



## Comments on Draft Notice under Section 71 of CEPA 1999 with respect to reporting of information on air pollutants, greenhouse gases and other toxic substances for the 2006 calendar year, dated June 18, 2007

Prepared by Nashina Shariff<sup>1</sup> and Johanne Whitmore<sup>2</sup>  
June 29, 2007

The Climate Action Network (CAN-RAC) welcomes this opportunity to provide comments on the *Draft Notice with respect to reporting of information on air pollutants, greenhouse gases and other toxic substances for the 2006 calendar year* (hereafter referred to as *Draft Notice*). We hope the following key recommendations will be considered by Environment Canada when finalizing the Section 71 (S.71) notice, to ensure that appropriate data is collected to develop 2006 emission baselines for regulated industrial emitters.

**1. Base year data** [Explanatory Note]: On May 2, 2007, Environment Canada officials indicated during a Technical Briefing<sup>3</sup> on the *Regulatory Framework* in Ottawa that the notice would be issued in June 2007, and that facilities would be required to report their data by the end of 2007. However, officials also noted that the protocols for quantifying emissions intensity for the purpose of assessing compliance with regulated targets would not be finalized within that timeframe.

CAN-RAC welcomes the prompt issuance of the S.71 notice. However, we are deeply concerned that, as a result of the time delay between the notice and the finalization of the protocols, officials could end up comparing apples and oranges due to discrepancies between base year data and the data used for assessing compliance from 2010 onwards. The time delay could also create an opening for some companies to exaggerate their base year emissions in an attempt to effectively weaken their targets.<sup>4</sup>

The draft notice mentions that the information can be used to support the development of regulations. However, the government should also explicitly state that it reserves the right to use the information to adjust reported 2006 emissions information, if necessary, to ensure the comparability of base year data with data to be reported once emissions regulations are in force.

**2. Public disclosure of data, transparency and accountability** [preamble]: The *Draft Notice* is completely silent on the public disclosure of information received under the notice. Previous *Canada Gazette* notices have made it clear which information would be made public (e.g., the *Notice with respect to reporting of greenhouse gases (GHGs) for 2006*, published in the *Canada Gazette Part I* on July 15, 2006, stated that emissions information by facility would be disclosed to the public). The S.71 notice should therefore specify which information from the notice will be made publicly available.

---

<sup>1</sup> The Toxics Watch Society of Alberta, phone: 780.915.8946, email: [nashina.shariff@toxwatch.ca](mailto:nashina.shariff@toxwatch.ca)

<sup>2</sup> The Pembina Institute, phone: 819.483.6288, ext.33, email: [johanne@pembina.org](mailto:johanne@pembina.org)

<sup>3</sup> Environment Canada. 2007. *Clean Air Regulatory Agenda - Regulatory Framework for Industrial Air Emissions*. In-depth Technical Briefing, Ottawa, May 2; [http://www.ec.gc.ca/4F2292E9-3EFF-48D3-A7E4-CEFA05D70C21/techbrief\\_e.pdf](http://www.ec.gc.ca/4F2292E9-3EFF-48D3-A7E4-CEFA05D70C21/techbrief_e.pdf)

<sup>4</sup> A lack of adequate baseline year data was the key factor in the over-allocation of emissions allowances in the first phase of the EU's Emissions Trading Scheme, which led to the much-publicized collapse in prices of allowances for the first phase since October 2006.

Although it is not necessary that all the information submitted by industrial facilities be disclosed publicly, some data does need to be publicly available to ensure there is sufficient public oversight of, and confidence in, the regulatory system, including:

- emissions information disaggregated by facility and by activity within each facility;
- production information disaggregated by facility and by activity within each facility; and
- information on the accuracy of production and emissions information.

