

**BILL C-33: AN ACT TO AMEND THE CANADIAN
ENVIRONMENTAL PROTECTION ACT**

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LEGISLATIVE HISTORY OF BILL C-33

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 3 December 2007
Second Reading: 1 February 2008
Committee Report: 27 February 2008
Report Stage:
Third Reading:

SENATE

Bill Stage	Date
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First Reading:
Second Reading:
Committee Report:
Report Stage:
Third Reading:

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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BILL C-33: AN ACT TO AMEND THE CANADIAN
ENVIRONMENTAL PROTECTION ACT*

Bill C-33, An Act to amend the Canadian Environmental Protection Act, 1999, was introduced in the House of Commons by the Minister of the Environment, the Honourable John Baird, on behalf of the Minister of Agriculture and Agri-food, the Honourable Gerry Ritz, on 3 December 2007.

This bill seeks to amend the *Canadian Environmental Protection Act, 1999* (“the Act”) with respect to provisions for the regulation of fuels. It establishes minimum levels of biofuel content in gasoline, diesel fuel and heating oil to be implemented within three to five years.

BACKGROUND

Bill C-33 contains some of the provisions that were included in Bill C-30, “Canada’s Clean Air Act,” introduced in the 1st Session of the 39th Parliament. That bill was amended and passed by a Legislative Committee and was at the report stage and second reading in the House of Commons when it died on the *Order Paper* as a result of the prorogation of Parliament on 14 September 2007.

According to a government news release, this bill allows the government to regulate renewable content in fuels.⁽¹⁾ Amendments to the *Canadian Environmental Protection Act, 1999* proposed in this bill allow the federal government to implement regulations requiring 5% average renewable content in gasoline by 2010. Subsequent regulations will also require 2% average renewable content in diesel and heating oil by 2012 on successful demonstration of renewable diesel fuel use under the range of Canadian environmental conditions.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Office of the Minister of the Environment, “Renewable Fuels Bill Clears Way for Renewable Fuel Content,” News release, Ottawa, 3 December 2007.

“Renewable fuels” refers to fuels made from renewable resources such as agricultural crops and other organic matter. Renewable fuels include ethanol made from grains, renewable diesels such as biodiesel made from vegetable oils and animal fats, and next-generation renewable fuels under development made from non-food agricultural residues such as wheat straw or forest biomass. Gasoline vehicles made since the 1980s can use up to 10% ethanol in gasoline, and many diesel vehicle manufacturers include in their warranty the use of 5% or higher biodiesel blends.

The government asserts that regulations requiring the use of renewable fuels will “reduce greenhouse gas (GHG) emissions by about 4 megatonnes per year, the GHG equivalent of taking almost one million vehicles from the road.”⁽²⁾

This bill, then, will permit the development of renewable fuel regulations.

DESCRIPTION AND ANALYSIS

Clauses 1 through 4 of this bill amend Division 4 of Part 7 of the *Canadian Environmental Protection Act, 1999*, “Controlling Pollution and Managing Wastes.” Division 4 is entitled “Fuels.”

Section 139(1) of the *Canadian Environmental Protection Act, 1999* addresses prohibitions against producing, importing or selling a fuel that does not meet the requirements set out in that section. These prohibitions are subject to certain exceptions, set out in section 139(2).

Clause 1 amends these exceptions to prohibitions in revised paragraphs 139(2)(a) to (d), in some cases narrowing the provision and in others broadening it.

Paragraph 139(2)(a) is amended to provide an exception for fuel that is in transit through Canada from a place outside Canada to another place outside Canada.

Paragraph 139(2)(b) is amended to make an exception for exported fuel, which already exists in the Act, subject to regulations. The amendment to paragraph 139(2)(c) expands the exception it provides to cover fuel that is produced or imported (currently the subsection covers only fuel that is imported) provided it meets the requirements of subsection 139(1) by the

time it is used or sold. A new paragraph (*e*) stipulates that the prohibition does not apply if “that person is exempted from the application of that subsection by a regulation made under subsection 140(3).” That section, as discussed below, permits producers or importers of small amounts of fuel to be exempted from the prohibitions in section 139(1).

CLAUSE 2 – REGULATIONS

Clause 2 amends the regulation-making power of the federal Cabinet in section 140, stating that the Cabinet may make regulations concerning blended fuels (proposed new paragraphs 140(1)(*c.I*), (*e*) and (*g*)), to include “or any additive contained in the fuel” under the power to make regulations concerning “the adverse effects from the use of the fuel ... on the environment, on human life or health, on combustion technology and on emission control equipment” (proposed subparagraph 140(1)(*g*)(iii)).

