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# Establishing A North American Clean Energy Beachhead





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## **Establishing A North American Clean Energy Beachhead**

Law360, New York (September 07, 2010) -- The catastrophic Deepwater Horizon oil spill in the Gulf of Mexico underscores the urgency of reducing our energy dependence on burning fossil fuels and slowing the atmospheric buildup of greenhouse gases that cause climate change.

While U.S. politicians are still deadlocked in debating whether and how to confront this challenge, our neighbors to the north in Ontario, Canada, have already passed comprehensive legislation aimed at transforming how energy is generated, transmitted and used.

Innovators looking for a lucrative North American market that is ready and eager to implement cutting-edge clean energy technologies should consider establishing an early beachhead in Ontario — Canada's most populated province.

### **The Green Energy Act**

Ontario passed the Green Energy Act in May 2009, with the goal of becoming a leader in the new clean energy economy. The act is designed to aggressively stimulate investment in, and deployment of, renewable energy technologies and projects.

It mandates modernization of the electric power grid and implementation of smart grid technologies needed to handle the amount of clean energy the province expects developers to generate. The legislation also helps ensure that by 2014, Ontario will be able to permanently shut down every single one of its coal-fired power plants.

This will make the province one of the first jurisdictions in the world to completely stop burning coal to generate electricity.

### *The Feed-In-Tariff Program*

A key feature of the Green Energy Act is establishment of a Feed-In-Tariff Program, which allows developers of renewable energy projects in Ontario to sell clean energy into the grid at premium prices under long term (20-year) guaranteed purchase agreements. The FIT Program makes it much easier for project developers to secure investment capital.

The premium prices are set high enough to ensure that the energy projects will be profitable for developers, and the guaranteed purchase agreements ensure a long-term market for energy generated by the projects.

Developers of renewable energy projects already have filed thousands of FIT Program applications. More than 700 new projects, worth billions of dollars, have been approved so far. The projects reflect a wide variety of energy technologies, including solar photovoltaics, onshore and offshore wind farms, hydroelectric, biogas, and landfill gas.

### *The Domestic Content Requirement*

Projects under the FIT Program must utilize specific percentages of Ontario-based products and services. This domestic content requirement is spurring manufacturers of renewable energy technologies to invest in the province.

For example, Siemens AG recently announced plans to build a wind turbine blade factory in Ontario as part of a deal to supply wind turbines to a massive FIT Program renewable energy project that will be led by South Korea's Samsung Group. Canadian Solar also plans on establishing Canada's first solar module manufacturing facility in the province, to supply the fast-growing demand for Ontario-based energy technology.

## **Establishing an Early North American Beachhead**

Clean energy innovators everywhere should be considering opportunities in Ontario. Establishing an early North American beachhead in the province will enable companies to prove that their energy technologies are implementable, scalable and profitable in the real world, right now.[1]

This will create a tremendous advantage over the competition when other lucrative markets, like the huge U.S. market, begin to embrace renewable energy technologies. Having a proven track record of success in a North American market like Ontario will make it easier to attract additional investment capital for a clean energy company seeking to expand in the U.S.

Similarly, governments and power utilities in the U.S. will be more likely to award contracts to a clean energy company offering technology that already has been successfully implemented in another North American jurisdiction, like Ontario.

## Thinking Beyond The Beachhead

Companies can further increase their competitive edge in the growing market for clean energy technologies by focusing on protecting the intellectual property in their innovations. Here, it is important to think far beyond the Ontario beachhead.

Patent applications should be filed in all countries likely to develop significant markets for the energy technologies, as well as in countries that are likely to be manufacturing products that incorporate or implement the technologies.

The U.S., Canada, China, Japan, South Korea and Germany eventually all will be hotbeds for production and/ or use of low carbon energy technologies. Therefore, every effort should be made to obtain patent protection in each of these countries, at a minimum.[2]

--By Rodger A. Sadler (pictured) and Chi Cheung, Orrick Herrington & Sutcliffe LLP, and David Pamenter, Gowling Lafleur Henderson LLP

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*The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients, or Portfolio Media, publisher of Law360.*

[1] See Terrence Murray, Ontario Green Energy Official: "The U.S. stimulus is probably our biggest competitor," Green Energy Reporter, June 2, 2010, [greenenergyreporter.com/policy/the-u-s-stimulus-is-probably-our-biggest-competitor/](http://greenenergyreporter.com/policy/the-u-s-stimulus-is-probably-our-biggest-competitor/)

[2] For more clean energy IP strategies, see Rodger A. Sadler, Chi Cheung, and Richard Martinelli, IP Strategies For A Clean Energy Economy, Law360, Aug. 5, 2009, [www.orrick.com/fileupload/2070.pdf](http://www.orrick.com/fileupload/2070.pdf)

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