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IMPORTANT INFORMATION FOR AGENTS

The *Climate Leadership Act* was passed in the Prince Edward Island legislature on December 5, 2018 and given Royal Assent. The *Act* comes into force on April 1, 2019.

This document has been prepared for information and reference purposes only. This document is not the official version of the Act. The information is only a portion of the Act and includes several areas you may find relevant. A link to the full Act can be found at:

<http://www.assembly.pe.ca/bills/onebill.php?session=3&generalassembly=65&number=62>

Information on Registration as an Agent and Appointment of Subagents

Climate Leadership Act

PART 1 - INTERPRETATION

In this Act,

(a) “**agent**” means

(i) a “**wholesaler**” as defined in the *Petroleum Products Act* R.S.P.E.I. 1988, Cap. P-5, who is registered with the Commissioner as an agent for the collection of the levy under this Act, and

(ii) any other person registered with the Commissioner as an agent for the collection of the levy under this Act;

(kk) “**subagent**” means a person that is designated by an agent under section 42 as a subagent for the collection of the levy;

(ll) “**vendor**” means an agent or subagent who in the ordinary course of business, either on the vendor’s own behalf or on behalf of another, sells fuel to a purchaser;

(mm) “**wholesaler**” means a person licensed or required to be licensed as a wholesaler under the *Petroleum Products Act*.

PART 2 - LEVY ON FUEL

Division 7 - Registration

41. Requirement for registration

(1) No person shall

- (a) in the province,
 - (i) sell or remove fuel from a bulk plant,
 - (ii) operate a bulk plant or act as a position holder within a bulk plant operated by another person,
 - (iii) sell fuel for the purpose of resale,
 - (iv) sell fuel exempt from the levy, or
 - (v) rebrand fuel;
 - (b) import fuel into the province
 - (i) for the purpose of sale or resale, or
 - (ii) that, without first having been sold or resold in this province, is put, in this province, into a fuel system that produces heat or energy; or
 - (c) export fuel from the province in bulk,
- unless the person is a wholesaler who is registered in accordance with the regulations with the Commissioner as an agent for the collection of the levy.

Registration - other persons

(2) Notwithstanding subsection (1), a person who is not a wholesaler who carries out any or all of the activities specified in subsection (1) shall be registered with the Commissioner in accordance with the regulations as an agent for the collection of the levy.

Refusal to register, renew

(3) The Commissioner may refuse to register an applicant or to renew a registration if the applicant

- (a) has contravened this Act or a regulation under this Act;
- (b) has contravened a law in force in the province that regulates the distribution and sale of fuel; or
- (c) has been convicted in respect of a contravention of a law in force in the province or in another jurisdiction that governs the collection or payment of a carbon levy or tax or governs a carbon pricing system.

Suspension, cancellation

(4) The Commissioner may suspend or cancel a registration if the agent

- (a) has contravened this Act or a regulation under this Act;
- (b) has contravened a law in force in the province that regulates the distribution and sale of fuel; or
- (c) has been convicted in respect of a contravention of a law in force in the province or in another jurisdiction that governs the collection or payment of a carbon levy or tax or governs a carbon pricing system.

Notice of refusal

(5) If the Commissioner refuses to register an applicant or suspends or cancels an agent's registration, the Commissioner shall give to the applicant or agent a notice of refusal, suspension or cancellation specifying the reasons for the refusal, suspension or cancellation.

42. Designation of subagent

(1) An agent may, in writing, designate one or more subagents for the collection of the levy which the agent is required to collect.

Restriction

(2) Only a person to whom an agent sells or delivers fuel for resale to purchasers shall be designated by that agent as a subagent.

Agent's responsibility

- (3) The agent shall
- (a) ensure that the subagent collects the levy from each purchaser who is liable to pay the levy;
 - (b) collect from the subagent the levy collected by the subagent;
 - (c) ensure that the subagent observes and complies with the requirements of this Act and the regulations;
- and
- (d) hold, account for and remit the levy collected by the subagent in the same manner as the levy collected by the agent.