Clause 2(6) amends subsection 140(1) of the Act with new paragraph (*k*), which adds to the federal Cabinet’s regulatory purview requirements respecting the submission of reports on the quantity of fuel produced or sold for export.

Clause 2(7) replaces subsection 140(3) of the Act, which currently permits regulations that distinguish among fuels according to their commercial designation, source, physical or chemical properties, class, conditions of use, or place or time of year of use.

The new subsection 140(3) permits the federal Cabinet, on the recommendation of the Minister, to make regulations exempting from the prohibition in section 139(1) those producers or importers of fuel who produced or import a quantity “less than 400 m³ per year.”

Clause 3 repeals section 146 of the Act, which currently states that regulations may distinguish between variations in fuels.

CLAUSE 4 – INSPECTIONS AND ENFORCEMENT

Clause 4 amends section 218(1)(*b*) of the Act, which concerns enforcement provisions. It permits an enforcement officer to enter and inspect any place where he or she has

(2) Office of the Minister of the Environment, “Action on renewable Fuel,” Background, Ottawa, 3 December 2007.

reasonable grounds to believe “*fuels* to which this Act applies *are* being or *have* been produced *or blended*” (new text emphasised).

CLAUSE 5 – GENERAL REGULATION-MAKING POWERS AND EXEMPTIONS

Section 330 of the Act sets out a series of conditions for the exercise of the regulatory power by the federal Cabinet.

Clause 5 adds new subsection 330(3.2) to permit regulations made under specified sections to distinguish among any class of persons, works, undertakings, activities or substances, including fuels, that they may establish on the basis of any factor. Regulations including these distinctions may concern: quantities of releases; production capacity; technology or techniques used; feedstocks used; in the case of works or undertakings, the date of commencement of their operation or the date on which any major alterations are completed; and the substance or fuel's source, commercial designation, or physical or chemical properties.

New subsection 330(3.3) states that nothing in Part 7 shall be construed so as to prevent the making of regulations under Part 5 of the Act, concerning “Controlling Toxic Substances.”

COMING INTO FORCE INFORMATION

Clause 6 provides that this Act (Bill C-33) will come into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

A government press release states that this bill fulfils a commitment found in the Speech from the Throne.⁽³⁾ The 16 October 2007 Speech from the Throne contained this sentence referring to fuel: “The agricultural sector will benefit from our Government’s promotion of biofuels and the new Growing Forward agricultural framework.”⁽⁴⁾

In October 2006, the government published a notice of intent to regulate air emissions. It provides a regulatory framework for short-term industrial emission reduction

(3) See note 1, above.

(4) Canada. Governor General. “Strong Leadership. A Better Canada.” Speech from the Throne. 2nd Session, 39th Parliament, 16 October 2007, <http://www.sft-ddt.gc.ca/grfx/docs/sftddt-e.pdf>.

targets, actions for transportation sources, actions on consumer and commercial products, and the regulatory framework for improvement of indoor air quality. Although this notice did not specifically refer to renewable fuels, it was followed in December 2006 with the government's announcement that it would regulate an annual average renewable content of 5% in gasoline by 2010 and a further 2% requirement for renewable content in diesel fuel and heating oil by 2012.⁽⁵⁾

At the same time, the government also announced funding of \$345 million for two agriculture programs that will support the development of biofuels and other bioproducts.⁽⁶⁾

The 2007 Budget proposes spending \$2 billion over seven years to support the production of renewable fuels. This includes \$1.5 billion for operating incentives for producers of alternative, lower-emission fuels and \$500 million to invest with the private sector in establishing large-scale facilities for the production of next-generation renewable fuels.

MEDIA REACTION

To date, media reaction to this bill has been muted. News sources have noted its introduction and provenance,⁽⁷⁾ observing that it had been part of Bill C-30 and that the government stated in the Speech from the Throne that it “would bring key elements of the lost legislation back before Parliament this session.”⁽⁸⁾

(5) Office of the Minister of the Environment, “Canada’s New Government takes new steps to protect the environment with biofuels,” News release, Ottawa, 20 December 2006.

(6) Ibid.

(7) See, for example, “Ottawa to reintroduce law limiting biofuels content,” *The Record* (Kitchener, Cambridge and Waterloo), 4 December 2007, A3; “Ottawa plans biofuels minimum in 3 to 5 years,” *The Sault Star* (Sault Ste. Marie), 4 December 2007, A6, and “Ottawa pushes biofuels in new legislation,” *The Globe and Mail* (Toronto), 4 December 2007, A11.

(8) “Tories want to set biofuels minimums within 5 years,” *The Daily Gleaner* (Fredericton), 4 December 2007, D1.