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Using equivalency agreements to advance Canadian climate policy

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Using equivalency agreements to advance Canadian climate policy

Contents

Introduction

This document explores the function and historical significance of equivalency agreements (EAs[1]) established under the *Canadian Environmental Protection Act, 1999* (hereafter *CEPA 1999* or "the Act"), and makes recommendations regarding their future use under the Pan-Canadian Framework on Clean Growth and Climate Change. This research is particularly relevant for current regional and federal work regarding regulatory measures for new and existing coal-fired electricity plants, new and converted gas-fired plants, and new regulations to control methane releases in the oil and gas sector.

Section 1 provides a brief primer on the statutory mechanics of EAs and situates this understanding in the context of the recent parliamentary review of *CEPA 1999*.

Section 2 examines previous EA negotiations between Alberta and the Government of Canada during and after implementation of the 2012 federal regulations on coal-fired electricity generation; reviews the existing EA covering greenhouse gas (GHG) regulations on the electricity sector in Nova Scotia; and summarizes ongoing discussions between Saskatchewan and the Government of Canada on the incoming federal update to regulations on coal- and gas-fired electricity.

Section 3 outlines principles for the drafting of future EAs in light of Canada's international emissions reduction targets and the policy direction provided by the Pan-Canadian Framework on Clean Growth and Climate Change.

[1] Not to be confused with environmental assessments (the more familiar meaning of the EA acronym) conducted under the authority of the *Canadian Environmental Assessment Act, 2012*.

1. Equivalency agreements 101

1.1 What are EAs, and how do they work?

The basic function of an EA is to allow a lower order of government to be exempted from federal regulations made under the *Canadian Environmental Protection Act, 1999* when that government already has equivalent rules or requirements in place. Section 10 of *CEPA 1999* provides the legislative authority for the negotiation of equivalency agreements between the federal government and any of three types of subnational government: provincial, territorial, or Indigenous.[2] The federal government assesses equivalency on a regulation-by-regulation basis, and a successfully negotiated EA forms the basis of a Cabinet decision declaring that a specific regulation under *CEPA 1999* does not apply in a certain jurisdiction. According to Environment and Climate Change Canada (ECCC), the purpose of EAs is to avoid the duplication of environmental regulations between different orders of government, and "to enable the best-positioned jurisdiction to provide the highest environmental quality for Canadians."[3]

As noted, an exemption can only be granted if an equivalent provision (whether a law, regulation, or other instrument) is already in force in the jurisdiction in question. While it is generally understood that "equivalent provisions" are those that result in the same environmental outcome as would otherwise occur under the federal rule,[4] the Act does not formally define any legal criteria by which an assessment of equivalency must be made. ECCC has suggested that the equivalent or substitute regulation does not need to be identical to, or have the same wording as, the *CEPA* regulation,[5] but that it must

[2] *Canadian Environmental Protection Act, 1999* [*CEPA 1999*], Section 10, "Agreements Respecting Equivalent Provisions." http://laws-lois.justice.gc.ca/eng/acts/C-15.31/page-2.html#h-8

[3] Environment Canada (now Environment and Climate Change Canada [ECCC]), *Fact Sheet — Equivalency Agreements under CEPA 1999*. http://www.ec.gc.ca/lcpe-cepa/DCDEC51D-4224-43F9-8C17-EDC61F3E0A0F/fs_fi-equiv.cfm.pdf

[4] Various informational materials supplied by Environment and Climate Change Canada (previously Environment Canada) over the years support this view. See ibid. More generally, see "Fact Sheets on Implementing the Canadian Environmental Protection Act, 1999," *CEPA Environmental Registry*. http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=1FE509F3-1

[5] ECCC, *A Guide to Understanding the Canadian Environmental Protection Act, 1999* (2004) s. 18.2. https://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=E00B5BD8-1. See also https://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=5CB02789-1.

"serve the same purpose and have the same effect."[6] In practice, the interpretation of equivalency is largely left to the discretion of the Minister of the Environment and Climate Change.

Section 10 also specifies the types of *CEPA* regulation that are eligible for inclusion in an EA. Eligible regulations are those that cover:

- toxic substances (s. 93(1));
- environmental emergencies (s. 200(1));
- government operations on federal and Aboriginal lands (ss. 209(1)(2)); and
- international air or international water pollution (ss. 167 and 177), unless the regulations are with respect to a federal source.[7]

For an exemption to be triggered (at which point the federal regulation is said to "stand down"), the subnational government must gain an order-in-council that declares the relevant *CEPA* regulation does not apply in the area under the jurisdiction of that government. This order is called a "declaration of equivalent provisions." Such an order is made on the recommendation of the federal Minister of the Environment, but the final authority to issue an order lies with the Governor in Council (i.e. the entire federal Cabinet).

For Cabinet to receive the recommendation of the Minister and issue the order, the Minster must agree *in writing* with the subnational government that two criteria have been met: first, there are already provisions in force "by or under the laws applicable to the jurisdiction of the [subnational] government" that are equivalent to the *CEPA* regulation; and second, that the subnational government has implemented provisions empowering individuals to request an investigation of alleged regulatory violations.[8] This investigation mechanism may be set out in environmental legislation other than

[6] To clarify the question of what "equivalency" entails, ECCC has offered the following examples: "The methods used to determine emission limits or allowances for regulated emitters should result in analogous reductions and treat like emitters comparably. From a policy perspective, an equivalency determination should also consider whether measurement methods will provide scientifically comparable and valid results, whether enforcement is consistent with Environment Canada's CEPA Enforcement and Compliance Policy; and whether there are provisions for comparable penalties." See *Fact Sheet — Equivalency Agreements under CEPA 1999,* 2.

[7] Under the Act, a "federal source" means a department or agency of the Government of Canada, a Crown corporation, or a federal work or undertaking (i.e. project).

[8] With respect to the second requirement, under subsection 10(3), the subnational jurisdiction must have instituted "provisions that are similar to sections 17 to 20 [of *CEPA* 1999] for the investigation of alleged offences under the environmental legislation of that jurisdiction." In general, sections 17 to 20 of the Act provides members of the public (who must be resident in Canada) with a right to appeal to the Minister for investigations of potential violations and a right to be kept informed of progress on those investigations.

that covered by the EA, so long as the other legislation explicitly extends the use of its provisions to cover the rule or regulation at issue.