Information on Fuel and Rates of Levy on Fuel

PART 1 - INTERPRETATION

1. Definitions

In this Act,

- (f) “**clear fuel**” means gasoline or diesel that is not marked fuel;
- (m) “**diesel**” means the products distilled from petroleum that are capable of developing the power required for operating internal combustion engines and that are commonly known as diesel, and includes any other products determined by the Commissioner to be diesel, but does not include aviation gasoline, aviation jet fuel, furnace oil, gasoline, kerosene, or marketable or nonmarketable natural gas or propane as specified in the Schedule to this Act;
- (r) “**fuel**” means a substance listed as a fuel in Table 1 in the Schedule to this Act;
- (t) “**gasoline**” means the liquid product distilled from petroleum which by combustion develops the power required for operating internal combustion engines, and also means every other liquid product that fulfils the same purpose by the same means and for the same end, and includes any other product determined by the Commissioner to be gasoline but does not include aviation gasoline, aviation jet fuel, diesel, furnace oil, kerosene, marketable natural gas, non-marketable natural gas or propane as specified in the Schedule to this Act;
- (x) “**levy**” means the levy imposed under the authority of this Act, and includes all penalties and interest that are, may be or may have been added to the levy pursuant to this Act or the regulations or the *Revenue Administration Act*;
- (z) “**marked diesel**” means diesel to which a dye or chemical marker has been added in accordance with the *Gasoline Tax Act* Regulations, but does not include furnace oil;
- (aa) “**marked fuel**” means marked gasoline or marked diesel;
- (bb) “**marked gasoline**” means gasoline to which a dye or chemical marker has been added in accordance with the *Gasoline Tax Act* Regulations, but does not include furnace oil;

SCHEDULE

1. Interpretation

(1) In this Schedule,

- (a) “**aviation gasoline**” means any gas or liquid that is sold to be used or is used to create power to propel an aircraft that is not propelled by a turbine;

- (b) “**aviation jet fuel**” means any gas or liquid that is sold to be used or is used to create power to propel an aircraft that is propelled by a turbine;
- (c) “**biomass**” means a substance developed from organic materials as a renewable and sustainable source of energy that may be added to a fuel;
- (d) “**butane**” means a hydrocarbon with a molecular structure of C₄H₁₀;
- (e) “**coal coke**” means a solid carbonaceous residue derived from low-ash, low-sulfur bituminous coal from which the volatile constituents were driven off by baking in an oven with the result that the fixed carbon and residual ash are fused together;
- (f) “**coke oven gas**” means gas that is recovered from the carbonization of coal at high temperatures in a coke oven for the production of coal coke and processed to be suitable as a fuel;
- (g) “**combustible waste**”, subject to the regulations, means tires or asphalt shingles whether in whole or in part;
- (h) “**ethane**” means a hydrocarbon with a molecular structure C₂H₆;
- (i) “**furnace oil**” means heating fuel or stove oil of a type used primarily for generating heat, but does not include diesel, gasoline, heavy fuel oil, or kerosene;
- (j) “**gas liquids**” means a mixture of two or more ethanes, propane, butane or pentanes plus, whether in gaseous or liquid form,
(i) that is obtained from the processing of natural gas or crude oil, and
(ii) of which the exact composition is unknown;
- (k) “**heavy fuel oil**” means a substance that is a distillate or a residual of crude oil and that has a viscosity of greater than 14 centistokes at 50°C;
- (l) “**high heat value coal**” means bituminous coal and any other coal with a heating value greater than 27,000 kilojoules per kilogram;
- (m) “**internal combustion engine**” includes a turbine engine that generates power by the combustion of fuel;
- (n) “**kerosene**” means a light petroleum distillate that meets the requirements of National Standard of Canada CAN/CGSB 3.3 99, Kerosene, as amended from time to time, but does not include aviation gasoline;
- (o) “**light fuel oil**” means a substance that is a distillate of crude oil that has a viscosity of not greater than 14 centistokes at 50°C, and is suitable
(i) for generating power by means of a diesel engine, or
(ii) for use in a furnace, boiler or open flame burner,
but does not include butane, ethane, gas liquids, aviation jet fuel, kerosene, naphtha, propane, pentanes plus or still gas;
- (p) “**low heat value coal**” means sub-bituminous coal and any other coal with a heating value up to and including 27,000 kilojoules per kilogram;
- (q) “**marketable natural gas**” means a gaseous product consisting mostly of methane that is drawn from gas wells and processed to meet the specifications for pipeline transport and sale as natural gas;
- (r) “**methane**” means a hydrocarbon a molecular structure of CH₄;
- (s) “**methanol**” means a chemical compound with the chemical formula CH₃OH;

