

**BILL C-33: AN ACT TO AMEND THE CANADIAN  
ENVIRONMENTAL PROTECTION ACT, 1999**

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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:	1 May 2008
Third Reading:	28 May 2008

### SENATE

Bill Stage	Date
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First Reading:	28 May 2008
Second Reading:	12 June 2008
Committee Report:	26 June 2008
Report Stage:	
Third Reading:	26 June 2008

Royal Assent: 26 June 2008

Statutes of Canada 2008, c. 31

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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## TABLE OF CONTENTS

	<b>Page</b>
BACKGROUND .....	1
DESCRIPTION AND ANALYSIS .....	2
CLAUSE 2 – REGULATIONS .....	3
CLAUSE 4 – INSPECTIONS AND ENFORCEMENT .....	4
CLAUSE 5 – GENERAL REGULATION-MAKING POWERS AND EXEMPTIONS.....	4
COMING INTO FORCE INFORMATION .....	5
COMMENTARY .....	5



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BILL C-33: AN ACT TO AMEND THE CANADIAN  
ENVIRONMENTAL PROTECTION ACT, 1999<sup>\*</sup>

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. The bill was amended by the House of Commons Standing Committee on Agriculture and Agri-Food to include suggested periodic and comprehensive reviews of the environmental and economic aspects of biofuel production in Canada.

**Bill C-33 was by passed by the Standing Senate Committee on Energy, the Environment and Natural Resources on 26 June 2008 without amendment but with observations. The bill was reported to the Senate, passed and given Royal Assent on 26 June 2008.**

This bill seeks to amend the *Canadian Environmental Protection Act, 1999* (“the Act”) with respect to provisions for the regulation of fuels. It establishes the power to regulate 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 1<sup>st</sup> Session of the 39<sup>th</sup> Parliament. That bill was amended and passed by a Legislative Committee and was at the report stage and second reading

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\* 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.

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.<sup>(1)</sup> 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.

“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.”<sup>(2)</sup>

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

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

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

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.1), (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)).

The Committee amended this clause to add the word “imported” to the words “produced or sold for export.” 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, imported 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 m<sup>3</sup> per year.”

New clause 2(8) amends the bill to add a provision for periodic and comprehensive reviews by a Parliamentary committee of the environmental and economic aspects of biofuel production in Canada. These reviews are not mandatory; rather, the bill states that such reviews “should be undertaken” by a committee.

The suggestion for periodic reviews, added by the Committee, is intended to act as a form of “insurance”<sup>(3)</sup> to determine whether the environmental and economic goals and benefits of the bill are being achieved, that is, whether greenhouse gas emissions are reduced and biofuel production serves as an economic stimulator in rural communities.

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

#### 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

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(3) House of Commons Standing Committee on Agriculture and Agri-Food, *Evidence*, 26 February 2008, p. 20, <http://cmte.parl.gc.ca/Content/HOC/Committee/392/AGRI/Evidence/EV3299494/AGRIEV17-E.PDF>.

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.<sup>(4)</sup> 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."<sup>(5)</sup>

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 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.<sup>(6)</sup>

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(4) See note 1, above.

(5) 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>.

(6) 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.



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.<sup>(7)</sup>

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.

**When this bill was introduced, reaction to it was muted. News sources noted its introduction and provenance,<sup>(8)</sup> 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.”<sup>(9)</sup>**

**However, since its introduction, Bill C-33 and biofuel production in general has garnered greater attention and controversy.**

**On the one hand,** commentators have noted that the use of biofuels promises several benefits, including lower gas prices, reduced emissions and benefits for rural communities.<sup>(10)</sup> They have also noted that increased production of biofuels and other alternative fuels can help break North America’s dependence on foreign oil imports.<sup>(11)</sup>

On the other hand, many recent media reports link the use of crops for biofuels with increased food prices.<sup>(12)</sup>

A 2007 report to the United Nations General Assembly evaluating the impact of biofuels on the Right to Food calls for a five-year moratorium on biofuel production to review production technology and create “regulatory structures to protect against negative

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(7) Ibid.