It is especially important that production data be made publicly available. Canadian industries have argued long and hard to have their climate change performance evaluated not on absolute emissions, but on emissions intensity. The federal government accepted this argument. As a result of this choice, the production data (by activity) that the government uses to calculate baselines must be made publicly available in order to have an adequate level of transparency in the system. Some industries make the argument that their emissions intensity should remain confidential because it reveals production data. However, the disclosure of baseline and production data is already required for intensity-based systems in Alberta<sup>5</sup> and for the United Kingdom's greenhouse gas (GHG) emissions trading scheme. In Alberta, the public reporting of production data is already common in many sectors. For example, Alberta's Oil and Gas Conservation Regulation states that the Energy and Utilities Board "shall make available to the public, from records, reports or information submitted to or acquired by it ..., monthly totals of crude bitumen, gas or water production from a well other than an experimental well."<sup>6</sup>

The following information does not need to be made publicly available, but rather should be collected by the federal government for quality assurance purposes:

- energy and fuel use data
- detailed methodologies used to estimate or measure emissions; and
- site-specific information.

**3. Mining Sectors** [Schedule 21]: With the exception of oil sands, there are no requirements for reporting from mining sectors in the *Draft Notice*. It is unacceptable for the government to exempt the entire mining industry from emissions reporting or regulations. Mining produces significant GHG emissions as well as emissions of other air pollutants. The anticipated future regulations must include all GHG-intensive industry in order to provide adequate coverage of industrial emissions in the country. For these reasons, schedules describing reporting requirements for the mining sectors in Canada must be added to the final S.71 notice.

**4. Completeness of GHG Emissions Information** [section 9 in Schedules 6, 15, and 20]: Some sectors are not required to report GHG emissions under the *Draft Notice*. Specifically the wood products and the petroleum products storage and distribution sector are not required to report any GHG emissions information and of the six main GHGs, the base metal smelting sector is only required to report emissions of CO<sub>2</sub>. Collecting incomplete GHG emissions information is inappropriate. All GHG-intensive sectors must be fully included in the reporting exercise and covered under the future regulation. The final S.71 notice must require all industrial sectors in Canada to report emissions of all of the main GHGs.

---

<sup>5</sup> Section 14 of the Emissions Trading Regulation under Alberta's Environmental Protection and Enhancement Act states that the underlying data used in determining the baseline information of a unit, and the detailed generation and emissions data with respect to a unit, are public information that must be disclosed by the registry operator.

<sup>6</sup> Alberta Regulation 151/71, *Oil and Gas Conservation Act, Oil and Gas Conservation Regulations*, section 12.1502.d; [http://www.eub.gov.ab.ca/bbs/requirements/actsregs/ogc\\_reg\\_151\\_71\\_ogcr.pdf](http://www.eub.gov.ab.ca/bbs/requirements/actsregs/ogc_reg_151_71_ogcr.pdf)

**5. Dissaggregation of information** [Schedule 5, Section 9 and similarly worded requirements listed in Schedules 6 to 20]: The *Draft Notice* currently requires emissions, energy and fuel use information to be reported at the facility level for all sectors. For some sectors, such as the aluminum and chemicals sectors, emissions are also to be reported by activity, however for many sectors such as the oil and gas and refining sectors emissions reporting is only required at the facility level.

Emissions targets for all sectors are expected to be set at the activity level. To develop effective targets and to establish transparent baselines, the S.71 notice should require industrial facilities to report total emissions, energy and fuel use data disaggregated by activity and by source. This will also ensure that sufficient data is available to the federal government if future adjustments need to be made to baselines for comparability with data to be reported when regulations are in force.

**6. Thresholds** [section 1 of each of Schedules 6, 7, 8, 11, 12, 17, and 18]: We welcome Environment Canada's requirement in the *Draft Notice* to have all oil and gas facilities report their emissions. ENGOs have repeatedly raised concerns that the use of thresholds that are too high would result in a large proportion of emissions being exempted in the oil and gas sector, where a significant proportion of emissions come from small facilities. However, CAN-RAC is concerned by the proposed thresholds for other sectors, including the chemicals sector, where the threshold has been set at 50kt for GHGs. Previous reports have shown that adopting a 50kt threshold across all sectors would only capture 65% of industrial emissions.<sup>7</sup> If similar results are found for the chemical industry, and as little as 65% of emissions from the sector are accounted for, then the proposed threshold for this sector is highly inappropriate. Environment Canada should instead adopt thresholds for this sector that are similar to those for the oil and gas sector.

