

SPECIAL REPORT ON CANADA'S CLEAN AIR ACT, 2006

This summary of the Clean Air Act (Bill C-30) summarizes the framework proposed by the government and provides a clause-by-clause analysis of the proposed changes to the Canadian Environmental Protection Act, 1999.

The CAA has been sent to a special all-party legislative committee that could make significant changes.

Meanwhile, leading industrial stakeholders are impatient for clear regulations to level the playing field, inform their long-term capital planning, and ensure that they don't lose credit for their early action.

Bill C-30, *Canada's Clean Air Act*, received a raucous first reading Thursday, October 19th, 2006. Rising controversy over the Government's widely disparaged "Hot Air Act" had threatened to kill the Tories' clean air plans. There was little chance Bill C-30 could even garner enough votes to pass Second Reading so it could be sent to committee for further review.

However, opposition leaders met with Prime Minister Stephen Harper on November 1, 2006 to break the log jam. They agreed that the Bill would be forwarded to a special all-party committee that, says NDP leader Jack Layton, "will be completely free to make any changes." The NDP is calling for a reduction in greenhouse gases of 80 percent by 2050 (based on 1990 levels), with a series of interim hard targets set every five years beginning in 2015. "We intend to bring forward our best ideas, get some regulations in place, and get some large polluters to cool their jets," says Layton. Despite the agreement, an election call could short circuit the process at any time.

The omnibus Bill, the centerpiece of the Government's long-awaited environmental agenda, incorporates amendments to the *Canadian Environmental Protection Act, 1999*, the *Energy Efficiency Act* and the *Motor Vehicle Fuel Consumption Standards Act*. While the Bill sets some of the groundwork for action, the regulations that will incorporate hard targets over the short and medium-term will take years to develop according to the Government's own schedule.

While air quality objectives to control smog precursors, such as ozone and fine particulates, must be in place within three years, the long-term target for cutting greenhouse gas emissions by 45 to 65 percent (from 2003 levels)

doesn't take effect until 2050. Changes in committee could set hard (instead of intensity-based) mid-term targets, and a more stringent 2050 target.

As expected, the Government is moving to strip a number of common air pollutants, carbon dioxide and several other recently-added greenhouse gases (GHGs) from Schedule 1, the List of Toxic Substances, in CEPA. This would mean these substances are no longer subject to regulation under section 93 of the Act. Instead, they would be covered by a new Part 5.1, "Clean Air," to be inserted into the Act.

The statutory purpose of this Part is "to promote the reduction of air pollution and to promote air quality in order to protect the environment and the health of all Canadians, especially that of the more vulnerable members of society." It would allow the Ministers of Environment and Health to conduct studies and investigations on air pollutants and their control, make it easier to collect emission and other data from generators, require the Minister to publish an annual air quality report and emission projections, empower the Minister to draft control regulations and issue interim orders related to air pollution and GHGs, and address remedial measures and cost recovery in the event of a release.

In addition, the sections of Bill C-30 dealing with CEPA would:

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- ◆ narrow the definition of “air pollution” to a list of designated substances, while adding a new definition for greenhouse gas;
- ◆ expand the mandate of the Minister to address indoor air problems, such as radon;
- ◆ allow provinces to opt out of a wider range of federal regulations if they have drafted equivalent requirements;
- ◆ allow the Minister to direct companies to prepare and implement pollution prevention plans and/or emergency response plans relating to specified air pollutants or GHGs;
- ◆ require the Ministers of the Environment and Health to establish air quality objectives for ozone and respirable particulates, and publicly report on the attainment of those objectives;
- ◆ rewrite the fuel standards to reduce the regulatory burden on producers, while permitting the Government to pursue its blended fuel objectives; and
- ◆ direct fines to a new Environmental Damages Fund.

BLUEPRINT FOR TACKLING INDUSTRIAL AIR EMISSIONS

Concurrent with the release of Bill C-30, Environment Canada posted a Notice of Intent to Regulate on the CEPA registry, committing the Government to a series of short, medium and long-term industrial air pollution targets.

