
April 18, 2018

-Submitted via Email-

Attn:

Electricity and Combustion Division
Energy and Transportation Directorate
Environment and Climate Change Canada
351 Saint-Joseph Boulevard, 11th Floor
Gatineau, Quebec K1A 0H3
Ec.electricite-electricity.ec@canada.ca

**Re: Canada Gazette, Part I, Vol. 152, No. 7 — February 17, 2018
Proposed Regulations Amending the Reduction of Carbon Dioxide Emissions from Coal-fired
Generation of Electricity Regulations**

To whom it may concern,

These comments are being offered by the Ecology Action Centre (EAC) for the proposed Regulations Amending the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations (Coal Regulations).

The EAC welcomes new regulations to limit the dependence and utilization of coal-fired generation in Canada, especially in provinces like Nova Scotia where coal-fired electricity remains the single largest electricity generation source, and the largest single source of greenhouse gas emissions in the province. We also welcome the opportunity to provide comment and feedback on the proposed regulations and how both Canada and Nova Scotia can meaningfully move away from coal-fired electricity generation. Additionally, the details of the upcoming Canada-Nova Scotia Equivalency Agreement on these Coal Regulations remain critical, and the process around how Nova Scotia can meet the basis of equivalency should be clear and transparent.

As we work to advocate for and implement strong climate change policy across Canada, we endorse the recommendations by civil society and health groups, including Climate Action Network Canada, the Pembina Institute, Canadian Association of Physicians for the Environment, Climate Justice Saskatoon and the Conservation Council of New Brunswick regarding regulation of greenhouse gas emissions from coal-fired electricity generation.

1. Comments on the Nova Scotian Context:

In November 2016, Nova Scotia and Canada announced an 'Agreement-in-Principle'¹ to enter into an Equivalency Agreement for these amended Coal Regulations, and for Nova Scotia to develop a Cap and Trade carbon pricing system with no incremental emission reductions in the electricity sector before 2030. This limits the effectiveness of policies before 2030, and the EAC calls for increased ambition before the 2030 calendar year.

The existing *Canada-Nova Scotia equivalency agreement regarding greenhouse gas emissions from electricity producers*², established emissions caps from 2021 through 2030, ultimately requiring an electricity sector-wide emissions cap of 4.5 Mt CO₂e for the 2030 calendar year in Nova Scotia.

For clarity, the Ecology Action Centre advocates for Nova Scotia to completely transition away from coal-fired electricity by 2030, or as soon as reasonably possible.

2. RIAS and Replacement Capacity Assumptions:

The Regulatory Impact Analysis Statement (RIAS) states that '*In the modelled scenarios, Nova Scotia would replace almost all its coal-fired electricity with electricity generated by new natural gas-fired units.*'³ Although this coincides with the envisioned coal-to-gas transition by Canada, this policy option remains very unlikely in Nova Scotia.

The EAC recognizes that some of the RIAS assumptions and analysis becomes less relevant given this policy landscape in Nova Scotia. The EAC recommends that other scenarios be presented and considered that include no new natural gas infrastructure, and instead present a focus on increased utilization and development of in-province renewable electricity, transmission interconnection between Nova Scotia and New Brunswick and Nova Scotia and Newfoundland, and imported hydro capacity.

Currently, the technical and economic feasibility of policy options for the phase out of coal-fired electricity in Atlantic Canada is being undertaken as part of the *Regional Electricity Cooperation and Strategic Infrastructure Initiative* (RECSI). These conversations include all Atlantic Canadian provincial governments and utilities, as well as Natural Resources Canada and a number of modelling and economic experts exploring these scenarios. We understand a modelling scenario with zero coal-fired generation in Nova Scotia in 2030 is being explored, but no data or analysis on this process has been made public to date.

This planning and modelling conversation should be happening in tandem to these Coal Regulations as options considered to better facilitate the coal phase-out in the Atlantic region.

Further, the RECSI conversations should be made public for stakeholders to understand and engage with, and considered under the timeframe of these Coal Regulations.

¹ <https://novascotia.ca/news/release/?id=20161121003>

² <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/agreements/equivalency/canada-nova-scotia-greenhouse-gas-emissions.html>

³ <http://www.gazette.gc.ca/rp-pr/p1/2018/2018-02-17/html/reg3-eng.html>

3. RIAS and the Basis for Equivalency:

The EAC feels it necessary to state that the basis of equivalency should be that any equivalency actions taken by Nova Scotia must be equal to or more ambitious than actions under the proposed Coal Regulations. In this case, any equivalency actions must result in equivalent emission reductions from the electricity sector from Dec 31, 2019, as shown in Table 1 of the RIAS.

