

Legal Developments on Climate Change: Implications for LDCs

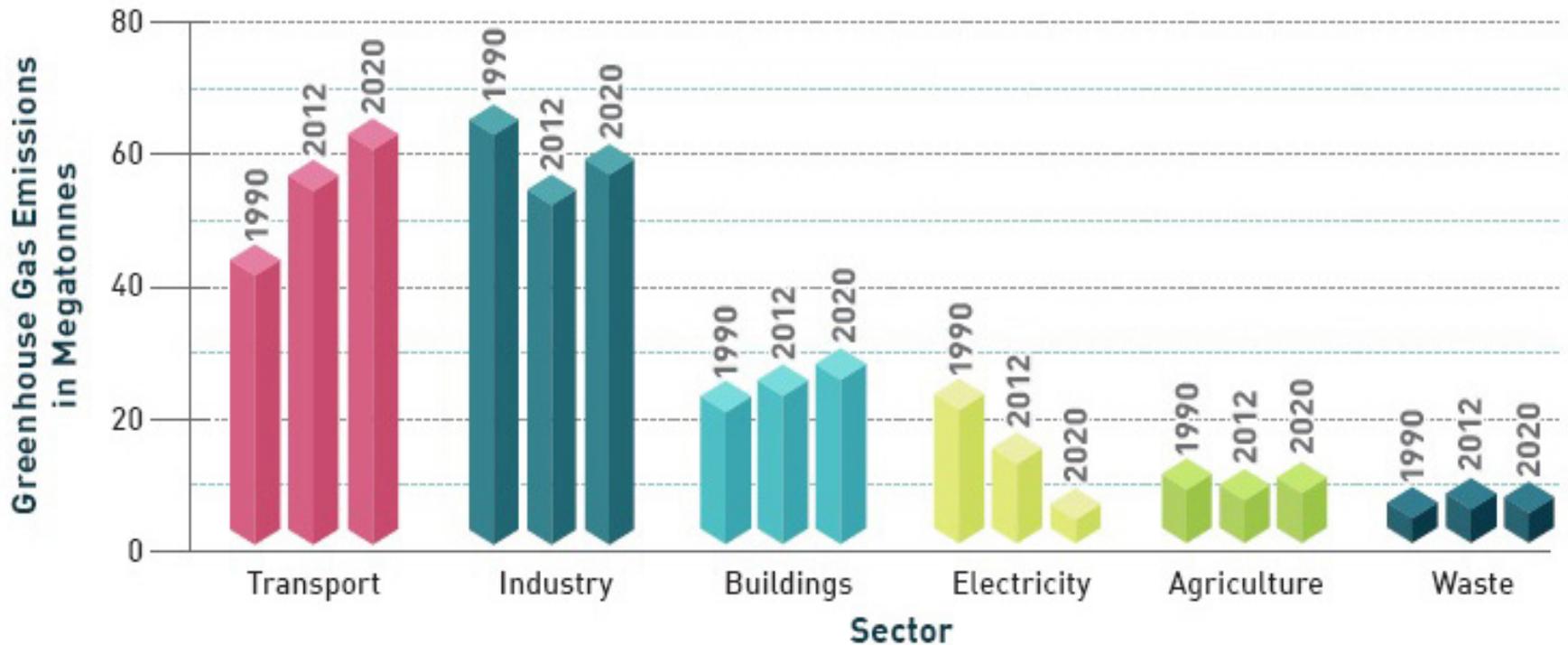
Richard J. King, Partner
Regulatory, Environmental, Aboriginal and Land (REAL) Group