- ◆ Consultations will start immediately with stakeholders on the key elements of integrated air pollutant and GHG regulations; the intent is to reach a decision, by spring 2007 on the overall regulatory approach, including proposed short-term targets for air pollutants and GHGs. The framework will address emissions for key industrial sectors, including fossil-fuel-fired electricity generation, upstream oil and gas, downstream petroleum, base metal smelters, iron and steel, cement, forest products, and chemicals production.
- ◆ Over the short-term (2010-2015), the Government intends to adopt a target-setting approach for air pollutants based on fixed caps, and for GHGs based on emissions intensity. The Government says it is committed to emissions targets “that are at least as rigorous as those in the U.S. or other environmental performance-leading countries,” and intends to publish the first sectoral regulations in the *Canada Gazette, Part I* beginning in spring 2008. All proposed regulations will be finalized no later than the end of 2010, with the necessary monitoring and enforcement tools in place.
- ◆ Over the medium-term (2020-2025), the Government intends to build upon the emissions intensity approach with GHG targets that are ambitious enough to lead to absolute reductions in emissions and support the establishment of a fixed cap.
- ◆ Over the long-term (2050), the Government is committed to achieving an absolute reduction in GHG emissions between 45 and 65 percent from 2003 levels by 2050, and will ask the National Round Table on the Environment and the Economy (NRTEE) for advice on the specific target to be selected and scenarios for how the target could be achieved.

Part 2 of Bill C-30 would amend the *Energy Efficiency Act* to clarify and expand the classes of products subject to the national energy efficiency standards and labelling requirements of the Act. And Part 3 would amend the *Motor Vehicle Fuel Consumption Standards Act*.

The Government plans to “produce intensity-based targets over the short-range and the long-term and they will cover a range of emissions.” Such targets would link allowable GHG emissions to some measure of a generator’s economic output -- such as kilograms of CO₂ per kilowatt hour or per barrel of oil. This could actually allow overall emissions of GHG or air pollutants to increase over the short-term as production increases.

Bill C-30 would permit the Government to tailor its CEPA regulations to specific provinces or areas of the country, in the interests of ensuring “national consistency”. It would also allow regulatory provisions to vary according to “any factor that provides for satisfactory protection of the environment or human life or health.” For example, regulated emission limits for GHGs could be geared to production capacity, the technology used, or the date operations commenced.

Similarly, regulations under *The Motor Vehicle Fuel Consumption Standards Act* could employ “intensity-based” criteria for setting consumption standards that could vary from company to company. For example, the standards could be set according to the number or size of motor vehicles sold in Canada by each company in the applicable year.

There has been some concern that the feds are planning to usurp the regulation of air pollution, traditionally a matter within the jurisdiction of the provinces and territories. The Bill would add a paragraph to the preamble of *CEPA, 1999*, declaring “that air pollutants and greenhouse gases constitute a risk to the environment and its biological diversity and to

human health, and are matters of national and international concern which cannot be contained within geographic boundaries.” This recital does not seem to be a strong launching pad for a major power grab.

Bill C-30 would also expand the equivalency provisions of CEPA under which a province or territory can opt out of certain CEPA regs if it has an equivalent requirement already in effect. The equivalency exemption currently lists CEPA regulations for toxic substances (s.93.1), environmental emergencies (s.200.1), and pollution prevention and environmental releases

(s.209.1-2). The Bill would expand the list to include regulations under the new air pollution and GHG provisions (under s.103.09.2), as well as any regulations governing phosphates and other nutrients in cleaning products and water conditioners (under the existing s.118.1), and those governing the composition of fuels and fuel additives (under the existing s.140.1).

Along with Bill C-30, the Government published a notice of intention to introduce additional clean air initiatives over “the coming weeks and months.” These are to include

new or amended CEPA regulations to reduce air emissions from on-road motorcycles, off-road diesel equipment and large spark-ignition engines, marine spark-ignition engines and off-road recreational vehicles. The feds also plan new regulations to control VOC emissions from a wide range of consumer and commercial products, new energy efficiency performance standards for some 20 currently unregulated products and tighter standards for another 10 regulated products. A new guideline on radon in indoor air is also planned.

