



FERTILIZER CANADA
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Mr. Brennen Young
Director, Regulatory Affairs Sector
Treasury Board of Canada Secretariat
90 Elgin Street
Ottawa, Ontario K1A 0R5

Via e-mail: RCD-DCMR@tbs-sct.gc.ca

September 5, 2019

RE: Regulatory Modernization Consultation

Dear Mr. Young,

Fertilizer Canada is an industry association representing manufacturers, wholesale and retail distributors of nitrogen, potash, phosphate and sulphur fertilizers – the backbone of Canada’s agri-food economy, spanning hundreds of communities and contributing thousands of jobs.

On behalf of the association and our members, we commend the Government of Canada in its goal towards advancing the regulatory framework initiative. We appreciate the opportunity to provide input into how Canada’s regulatory process can enable our industry to remain competitive in the global market, while at the same time continue to support high-paying jobs, investment and the growth of Canada’s economy.

Competitiveness as a core component for regulatory impact assessment

The Advisory Council on Economic Growth was tasked with identifying policy actions to create conditions for strong and sustained economic growth. The resulting “Barton Report” identified the agriculture and agri-food sectors as having significant growth and export opportunities, setting a target of \$75 billion in agri-food exports by 2025. With fertilizer accountable for roughly 50 per cent of food production, it is critical that Canadian production is maintained to help feed the world’s growing population, which is expected to exceed nine billion by 2050.

While demand for our products is healthy, we risk losing market share to competitors in jurisdictions with geographic advantages and/or differing regulatory requirements. The fertilizer industry is one of Canada’s most energy-intensive, trade-exposed (EITE) industries, meaning its competitiveness is highly sensitive to additional production costs not borne by competitors in other jurisdictions. Fertilizer producers are “price takers” on the global market and are competing against other producers operating



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under less stringent regulatory environments. Unachievable targets and regulatory and economic uncertainty discourages global companies from investing in Canada's facilities and elevates the attractiveness of other production jurisdictions outside of the country. It is essential that the regulatory development process consider competitiveness as a core component of Canada's regulatory system.

Fertilizer Canada supports the idea of integrating regulatory efficiency and economic growth as an integral part of a regulator's mandate; particularly for EITE industries which are more vulnerable to competitiveness impacts, carbon leakage and reduced investment. It is our belief that an assessment of competitiveness impacts on a cumulative basis is key to understanding the true impact on a regulated party and its influence on the well-being of Canada. This should be done with clear and transparent assessment criteria and process rules.

A regulated entity will face multiple obligations for a single facility, piece of equipment or outcome (e.g. a release to the environment) by multiple regulations with similar objectives at the federal and provincial government levels. In our experience, the impact a regulation is typically assessed on an incremental basis and does not consider the complementary or cumulative regulatory environment. This increases the likelihood of duplicative measures and costs and underestimates the true impact to the regulated party. For example, the federal Clean Fuel Standard (CFS) and carbon pricing system (the "Backstop") are intended to be complementary programs; however, associated cost-benefit analysis (CBA) work assessed the programs separately.

The proposed CBA framework for the CFS outlines an analysis which aims to assess the incremental costs and benefits of the CFS. This framework compared the incremental CFS scenario to a baseline scenario where the federal carbon pricing system (the "Backstop") is already in place. In relation to this, the CBA framework and Regulatory Impact Assessment Statement (RIAS) for the federal output-based pricing system (OBPS) for industrial emissions did not consider the CFS in its analysis of impacts. As a result, a scenario which would assess the cumulative costs to industry was not considered.

As both programs have similar objectives and scope of application, there is a strong potential for duplicative costs. As the fertilizer industry is already subject to carbon pricing programs which put a price on industrial emissions – either provincially or federally – the sector will be paying twice for the same molecules of carbon; first for the increased price of fuel under the CFS and again for the carbon emissions of using the fuel. This creates an additive system which was not properly analysed and further



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puts Canadian industry at a competitive disadvantage compared to their global competitors.

Commitment to meaningful and transparent consultation

The Canadian fertilizer industry believes in a cooperative consultation approach that meets the needs of both industry and government for the development of policy. As frequent stakeholders in regulatory consultations, we are significantly invested in maintaining a meaningful and transparent regulatory development process. Our recent experience in the development of climate policies has challenged these core values. It is imperative that action be taken to ensure that the process continues to embody the principle of collaboration in which it was founded on.

When the Pan-Canadian Framework on Clean Growth and Climate Change was adopted in December of 2016, Environment and Climate Change Canada (ECCC) subsequently launched extensive stakeholder consultations towards the development of the federal Backstop and OBPS as well as the CFS. Fertilizer Canada and our members have been extensively engaged with the development of these policies – with over 25 written submissions, participation in more than 50 stakeholder sessions and webinars, and over 30 bilateral meetings.

Fertilizer Canada recognizes the challenge of executing comprehensive, large-scale consultations, however we strongly believe that sufficient timelines, meaningful engagement and clear process and decision making are required towards a well-considered policy. The aggressive pace of consultation, complexity of material and uncertainty in the process and deadlines experienced made it difficult to ensure that stakeholders had enough time and resources to fulsomely participate, uphold our standards for quality of submitted information and understand how policy decisions were made. Despite the extensive discussions and long timeline of opportunity, the finalization of several major policy elements – some with completely new approaches – were only communicated to stakeholders with their publication to *Canada Gazette* Part II.

In addition, we are strongly concerned with the methodology used for the RIAS of the federal OBPS. This analysis compared the OBPS system to a baseline reference scenario where a carbon levy would be applied to all industrial emissions. This baseline reference scenario disconnects from the true legal application of the *Greenhouse Gas Pollution Pricing Act*, which clearly states that the fuel charge is not payable if a party is a registered emitter. It avoids the true baseline reference scenario which is the case where industry is not subject to a carbon price at all. **We believe**



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that this approach violates the spirit of federal regulatory policy and are deeply concerned that a method, which seemingly helps lead the analysis towards a desired conclusion, was deemed acceptable and permitted.

In consideration of the development of future policies, it is important that the gaps and “lessons learned” of previous experiences are noted and strategies are put in place to mitigate similar deficiencies going forward. A high standard of certainty that the regulatory development process will adhere to the set rules in a predictable and objective manner is essential to maintain a process founded on collaboration and trust.

Conclusion

The fertilizer industry faces strong competition for business and investment. Maintaining favorable economic conditions, including a transparent and trustworthy regulatory system, is critical to the industry’s continued success in Canada. As the Treasury Board of Canada Secretariat undertakes this regulatory modernization review, Fertilizer Canada encourages you to ensure a collaborative and structured regulatory development process and a commitment to continuous improvement.

We would be pleased to discuss our experiences further at a meeting time of your convenience.

Sincerely,

Clyde Graham
Executive Vice President
Fertilizer Canada