Before an EA can be officially "entered into," *CEPA 1999* requires that the text of the proposed agreement be made available for a 60-day public comment period, during which time any person may file written comments or a notice of objection. At the end of the comment period, the subnational Minister is required to publicly report on how these submissions (if any) were resolved. An EA officially comes into force on the date specified in the agreement, and the federal Minister is required to publish the final text (or give notice of its availability) in the *Canada Gazette*. The Act then requires the federal Minister to report annually on the administration of all operative EAs.[9]

Finally, to ensure regular review and renewal (as necessary), EAs automatically terminate five years after coming into force. EAs may also be terminated earlier if either party gives the other a notice of withdrawal, in which case the EA terminates three months after the notice is issued.

1.2 Parliamentary review of equivalency agreements

On March 22, 2016, the House of Commons passed a motion instructing the Standing Committee on Environment and Sustainable Development to undertake the latest five-year statutory review of *CEPA 1999*, and to report back within one year. The following month, ECCC provided the Committee with a wide-ranging discussion paper on issues concerning the Act, and possible approaches to addressing them.[10] The Committee also took oral and written testimony from many different individuals and stakeholder organizations. It presented its final report and recommendations to Parliament on June 15, 2017.[11]

[9] Annual reporting on the administration of EAs is included as part of the general annual report, required under section 342, on the administration and enforcement of the Act.

[10] Environment and Climate Change Canada, "Discussion Paper: Canadian Environmental Protection Act, 1999 — Issues and Possible Approaches" (May 2016). http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=1817692F-1

[11] Deborah Schulte et al., *Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening the Canadian Environmental Protection Act, 1999*, Report of the House of Commons Standing Committee on Environment and Sustainable Development (2017). http://www.ourcommons.ca/DocumentViewer/en/42-1/ENVI/report-8/

Since intergovernmental cooperation is one of the guiding principles of *CEPA 1999*, the ECCC discussion paper contains a section on "facilitating intergovernmental cooperation." The section proposes two changes to the statutory framework governing EAs. First, it suggests that "recent experience [with EAs] has raised questions about the utility of requiring an agreement before the issuance of an order."[12] It proposes the removal of the precondition of a written agreement between the federal government and the other jurisdiction, before the Governor in Council can declare that the federal regulation does not apply. In other words, ECCC's discussion paper proposes that the Governor in Council be empowered to stand down the federal regulation without a written EA in place.

Second, the ECCC discussion paper also suggests that it could be "helpful to clarify" that the test of "equivalent provisions" under the Act could be met "by provisions that have similar environmental effect."[13] To operationalize this suggestion, it proposes *CEPA 1999* be amended to mirror the language in the *Fisheries Act,* by replacing the phrase "equivalent provisions" in subsection 10(3) with "equivalent in effect."[14] This change could lower the threshold for provinces or territories wishing to establish an EA: instead of *provisions* that are equivalent to the federal regulation (i.e. that also take the form of some regulatory instrument), provinces or territories would need to demonstrate that the *effects* of their policy (including intended effects) are equivalent to those of the avoided federal rule. This could open the door to the legal acceptability of a broad range of substitute instruments, including unenforceable voluntary agreements that offer little certainty to the public that the intended environmental effects will in fact be achieved. As it stands, the current focus of the language in section 10 of *CEPA 1999* is on the actual provisions of the laws of the other jurisdictions, and less on the effects or outcomes of measures or policies taken in that jurisdiction.

The Committee's final report did not address ECCC's two proposals directly. However, it did note testimony that "the record of provincial performance and federal monitoring of

[12] Ibid., s. 11.1.

[13] Ibid., s. 11.1.

[14] A similar proposal has been floated before in Bill C-30, *The Clean Air Act*, a piece of legislation sponsored by then-Minister of the Environment, Rona Ambrose, which would have amended *CEPA 1999* but did not end up becoming law. See: Hugh Benevides, Hugh Wilkins, and Mark Winfield, "Joint submission of the Canadian Environmental Law Association, Sierra Legal Defence Fund, and The Pembina Institute to the Legislative Committee on Bill C-30" (2007). https://www.pembina.org/reports/Bill_C30Subm_plus_chart.pdf. See also https://openparliament.ca/bills/39-1/C-30/

provincial performance under equivalency agreement is very weak."[15] To that end, it made two recommendations to strengthen (or make more explicit) the criteria under which EAs may be established:

- "*Recommendation 8*: The Committee recommends that the provisions of CEPA regarding the criteria required to establish equivalency agreements be strengthened, and that the requirement for monitoring and reporting of performance under any agreements by the affected province and by Environment and Climate Change Canada be strengthened.
- *Recommendation 9*: The Committee recommends that subsection 10(3) of CEPA be amended to add the following third precondition to a declaration of equivalent provisions: that the government of the jurisdiction has in place an enforcement and compliance policy similar to that issued by the Minister providing for effective enforcement and compliance of the provisions described in the two current preconditions."[16]

The Pembina Institute fully supports both of the Committee's recommendations. In our view, even in the absence of legislative reform, there is an opportunity to better incorporate monitoring and reporting requirements into future EAs. This idea is discussed further in Section 3. We strongly urge the federal government to accept and implement the Committee's recommendations with respect to equivalency agreements,[17] and to include these reforms in the broader package of federal environmental legislative reforms anticipated in response to the ongoing mandated review of Canada's environmental assessment and regulatory review processes.[18]

On the question of ECCC's two proposed reforms (from the discussion paper), we are pleased the Committee did not advance recommendations in these areas. We urge ECCC to consider whether the absence of a written agreement and/or a shift away from "equivalent provisions" could weaken the environmental integrity of future EAs.

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[15] Commissioner for the Environment and Sustainable Development, "Co-operation Between Federal, Provincial, and Territorial Government," Chapter 7 in *Report of the Commissioner of the Environment and Sustainable Development* (2000). http://publications.gc.ca/collections/Collection/FA1-2-2000-8-3E.pdf. See also Schulte et al., *Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening CEPA 1999*, 12.

[16] Schulte et al., *Healthy Environment, Healthy Canadians, Healthy Economy: Strengthening CEPA 1999*, 13.

[17] It is worth noting that the Committee's recommendations closely track Recommendation 29 from the previous 2007 review of *CEPA 1999*.

[18] The federal government's "Review of Environmental and Regulatory Processes" includes the review of environmental assessment processes under the *Canadian Environmental Assessment Act*, the "modernization" of the National Energy Board, and the studies to reintroduce and update lost protections under the *Fisheries Act* and the *Navigation Protection Act*. See: https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews.html

The Pembina Institute strongly believes that the Act's stipulation for a written EA between the federal government and a province (or other jurisdiction) before regulations are "stood down" should be maintained. The transparency and legitimacy of EAs depends on the existence of a formal, publicly available text. Conversely, the removal of the requirement for a written agreement would make analysis of the actual effectiveness of EAs more difficult and unlikely than it already is.