June 2017

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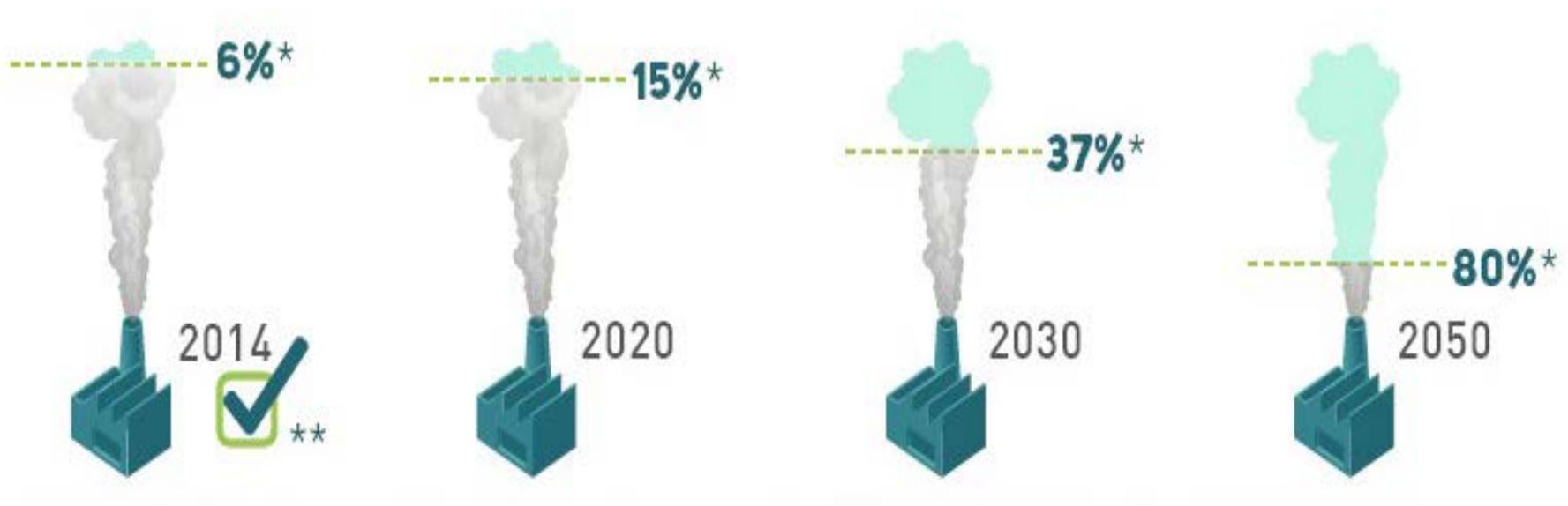
Ontario's GHG Emissions

Ontario's GHG Emissions by Sector (1990 – 2012 – 2020)



Source: Ontario Government: *Climate Change Action Plan 2015-2020*, p. 7.

