CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

Submission to the Legislative Committee on Bill C-30 Regarding Bill C-30 (*The Clean Air Act*) and the *Canadian Environmental Protection Act*

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1. Introduction

The Pembina Institute, Sierra Legal, and the Canadian Environmental Law Association welcome the opportunity to make this submission to the Legislative Committee considering Bill C-30 *The Clean Air Act* regarding the Bill's proposed amendments to the *Canadian Environmental Protection Act, 1999* (CEPA).

This submission focuses on five issues:

- The creation of the new categories of substances under CEPA, namely, air pollutants and greenhouse gases, and the removal of substances in these categories from the current Schedule 1 of CEPA;
- The establishment of targets with respect to the reduction of Canadian emissions of greenhouse gases (GHGs)
- The proposed amendments to CEPA's provisions regarding federal/provincial/territorial equivalency agreements;
- The strengthening of the existing provisions of CEPA regarding international air pollution and the creation of new provisions dealing with inter-provincial air pollution; and
- A number of minor amendments to CEPA proposed via Bill C-30.

Specific proposals for legislative amendments are provided in the attached Table 1.

1. "Air pollutants," "greenhouse gases" and "toxic" substances

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

These provisions would simply reproduce regulatory authorities the federal government already has in relation to these substances, which have been found to meet the definition of a toxic substance under s.64 of CEPA, and which are already listed on CEPA Schedule 1.

At the same time, 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 the Act is no longer to rely on demonstration of their ability to meet the procedural and substantive tests for toxicity 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) are likely to provide little help in this regard.

Recommendations

1. *The provisions of Bill C-30 creating the new categories of "air pollutants" and "greenhouse gases" and removing the substances in these categories from the current Schedule 1 of CEPA should be deleted.*

2. The regulatory authorities and other provisions of Bill C-30 in relation to these categories should also be deleted *as they are redundant in light of the existing provisions of CEPA in relation to toxic substances, with the exception of a few provisions that expand on existing authorities in CEPA in a minor way.*

Please refer to Table 1 (attached): Part I for a clause-by-clause description of these recommended amendments.

2. Climate change and greenhouse gas emission reduction targets

Bill C-30, as drafted, provides no specific targets or timelines for the reduction of Canada's GHG emissions, as required under the Kyoto protocol

Recommendations

3. *Bill C-30 should be amended to create a new division (6a) entitled "Climate Change" within Part 7 of CEPA.*

4. *The new division should include provisions setting out mandatory short-, medium- and long-term targets requiring Canada to meet its 2008-2012 commitments under the Kyoto Protocol and requiring Canadian*

> *greenhouse gas emissions reductions of 25 per cent below 1990 levels by 2020, and 80 per cent below 1990 levels by 2050*

Please refer to Table 1 (attached): Part 2 for a clause-by-clause description of these recommended amendments to Bill C-30.

3. Equivalency Agreements

CEPA's existing provisions provide that regulations made under CEPA do not apply within the jurisdiction of a government (i.e. province or territory) with which the federal government has entered into an equivalency agreement.

Sub-clause 5(1) of Bill C-30, amending subsection 10(1) of CEPA, would add new areas (air pollutants, aquatic vegetation growth from nutrient releases, and fuel blenders) to CEPA's equivalency provisions.

Sub-clause 5(1) would also amend subsection 10(3) of CEPA regarding equivalency agreements. It would alter the test that must be met for the federal government to enter into an equivalency agreement.

The current provisions of CEPA require that in order for the federal government to enter into an equivalency agreement with a province or territory with respect to regulations made under CEPA, the jurisdiction in question has to have in place provisions under its laws that are equivalent to the regulation made under CEPA. In other words, in order for an equivalency agreement to be established, the jurisdiction in question has to have adopted legislation or regulations whose provisions are equivalent.

Bill C-30 would lower the threshold for entering into an equivalency agreement, requiring that provinces or territories have provisions in place that have <u>effects</u> that are "equivalent to those of the (federal) regulation." Such mechanisms could conceivably include a broad range of instruments, including voluntary agreements, which may be far less effective than a legally enforceable regulation.

In addition, Bill C-30 (Clause 5(1) amending CEPA s.10(8)) would allow equivalency agreements to be extended indefinitely. The current provisions of CEPA require that they be renewed every five years.

It is important to consider that there has been no comprehensive review of the results of the administrative and equivalency agreements entered into by the federal government with respect to CEPA and the Fisheries Act. However, reviews by both the Office of the Commissioner of the Environment and

Sustainable Development,[1] and Sierra Legal Defence Fund[2] have suggested that there are serious problems with provincial performance under the agreements.

Given these findings, the scope for the use of equivalency agreements should not be expanded until a rigorous review of the performance of the existing agreements has been completed. Similarly, the tests for entering into equivalency agreements should not be weakened, and the time limits on equivalency agreement should not be removed.

Recommendation

5. *The provisions of Bill C-30 expanding the subject matter that may be covered by equivalency agreements made under CEPA, altering the thresholds for entering into such agreements and removing the current 5-year time limit for equivalency agreements should be deleted.*

Please refer to Table 1 (attached): Part 3 for a clause-by-clause description of these recommended amendments to Bill C-30.

4. International and Inter-provincial air pollution

4.1. CEPA and Canada's international environmental obligations

The existing preamble to CEPA includes a provision noting that "the Government of Canada must be able to fulfil its international obligations with respect to the environment." However, CEPA contains no provision requiring that the Government of Canada actually ensure that Canada fulfils its obligations under international environmental agreements, which are binding on Canada.