For the mining and manufacturing sector, it would have been preferable for Environment Canada to adopt *de minimus* levels, as proposed in the past under the Large Final Emitters system. Environment Canada previously intended to require all facilities in the covered mining and manufacturing sectors to take on targets<sup>8</sup>. For reasons of coverage, equity and to avoid perverse incentives to create small facilities, we believe that Environment Canada should impose a similar requirement under the S.71 notice.

To ensure that the thresholds result in a regulatory system that covers a sufficient proportion of industrial emissions, the federal government will need to provide estimates of the percentage of emissions to be excluded in each sector for which a threshold has been included in the notice.

**7. Verification** [Schedule 2]: Information reported under the final S.71 notice must meet high quality standards because it will be used to set baselines for regulated industrial emitters. Quality standard requirements are already common in other jurisdictions with emissions trading systems. For example, under Alberta's NO<sub>x</sub>/SO<sub>2</sub> emissions trading system, baseline information must be verified by a third party.<sup>9</sup> Therefore, to establish a credible emissions trading system under the federal government's Regulatory Framework, we recommend that the final S.71 notice similarly require that reported emissions from all facilities be verified by a third party.

**8. Accuracy** [Schedules 5 to 20]: Industrial emitters should be required to report emissions to a specified level of accuracy, as is commonly required in other jurisdictions. For example, the European Union's

---

<sup>7</sup> Emissions Trading Regulation under Alberta's Environmental Protection and Enhancement Act, section 26 <http://www.canlii.org/ab/laws/regu/2006r.33/20070515/whole.html>

<sup>8</sup> Current Thinking RE LFE System Coverage and Thresholds, Presentation made to the Technical Working Group on Thresholds of the Stakeholders Advisory Committee on Reporting, on March 11, 2005

<sup>9</sup> Correspondence from the USEPA to Alberta Environment, Distributed to Alberta Environment's Technical Advisory Group on Emissions Reporting.

system expresses permissible uncertainty at a 95% confidence interval around the measured value.<sup>10</sup> In Alberta, production data in the oil and gas industry must be reported at an uncertainty level of 5% or less.<sup>11</sup> The federal government should similarly require that uncertainty of emissions estimates be no more than 5%.

If this requirement is considered too onerous, the federal government should at the very least require in the final S.71 notice that industrial emitters report the uncertainty level associated with their reported information, just as the federal government is required to do for each source in its inventory when reporting its emissions under the United Nations Framework Convention on Climate Change.<sup>12</sup> This information should then be disclosed to the public.

**9. Quantification** [Schedule 5, section 22 and similarly worded clauses in Schedules 6 to 20]: The notice does not require reporters to use the best data available to them in their reporting. To ensure that the government receives the most accurate data available it must require large industry to use the best data and methodology for quantifying emissions available to it when compiling the required information.

The notice does not require reporters to use emissions methodologies which are consistent with guidance issued by the Intergovernmental Panel on Climate Change. The *Notice with respect to reporting of greenhouse gases (GHGs) for 2006*, published in the *Canada Gazette Part I* on July 15, 2006 stated that “[a] person submitting a report ... should, where reasonable, use quantification methods for estimating emissions that are consistent with the guidelines approved for use by the United Nations Framework Convention on Climate Change (UNFCCC) for the preparation of National Greenhouse Gas Inventories by Annex 1 Parties (Decision 18/CP.8), and the annex to that decision contained in FCCC/CP/2002/8.” Canada must comply with these guidance documents when reporting its national emissions to the UNFCCC. For efficiency, all industrial emitters should also comply with the guidelines to ensure that their reported data can be readily used by the federal government when updating its national emissions inventories under the UNFCCC.