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

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

(10) G. Quaiattini, “Letters,” *Edmonton Journal*, 21 April 2008, p. A17.

(11) J. Overmeyer Newsart, “Opinion,” *Toronto Star*, 19 April 2008, p. 00A6.

(12) See, for example, P. Waldie, “Food Inflation: These Are Stunningly, Stunningly Challenging Times,” *The Globe and Mail*, 25 April 2008, p. A1; D. Booth, “Biofuels May Cause More Harm Than Good,” *National Post*, 25 April 2008, p. DT2; K. Sullivan, “Food Crisis Is Depicted As ‘Silent Tsunami,’” *Washington Post*, 23 April 2008, p. A01; Reuters, “Biofuel Targets May Be Lowered To Ease Food Prices,” *Vancouver Sun*, 22 April 2008, p. A8; and M. Lacey, “Across Globe, Empty Bellies Bring Rising Anger,” *New York Times*, 18 April 2008, p. F1.

environmental, social and human rights impacts” of biofuel production. It sounds a cautionary note, urging member states to look into the possibility of deriving biofuels solely from agricultural waste and non-food crops in order to eradicate competition between food and fuel.<sup>(13)</sup> **A policy paper published by Oxfam International in June 2008 echoed these concerns, suggesting biofuels policies are contributing to the “food crisis.”<sup>(14)</sup>**

This debate indicates that achieving a balance between food and fuel will be difficult, at least in the short term.

**The “food or fuel” debate was discussed by the Standing Senate Committee on Energy, the Environment and Natural Resources in its hearings on the bill. The Committee also heard testimony about the capacity of Canadian farmers to produce the amount of agricultural product necessary to meet the targets set out in government plans, as well as whether the use of biofuels would have a measurable impact on greenhouse gas emissions.**

In the end, the Senate Committee passed the bill without amendment, but with observations. Observations carry no legal weight but serve to indicate to the Senate and the government the Committee’s opinion on the bill.<sup>(15)</sup> Those observations are as follows:

**That the Government of Canada should exercise due diligence and perform a cost-benefit analysis before proposing any regulations arising from this bill to ensure that:**

- a) Canada’s tax dollars are being prudently used to produce a significant result in reducing greenhouse gases emissions;**
- b) The industry is able to process and mix the [bio]fuel as required by law;**
- c) Canadian producers, the farmers, can meet the demand [for agricultural output] and farmers’ income is improved;**

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(13) United Nations General Assembly, Report of the Special Rapporteur on the right to food, A/62/289, 22 August 2007, at paragraph 44, <http://www.righttofood.org/A62289.pdf>.

(14) Oxfam International, “Another Inconvenient Truth: How Biofuel Policies Are Deepening Poverty and Accelerating Climate Change,” Briefing Paper No. 114, June 2008, <http://www.oxfam.org/files/bp114-inconvenient-truth-biofuels-0806.pdf>.

(15) Senate, *Journals of the Senate*, Issue 29, 2<sup>nd</sup> Session, 37<sup>th</sup> Parliament, 11 December 2002. As noted in a ruling from the Speaker of the Senate, “These observations are not a procedurally significant part of [Senate Committee] reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation.”

- d) Human health will not be compromised in any way by this bill; and**
- e) Any new information that is available prior to regulations being proposed is taken into consideration before such regulations are promulgated.**

**Your Committee also notes its intention to examine, at its first opportunity, the development of the regulatory process and the proposed regulations; and will on an ongoing basis, examine the efficacy derived from the application of those regulations.<sup>(16)</sup>**

**Bill C-33 received Royal Assent on 26 June 2008. The next step is for the government to develop renewable fuels regulations, a process that may take as long as two to three years.**

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**(16) Senate, Standing Committee on Energy, the Environment and Natural Resources, Twelfth Report, 26 June 2008, <http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/eng-e/rep-e/rep12jun08-e.htm>.**