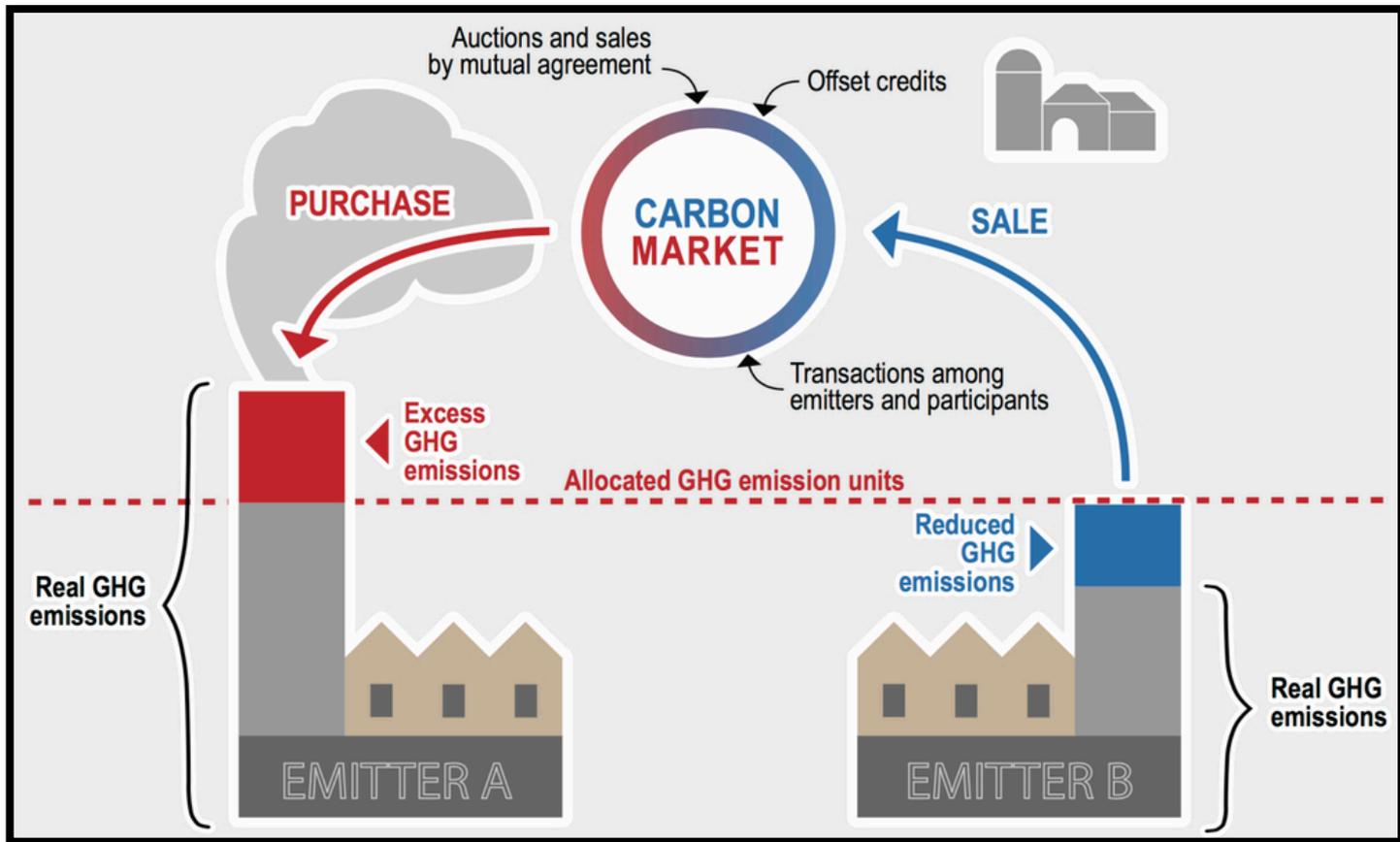
Ontario's GHG Reduction Targets (versus 1990 levels)



Source: Ontario Government: *Climate Change Action Plan 2015-2020*, p. 13.