The *Draft Notice* requires emitters to specify the type of quantification method used to estimate emissions. However, the final S.71 notice should require the following additional information on methodologies:

- information on the nature of measuring devices used, where direct measurement is used;
- key data inputs and calculations where predictive emissions monitoring, mass balance, site specific emissions factors and engineering estimates are used;
- the source of emissions factors when an emission factor published from an external document is used.

**10. Carbon content of fuels** [Schedules 5 to 8 and Schedules 10 to 20]: For the electricity sector, the carbon content of fuel is required to be reported. However, this is the only sector where this requirement is applied. In the final S.71 notice, Environment Canada should also require that the carbon content of all fuels be reported when available. This data will allow the federal government to set the most accurate emissions baselines for facilities.

---

<sup>10</sup> Commission Decision of 29 January 2004 establishing guidelines for the monitoring and reporting of greenhouse gas emissions, Section 4.3 Uncertainty Assessment.

<sup>11</sup> EUB Directive 017, Measurement Requirements for Upstream Oil and Gas Operations, <http://www.eub.gov.ab.ca/bbs/documents/directives/Directive017.pdf>

<sup>12</sup> Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol, Section B: Inventory Planning, Par. 14d, The Guidelines were recommended for adoption by the first session of the Conference of the Parties serving as the meeting of the parties in COP decision 20/CP.7. <http://unfccc.int/resource/docs/cop7/13a03.pdf#page=2>

**11. On-site transportation emissions** [Schedules 5, section 9 and similarly worded provisions in Schedules 6 to 20]: The *Draft Notice* excludes the reporting of on-site transportation emissions from all sectors. This information should be collected to ensure that a substantial proportion of emissions will not be excluded from any sector.

Previous notices for GHG emission reporting from large industrial emitters included on-site transportation emissions (e.g., see *Notice with respect to reporting of greenhouse gases (GHGs) for 2006*, published in the *Canada Gazette Part I* on July 15, 2006, Schedule 2, section 2).

**12. Waste Water Emissions** [Schedules 1 to 7; Schedules 9 to 13; Schedules 15 to 18; and Schedule 20]: In the *Draft Notice*, the reporting of waste water emissions are only required for some sectors such as the oil and gas and oil sands sectors. However, the *Notice with respect to reporting of greenhouse gases (GHGs) for 2006*, published in the *Canada Gazette Part I* on July 15, 2006 required the reporting of waste water emissions from all sectors. The final S.71 notice should therefore require that waste water emission from all sectors be reported to ensure no important emissions sources are being excluded from the regulatory system.

**13. CO<sub>2</sub> emissions from biomass** [Schedule 5, section 13 and similarly worded provisions in Schedules 6 to 20]: Under the *Draft Notice*, there emitters are not required to report CO<sub>2</sub> emissions from biomass. Although these emissions should not be reported as part of the facilities' emissions totals, they should be reported as a separate line item. This will allow for appropriate accounting of biomass emissions.

Requiring biomass emissions to be reported separately is already common practice. For example, Schedule 2, section 3 of the *Notice with respect to reporting of greenhouse gases (GHGs) for 2006*, published in the *Canada Gazette Part I* on July 15, 2006 required biomass emissions to be reported separately while excluding them from the emission totals.

**14. Fixed process and non-fixed process emission data** [Schedule 5, section 16 and similarly worded provisions in Schedules 6, 7 and 10 to 20]: In the *Draft Notice*, the following requirement for process emissions is included for most sectors:

*“Where industrial process emissions are produced in combination with emissions from fuel combusted for energy purposes, the operator shall report the emissions according to the purpose of the activity, that is, either an industrial process or energy production.”*

Process emissions will receive no emissions reduction obligations under the proposed regulatory system. For this reason it is important that only those emissions that are produced primarily for process related activities are classified as such. By allowing emitters to choose whether to report emissions as process or energy related, an incentive is created for emitters to classify emissions that are primarily related to energy production as process emissions, thus reducing their regulatory obligation. In the final S.71 notice, the end part of the above statement should specify that emissions be reported “*according to the **primary purpose of the activity.***”

In addition, the final S.71 notice should require that emissions from gasification be reported separately. Industry has argued for fixed process emissions to be excluded from the regulatory system because it is claimed these emissions cannot be reduced. However, some fixed process emissions, such as those that result from gasification, can be reduced through capture and storage. For this reason industry should be required to distinguish these emissions from other process emissions in their reporting so that they can be regulated in future.

