The Climate Action Network Canada Comments on Environment Canada's *Drafting Instructions - Cross-Cutting Provisions for the Large Final Emitters Regulations*, dated November, 2005

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GENERAL COMMENT

1. **Releasing business-as-usual projection data used as the basis for LFE targets specified in Canada's April 2005 Kyoto Plan, *Moving Forward on Climate Change – A plan for Honouring our Kyoto Commitment***

   (i) Given that the Government has chosen to measure emission reductions starting from business-as-usual (BAU) levels, third parties and the public will have no way of understanding the environmental implications of targets – or of holding the Government accountable by verifying whether they add up to the 45Mt emission reductions to which the Government committed in the 2005 Plan – unless BAU projections are published for both emissions and production in 2010 for each activity that has a distinct target under the LFE regulation.

   (ii) After ENGOs expressed the above concerns to Environment Canada (EC) officials at a meeting on the LFE system and its draft cross-cutting regulation on December 15, 2005, EC officials recognized that ENGOs have the "right" to basic information regarding LFEs, including BAU data and the list of covered activities that the government proposes to regulate. We welcome this statement by EC officials, and their reassurance that BAU data "is expected to be published in the ***next four weeks***" (i.e., by January 15, 2006), but we are concerned that the list of covered activities "will likely take longer".

2. **Supplementary principle**: The use of eligible Kyoto units should be limited to ensure they are supplemental to domestic emission reductions by LFEs, as specified in the Marrakech Accords: *"the use of the mechanisms shall be **supplemental** to domestic action and that domestic action shall thus constitute a significant element of the effort made by each Party included in Annex I to meet its quantified emission limitation and reduction commitments under Article 3, paragraph 1."*[3] The cross-cutting regulation should include a preamble reiterating the above supplementary principle in the Marrakech Accords.

SPECIFIC COMMENTS ON THE DRAFT CROSS-CUTTING REGULATION

3. Definitions

3.1 Credits [p.1]. The draft cross-cutting regulation includes "Technology Investment Units" in its definition of "*eligible domestic credit*" and appears to allow for price assurance mechanism units being included in the category of "tradeable units".

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[3] Marrakech Accords, FCCC/CP/2001/13/add.2, p.3; http://cdm.unfccc.int/Reference/COPMOP/decisions_17_CP.7.pdf.

- For clarity purposes, the cross-cutting regulation should specify in its definition that domestic credits obtained through contributions to the Technology Investment Fund will not be tradeable. As specified in the *Greenhouse Gas Technology Investment Fund Act*, TIUs can only be used by an LFE towards its compliance.
- We support the omission of price assurance mechanism from the cross-cutting regulation. The price assurance mechanism could result in a transfer of financial liability from LFEs to taxpayers and act as a disincentive to technological innovation. However, if price assurance mechanism units are included in the LFE system, regulations should make clear that they are not tradeable. WWF is preparing a detailed submission on the potential cost to government of the price assurance mechanism and recommendations for its improvement, we hope the government will consider this supplementary information to be submitted in the weeks to come, in its deliberations on the design of the LFE system.
- TIUs should be made available at a premium to the market price for compliance units in order to limit the government's liability and create a preference for compliance options that genuinely comply with the Kyoto protocol (i.e., emission reductions actually occurring during 2008–2012).
- The 2005 Plan limits access to investments in the Technology Fund to 9Mt per year. The Government needs to consult on a mechanism to implement this limit. For example, to ensure that all LFEs have access to this compliance mechanism, the use of TIUs by individual LFEs could be limited to a maximum of 20% of the required number of compliance units that an LFE must remit. Further consultation is needed to discuss the best way to implement a limit.

3.2 Facility [p.2]. The cross-cutting regulation defines *"facility"* as "any structure, equipment or other necessary physical component of a commercial operation engaged in one or more covered activities." We recommend that the definition of facility be sufficiently broad to allow for the reporting of aggregated data by numerous small similar facilities owned by a single company (e.g., oil wells in Alberta), and to include on-site mobile sources that are integral to the production process.

4. Prohibition to emit [p.3]

"Subject to section 3, no operator shall, in a given calendar year, release prescribed greenhouse gas emissions from covered activities that exceed the aggregate amount calculated by the following equation":

$$L = \sum_{j=1} \sum_{i=1} \left\lfloor A_i x B_{ij} \right\rfloor$$

where:
i = *the* i^{th} *covered activity*
j = *facility where the operator carries out covered activity* i
A_i *is the emission intensity standard for covered activity* i
B_{ij} *is the physical production for covered activity* i *that is carried out in facility* j
where A_i *and* B_i *are defined in the applicable sector-specific regulation listed in Schedule 2.*

- The cross-cutting regulation should clearly specify that a single numeric emission intensity standard will apply for each activity and that these standards will be published in the sectoral regulations.
- Physical production data must be reported in a uniform manner to enable clear comparison of this data across facilities involved in the same activity, including reporting of uncertainties associated with the data.

- The public accountability and credibility of the LFE system requires that physical production data used to quantify prescribed emissions from covered activities be publicly disclosed.