2. Provincial case studies

2.1 Alberta: Electricity equivalency negotiations

Alberta has one existing EA, signed June 1994, relating to the release of certain toxic substances and effluents from pulp and paper mills.[19] This was the first formal EA negotiated under modern Canadian environmental protection legislation. Although *CEPA 1999* establishes a five-year expiration date for EAs, the order-in-council that stood down the relevant federal regulations (and declared their equivalency with Alberta regulations) was made under the previous 1988 version of the Act, which apparently allowed for EAs to be struck permanently (or until terminated by one party).[20]

More recently, the Alberta government began negotiations with the federal government in 2012 on the possibility of striking an EA that would cover the provincial electricity sector from the 2012 federal *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*. No agreement has yet materialized, and the context for the negotiations has since changed considerably. Changes in provincial and federal policy ambition, notably Premier Notley's commitment under the 2015 Climate Leadership Plan to phase out emissions from the province's coal-fired power plants by 2030, must now be incorporated into EA discussions.[21] The Government of Alberta has entered into agreements with the major coal generators, including Capital Power, TransAlta, and ATCO, to ensure that they either cease operations or eliminate all coal-fired emissions on or before December 31, 2030. The province agreed to pay these companies a total of nearly $1.1 billion (discounted to net present value) in annual

[19] ECCC, "Equivalency Agreements," in *CEPA Environmental Registry* (last modified May 12, 2017). http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=5CB02789-1. We assume the CEPA Registry contains an up-to-date list of all operative EAs.

[20] ECCC, "CEPA Annual Report for the Period April 1994 to March 1995," https://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=78A520BD-1&printfullpage=true#A3_5. It is worth noting that the five-year statutory lifetime for EAs applies to the agreements themselves, but not to the Cabinet orders in which they result. An order could therefore theoretically persist in effect beyond the life of its corresponding EA.

[21] Similarly, the federal government has announced a nationwide phase-out of coal-fired electricity, although the federal and provincial dates are not perfectly aligned. The federal commitment has technically been made with a full phase-out deadline of December 31, 2029 (unless provinces negotiate an EA), while Alberta's earlier-announced policy sets a phase-out goal of December 31, 2030.

installments of $97 million.[22] The payments are to be sourced from carbon pricing revenues and will be made each year from 2017 until 2030. In return, generators will shut down six of their 18 coal power plants early (the other 12 are scheduled to close or convert to natural gas before 2030).[23] Subsequently, ATCO and TransAlta announced they would pursue coal-to-gas conversions — representing about 3800 megawatts, or some 60% of the province's total 6300 MW of coal generation capacity[24] — well ahead of federal regulatory deadlines (generally in the mid-to-late 2020s) for coal plant end-of-life requirements (i.e. unit closure or emissions intensity compliance).[25] TransAlta is also closing Sundance Unit 1 (280 MW) and mothballing Sundance Unit 2 (280 MW), which means another 560 MW of generation capacity is likely to go offline by the end of 2019, depending on whether the federal government grants Unit 2 additional time for conversion to gas.

2.1.1 Details on Alberta-Canada EA discussions

The Pembina Institute has gained access to a number of provincial documents concerning the province's recent EA negotiations, including briefings to Alberta's Minister of Environment and correspondence between the provincial department and ECCC (then Environment Canada). Obtained through a request under Alberta's *Freedom of Information and Protection of Privacy Act*, the documents cover a period from September 2012 to April 2014.[26] They reveal the complex character of the province's equivalency negotiations, including Alberta Environment's general assessment of the

[22] Government of Alberta, *Energy Annual Report 2016-2017* (June 2017). https://open.alberta.ca/dataset/cbd7147b-d304-4e3e-af28-78970c71232c/resource/7f360403-7e80-40c9-8f7a-0a5079d14f55/download/2016-17-Annual-Report-Energy.pdf#page=31

[23] Geoffrey Morgan, "Alberta to pay three power companies $1.36 billion to shut their coal-fired plants early," *Financial Post,* November 24, 2016. http://business.financialpost.com/commodities/energy/alberta-strikes-1-36-billion-deal-with-coal-companies-as-part-of-plan-to-shut-down-plants-early/wcm/cc9363e7-2168-4387-aa12-3b99890fcbd8

[24] Kent Howie and Jason Wang, "Making Sense of the Recent Coal-To-Gas Conversion Announcements in Alberta," *Alberta Power Market* (Borden Ladner Gervais, May 29, 2017). https://albertapowermarket.com/2017/05/29/making-sense-of-the-recent-coal-to-gas-conversion-announcements-in-alberta/

[25] Geoffrey Morgan, "Alberta could be coal-free years ahead of deadline as ATCO plans transition to natural gas by 2020," *Financial Post,* May 10, 2017. http://business.financialpost.com/commodities/energy/alberta-could-be-coal-free-years-ahead-of-deadline-as-atco-plans-transition-to-natural-gas-by-2020/wcm/69bb4d78-a2ad-4bf7-8eaa-1f592c056035

[26] The Pembina Institute has posted these documents in two batches online. See: http://www.pembina.org/reports/coal-equivalency-ab-foip-part-1.pdf & http://www.pembina.org/reports/coal-equivalency-ab-foip-part-2.pdf

federal government's approach (under former Prime Minister Stephen Harper) to regulating GHGs: "From Alberta's perspective, the sector-by-sector approach being taking by Environment Canada lacks policy coherence and will likely result in uneven or unfair treatment across facilities, sectors, and regions."[27]

Many altered aspects of the final coal-fired electricity regulations (i.e. the version published in the *Canada Gazette, Part II*) pleased Alberta. The province viewed the changes between the draft and final versions of the regulation as responsive to most of its requested modifications (after publication of the draft text in the *Canada Gazette, Part I*). The changes included:

- a two-year (rather than 18-month) extension to end-of-life requirements for facilities adopting carbon capture and storage
- a less stringent emissions intensity limit of 420 tonnes carbon dioxide equivalent per gigawatt-hour (formerly the standard had been 375 tCO_2e/GWh)
- a greater number of years (from 45 to 50) allowed under the general definition of a coal-fired generating unit's "useful life"
- recognition to operators for early unit shutdown on a tonne-for-tonne basis.

In response to an "equivalency template" proposed by ECCC (which sketched out five-year cumulative GHG emissions through caps for the electricity sector from 2015 to 2019),[28] Alberta's climate change secretariat laid out several concerns:

- It wanted assurance of "full access to compliance flexibility" through offsets, inter-facility trading, and contributions to a provincial technology fund.
- It was concerned that ECCC had "defined the electricity sector more narrowly than desired" (because it excluded "behind-the-fence" industrial generation / off-grid co-generation), and that this could lead to greater uncertainty in emissions estimates.[29]
- It felt that ongoing uncertainty about forthcoming federal GHG regulations on natural gas generation would require an eventual revision to any EA established for its electricity sector.[30,31]

[27] FOIP Request E14-G-0575, "Briefing Note: Update on federal sector approach for regulating greenhouse gas emissions," 7.