(t) “**naphtha**” means a refined or partially refined petroleum fraction with an approximate boiling range between 50°C and 204°C;

(u) “**non-marketable natural gas**” means natural gas that
(i) does not meet the specifications for pipeline transport and sale, and
(ii) is not moved

(A) to a gas processing plant from a gas battery, compressor station or oil battery, or
(B) from a gas processing plant to a transmission pipeline;

(v) “**pentanes plus**” means a mixture mainly of pentanes and heavier hydrocarbons that ordinarily may contain some butanes and may be contaminated with sulphur and that is obtained from the production or processing of raw gas, condensate or crude oil;

(w) “**petroleum coke**” means a carbonaceous solid resembling coal produced as a by-product of the crude oil refining process delivered from an oil refinery coker;

(x) “**propane**” means a hydrocarbon with a molecular structure of C₃H₈;

(y) “**standard reference conditions**” means,
(i) in the case of a gas, a temperature of 15°C and an atmospheric pressure of 101.325 kPa, and
(ii) in the case of a liquid, a temperature of 15°C;

(z) “**still gas**” means the remaining unseparated gaseous fractions produced in refinery distillation or cracking processes, after marketable products have been extracted.

(2) For the purpose of determining the amount of the levy payable on a fuel set out in the Table, when the levy rate is based on litres, the levy rate shall be multiplied by the amount of liquid or gaseous fuels measured in litres at standard reference conditions.

(3) For the purpose of determining the amount of the levy payable on a fuel set out in the Table, when the levy rate is based on cubic metres, the levy rate shall be multiplied by the amount of liquid or gaseous fuels measured in cubic metres at standard reference conditions.

(4) For the purpose of determining the amount of the levy payable on a fuel set out in the Table, when the proportions of ethane, propane, butane, and other components present in the substance are known as a result of analysis or blending, the levy shall be calculated in accordance with section 9 of this Act.

Table 1 - Rates of Levy on Fossil Fuels from 2019 to 2020

Type	UNIT	April 1, 2019	April 1, 2020
AVIATION GASOLINE	\$/litre	0.0498	0.0747
AVIATION TURBO FUEL/ JET FUEL	\$/litre	0.0516	0.0775
BUTANE	\$/litre	0.0356	0.0534
DIESEL	\$/litre	0.0537	0.0805
ETHANE	\$/litre	0.0204	0.0306
FURNACE OIL	\$/litre	0.0000	0.0000

GAS LIQUIDS	\$/litre	0.0333	0.0499
GASOLINE	\$/litre	0.0442	0.0663
HEAVY FUEL OIL	\$/litre	0.0637	0.0956
KEROSENE	\$/litre	0.0516	0.0775
LIGHT FUEL OIL	\$/litre	0.0537	0.0805
MARKED DIESEL	\$/litre	0.0100	0.0200
MARKED GASOLINE	\$/litre	0.0100	0.0200
METHANOL	\$/litre	0.0220	0.0329
NAPHTHA	\$/litre	0.0451	0.0676
PETROLEUM COKE	\$/litre	0.0767	0.1151
PENTANES PLUS	\$/litre	0.0356	0.0534
PROPANE	\$/litre	0.0000	0.0000
COKE OVEN GAS	\$/cubic metre	0.0140	0.0210
MARKETABLE NATURAL GAS	\$/cubic metre	0.0391	0.0587
NON-MARKETABLE NATURAL GAS	\$/cubic metre	0.0517	0.0776
STILL GAS	\$/cubic metre	0.0540	0.0810
COAL COKE	\$/tonne	63.59	95.39
HIGH HEAT VALUE COAL	\$/tonne	45.03	67.55
LOW HEAT VALUE COAL	\$/tonne	35.45	53.17
COMBUSTIBLE WASTE	\$/tonne	39.95	59.92

Information on Exemptions

Division 3 - Exemptions

13. Exemption - farmers

Fuel purchased by a farmer is exempt from the levy imposed under Division 1 of this Part if

- (a) the farmer provides at the time of purchase a valid levy exemption permit for the fuel, or other evidence of exemption for the fuel in accordance with the regulations; and
- (b) the fuel is marked fuel to be used for agricultural operations on a farm.