5. Remittance of Compliance Units [p.3-4]

5.1 Limit on temporary and long-term certified emission reduction units [p.4]. The cross-cutting regulation limits the use of temporary *or* long-term certified emission reduction units (tCERs and lCERs) to a maximum of 30% of the total number of required compliance units by LFEs.

> *"3.(2) Neither the number of temporary Certified Emission Reduction units or long-term Certified Emission Reduction units remitted under section 3(1)* ***shall exceed 30% of the total number of required compliance units****."* [p.4]

This provision is problematic for several reasons:

(i) The provision represents a significant shift from the federal government's previously proposed 2% limit on the use of tCERs and lCERs by LFEs for compliance purposes. According to NRCan's discussion paper "The Use of CDM Credits from Reforestation and Afforestation": "*The legislation should allow LFEs to use temporary CERs – Temporary Certifies Emission Reductions (tCERs) and Long-Term Certified Emission Reductions (lCERs) – for compliance against their obligation under the LFE program, subject to the limitations noted below:*

a) In any given year, the tCERs and lCERs transferred into the remittance account must be ***equal to or less than 2% of its permit allocation for that year.***
b) In order to respect Canada's national limit on the 'net acquisition' of tCERs and lCERs, a tCER can be transferred to the remittance account by an LFE only if the national 't/lCERs gateway' is open. NRCan and Environment Canada will be undertaking additional work to assess how best this gateway might function".

(ii) The provision could compromise Canada's ability to respect its national limit on the 'net acquisition' of tCERs and lCERs, as defined under Decision 7/CP7, article 7b of the Marrakech Accords, which states that "*for the first commitment period, the total of additions to a Party's assigned amount resulting from eligible land use, land-use change and forestry* [LULUCF] *project activities under the clean development mechanism shall* ***not exceed one per cent of base year emissions of that Party, times five****."*[4]

Considering Canada's 1990 emissions were 609 Mt, LULUCF tCERs and lCERs may only contribute to a maximum of 6.09 Mt/year of Canada's remittances of Kyoto units during the 2008-2012 period. To meet its Kyoto obligation, Canada must reduce its total annual GHG emissions by 270 Mt during the 2008-2012 period, of which LFEs are to contribute 36 Mt. It would therefore be reasonable to allow LFEs to make use of 36/270 or 13% of Canada's total allowance of 6.09 Mt/year of tCERs and lCERs, i.e., 0.812 Mt/year, which is 1.8% of the total LFE target of 45 Mt. The cross-cutting regulation should therefore include a mechanism to limit tCERs and lCERs to a maximum of 1.8% of the required number of compliance units that LFEs,

[4] Marrakech Accords, FCCC/CP/2001/13/add.2, p.22; http://cdm.unfccc.int/Reference/COPMOP/decisions_17_CP.7.pdf.

individually or in aggregate, must remit. It is also important to clearly specify in Section 3.2 of the cross-cutting regulation that the limit applies to the combined sum of tCERs *and* lCERs, and not to the sum of each type of credit.

5.2 Temporary eligible domestic credits [p.4]**.** According to section 5 of the cross-cutting regulation, *"an operator who has remitted temporary eligible domestic credits in compliance with these regulations in the previous year must replace the temporary eligible domestic credits by remitting an equivalent number of compliance units to the Minister."* Currently, Canada's Kyoto target does not account for domestic forest sinks. Canada must therefore determine whether it intends to include forest management towards its emissions obligations under Kyoto, before it determines whether temporary domestic credits generated by forest sinks can be use by LFEs towards compliance. Otherwise, there will be a transfer of liability from LFEs to taxpayers, because the government will need to purchase additional emission reduction credits to replace non-Kyoto credits used by LFEs. If Canada elects not to include forest sinks in its emission reduction commitments under the Kyoto protocol, temporary domestic credits should therefore not be granted to LFEs.

6. Reporting, Records, and other Documents [p.5]

Section 12 of the cross-cutting regulation makes no reference to third-party emission verification.

"12. Every operator shall submit, for each facility that he or she operates, in a form approved by the Minister, an annual report to the Minister …" [p.5]

Currently, third-party verification is required by Canada's offset system. Similarly, to ensure that LFEs' reductions in their onsite emissions as well as emissions credits generated by LFEs represent real, additional and comparable emissions reductions, third-party verification should be required for all emissions reported.

7. Request for Confidentiality [p.6]

During the December 15, 2005 meeting, EC officials stated that their reasoning for including Section 21 in the cross-cutting regulation (*"21. The proposed regulations would contain provisions regarding requests for confidential treatment of data"* [p.6]) was to provide additional detail on the application of the confidentiality provisions under CEPA.

We strongly recommend that provision 21 also be used to elaborate on the confidentiality provisions under CEPA:

- When determining whether to grant confidentiality status to information, the Minister should also consider whether or not the type of information being granted the exemption would ordinarily be, or has in the past been, considered confidential. If the information is or was in the past not conventionally treated as confidential, confidentiality status should not be granted.
- When granted, confidentiality should be limited to a maximum period of time, as is the case under Alberta's GHG reporting system. Information should be considered confidential for no more than a 2-year period.

In addition to these clarifications, we would like to note that CEPA does not specify the minimum information that will be publicly disclosed by LFEs. This should be outlined in the cross-cutting regulation.