[28] FOIP Request E14-G-0575, "Memorandum: Issues to resolve for equivalency to coal fired electricity regulation," (undated), 97-99. The proposed caps were 236.9 Mt for 2015-2019 and 483.1 Mt for 2020-2030.

[29] "Alberta feels this scope [of the equivalency agreement] must extend to include industrial self generation since an open and level playing field between generators is necessary to the functioning of Alberta's electricity market." Ibid., 97, 102.

[30] These regulations are still under development, but are expected to be published in draft form in late 2017.

- It was concerned that because *CEPA 1999* requires EAs to expire after five years, ECCC would not have a legal basis to carry forward (i.e. bank) reductions beyond those required into subsequent periods.
- It doubted whether ECCC's emissions forecasting under the Regulatory Impact Analysis Statement (RIAS) could be squared with provincial forecasts of generation growth, and wanted an acknowledgment that variances in generation forecasting would yield variances in the resulting emissions.[32]
- It wanted ECCC to commit to revisiting agreed-upon emissions numbers should generation growth differ substantially from what was forecasted, because the interplay between Alberta's carbon pricing scheme at that time (the Specified Gas Emitters Regulation for large emitters) and the federal electricity sector regulations created a basic difficulty of "translating intensity-based performance standards into a hard number of greenhouse gas emissions [reductions]," since this requires inherently debatable assumptions about the future level of activity in the covered economic sector.[33,34]

Negotiations around equivalency for Alberta's coal-fired generators were also complicated by the wider regulatory landscape for its electricity sector. One significant issue concerned alignment between the coal regulation and the mid-life Base Level Industrial Emissions Requirements (s) that were then under development as part of the Canada-wide Air Quality Management System (AQMS), an initiative of the Canadian Council of Ministers of the Environment.[35] Requirements under BLIERs would have

[31] Subsequent to these provincial discussions, the Government of Canada has announced its intentions to develop new regulations on gas-fired plants. These regulations, which have yet to be drafted, will form their own set of regulations. See: Government of Canada, Department of the Environment [ECCC], "Notice of intent to develop greenhouse gas regulations for electricity generation in Canada," in *Canada Gazette, Part I*, Vol. 150, No. 51 (Dec., 17, 2016). http://www.gazette.gc.ca/rp-pr/p1/2016/2016-12-17/html/notice-avis-eng.php#nl1. See also ECCC, Forward Regulatory Plan 2017-2019. http://www.ec.gc.ca/default.asp?lang=En&n=DF9C1A4C&offset=1&toc=show

[32] The province argued that any EA should include a clause that would allow for an adjustment to the overall sectoral cap if the actual growth in the sector differs from the forecast used in setting the cap. See: FOIP Request E14-G-0575, "Federal/Provincial Coal Issues Analysis," (undated), 128.

[33] FOIP Request E14-G-0575, "Briefing Note: Equivalency to Environment Canada Coal Fired Electricity Regulations," (November 2, 2012), 33-37, 141, 169-70.

[34] Ibid., 143.

[35] The BLIERs consist of both regulatory and non-regulatory instruments (the latter including codes of practice and voluntary guidelines) to manage and protect Canadian air quality, particularly with respect to criteria air contaminants (nitrogen oxides (NOx), sulphur dioxide (SO_2), volatile organic compounds (VOCs), and particulate matter (PM)). The regulatory component was finalized in June 2016 as the Multi-Sector Air Pollutants Regulations. See: ECCC, "Summary of final and proposed instruments used to

necessitated the installation of new equipment to control air pollution (primarily nitrous oxide and sulphur dioxide) at many mid-life industrial facilities.

Despite the different mitigation objectives of the two sets of incoming regulation (on greenhouse gases and air pollution), Alberta Environment inappropriately considered this a situation of "double jeopardy" for its electricity sector.[36] The province opposed the adoption of the BLIERs on the grounds that the existing provincial emissions management framework for the sector — adopted in 2003 through a longstanding multi-stakeholder initiative called the Clean Air Strategic Alliance (CASA) — would significantly reduce air pollution (though not GHGs) "much more cost effectively and without prejudicing the continuity of provincial electricity supplies."[37] Further, in response to the combined implications of the BLIERs and the new federal GHG regulations on coal, some of Alberta's coal-fired electricity producers requested exemption from their commitments under CASA. The province, however, was determined not to "waffle" on CASA, and pursued an agreement with Environment Canada that the existing framework would be considered equivalent to the BLIERs. In the end, it seems that no formal agreement was necessary, as the Multi-sector Air Pollutants Regulations (which constitute the regulatory or non-voluntary component of the BLIERs) only apply to gaseous-fuel-fired engines, and thus effectively exempt coal-fired generators.[38]

Despite evidence of a great deal of detailed preparation at the bureaucratic level for the negotiation of an EA, to date Alberta has not concluded an agreement with the federal government. Still, internal documents show Alberta's commitment to an "outcomes-based" EA in which ECCC determines that the provincial regulations "will deliver equivalent *or better* environmental outcomes."[39]

implement base-level industrial emission requirements (BLIERs)." http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=138FDC7D-1

[36] FOIP Request E14-G-0575, "Briefing Note," 40.

[37] FOIP Request E14-G-0575, "Briefing Note," 16, 40, 49.

[38] The finalized Multi-sector Air Pollutants Regulations were published in the *Canada Gazette, Part II*, in late June 2016. See: ECCC, "Current Regulations: Multi-sector Air Pollutants Regulations (SOR/2016-151). http://www.ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=220.

[39] FOIP Request E14-G-0575, 33 [emphasis added].

2.2 Nova Scotia: Power sector agreement

Nova Scotia is the first and so far only province to have gained an order-in-council from the federal Cabinet suspending the application of federal GHG regulations in its area of jurisdiction.[40] The Order was made pursuant to the signing (in late May 2014) of a written equivalency agreement between the two levels of government. The EA itself consists of just over four pages of text, signed by then-Ministers of the Environment Leona Aglukkaq (for Canada) and Randy Delorey (for Nova Scotia).[41] These pages together constitute the only finalized and public example of a climate-related EA text in Canada.