THE CHANGING DEFINITION OF AIR POLLUTION

Existing text	Proposed text
<p>“Air pollution” means a condition of the air, arising wholly or partly from the presence in the air of any substance, that directly or indirectly:</p> <ol style="list-style-type: none"> endangers the health, safety or welfare of humans; interferes with the normal enjoyment of life or property; endangers the health of animal life; causes damage to plant life or to property; or degrades or alters, or forms part of a process of degradation or alteration of, an ecosystem to an extent that is detrimental to its use by humans, animals or plants. <p>(Note, each of the listed air pollutants in Bill C-30 is currently included on Schedule 1, the List of Toxic Substances, as Items 8, 51, and 60 through 65. They will be removed from Schedule 1).</p>	<p>“Air pollutant” means the following substances:</p> <ol style="list-style-type: none"> respirable particulate matter less than or equal to 10 microns; ozone, which has the molecular formula O₃; sulphur dioxide, which has the molecular formula SO₂; nitric oxide, which has the molecular formula NO; nitrogen dioxide, which has the molecular formula NO₂; volatile organic compounds that participate in atmospheric photochemical reactions, excluding those listed in Schedule 3.1; gaseous ammonia, which has the molecular formula NH₃; mercury; and any other substance prescribed under ss. 103.09(1). <p>(The existing definition for “air pollution” would be repealed. Several sections of Bill C-30 refer to “air pollution”. Absent a definition, will air pollution be limited to substances that have been defined as air pollutants?)</p>
<p>Currently there is no reference to indoor air in <i>CEPA 1999</i>.</p>	<p>“Air” includes indoor air.</p>
<p>Each of the listed greenhouse gases in Bill C-30 is currently included on Schedule 1, the List of Toxic Substances, as Items 74 through 79. They will be removed from Schedule 1.</p>	<p>“Greenhouse gas” means the following substances:</p> <ol style="list-style-type: none"> carbon dioxide, which has the molecular formula CO₂; methane, which has the molecular formula CH₄; nitrous oxide, which has the molecular formula N₂O; hydrofluorocarbons that have the molecular formula C_nH_xF_(2n+2-x) in which 0<n<6; the following perfluorocarbons: those that have the molecular formula C_nF_(2n+2) in which 0<n<7, and octafluorocyclobutane, which has the molecular formula C₄F₈; sulphur hexafluoride, which has the molecular formula SF₆; and any other substance prescribed under ss.103.09(1).

GOVERNMENT CONSIDERS COMPLIANCE OPTIONS

In order to minimize the costs to industry of complying with the proposed regulatory requirements, a number of compliance options will be considered. Consultations and analysis on compliance options could explore self-supporting market mechanisms that are not reliant upon tax-payer dollars, such as:

- ◆ industry-led emissions trading systems (the Government will not purchase credits or otherwise participate in the emissions trading market);
- ◆ opt-in mechanisms that would enable entities not covered by regulation to voluntarily assume emissions targets;
- ◆ incentives that could see companies receive credit for investments in technology, such as CO₂ sequestration, which will lead to significant reductions in the future;
- ◆ mechanisms to recognize credit for early action; or
- ◆ domestic offsets in which verified emissions reductions outside the regulated system are recognized as eligible for compliance in the regulated system.

The Government is also considering the establishment of a technology investment fund into which industry and potentially governments could contribute resources to support the development of transformative technologies for emissions reduction.

EMISSION TARGETS AND TIMELINES

	Air Pollutants	GHGs
Short Term (2010 – 2015)	Targets/ Fixed Caps	Targets/ Emission Intensity
Medium Term (2020 – 2025)	Targets/ Fixed Caps	Targets/ Emission Intensity Absolute Reductions
Long Term (2015 -	Targets/ Fixed Caps	45-65% Absolute Reductions From 2003 Levels

Targets to be no less rigorous than U.S.

WILL THE MADE IN CANADA SOLUTION COMPLY WITH KYOTO?