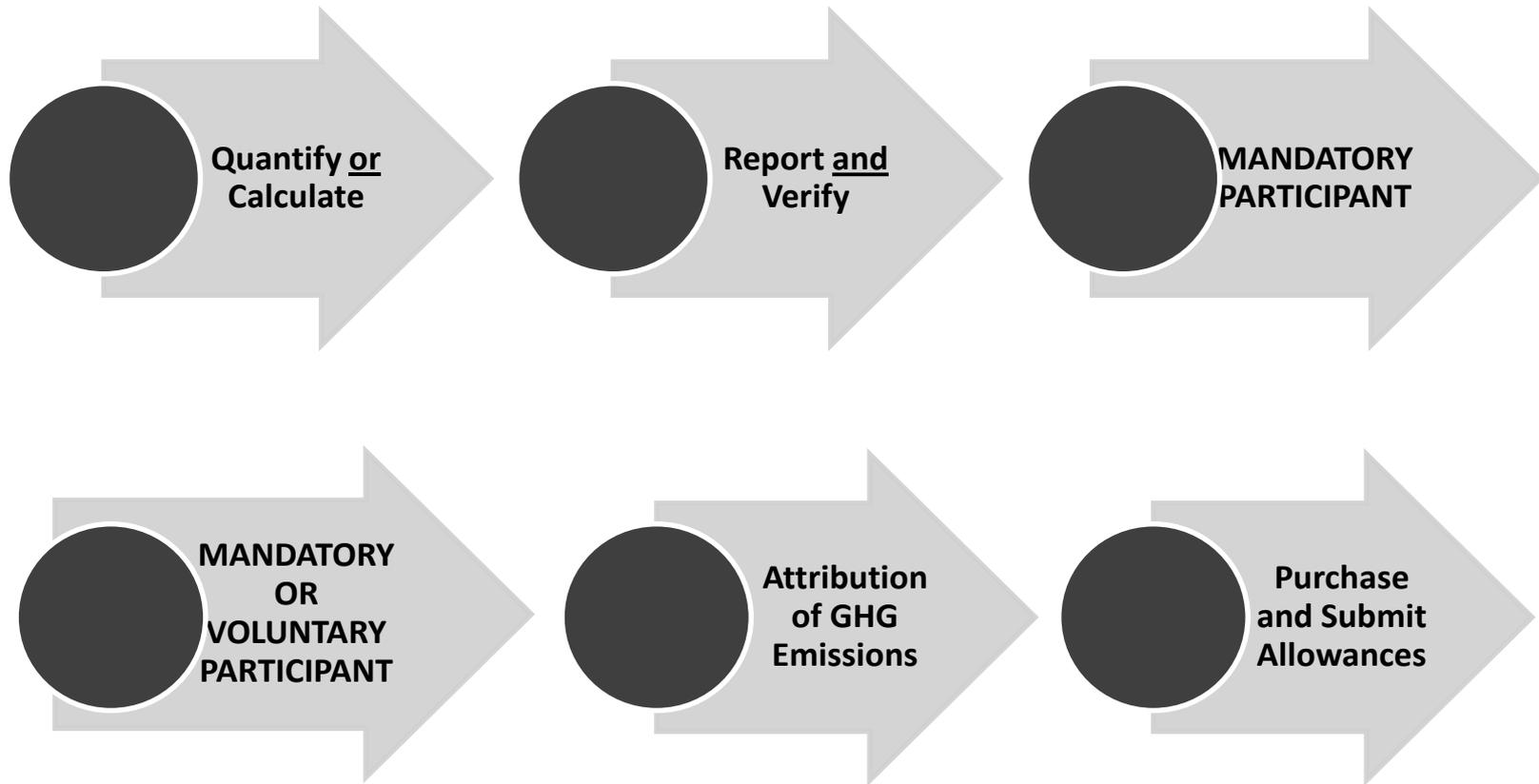
Ontario's Cap & Trade Regime

How Cap & Trade Works



Source: MSDEFCC, *The Québec Cap and Trade System for Greenhouse Gas Emissions Allowances, in brief*, <http://www.mddelcc.gouv.qc.ca/changements/carbone/documents-spede/in-brief.pdf>

Overview of Applicability and Operation of Regime



Industries Required to Quantify GHG Emissions (LFEs)

Adipic Acid Production	Ammonia Production	Carbonate Use
Cement Production	Cu and Ni Production	Electricity Generation
Ferroalloy Production	General Stationary Combustion	Coal Storage
ODS Production/Destruction	Glass Production	Indirect Useful Thermal Energy
Iron and Steel Production	Lead Production	Lime Production
Magnesium Production	Nitric Acid Production	Electricity Tx or Dx Equipment
Natural Gas Tx and Storage	Petrochemical Production	Petroleum Refining
Phosphoric Acid Production	Primary Aluminum Production	Pulp and Paper Production
Refinery Fuel Gas Use	Soda Ash Production	Zinc Production
	Hydrogen Production	