The EA has paved the way for Nova Scotia to avoid closing six coal-fired units (totalling 952 MW of capacity) that would have been affected under the existing federal regulatory regime for coal power. Instead, Nova Scotia is expected to retire only one of its coal-fired units in the same time frame.[42] The EA thus allows Nova Scotia's coal-fired electricity generators to continue operating despite the fact that they will not meet the performance requirements prescribed by the federal regulations. Equivalency was justified on the presumption of reduced generation at the province's coal-fired power plants and as a result of other actions.[43] For example, Nova Scotia also developed measures to manage supply and demand in the electricity sector; these included a new

[40] The order-in-council was made November 20, 2014, and registered the day following. See "Order Declaring that the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations Do Not Apply in Nova Scotia," http://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-265/FullText.html. See also: Privy Council Office, Orders in Council Database, Privy Council (P.C.) Number: 2014-1268. http://www.pco-bcp.gc.ca/oic-ddc.asp.

[41] Government of Canada and Government of Nova Scotia, "An Agreement on the Equivalency of Federal and Nova Scotia Regulations for the Control of Greenhouse Gas Emissions from Electricity Producers in Nova Scotia," (signed May 26, 2014). http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=775586DB-1. The draft version of the Agreement was published along with the RIAS for public comment in the *Canada Gazette, Part I*, on September 15, 2012.

[42] ECCC, "Regulatory Impact Analysis Statement: Order Declaring that the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations do not apply in Nova Scotia," in *Canada Gazette, Part I*, Vol. 148, No. 26 (June 28, 2014), s. 8.1. http://gazette.gc.ca/rp-pr/p1/2014/2014-06-28/html/reg3-eng.php

[43] This is the essence of the thinking underlying previous and ongoing equivalency negotiations with Nova Scotia: that an "outcome-based" approach satisfies the intent and meaning of *CEPA* section 10. However, at least one legal commentator has suggested this approach may be inappropriate, given concerns about the additionality of the offsetting programs and about related assumptions regarding the business-as-usual scenario (in this case, with the 2012 federal rules in force and no provincial caps). See: Nigel Bankes, "Canada and Nova Scotia Finalize Equivalency Agreement on the Control of Greenhouse Gas Emissions in the Electricity Sector," *ABlawg.ca*, August 5, 2014. https://ablawg.ca/2014/08/05/4693/

demand-side management utility (Efficiency Nova Scotia) and a requirement (under amendments to its *Renewable Electricity Regulations*) for 25% of electricity sales to be sourced from renewable energy sources by 2015, and at least 40% onward from 2020.[44] Taken together, Nova Scotia's regime fulfilled a key condition for an EA: namely that regulations continue to deliver GHG reductions equivalent to those anticipated under the federal rules *beyond* the time frame of the agreement itself (i.e. past 2019).

The EA built on several years of negotiations following the 2010 Canada-Nova Scotia Agreement in Principle on Efforts to Address Climate Change. The EA came into force on July 1, 2015 (the same date as the federal GHG regulations) and set a termination date of December 31, 2019. Prior to this, ECCC prepared a Regulatory Impact Analysis Statement (RIAS) for the proposed order that helped to reveal the federal government's methodology in assessing equivalency. In particular, the RIAS analyzed the equivalency of Nova Scotia's existing regulatory measures in terms of GHG outcomes.[45] The province's stand-in measures were ultimately deemed equivalent "in effect" because the projected GHG emission levels for 2015-2019 period are no greater (under those measures) than they would be if the federal performance standard on electricity producers applied instead.[46]

The RIAS recognized Nova Scotia's existing regulatory framework for addressing climate change, which includes a target to reduce provincial GHG emissions to 10% below 1990 levels by 2020.[47] To meet this target, Nova Scotia created its *Greenhouse Gas Emissions Regulations*, which initially set hard GHG caps for 2010–2020 on facilities emitting over 10,000 tonnes of CO_2e annually.[48] It was on the basis of 2013 amendments to these regulations that the Nova Scotia EA was agreed upon. These amendments — the main provincial "contribution" during negotiations — increased the stringency of the sector

[44] These targets were partly based on the province's expectation of being able to import electricity from Newfoundland and Labrador through the Maritime Link Project. See: Government of Nova Scotia, *Renewable Electricity Regulations*, N.S. Reg. 155/2010 as amended by OIC 2017-127 (April 24, 2017), N.S. Reg. 73/2017. http://www.novascotia.ca/just/regulations/regs/elecrenew.htm

[45] ECCC, "Regulatory Impact Analysis Statement: Nova Scotia Equivalency Order."

[46] ECCC calculated emissions projections for different regulatory scenarios in the RIAS using its Energy, Emissions, and Economy Model for Canada (E3MC).

[47] This target was set in 2007 with the passing of the province's *Environmental Goals and Sustainable Prosperity Act*.

[48] These regulations were originally made in 2009 under the province's *Environment Act*. They are also intended to create incentives for new "low-emissions electricity," defined to include solar, wind, sustainably harvested biomass, hydroelectric, ocean, tidal, wave, landfill gas, liquid biofuel/biogas and nuclear power. Nova Scotia was the first Canadian province to establish a cap on electricity sector emissions. See: Nova Scotia Environment, "Legislation," http://novascotia.ca/nse/resources/legislation.asp.

caps and extended them for the period from 2021–2030 to provide assurance that electricity sector emissions would continue decreasing. Allowable emissions from industrial facilities in the province were set to decline according to a schedule established in the regulation (see Table 1).

Table 1: Provincial caps on electricity sector GHG emissions in Nova Scotia, 2010–2030[49]

Compliance Period	1	2	3	4	5	6	7	8	9
Calendar Years	2010–2011	2012–2013	2014–2016	2017–2019	2020	2021–2024	2025	2026–2029	2030
Emission cap for all facilities (Mt CO_2e)	19.22	18.5	26.32	24.06	7.5	27.5	6	21.5	4.5

Note: As a result and in the course of its equivalency agreement negotiations, Nova Scotia adopted a novel approach whereby compliance periods after 2020 alternate between single in-year GHG caps and caps on cumulative emissions over several multi-year periods. On average, the provincial emission limits decline to become more stringent each year.