14. Exemption - fishers

Fuel purchased by a fisher is exempt from the levy imposed under Division 1 of this Part if

- (a) the fisher provides at the time of purchase a valid levy exemption permit for the fuel, or other evidence of exemption for the fuel in accordance with the regulations; and
- (b) the fuel is marked fuel to be used for commercial fishing operations.

15. Exemption - aquaculturists

Fuel purchased by an aquaculturist is exempt from the levy imposed under Division 1 of this Part if

- (a) the aquaculturist provides at the time of purchase a valid levy exemption permit for the fuel, or other evidence of exemption for the fuel in accordance with the regulations; and
- (b) the fuel is marked fuel to be used for aquaculture operations.

16. Exemption - custom agricultural contractors

Fuel purchased by a custom agricultural contractor is exempt from the levy imposed under Division 1 of this Part if

- (a) the custom agricultural contractor provides at the time of purchase a valid levy exemption permit for the fuel, or other evidence of exemption for the fuel in accordance with the regulations; and
- (b) the fuel is marked fuel to be used for custom agricultural contracting operations on a farm.

17. Exemption - interjurisdictional passenger and cargo flights

(1) Fuel purchased for use in a flight is exempt from the levy imposed under Division 1 of this Part if evidence is provided at the time of purchase that the flight

- (a) is operated by an interjurisdictional air service that holds a licence issued by the Canadian Transportation Agency and holds, if required by Transport Canada, an operating certificate issued by Transport Canada for the type of aircraft used for the flight; and
- (b) begins or ends outside the province. ...

18. Exemption - interjurisdictional air services flights

(1) Fuel purchased for use in a flight is exempt from the levy imposed under Division 1 of this Part if evidence is provided at the time of purchase that the flight

- (a) is operated by an interjurisdictional air service that holds a licence issued by the Canadian Transportation Agency and holds, if required by Transport Canada, an operating certificate issued by Transport Canada for the type of aircraft used for the flight; and
- (b) begins or ends outside the province, and that beginning or ending outside the province is integral to the provision of the air service. ...

19. Exemption - cruise ships

Fuel purchased for use in the operation of a cruise ship is exempt from the levy imposed under Division 1 of this Part if evidence is provided at the time of purchase that

- (a) the cruise is offered to members of the public for a fee; and
- (b) the cruise ship has a scheduled port of call outside of the province.

20. Exemption - commercial vessel

Fuel purchased for use in the operation of a commercial vessel is exempt from the levy imposed under Division 1 of this Part if evidence is provided at the time of purchase that the commercial vessel is being used for

- (a) the carriage of passengers or freight from this province to another province, territory or country for a fee; or
- (b) the dredging of the ocean bed in extra-territorial waters.

21. Exemption - out of province marine craft

Fuel purchased for use in the operation of a marine craft that is registered outside the province is exempt from the levy imposed under Division 1 of this Part if evidence is provided at the time of purchase that

- (a) the owner of the marine craft is in possession of a valid levy exemption permit issued on behalf of the province of registration of the marine craft;
- (b) the marine craft is actually being employed in commercial fishing operations; and
- (c) the fuel is marked fuel to be used in commercial fishing operations.

22. Exemption - covered facility

Subject to the regulations, fuel purchased for use by a covered facility is exempt from the levy imposed under Division 1 of this Part if evidence is provided at the time of purchase that

- (a) either

- (i) the covered facility continues to be designated under the *Greenhouse Gas Pollution Pricing Act* (Canada), or
 - (ii) the covered facility certificate issued in respect of the facility remains in force; and
- (b) the emissions from the fuel are reportable emissions under the *Greenhouse Gas Pollution Pricing Act* (Canada).

23. Exemption - Indian Act

Fuel delivered to a reserve and purchased for use by a purchaser who is an Indian, as defined in the *Indian Act* R.S.C. 1985, cap. I-5, is exempt from the levy imposed under Division 1 of this Part.

24. Exemption - pre-packaged fuels

Fuel purchased in pre-packaged, factory-sealed containers with a capacity specified in the regulations is exempt from the levy imposed under Division 1 of this Part.