Although the base case is not articulated in values, the RIAS states '*In the baseline scenario, the Nova Scotia equivalency agreement is assumed to extend indefinitely beyond 2030, whereas it would end in 2030 in the policy scenario*'. Assuming this means a base case of a GHG emissions cap of 4.5 Mt/yr holding from 2030 onward, particularly for the 2030 decade, significant emission reductions are presented in the Coal Regulations scenario. Given Table 1 showing the five-year emission periods and incremental reductions from the Coal Regulations when compared to the base case, Nova Scotia sees a 2.7 Mt drop in the 2026-2030 period.⁴

Table 1: GHG emission reductions (Mt of CO₂e)

	2019–2025	2026–2030	2031–2035	2036–2040	2041–2045	2046–2050	2051–2055	Total
Alberta	0.0	9.7	0.9	0.1	0.0	0.0	0.0	10.6
Saskatchewan	0.0	1.3	6.4	6.7	2.7	0.0	0.0	17.0
New Brunswick	0.0	2.6	11.2	11.4	6.7	0.0	0.0	31.9
Nova Scotia	0.0	2.7	12.5	11.2	8.5	4.3	1.6	40.7
Total	0.0	16.3	30.9	29.4	17.9	4.3	1.6	100.5

Particularly, if this regulation only comes into effect in January 2030, the 2026-2030 year can be assumed to only present emission reductions from the 2030 calendar year. Given a 2.7 Mt reduction under the base case scenario of 4.5 Mt, this would mean an annual cap of approximately **1.8Mt CO₂e for province-wide emissions from the electricity sector beginning in 2030** and holding at this level or becoming more stringent through the 2030 decade.

This is what the Ecology Action Centre understands the basis for equivalency is for ongoing Equivalency Agreement negotiations, and is seeking more clarity on these values.

The basis for equivalency should also include all relevant CACs and mercury - as per the comments for submission made by Canadian Association of Physicians for the Environment in April 2018 – with a focus on reducing coal-fired generation in Nova Scotia.

For general recommendations on Equivalency Agreements, please also see **Appendix I** of this submission for a complete list of recommendations based on work developed in partnership with Climate Action Network Canada and other partner organizations.

⁴ <http://www.gazette.gc.ca/rp-pr/p1/2018/2018-02-17/html/reg3-eng.html>

4. Transparency

Although the results of the negotiations between Nova Scotia and Canada affect a wide range of stakeholders, there is no transparency around this Equivalency Agreement process, or the ways in which Nova Scotia plans to meet its obligations under the Coal Regulations.

The EAC feels that it is important that Canada and Nova Scotia communicate clearly and transparently the requirements for Nova Scotia's electricity sector under the Equivalency Agreement, in order for stakeholders to better engage, independent review to take place, and for the electricity sector to better plan for the decades ahead.

5. Just Transition:

The EAC applauds the creation of the Just Transition Task Force as the first efforts to ensure workers are centered in the transition away from high-carbon industries to low-carbon industries and other sectors of the economy.

The justice-based transition is a critical element of how we decarbonize our energy systems. In the case of Nova Scotia, there are approximately 600 workers in thermal generation plants across the province, many of whom will be affected by the transition away from coal by and after 2030. It's important that conversations in Nova Scotia begin early to meet the needs of workers and affected communities, and ensure that policies are in place to create and sustain training programs and viable employment opportunities in the growing green economy in Nova Scotia.

The Ecology Action Centre will seek ways to continue to engage with the Just Transition Task Force, and other efforts toward the justice-based transition in Nova Scotia.

We look forward to continuing the dialogue on the phase out of coal-fired generation in Nova Scotia with the governments of Canada and Nova Scotia. Please feel free to contact the Ecology Action Centre directly should you require any further information or documentation on this submission.

Thank you for your time and consideration,



Stephen Thomas

Energy Campaign Coordinator, Ecology Action Centre

K'jipuktuk, Mi'kmaq Territory

2705 Fern Lane, Halifax, NS, B3K 4L3

t. 1.902.442.0199

stephen@ecologyaction.ca

Appendix I:

Expectations for Equivalency Agreements

Developed with Climate Action Network Canada (CAN-Rac) and partners

[Full CAN-Rac Report yet to be published]

Given the limited history and mixed results of equivalency agreements in Canada, CAN-Rac proposes a clear set of expectations for federal-provincial equivalency agreements arising from the Pan-Canadian Framework on Clean Growth and Climate Change.

The current design of equivalency agreements is steeped in bureaucratic complexity and highly political. It's important to set clear benchmarks and expectations as we move forward.

Recommendations:

- 1. A legislative test for equivalency:** The absence of a legislated test for a finding of equivalency is the most important gap to be filled. *CEPA* currently does not define "equivalency", so this crucial underlying detail is left to political consideration⁵ rather than rigorous determination. Opinions differ on whether outcome-based agreements fit within the current drafting of *CEPA* s. 10(3) a), which focuses on the equivalency of provisions rather than their effects.⁶ The equivalency test should take into account:
 - The different nature of systems in place (tax vs. cap and trade), and the resulting difference in uncertainty, with transparent modeling.
 - Variable baseline years for targets across jurisdictions, taking into account the ambition in past targets that pre-date the PCF
 - Synergies and interplays across different regulatory and market instruments, for example, the risk that regulatory measures could result in a huge volume of free credits flooding a cap and trade system.⁷
- 2. Enforcement:** Enforcement of environmental law by both levels of government is a major issue in Canada, beginning with the risk that administrative federalism could undermine the federal government's ability to compensate for provincial inaction, and vice versa.⁸ Enforcement provisions must also consider that the federal government may lack the political will to intervene in a province's handling of environmental protection, or apply the carbon pricing backstop if it does not comply with the terms of an equivalency agreement. The new regime should ensure varied options for enforcement by both levels of governments and third parties, including

⁵ Taylor, 12.