Ultimately, over the 2015–2020 period, the suspension of the federal coal-fired electricity regulations and the implementation of the provincial GHG emissions caps are expected to produce incremental GHG emissions reduction of 0.3 Mt CO_2e. Over the 2021–2030 period, ECCC projects a net reduction of generation from coal-fired and natural gas-fired units and a corresponding net reduction of approximately 3 Mt CO_2e of GHG emissions, as well as avoided capital investment, avoided generation costs for the electricity producer, and forgone electricity exports. In sum, the federal government estimated the net present value (benefits less costs) of the EA at approximately $175 million (2010 dollars).[50]

In November 2016, two years after the EA was signed (but in force for less than one and a half years), the Government of Canada announced its new policy to accelerate existing regulatory timelines for the phase-out of coal-fired power. The federal announcement was made in Nova Scotia, and the Government of Nova Scotia made two additional provincial policy announcements: first, that it would adopt a cap-and-trade system to price carbon, aligning with the federal objective that all sub-national jurisdictions have

[49] Government of Nova Scotia, *Greenhouse Gas Emission Regulations*, N.S. Reg. 260/2009 as amended by OIC 2013-332 (September 10, 2013), N.S. Reg. 305/2013. http://www.novascotia.ca/JUST/REGULATIONS/regs/envgreenhouse.htm

[50] ECCC, "Regulatory Impact Analysis Statement: Nova Scotia Equivalency Order," *supra* note 26.

a price on carbon in place by 2019[51]; and, second, that a new agreement-in-principle had been reached to collaborate in drafting the terms of a replacement for the existing EA.[52] The agreement-in-principle is to push the province towards clean energy sources, but also enable its coal-fired plants "to operate at some capacity beyond 2030."[53] Thus, as it stands, the anticipated new Canada-Nova Scotia EA will allow the province to keep its coal-fired electricity plants running beyond the new 2030 federal deadline, by which time all coal-fired units would otherwise have to meet a prescribed federal emissions performance standard. No final deadline has yet been set for the complete phase-out of coal plants or coal emissions in the province.

2.3 Saskatchewan: Electricity sector negotiations

In late November 2016, just prior to the first ministers' meeting and the signing of the Pan-Canadian Framework, Saskatchewan's minister of environment and his federal counterpart announced that they had reached an agreement-in-principle to finalize an equivalency agreement covering Canada's existing 2012 regulation on carbon dioxide emissions from coal-fired power.[54] The announcement came one week after the Government of Canada announced its intent to accelerate the nationwide coal phase-out; however, the announcement and the agreement it highlighted did not cover negotiations on this new federal policy direction.

[51] The benchmark requirements are laid out in Annex 1 of the *Pan-Canadian Framework on Clean Growth and Climate Change*. https://www.canada.ca/en/services/environment/weather/climatechange/pan-canadian-framework/annex-federal-investments-measures.html

[52] ECCC, "Government of Canada announces plan with Nova Scotia to price carbon pollution and negotiate coal phase-out agreement," media release, November 21, 2016. https://www.canada.ca/en/environment-climate-change/news/2016/11/government-canada-announces-plan-nova-scotia-price-carbon-pollution-negotiate-coal-phase-agreement.html

[53] Government of Nova Scotia, Premier's Office, "Nova Scotia Reaches Climate Change Agreement," media release, November 21, 2016). https://novascotia.ca/news/release/?id=20161121003

[54] Government of Canada, "Saskatchewan, federal government work together on equivalency agreement," media release, November 28, 2016. https://www.canada.ca/en/environment-climate-change/news/2016/11/saskatchewan-federal-government-work-together-equivalency-agreement.html & https://www.saskatchewan.ca/government/news-and-media/2016/november/28/exquivalency-agreement

The agreement-in-principle is not itself an EA, but rather represents a public commitment to conclude one "in the near future."[55] It supersedes a previous agreement-in-principle, signed in May 2009, on efforts to address climate change.[56] Because the scope of this latest agreement is more focused, covering only the electricity sector, it appears more likely to result in a legal EA. Essentially, it establishes several principles on the basis of which the federal and provincial departments of the environment will move negotiations forward. The agreement aims to give the province flexibility in transitioning to a cleaner electricity system — particularly with respect to the decisions of whether it should pursue more carbon capture and storage (so-called "non-traditional" coal-fired generation). If the EA is established, the province would be allowed to use coal beyond 2030, so long as it achieves emission reduction outcomes equivalent to what would occur under the federally mandated phase-out. The key elements of the agreement-in-principle relate to:

- **Timing**: The EA would apply retroactively to cover a period starting July 1, 2015, and would consider cumulative GHG emissions over a 15-year time frame to 2030.[57]
- **Carbon capture and storage technology**: The EA would recognize emissions avoided through the installation of a CCS retrofit on SaskPower's Boundary Dam Unit 3 "in advance of and beyond regulatory requirements."[58] The EA may also provide credits for carbon already captured through this project, and will give the province more time to consider the feasibility of deploying CCS on additional Boundary Dam units (4 and 5).
- **Renewable electricity policy:** The EA would recognize the emission reductions that occur as a result of the provincial government's goal to reach 50% renewable energy generation by 2030 (which government estimates suggest would cut GHGs releases by 40% from 2005 levels).

[55] The Pembina Institute has obtained a copy of Saskatchewan's agreement in principle. ECCC also lists "Equivalency Agreement with the Province of Saskatchewan" in its current Forward Regulatory Plan, which summarizes the federal department's near-term regulatory agenda. See: ECCC, "Forward Regulatory Plan 2017 to 2019: Air Emissions and Greenhouse Gases—Proposed Regulatory Initiatives," (last modified June 21, 2017). https://www.ec.gc.ca/default.asp?lang=En&n=DF9C1A4C-1&offset=1&toc=show#X-2017022815084473

[56] Government of Saskatchewan, "Saskatchewan takes real action to reduce greenhouse gas emissions," media release, May 11, 2009. https://www.saskatchewan.ca/government/news-and-media/2009/may/11/saskatchewan-takes-real-action-to-reduce-greenhouse-gas-emissions

[57] Clearly, this time frame would exceed the currently permissible duration of individual EAs (five years) under *CEPA 1999*.

[58] The retrofitted Boundary Dam Unit 3 came online in late 2014, while the federal regulations on coal-fired power (enacted in 2012) came into force on July 1, 2015.

- **Emissions accounting and forecasting assumptions:** The EA would allow Saskatchewan to meet or exceed the federal emission requirements over time, and on a sectoral or system-wide basis (i.e. accounting for CCS coming online in 2014 and the additional build-out of renewables). The province would have the option of treating its entire fleet of coal units (the Poplar River, Boundary Dam, and Shand power stations) as a single emitter, as opposed to opposed to applying in-year emission intensity requirements on each coal-fired unit.[59] Further, the calculation of equivalent reductions would reflect an assumption that replacement generation (resulting from the application of the *CEPA 1999* regulation) would be met solely by natural gas.[60]

Coal-fired power represents nearly 40% of Saskatchewan's electricity generation. Given the province's heavy reliance on coal, the anticipated EA will be essential for Saskatchewan to remain in compliance under evolving federal greenhouse gas rules. ECCC has set late 2017 or early 2018 as the target date for publishing the EA in the Canada Gazette, Part I. Likewise, the amended federal regulations on coal are expected to be published in late 2017.[61] Some uncertainty arises from the fact that Saskatchewan intends its stand-in regulations to be established under its *Management and Reduction of Greenhouse Gases Act*, which passed in 2010 but was never proclaimed in force. If proclaimed, this legislation would require large emitters (who release at least 50,000 tonnes of CO_2e) to reduce emissions in line with limits set by the province; it also creates an effective carbon price for facilities that exceed their allocation. However, the regulations that would set the provincial limits have also not yet been made.

