

# Understanding lifecycle improvement credit opportunities under the Clean Fuel Standard

November 04, 2020

It is no secret that there has been opposition to Environment and Climate Change Canada's (ECCC) coming Clean Fuel Standard (CFS). Concerns over the increased costs of production, technological compliance difficulties and regulatory constraints have been coupled by threats of constitutional challenges similar to those launched a few years ago in respect of federal baseline carbon pricing.

One might argue, however, that the CFS contains some incentives as well as financial burdens for Canada's oil and gas industries - most notably, credit creation opportunities through lifecycle reduction in the carbon intensity of fossil fuels.

## Carbon intensity reductions across fuel lifecycle

Borrowing from the British Columbia Low Carbon Fuel Standard, the focus of the coming CFS liquid fuels regulations will be upon enhanced environmental performance across the entire supply chain for fossil fuel production, including improvements from both the "Primary Supplier" (producers/importers) and their vendors/service providers such as:

- Switching to a lower-carbon intensity fuel;
- Renewable energy integration; and
- Carbon capture (& utilization) and storage.

Credit generation can undertake activities from July 2017, so early adopters (past and present) will qualify. In adopting a similar lifecycle methodology to the BC Low Carbon Fuel Standard, the CFS can also benefit from the experience under that program.

## What is "additional" v. good business?

When supply chain improvements count as credit generation is less clear under the CFS. The CFS leans upon the carbon market's notion of "additionality" as a threshold requirement - in other words, compensating parties who are primarily incentivized to reduce carbon (or its intensity) by the prospects of credit generation and not normal course process and efficiency improvements.

Here the ECCC, in its Proposed Regulatory Approach, is less than reassuring to the market:

“The **additionality assessment will take into account** many factors, including the financial aspect of the project, regulatory considerations (e.g. whether an action is required by other law or regulations), technological and financial barriers, emissions (in the defined base case and projected reductions), and the penetration rate of the technology or practice.”

It's no wonder that **wholesale process improvements have not been convened** in the name of the CFS. Much more is needed from the ECCC as concrete guidance before the CFS will deliver significant lifecycle carbon intensity improvements.

## **But what about related Canadian carbon programs?**

Credit creation for process improvements under the CFS will not occur in a vacuum. Many Primary Suppliers will also be caught by other emissions-related laws, both federal and, more often, provincial.

The ECCC has indicated that lifecycle improvements will qualify for CFS credits where **such improvements “overlap” with carbon pollution pricing systems** (read: Federal Carbon Pricing Backstop and its progeny) in either:

- Emissions compliance; or
- Carbon credits.

CFS credits will also be generated through improvements made in compliance with the BC Low Carbon Fuel Standard. What is less clear is the status of compliance activities of Alberta's Renewable Fuels Standard - an omission not lost on the province.

## **What will not qualify as creditable lifecycle improvements?**

The ECCC is, unfortunately, much clearer in defining what does not qualify than what does. The noteworthy exclusions include:

- Legal compliance (other than carbon pricing laws);
- Use of renewable or low-carbon fuels already CFS-credited upstream;
- Processing lower-carbon intensity fossil fuels (such as heavy to light crude oil); and
- Curtailing production.

Curiously, receipt of government funds for improvements itself, does not, exclude eligibility for CFS lifecycle credits.

## **The answers lie in the emission reduction quantification methodologies**

The hope is that the ambiguities in the lifecycle credit generation process will become much clearer through the ECCC development of emission reduction qualification methodologies. For now, we know they must be consistent with ISO 14064-2, overtly scientifically defensible and for no less than a 5-year period. We also know that methodologies will be developed for:

- Carbon capture and storage;
- Enhanced oil recovery;
- Low-carbon intensity electricity integration;
- Methane reductions that are additional to regulatory requirements;
- Co-generation;
- “**Electrification**”; and
- Co-processing of biocrudes in refineries and upgraders.

In short, a veritable laundry list of the types of improvement areas that the oil and gas industries have continued to work on long before the CFS was ever contemplated.

With tangible and detailed lifecycle credit opportunities and meaningful financial returns for the investment, the oil and gas industries may well be able to take advantage of the **lifecycle improvement credit opportunities under the CFS**. Further, the **carbon-intensity improvements brought about by these changes may also better position Canada’s industry to meet similar standards developing throughout various export markets.**

By:

[Jonathan Cocker](#)

Services:

[Environmental](#), [Climate Change](#), [District Energy](#)

---

## **BLG | Canada’s Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2022 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.