**15. Continuous Emissions Monitoring Equipment (CEM)** [Schedules 5, section 45 and similarly worded provisions in Schedules 6 to 20]: For most sectors, the *Draft Notice* states:

*“If continuous emissions monitoring equipment is installed at the... facility, indicate the year the equipment was installed, the substance the equipment monitors, the frequency at which the equipment monitors that substance, and the percentage of the... facility’s emissions monitored by the equipment.”*

In addition to the above information, the final S.71 notice should require facility operators to report whether their CEMs are maintained to comply with a given obligation – for example, in Alberta, CEMs must comply with a CEMs code. This will provide the federal government with additional information on the reliability of a facility’s CEMs data.

**16. Electricity Generating Units on Industrial Sites** [Schedule 5 to 8 and 10 to 20]: In the *Draft Notice*, the electricity sector is required to report emissions and fuel use by unit. This sector is also required to report the year that each unit was commissioned. However, for power generating units on industrial sites, reporting of emissions and fuel use information from each unit and the year the unit was commissioned is not required across all sectors.

To be able to compare and treat the emissions from cogeneration and other on site electricity generating units the same way as emissions from the electricity sector, the final S.71 notice must require that reported on site power generation data be disaggregated at the same level as those from stand alone electricity units (i.e., (i) emissions from each generation unit; (ii) commissioning date of each generation unit; and (iii) fuel use information for each generating unit.)

**17. Information provided under other systems** [Section 2]: The *Draft Notice* allows reporters who have submitted information to the Minister of the Environment under another system to reference the information and where it was sent. The *Draft Notice* states that this information will be incorporated into the information to be provided in response to the notice.

This can be problematic given that other systems, such as the National Pollutant Release Inventory, use different facility definitions than those under the S.71 notice. The final S.71 notice should therefore require that only facility information reported under other systems that are equivalent to those under the S.71 notice be allowed to be referenced.

**18. Statement of certification** [Schedule 5, section 8 and similarly worded provisions in Schedules 6 to 20]: There are two important differences between the statement of certification clauses in the *Draft Notice* and in previous *Canada Gazette* notices concerning GHG reporting:

(i) Previous notices have specified that the statement of certification should attest that the company has ensured that the information provided is *“based on the best available information.”* However, in the *Draft Notice* this phrase has been omitted. It is important that the information provided under this notice represents a facility’s best available data, to ensure that accurate baselines can eventually be set. The final S.71 notice should therefore reinsert a reference to best available data under its requirement on a statement of certification.

(ii) Previous notices have specified that the statement of certification must be *“signed by an authorized signing officer of the reporting company.”* The *Draft Notice*, however, does not specify this requirement and only asks that the operator sign the certification document. This is inappropriate as clearly an officer of the company must take responsibility for ensuring the information is true, accurate, complete and based on the best available information.

**19. Confidentiality** [preamble]: The *Draft Notice* allows reporters to submit with their information a request that the information be treated as confidential. Under the *Notice with respect to reporting of greenhouse gases (GHGs) for 2006*, published in the *Canada Gazette Part I* on July 15, 2006, the government also stated that reporters submitting such requests include the reasons for requesting that the data be kept confidential. The final S.71 notice should also require that those requesting confidentiality substantiate their requests and that these be made publicly available. Information cannot reasonably be deemed confidential in the absence of compelling public arguments.

**20. Data retention** [Schedule 2]: The notice is silent on the retention of data. The notice must require that all data used by industry to establish their 2006 baseline be kept for as long as the government's emission regulations use a 2006 baseline.