⁶ Edward A Fitzgerald, *The Constitutionality of Toxic Substances Regulation Under The Canadian Environmental Protection Act*, (1996) 30 U.B.C. L. Rev. 55-98, online: <https://advance.lexis.com/document/?pdmfid=1505209&crd=f1a2af1a-2f3b-428e-a535-a66d0eeb8706&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials-ca%2Furn%3AcontentItem%3A5HSF-42J1-JPGX-S2V1-00000-00&pddocid=urn%3AcontentItem%3A5HSF-42J1-JPGX-S2V1-00000-00&pdcontentcomponentid=281534&pdteaserkey=sr13&ecomp=z49k&earg=sr13&prid=33bb6023-2567-4a48-b116-e28c646f68e6>

See contra: Bankes.

⁷ Doelle, NS article.

⁸ Brenda Heelan Powell, *op. cit.*, at 24: "The division of powers set out in the constitution allows the federal government to counter provincial bias or refusal to act. This protection is threatened by any sort of inter-delegation."

investigative procedures that are “equivalent” rather than “similar” to CEPA and provisions for citizen legal action that cannot be arbitrarily stayed by the attorney general.

3. **No Backsliding:** Terms of equivalency should not lead to outcomes that are less ambitious than those foreseen under the federal or provincial reference case. To prevent backsliding, the government can include a provision similar to Principle 11 of the *Canada-Wide Accord on Environmental Harmonization*, in the statutory framework for enacting equivalency agreements: “[T]he environmental measures established and implemented in accordance with this Accord [law] will not prevent a government from introducing more stringent environmental measures to reflect specific circumstances or to protect environments or environmental values located within its jurisdiction, [including GHGs].”⁹
4. **Set Floors, Not Ceilings:** Established federal standards of equivalency should present a minimum standard, with the expectation that provinces that can be doing more. If the established federal regulations are less ambitious a province’s pre-existing commitment, that commitment stands.
5. **Ensure Flexibility and Drive Progress:** Long-term, cost-effective GHG policy must drive increasingly stringent GHG ambition, with “updating to address economic growth and decline. At the extreme, flexibility also means equivalency agreements may need to be abandoned should they impede the alignment of subnational systems, or if they become too complicated in practice.”¹⁰ Five-year terms under CEPA s. 10 (8) should be timed to coincide with Canada’s stocktaking and increasing ambition under the Paris Agreement, and equivalency agreements should open to revision to ensure transformational rather than marginal GHG reductions.
6. **Binding targets and agreements:** Federal and provincial emissions targets subject to outcome-based equivalency arrangements must be legislated and legally binding. Equivalency orders under CEPA s. 10(3) should include the entire equivalency agreement and regulatory impact analysis as conditions precedent to the issuance of the order.
7. **GHG Reporting:** The federal government should refrain from delegating all responsibility for greenhouse gas reporting to a province or territory. When any such responsibility is delegated, it is imperative that the subnational jurisdiction meet federal standards for reporting greenhouse gases.
8. **Transparency:** Information shared under equivalency agreements must be made public by default, rather than subject to access to information requests.¹¹ Determinations of equivalency must be made transparently, using open-access models that make underlying assumptions explicit with freely accessible data.

⁹ Canadian Council of Ministers of the Environment, *Canada-Wide Accord on Environmental Harmonization* (January 1998), online: http://www.ccme.ca/files/Resources/harmonization/accord_harmonization_e.pdf.

¹⁰ Dave Sawyer and Philip Gass, “Regulating Carbon Emissions in Canada: Climate Policy Year in Review and Trends, 2013”, *International Institute for Sustainable Development*, February 2014, http://www.iisd.org/pdf/2014/canadian_carbon_policy_review_2013.pdf, page 11.

¹¹ See Nova Scotia EA clause 3.4 for a discussion of this issue.

9. **Periodic Independent Review:** EA implementation must be subject to frequent performance reviews, preferably by an independent party such as the Auditor General of Canada or the Commissioner of the Environment and Sustainable Development, before they can be renewed.
10. **Fairness in Single-Sector Approaches:** For equivalency with policy measures intended for a single sector, such as the phase out of coal-fired electricity, elements of equivalency must remain within that sector, to maintain the intent of the original emissions reduction policy and ensure fairness within and among sectors.
11. **Cost Recovery:** The federal government should offer cost recovery to provinces and territories entering into equivalency agreements, to ensure that not all the costs of environmental regulation are passed on to them.