	Kyoto	Clean Air Act
Target	6%	45-65%
By	2012	2050
Baseline	1990	2003

CLAUSE-BY-CLAUSE REVIEW OF PROPOSED CLEAN AIR ACT, 2006 CHANGES TO CEPA 1999

Bill C-30	CEPA 1999	Description of Amendment
2	New	Adds paragraph on impact of air pollutants and greenhouse gases to preamble of CEPA, 1999
3	3.1	Replaces the broader, effects-based definition of "air pollution" with a list of eight "air pollutants", including ozone, sulphur dioxide, nitrogen oxides, ammonia, certain VOCs, respirable particulates and mercury; expands the definition of "air" to include "indoor air"; and adds a definition for the term "greenhouse gas." Note, the listed air pollutants and GHGs are removed from Schedule 1 of the Act by ss.38-40 of Bill C-30.
4	6.1(a)	Gives the National Advisory Committee the added job of advising the Minister on any air pollution or GHG regulations that may be proposed under the new s.103.09(2); the committee currently reviews those substances to be included in Schedule 1, the List of Toxic Substances, under s.93.1.
5	10.1 - 10.9	Expands the number of regulations subject to the equivalency provisions of the Act to include regs promulgated under s.103.09.2 (clean air), s.118.1 (nutrients), and s.140.1 (fuels); the Minister is empowered to make additional regulations respecting the circumstances in which and the conditions under which equivalency agreements can be entered into.
6-7	44-45	Expands federal research and information gathering activities; the Minister of Health would be required to study the role of substances or pollution in illnesses or in health problems, including monitoring biomarkers, as well as pollution prevention and mitigation techniques.
8	46	Permits the Minister, upon publication of a notice in the <i>Canada Gazette</i> , to require that specified persons provide information regarding "substances or activities that may contribute to air pollution"; any person named in a notice may be required to obtain an independent verification of the information before it is provided.
10	56.1	Expands the list of substances for which a pollution prevention plan must be prepared and implemented, upon publication of a notice in the <i>Canada Gazette</i> (or in any other appropriate manner), to include specified air pollutant(s) or GHG(s).
12	71.1	Allows either the Minister of Health or the Environment to require certain specified information be submitted regarding the assessment or development of appropriate controls for toxic substances; in addition, the notice requiring submission of such information may specify the sampling or monitoring methods, test procedures and/or laboratory practices to be followed.
14	93.1	Expands the sections dealing with toxic substances or products to include a product "that contains or may release [the substance] into the environment."
15	95.7	Expands the sites to which an enforcement officer or other authorized person may enter and have access to include both the location where a release occurs (or is likely to occur) and any place or property that is "reasonably suspected to be affected by the release."
18	New	Adds Part 5.1 "Clean Air" to <i>CEPA 1999</i> and incorporates the following provisions: s.103.1 sets forth the purpose of this Part; s.103.2 allows either or both Ministers, following consultation with other levels of government and certain stakeholders, to issue interpretation guidelines; s.103.3 allows either Minister to collect data, conduct investigations or make recommendations on whether a substance contributes to air pollution or how to control an air pollutant or GHG; s.103.4 requires that manufacturers, processors, importers, users and other designated persons provide any "information that reasonably supports the conclusion that the substance contributes to air pollution" without delay; s.103.5 allows either Minister to publish a notice requiring designated persons to submit information, take samples or undertake testing in regards to an air pollutant or GHG (this section also covers the contents of the notice, compliance deadlines, extensions, the manner in which info is to be submitted, record keeping, etc.); s.103.6 states that such notice must not be published unless a Minister has reason to suspect that the substance or product contributes (or is capable of contributing) to air pollution; s.103.7 requires the Ministers, following consultation, to issue air quality objectives for respirable particulate matter less (than or equal to 10 microns) and ozone within three years of this section coming into force, and monitor and assess the subsequent attainment of said objectives; the Minister must also prepare and submit an air quality report at the end of each fiscal year; s.103.8 requires the Minister to publish projections of air pollution or air quality;