[59] Brian Zinchuk, "Carbon capture decision may come later," *Estevan Mercury,* May 17, 2017. http://www.estevanmercury.ca/news/business-energy/carbon-capture-decision-may-come-later-1.19977452

[60] Given the steadily falling price of renewable energy sources, the Pembina Institute believes this assumption is unwarranted and unrealistic. However, the motivation underlying this decision seems clear, since it gives the province a bigger "buffer" (in terms of expected emissions reductions) out to 2030.

[61] ECCC, "Forward Regulatory Plan 2017 to 2019."

3. Principles for climate equivalency in the era of the Pan-Canadian Framework

Cooperation across orders of government successfully delivered the Pan-Canadian Framework on Clean Growth and Climate Change, Canada's first truly national climate plan, in December 2016. As a policy package, the Framework has set Canada on course to reducing the 200 Mt of GHG emissions necessary to reach our 2030 national emissions target. But in order for the Framework to fulfil its potential and move the country towards deeper decarbonization by mid-century, governments must implement its numerous measures swiftly while maintaining policy integrity. This means that the need for intergovernmental cooperation will only deepen, especially as individual federal policies announced within the Pan-Canadian Framework progress through their respective phases of implementation.

As provinces and territories search for ways to adapt federal climate policy to their own circumstances, EAs will play an increasingly important role across a number of critical measures. Though the word "equivalency" appears only twice in the Pan-Canadian Framework document itself — once in relation to the general overview of "complementary measures" (i.e. policies additional to carbon pricing), and once in relation to a specific complementary measure (reducing methane emissions from the oil and gas sector) — these references affirm that federal-provincial-territorial governments consider EAs a viable and acceptable option for implementing policy directions established under the Framework. In pursuing mitigation initiatives beyond carbon pricing, signatories of the Framework committed to ensuring that new policies focus on GHG-emission outcomes *and* "recognize flexibility for regional differences, including through outcomes-based regulatory equivalency agreements."[62] If the signing of the Pan-Canadian Framework truly symbolizes the emergence of a new era of collaborative, pan-Canadian climate policy, then the instrument and the idea of equivalency under *CEPA 1999* have never been more significant — or more in need of careful elaboration and public scrutiny.

[62] Government of Canada et al., *The Pan-Canadian Framework on Clean Growth and Climate Change* (2016), 9. https://www.canada.ca/content/dam/themes/environment/documents/weather1/20170125-en.pdf#page=17

To that end, when contemplating the use of EAs, the Government of Canada must ensure that it enters any individual negotiation with a commitment to fair treatment across all parties and governments. Any finalized equivalency agreement must be seen to respond to a legitimate claim that establishing one would avoid duplicative regulation, or preserve the authority of the jurisdiction better-placed to provide a particular environmental protection. Equally, the federal government must conduct any ongoing or anticipated negotiation in the ultimate interest of achieving Canada's Nationally Determined Contribution under the Paris Agreement.[63]

The Pembina Institute suggests the following principles and actions to ensure that equivalency agreements, when used, serve to effectively implement policy by the Government of Canada and its subnational partners.

1. Ensure accountability: Enhance reporting and oversight requirements

In considering and negotiating the use of any equivalency agreement, the federal government should uphold, develop, and apply the reporting and oversight commitments it made in the Pan-Canadian Framework. These commitments include collaborating to better measure and report on emissions, reporting regularly on implementation, engaging external/independent analysis and advice, and periodic review.[64] While these obligations relate to the entire suite of Framework policies, they should also be incorporated into an annual oversight mechanism to report on and assess each operative EA. In particular, we urge federal, provincial, territorial and Indigenous governments to take the following three actions to improve reporting and public oversight:

1. Before any equivalency agreement is formally declared, ECCC should prepare and publish a Regulatory Impact Analysis Statement, following the precedent established in the case of the EA covering Nova Scotia's electricity sector (and as required under the 2012 federal *Cabinet Directive on Regulatory Management*). All such analyses should include estimates of GHG emissions reductions under the business-as-usual scenario (in which the federal regulation applies) and under the EA scenario (where the order-in-council applies).

[63] Nationally Determined Contribution is the United Nations term used to describe countries' formal communications to the international community on their domestic plans for addressing climate change. As set out in Article 4 of the Paris Agreement, NDCs must contain a transparent national GHG emissions target, and they must be progressively updated at least every five years. Canada's current NDC is a 30% reduction in emissions from a 2005 baseline by 2030. See "Canada" in NDC Registry, http://www4.unfccc.int/ndcregistry/pages/Party.aspx?party=CAN

[64] *Pan-Canadian Framework*, 45-46.

2. Both federal and subnational governments should create opportunities for public consultation and engagement in relation to the negotiation and final terms of any given EA. At minimum, ECCC should continue to receive and respond to written submissions during the public comment period for EAs proposed in Canada Gazette Part I (along with the RIAS). Ideally, funding should be allocated to support submissions from and engagement by non-industry public interest groups and Indigenous peoples.
3. Once Cabinet issues a declaration of equivalency (i.e. an order), the provincial or territorial programs and policies that substitute for stood-down *CEPA* regulations must be monitored. Given the lack of substantive oversight of provincial performance under existing and previous EAs, there is a need for more rigorous monitoring, evaluation, and reporting by governments. We therefore suggest the creation of an oversight mechanism for EAs, and that this be in each instance a joint initiative including representation from both the federal government (likely through ECCC) and the relevant subnational government.

Accountability in the Pan-Canadian Framework

The following commitments were made in last year's federal-provincial-territorial climate agreement:

Measurement and reporting on emissions – Federal, provincial, and territorial governments will continue to collaborate on efforts to track and report GHG emissions in a consistent way across the country, to track progress on the Pan-Canadian Framework, and to support international reporting obligations. This will involve further technical work on measurement to improve emissions inventories and projections, and aligning these where possible. Federal, provincial, and territorial governments will work together through the Canadian Council of Ministers of the Environment (CCME) to examine options for the reporting of emissions and inventories to ensure consistency across provinces and territories, to support Canada's reporting to the UNFCCC, and for a pan-Canadian offset protocol framework and verified carbon credits that can be traded domestically and internationally.