Information on offences and penalties

PART 4 - OFFENCES, PENALTIES AND ADMINISTRATIVE PENALTIES

45. Offences and penalties

A person who contravenes any provision of this Act is guilty of an offence and liable on summary conviction to a fine of not less than \$250 and not more than \$5,000.

46. Offences re documents and records

- (1) A person who
 - (a) makes, participates in, assents to or acquiesces in the making of false or deceptive statements in an application, return, statement, record, report or document delivered or made under this Act or the regulations;
 - (b) destroys, alters, mutilates or disposes of the records of a person required to keep records under this Act or the regulations;
 - (c) makes or assents to or acquiesces in the making of false or deceptive entries or omits or assents to or acquiesces in the omitting of material particulars in the records of a person required to keep records under this Act or the regulations;
 - (d) wilfully evades or attempts to evade compliance with this Act or the regulations; or
 - (e) conspires with any person to commit an offence described in clauses (a) to (d), is guilty of an offence.

Penalty

- (2) In addition to any penalty otherwise provided for by this Act, a person who commits an offence under subsection (1) is liable on summary conviction to
 - (a) a fine in an amount that is not more than 300% of the greatest of
 - (i) the levy evaded or sought to be evaded,
 - (ii) the difference between the amount that should have been remitted and the amount remitted, or
 - (iii) the refund, credit, reimbursement or rebate obtained or sought to be obtained; or
 - (b) to that fine and a term of imprisonment of not more than two years.

47. Failure to file returns

- (1) In addition to any penalty otherwise provided for by this Act, a person who fails to submit a return or report or to provide or produce information or a document as and when required by this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of \$50 for each day or part of a day on which the default continues.

Failure to maintain records

- (2) In addition to any penalty otherwise provided for by this Act, a person who fails to maintain records and books of account when required by the Commissioner to do so is guilty of an offence and liable on summary conviction to a fine of \$50 for each day from the day the person receives notification of the requirement to the day the person complies with the requirement.

48. Notice of non-compliance

(1) Despite sections 45, 46 and 47, if the Commissioner believes, on reasonable grounds, that a person has contravened or failed to comply with a provision of this Act listed in Column I of Table 2 in the Schedule to this Act, the Commissioner may issue a notice of non-compliance to the person.

Service of notice

(2) The Commissioner shall serve a notice of non-compliance personally or by sending it by registered mail to the last known address of the person to whom it is directed.

Contents of notice

(3) The notice of non-compliance shall include

- (a) the name of the person who has contravened or failed to comply with a provision listed in Column I of Table 2 in the Schedule to this Act;
- (b) the provision listed in Column I of Table 2 in the Schedule to this Act and the date on which the contravention or failure to comply occurred;
- (c) the amount of the administrative penalty that may be imposed under section 51; and
- (d) information with respect to the person's right to request a review of the decision under section 49.

Time limit

(4) A notice of non-compliance shall not be served more than one year after the Commissioner first had knowledge of the violation or failure to comply.

Requirement to comply

(5) A person who receives a notice of non-compliance for a contravention or failure to comply with section 36 or 38 shall comply with the provision within 30 days after being served with the notice.

49. Request for review

(1) A person who receives a notice of non-compliance may submit a written request for review of the decision to the Commissioner within 30 days after being served with the notice.

Result of review

(2) Within 60 days after receiving the written request for review, the Commissioner shall

- (a) issue a notice indicating that the Commissioner is satisfied of one or more of the following:
 - (i) an error or omission exists with regard to the issuance of the notice of non-compliance,
 - (ii) an extenuating circumstance beyond the control of the person prevented compliance with the provision listed in Column I of Table 2, or
 - (iii) due diligence was exercised by the person to attempt to prevent the violation or failure to comply with the provision listed in Column I of Table 2;
- (b) issue a notice extending the time period referred to in subsection 48(5); or
- (c) impose an administrative penalty by issuing a notice of administrative penalty.

50. Effect of administrative penalty

(1) A person subject to an administrative penalty shall not be charged with a contravention in respect of the same incident that gave rise to the administrative penalty.

Effect of charge for contravention

(2) A person charged with a contravention shall not be subject to an administrative penalty in respect of the same incident that gave rise to the charge.