Bill C-30	CEPA 1999	Description of Amendment
18	New	<p>s.103.9 permits the promulgation of regulations prescribing a substance as an air pollutant or a GHG, set limits on releases, and stipulate other controls that be implemented, and specifies the consultation to be undertaken and factors to be considered in promulgating any regulations under this Part;</p> <p>s.103.10 authorizes the issuance of interim orders in the event that immediate action is required to deal with a significant danger to the environment or to human life or health;</p> <p>s.103.11 covers the reporting, remedial measures and public notification required in the event of the release (or likely release) of an air pollutant or GHG in contravention of a regulation or interim order issued under this Part, and the powers of enforcement officers in such situations;</p> <p>s.103.12 covers voluntary reporting, confidentiality and protection for whistle blowers;</p> <p>s.103.13 authorizes regulations covering the reporting of releases under s.103.11-12;</p> <p>s.103.14 permits Her Majesty in right of Canada to recover the costs and expenses of (and incidental to) taking any measures in the event of a release (or likely release) under s.103.11(4), and sets forth the administrative details for such recovery; and</p> <p>s.103.15 permits the Minister to require remedial measures be undertaken following a contravention of this Part or a regulation promulgated under this Part; this may include giving public notice, notifying customers, issuing recalls, replacing products or taking “any other measures for the protection of the environment or of human life or health”.</p>
19-23	138-146	<p>Makes extensive amendments to Division 4, “Fuels,” of <i>CEPA 1999</i>, including: an exemption for producers if there is written evidence to show the fuel will meet the requirements of s.139.1 before it is used or sold; the addition of an exemption for persons that import or produce less than 400 m³ per year; the power to make regulations for additional areas of concern (such as fuel blending, the effects of additives, the quantity of fuel produced and sold for export, etc.); a provision to account for the effects of future air pollution regulations on the use of a national fuels mark; and some additional factors that may be considering in setting variations in fuel standards and regulatory requirements.</p>
25	199.1	<p>Permits the Minister to publish a notice requiring specified persons to prepare and implement an environmental emergency plan for an air pollutant or GHG; current requirements relate to designated toxic substances only.</p>
27, 29	272	<p>Sets the penalties for any person who fails to remit a tradeable unit to the Minister, and empowers the Governor in Council to make regulations that set the fines payable for each tradeable unit that is not remitted to the Minister.</p>
28	277.1	<p>Directs that all fines received by the Receiver General (subject to s.278) in respect of the commission of an offence or the execution of an order in relation to this Act be credited to the newly-created Environmental Damages Fund.</p>
30-31	296.1 310.2	<p>Amends administrative provisions related to alternative penalties and the method of calculating fines.</p>
32-33	325-326	<p>Amends those provisions related to economic instruments (deposits and refunds, tradeable units, etc.) to authorize regulations applying to air pollutants or GHGs.</p>
34	330.3 (1)	<p>Permits the limited application of certain regulations, including those related to air pollution, to only a part or parts of Canada (including certain provinces) “to achieve national consistency in environmental quality”; in addition, a regulation made under ss. 93.1, 103.09(2), 167, 177 or 326 may distinguish among persons, works, undertakings or activities according to any factors (such as release quantities, production capacity, technology used, the date operations commenced or alterations were completed, etc.) that provides for satisfactory protection of the environment or human life or health</p>
36	332	<p>Requires the publication of every order, regulation or instrument, issued under the list of specified provisions, in the <i>Canada Gazette</i>.</p>
37	333	<p>Permits the Minister to establish a Board of Review to review any objections filed to regulations made under s.10.11 (i.e., those regs respecting the circumstances in which equivalency agreements can be entered into).</p>
38-41	S.1	<p>Repeals item 51 (respirable particulate matter less than or equal to 10 microns), items 60-65 (gaseous ammonia, ozone, nitric oxide, nitrogen dioxide, sulphur dioxide, and VOCs that participate in atmospheric photochemical reactions), and items 74-79 (carbon dioxide, methane, nitrous oxide, specified hydrofluorocarbons and perfluorocarbons, and sulphur hexafluoride) of Schedule 1, the List of Toxic Substances; in addition, Schedule 3.1, a “List of Excluded Volatile Organic Compounds,” would be added to the Act</p>