Industries Required to Calculate GHG Emissions



Natural Gas Distributors

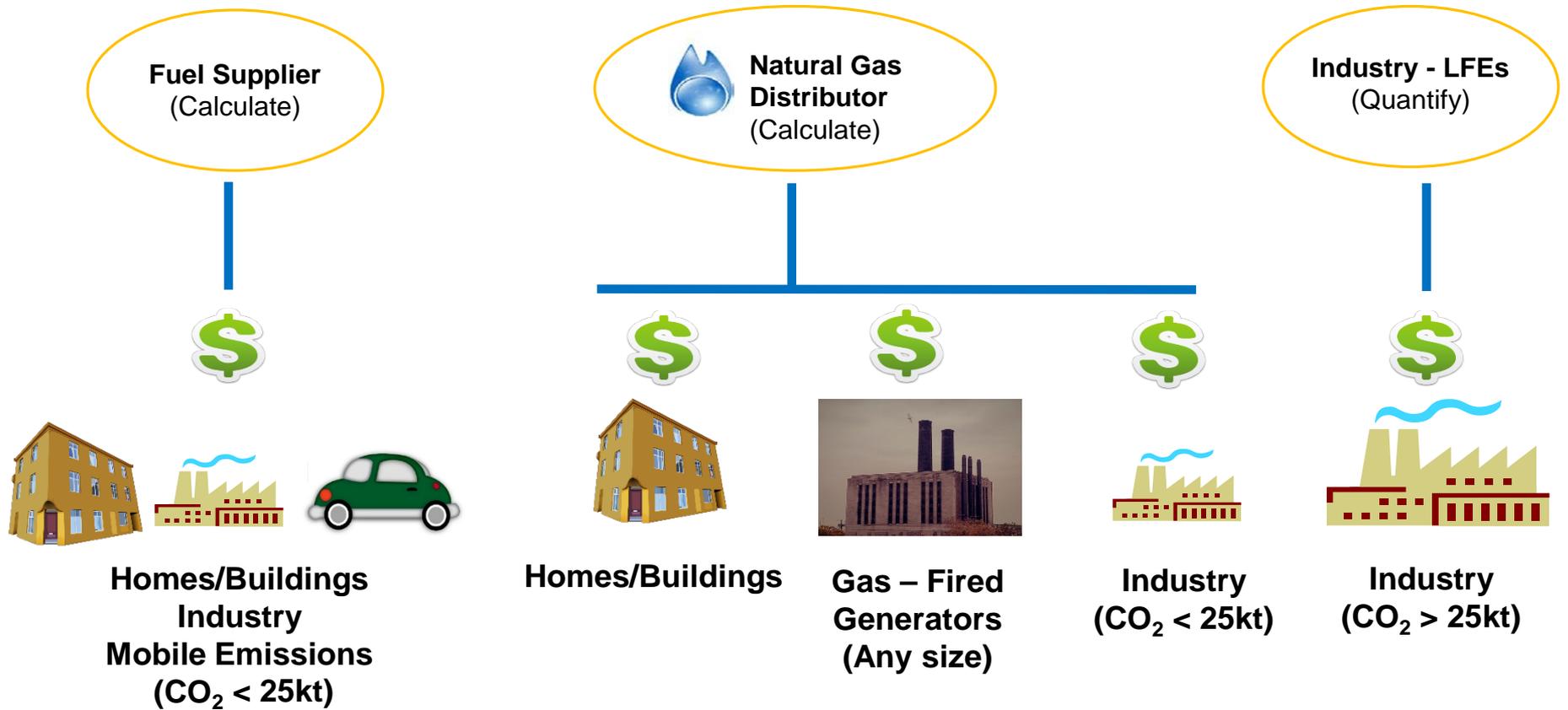


Electricity Importers



Petroleum product suppliers

Points of Compliance



****ELECTRICITY IMPORTS (based on supply mix make-up)**

Who must register in C&T Program? Who can register?

CAPPED PARTICIPANTS

MANDATORY PARTICIPANTS

- Those that had to report and verify their GHG emissions
- Exemption for most natural gas-fired electricity generators

VOLUNTARY PARTICIPANTS

- Facilities that emit between 10,000 and 25,000 tonnes of CO2 emissions in a year and who choose to opt-in to the program
- Must own or operate a facility that engages in a specified GHG activity (as per Reporting Regulation)
- Must have submitted 2 verified GHG Reports

MARKET PARTICIPANTS

- Participants with no compliance obligations
- These participants choose to trade in the market (i.e. entities that wish to buy and sell credits in the market)
- A person who is not an owner, operator or employee of a mandatory or voluntary participant

Attributing Emission Allowances to Capped Participants

- Capped Participants are “attributed” GHG emissions for a calendar year, based on their reported/verified GHG emissions in year t-2 (expressed in tonnes of CO₂e)
- Simple for industry/LFEs
- Natural gas distributors, electricity importers and fuel suppliers are attributed what their customers used in Ontario
 - Gas distributors = distributed to end users in year t-2
 - Fuel suppliers = what is imported into Ontario in year t-2 and used (not pushed through Ontario or left in storage)
 - Electricity importers = what was imported (not wheeled through)
- BUT over time these amounts are reduced to meet targets

