

## **A Preliminary Analysis of Bill C-30 – The Clean Air Act (CAA)**

October 20, 2006

### **The legislation retains the basic structure of the draft bill leaked last week**

- It proposes to remove the criteria air pollutants and greenhouse gases from Schedule 1 of CEPA (C-30 ss.38-40), place these substances into two new categories (“air pollutants” and “greenhouse gases”) and create a parallel set of authorities to those that exist in CEPA with respect to toxic substances.

### **The two fundamental problems identified with the draft legislation remain:**

1. The legislation is in a fundamental sense almost completely pointless, as its core is simply a reproduction of authorities the federal government already has in relation to these substances as a result of their already being on CEPA schedule 1.
2. The legislation raises the serious question of what the constitutional basis for the exercise of federal regulatory authority in relation to these substances is if it no longer relies on demonstration of their ability to meet the procedural and substantive tests to be found toxic for the purposes of CEPA. The addition to the preamble of CEPA of references to these substances being risks to human health, the environment, and being matters of national and international concern, and the short statement of purpose in s.18 (adding s.103.01 to CEPA) provide likely little help in this regard.

### **There are some minor additional authorities within CEPA that would be provided via the CAA**

- Authority to regulate products containing toxic substances under CEPA (CAA s.14 amending CEPA s.93). Useful, although not specific to clean air.
- A mandatory duty on the part of the Ministers to establish air quality objectives for PM<10 and ozone within three years (s.103.07). The objectives would not, however, be enforceable in any way. Authority to establish these types of objectives already exists under CEPA ss.54 & 56.
- Authority to publish projections of air pollution or air quality (103.08). (This authority probably already exists under CEPA and the Department of the Environment Act via the Minister’s authority to conduct research)
- Minor additional authority with respect to the production and blending of fuels and fuel additives.

- Creation of an environmental damages fund to receive any fines imposed under the Act (CAA s.28). There are no provisions regarding the use of these funds.
- Provision of minor additional authority with respect to emission trading (CAA s.33)
- Provision for prepublication of proposed instruments under CEPA (CAA s.36).  
“Instruments” don’t seem to be defined, but in theory could include permits. Although not specific to air quality, this is potentially useful, as it would introduce a notice and comment period on permits issued under CEPA, similar to Ontario’s *Environmental Bill of Rights*.

### **The Clean Air Act fails to take the obvious opportunity to enhance existing elements of CEPA related to air quality**

The proposed Clean Air Act could, for example, have been used to clarify and strengthen the authority of the federal government provided in Part 7, Division 6 (International Air Pollution) to take independent action to control air pollution (this is already defined in CEPA in a way that can be interpreted to include GHGs) from Canadian sources that violate international agreements to which Canada is a party, or which causes air pollution in another country.

Authority to deal with sources of air pollution in one province affecting others could also have been added. Similarly, the Act fails to take the opportunity to consolidate regulatory authority over emissions and fuel economy from all types of vehicles and engines, including on- and off-road cars and trucks, ships, aircraft and railway locomotives, under one statute (CEPA) and one department (Environment Canada).

### **Additional Points**

- There are some minor amendments to the Energy Efficiency Act regarding information gathering, record keeping, and expanding regulatory authority to include controls on energy consumption (e.g. thermostats).
- There are some technical amendments to the Motor Vehicle Fuel Consumption Act regarding inspection powers, and methods of assessing fuel consumption.

### **For More Information Contact:**

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