Reporting on implementation – Federal, provincial, and territorial governments will work together to support the coordinated implementation of the Pan-Canadian Framework, engaging with relevant ministerial tables including ministers of environment, energy and mines, transportation, forestry, agriculture, innovation, infrastructure, emergency management, and finance, and with meaningful

involvement of Indigenous Peoples. This will include a process to take regular stock of progress achieved, to report to Canadians and, to inform Canada's future national commitments in accordance with the Paris Agreement.

Analysis and advice – Federal, provincial, and territorial governments will engage with external experts to provide informed advice to First Ministers and decision makers; assess the effectiveness of measures, including through the use of modeling; and identify best practices. This will help ensure that actions identified in the Pan-Canadian Framework are open to external, independent review, and are transparent and informed by science and evidence.

Review – Federal, provincial, and territorial governments will work together to establish the approach to the review of carbon pricing, including expert assessment of stringency and effectiveness that compares carbon pricing systems across Canada, which will be completed by early 2022 to provide certainty on the path forward. An interim report will be completed in 2020 which will be reviewed and assessed by First Ministers. As an early deliverable, the review will assess approaches and best practices to address the competitiveness of emissions-intensive trade-exposed sectors.

2. Hold the line on ambition: Secure incremental, defensible cumulative emission reductions

Equivalency agreements should unlock incremental, cumulative GHG emissions reductions (relative to the business-as-usual emission scenario) in the subnational jurisdiction or economic sector in question, over the time period for which it was negotiated. An EA is preferable to the subnational or sectoral business-as-usual scenario is if it leads to equivalent or fewer emissions than would be anticipated under the federal regulatory regime: EAs offer a degree of flexibility in achieving regulatory objectives, but ultimately must support material progress towards Canada's Paris pledge. They should not be justified, approved, or relaxed on the basis of previous provincial or territorial mitigation actions. Further, the federal government should take steps to ensure with a high degree of confidence that the proposed sub-national policy instrument is just as ambitious (though differently structured) as that proposed by the federal government. It is especially important that the provincial tool yield the same or better emissions reductions from a cumulative perspective. As with the case of Nova Scotia's EA, this could potentially included anticipated reductions extending beyond the life of the EA itself (e.g. out to 2030).

3. Harness evidence to ensure outcomes are achieved: Ensure frequent public reporting and commit to annual reviews of all EAs

Provincial or territorial performance under equivalency agreements should be publicly reported in a way that is transparent and accessible to Canadians. In particular, we urge the federal government to conduct annual monitoring and evaluation, and to report out on the EA's effects on GHG emissions in the covered subnational jurisdiction. If data constraints or processing delays make this recommendation impractical, then such an assessment should at least be performed at the mid-point of the five-year term for which an EA can legally apply, and before it is amended or renewed. In either case, this information could be included in Canada's annual *Emissions Trends* report. Further, the federal government should harness this emerging evidence to determine whether intended environmental outcomes are on track to be achieved — and should review the terms of the EA if the evidence suggests the subnational approach will not deliver the intended cumulative result over the compliance period. In particular, as scientific evidence improves our understanding of emissions baselines, the environmental outcomes established within an EA should be updated. The federal government should consider, for example, the emerging science on methane emissions and its related impact on Canada's national objective to reduce those emissions by 45% by 2025.

4. Reward leadership: Support ambitious subnational policies that extend emissions reductions beyond the Pan-Canadian Framework

Provinces or territories with existing regulatory regimes for certain sectors or issues may be understandably wary of additional attempts by the federal government to regulate in the same domain. On the other hand, as with the national carbon price floor, leading jurisdictions should be encouraged to see federal policy as setting a baseline with respect to action on climate mitigation. Given that a jurisdiction seeking an equivalency agreement must already have an equivalent regulatory system in place, some provinces or territories may have the capacity to establish more advanced standards or timelines for regulatory action compared to the federal approach. When jurisdictions use EAs to achieve regulatory outcomes that go beyond what would be required federally, the federal government should consider ways of rewarding this exemplary behaviour. For example, the federal Minister of the Environment and Climate Change could examine options for supporting more ambitious action in the design of EAs through the disbursement of the Low Carbon Economy Fund.[65] Given that the Pan-

[65] The Low Carbon Economy Fund is a key source of federal funds earmarked to support implementation of the Pan-Canadian Framework. Starting in fiscal year 2017-2018, the Fund will provide $2 billion over 5

Canadian Framework contains a 44 Mt gap towards Canada's 2030 target, and Canada has committed to increasing its ambition in line with requirements under the Paris Agreement, subnational policy leadership remains incredibly important to Canada's long-term climate success — and should be rewarded as such.

Subnational jurisdictions for which an EA is in place must recognize that they remain accountable for achieving the equivalent outcome articulated in the written agreement. In the event that such an outcome is not achieved, or appears threatened, the federal government should exercise its power to terminate the EA before its default date of expiry (in which case the *CEPA* regulation would eventually re-apply in the jurisdiction in question). Alternatively, and less provocatively, the Government of Canada could consider allowing the EA to lapse, and then refusing to renew or renegotiate.

5. Begin with the end in mind: Review implications for Canada's 2030 target and deep decarbonization pathway

The negotiation and implementation of any EA should be undertaken with a view to its role as a tool to implement the Pan-Canadian Framework. However, the federal government should also consider the extent to which the EA has helped or hindered progress toward Canada's obligations under the Paris Agreement. As EAs constitute one form of possible action that may be pursued under the Framework, their individual and collective effectiveness should be, as the Framework suggests, "assessed with a view to ensuring continual improvement so as to increase ambition over time, in accordance with the Paris Agreement."[66] In the era of the Pan-Canadian Framework, the most powerful and successful EAs will be those that unlock additional emissions reductions and place sectors and regions on a successful path to decarbonization by mid-century. In this way, they will be strong tools to support Canada's successful implementation of the Paris Agreement.

years to provinces and territories that have become signatories to the Pan-Canadian Framework. The Fund has two components: the Low Carbon Economy Leadership Fund ($1.4 billion), which provides eligible jurisdictions with a base amount of $30 million (plus additional funding based on population) for projects to reduce emissions in each province and territory; and the Low Carbon Economy Challenge ($600 million), which will support emissions mitigation and clean growth projects led by various actors, including provinces and territories, as well as municipalities, Indigenous governments and organizations, businesses, and not-for-profit organizations. See ECCC, "Low Carbon Economy Fund: Backgrounder." https://www.canada.ca/en/environment-climate-change/news/2017/06/low_carbon_economyfund.html

[66] *Pan-Canadian Framework*, 45.