51. Imposition of administrative penalty

(1) The Commissioner shall impose an administrative penalty on a person by issuing a notice of administrative penalty

- (a) if the person does not comply within the time period referred to in subsection 48(5);
- (b) if the person does not submit a written request for review within the time period referred to in subsection 49(1); or
- (c) under clause 49(2)(c).

Service of notice

(2) The Commissioner shall serve a notice of administrative penalty personally or by sending it by registered mail to last known address of the person to whom it is directed.

Contents of notice

(3) The notice of administrative penalty shall include

- (a) the name of the person required to pay the administrative penalty;
- (b) the provision listed in Column I of Table 2 in the Schedule to this Act and the date on which the contravention of or failure to comply with the provision occurred;
- (c) the amount of the administrative penalty;
- (d) when and how the administrative penalty shall be paid; and
- (e) information with respect to the person's right to appeal the Commissioner's decision under section 52.

52. Appeal

A person who receives a notice of administrative penalty may, within 30 days, appeal the decision of the Commissioner to the Island Regulatory and Appeals Commission in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11.

53. Payment within 30 days

(1) A person who receives a notice of administrative penalty shall pay the administrative penalty set out in the notice within 30 days after being served with the notice.

Variation on appeal

(2) Where, on an appeal under section 52 by a person who received a notice of administrative penalty, the Island Regulatory and Appeals Commission varies the Commissioner's decision, the Commissioner shall refund the administrative penalty or portion of it within 30 days after the decision of the Island Regulatory and Appeals Commission.

Payable to Minister

(3) The administrative penalty shall be payable to the Minister.

Deemed contravention

(4) For the purposes of this Act only, a person who pays an administrative penalty shall be deemed to have contravened or failed to comply with the provision listed in Column I of Table 2 in the Schedule to this Act in respect of which the payment was made.

54. Administrative penalty - amount

The amount of an administrative penalty is as follows:

- (a) for a first contravention or failure to comply with the provision listed in Column I of Table 2 in the Schedule to this Act, a sum equal to the minimum administrative penalty listed beside it in Column II of Table 2;
- (b) for a second contravention or failure to comply with the provision listed in Column I of Table 2 in the Schedule to this Act, a sum equal to ten times the minimum administrative penalty listed beside it in Column II of Table 2; and

(c) for a third or subsequent contravention or failure to comply with the provision listed in Column I of Table 2 in the Schedule to this Act, a sum equal to the maximum administrative penalty listed beside it in Column II of Table 2.

55. Failure to pay administrative penalty

Where a person who is required to pay an administrative penalty under subsection 53(1) fails to do so,
 (a) the Commissioner may suspend, revoke, or refuse to issue or renew the person’s levy exemption permit or registration; and
 (b) the amount of the administrative penalty constitutes a debt due to the Government.

Table 2 – Administrative Penalties

COLUMN I	COLUMN II	COLUMN III
Section	Minimum and maximum amounts of administrative penalty	Offence
32	\$250 - \$5,000	Failure to issue accurate invoice
5, 6, 8	\$250 - \$5,000	Failure to remit levy as required
36	\$250 - \$5,000	Failure to report on imports
41	\$250 - \$5,000	Failure to register as agent
5, 28	\$250 - \$5,000	Failure to collect levy as required
6, 29, 30	\$250 - \$5,000	Failure to pay levy as required
32, 33, 34, 35, 36, 37, 38	\$250 - \$5,000	Failure to keep and maintain records as required
38	\$250 - \$5,000	Failure to produce records as required
33, 37	\$250 - \$5,000	Failure to make return or report as required

Miscellaneous Information

Security:

56. Security for amounts owing

(1) The Commissioner may require an agent to deposit with the Minister a security in the form of cash, a bond or other security acceptable to the Commissioner.

Amount of security

(2) The amount of any security required by the Commissioner under subsection (1) shall be determined by the Commissioner, but shall not

- (a) exceed a maximum amount that is equal to six times the amount of the estimated levy that, in the opinion of the Commissioner, would normally be collected by the agent each month under this Act; and
- (b) be less than \$5,000.

Refusal to register

(3) The Commissioner may refuse to register an agent who fails to deposit with the Minister a security required under subsection (1).