Creating Emission Allowances

- Emission allowances are created by government, with the amount set by regulation:

2017	142,332,000
2018	136,440,000
2019	130,556,000
2020	124,668,000

- 5% of each year's amount is reserved for sale
- Certain % of each year's amount is reserved for distribution free of charge
- Certain % of each year's amount is reserved for auction

Obtaining Emission Allowances

- Emission allowances can be bought (at auction or via direct sale) or government can distribute for free
- **Auction:** Minister must hold four auctions of allowances per year



- **Sale:** Minister may hold up to four sales of allowances per year
- **Free Emission Allowances:** Have to apply to government for them, but will be phased out over time

AUCTIONS AND SALES GENERATE \$\$ FOR GOVERNMENT TO USE ON OTHER ELEMENTS OF ITS CLIMATE CHANGE ACTION PLAN

Remitting Emission Allowances

- For each compliance period, a capped participant must remit enough emission allowances to cover the GHG emissions that are attributed to that capped participant
- Each compliance period will be three years with the exception of this first compliance period (2017 to 2020 inclusive)
- Remit by November 1 of the year following the compliance period
- Once the emission allowances are remitted back to government, they are cancelled

Penalties for Non-Compliance

Individuals

	GENERAL			SPECIFIED		
	Fine	Jail	Both	Fine	Jail	Both
1 st Offence	\$50,000 Max.			\$5,000 Min. \$4M Max.	5 Years	✓
2 nd Offence				\$10,000 Min. \$6M Max.	5 Years	✓
Subsequent Offences	\$100,000 Max.	1 Year	✓	\$20,000 Min. \$6 Max.	5 Years	✓

Corporations

	GENERAL	SPECIFIED
	F	F
1 st Offence	\$250,000 Max.	\$25,000 Min. \$6M Max.
2 nd Offence		\$50,000 Min. \$10M Max.
Subsequent Offences	\$500,000 Max.	\$100,000 Min. \$10M Max.

Fine	Fine (per day/part of day on which offence occurs continues)
Jail	Maximum term of imprisonment
Both	Whether both a fine and jail sentence may apply

Using Offsets to Meet Compliance Obligations

- Allows for people to undertake a project to reduce GHGs (not GHGs covered by cap-and-trade program) and create offset credits (e.g., a tree planting program, a manure management program, a cooling system initiative that reduces certain refrigerants)
- Projects will have to meet certain “offset protocols” to be eligible, and must be “outside” the cap-and-trade regime
- So a company could submit these “offset credits” for up to 8% of GHG emissions attributed to it

The Federal Government's Approach

Pan-Canadian Framework

- Released December 2016
- Canada-wide carbon pricing framework requiring all jurisdictions to have a carbon pricing scheme in place by 2018 (cap-and-trade or carbon tax)
- Initially price should be \$10/tonne, increasing by \$10/tonne each year to \$50/tonne by 2022
- Revenues remain in jurisdiction of origin
- Just released a paper describing how it proposes to implement a backstop carbon price in provinces and territories that do not meet the benchmark price by 2018

Impacts on LDCs

Impacts on LDCs

- No direct compliance obligation
- Impact on LDCs driven by changed behaviour of LDC customers
- Opportunity for GHG reductions:



Transportation sector
is largest emitter

Impacts on LDCs

- Other opportunities for GHG reductions:



Industry and Buildings next largest emitting sectors

- Two sources of funding (auction/sale proceeds and self-motivation to reduce emissions)
- More of same in terms of government programming aimed at both GHG reductions and electricity savings

Richard J. King



**Partner, Regulatory, Environmental,
Aboriginal and Land (REAL)**

Richard King practises energy, Aboriginal and environmental law at Osler.

His environmental practice focuses on the environmental aspects of large infrastructure projects, often in the energy sector. Richard has been extensively involved in Ontario's natural gas and electricity sectors for many years and advises clients on regulatory matters related to power project and pipeline development, power trading and utility regulation. He regularly appears on behalf of clients before the Ontario Energy Board and the National Energy Board in project approval and rate regulation matters. Richard has taught Environmental Law at Western University, and currently teaches Regulatory Theory at Osgoode.