Recommendations:

6. *Bill C-30 should be amended to add a clause adding a new section (s.2(1)(p)) to the administrative duties provisions of CEPA requiring that the Government of Canada ensure that Canada fulfils its international obligations with respect to the environment, including international agreements binding on Canada in relation to the prevention, control or correction of pollution listed in Schedule 7 of the Act.*

7. *Bill C-30 should be amended to add a clause creating a new schedule (7) within CEPA, listing the International agreements binding on Canada in*

[1] Commissioner for Environment and Sustainable Development, 2000 Report (Ottawa: Minister of Supply and Services 2001), Chapter 7, "Co-operation Between Federal, Provincial and Territorial Governments."

[2] E. Christie and J. McEachern, Pulping the Law: How Pulp Mills are Ruining the Water with Impunity (Vancouver: Sierra Legal Defence Fund, 2001).

relation to the prevention, control or correction of pollution to which Canada is a party. The schedule should include (but not be limited to) the following agreements:

- *The United Nations Framework Convention on Climate Change and its subsidiary agreements*
- *The Canada-US Air Quality Agreement and its subsidiary agreements*
- *The Boundary Waters Treaty, Great Lakes Water Quality Agreement its subsidiary agreements*
- *The United Nations Economic Commission for Europe Air Quality Agreements and protocols*
- *The Vienna Convention for the Protection of the Ozone Layer and its subsidiary agreements*
- *The Stockholm Convention on Persistent Organic Pollutants*
- *The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides*
- *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*
- *The North American Agreement for Environmental Cooperation*
- *The International Convention for the Prevention of Marine Pollution from Ships—MARPOL*

Please refer to Table 1 (attached): Part 4.1 for a clause-by-clause description of these recommended amendments to Bill C-30.

4.2. International air pollution

CEPA includes provisions intended to permit the federal government to regulate emissions from air pollution sources in Canada that cause pollution in other countries or that violate international agreements on air pollution to which Canada is a party (CEPA Part 7, Division 6). The provisions also allow the federal government to require the development of pollution prevention plans by these sources under s.56 of CEPA.

These provisions could provide the basis for decisive federal action in relation to conventional and hazardous air pollutants, including substances on Schedule 1 of CEPA (such as greenhouse gases) and other international air pollutants.

However, the existing provisions of CEPA provide no clear criteria for when federal regulation of sources of air pollution in Canada that may affect other countries or violate international agreements to which Canada is a party is warranted. Surprisingly, Bill C-30 includes no provisions to clarify or strengthen these provisions of CEPA to reduce the barriers to decisive federal action on sources of international air pollution in Canada.

Recommendation

8. *Bill C-30 should be amended to strengthen and clarify the existing provisions of CEPA regarding international air pollution*

Please refer to Table 1 (attached): Part 4.2 for a clause-by-clause description of these recommended amendments to Bill C-30

4.3. Inter-provincial air pollution

CEPA contains no provisions regarding sources of air pollution within one province or territory of Canada that may affect other provinces or territories, or that violate intergovernmental agreements regarding the prevention or control of such pollution. Bill C-30 includes no provisions providing authority to the federal government to address such sources of air pollution within Canada, despite the clean and exclusive jurisdiction of the federal government to legislate these matters.

Recommendation

9. *Bill C-30 should be amended to add provisions parallel to the current Part 7, Division 6 (International Air Pollution) of CEPA enabling the federal government to address sources of inter-provincial air pollution.*

Please refer to Table 1 (attached): Part IV for a clause-by-clause description of these recommended amendments.

5. Other provisions of Bill C-30 amending CEPA

There are a number of minor additional authorities that C-30 would add to CEPA. These provisions of Bill C-30 should be retained subject to the amendments outlined in the attached tables:

- The establishment of authority to regulate products containing toxic substances under CEPA (Bill C-30 clause14 amending CEPA s.93).
- The establishment of 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 provision of minor additional authority with respect to the production and blending of fuels and fuel additives.
- The provision of minor additional authority with respect to emission trading (Bill C-30 clause 33).

- Provision for prepublication of proposed instruments under CEPA (Bill C-30 clause 36). “Instruments” should be defined to include permits and orders issued under the Act, and to require their publication in the CEPA Registry.

Please refer to Table 1 (attached): Part 5 for a clause-by-clause description of these recommended amendments to Bill C-30.

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Table 1:
Suggested Amendments to Bill C-30 – The Clean Air Act

Canadian Environmental Law Association
The Pembina Institute
Sierra Legal
February 2007

1. "Air pollutants," Greenhouse gases" and toxic substances

Proposed clause in Bill C-30	Relevant CEPA section	Action needed/notes
Clause 2 - Change to preambular language - Clearly an attempt to establish federal jurisdiction to regulate the new category of "air pollutants"	CEPA preamble. The CEPA pre-amble is fine as-is	**Delete:** This section should be dropped, as GHGs and CACs (criteria air contaminants) should be regulated as soon as possible as toxics under the existing CEPA 1999.
Clauses 3(1) and (2) - Defines new terms "air pollutants" and "GHGs", while repealing the words "interferes with the normal enjoyment of life or property" from the current definition of air pollution in CEPA.	CEPA s. 3 (1)	**Delete:** No new definitions of GHGs and air pollutants are needed. These substances should be kept on Schedule 1 of CEPA and regulated as toxics. The intention in CEPA 1988 was to codify the common law cause of action for nuisance. The words "interferes with the normal enjoyment of life or property" should therefore be retained.
Clause 3(3) - Defines the release of a substance from a product as a release "during a use for which the product was intended."	CEPA s. 3 (creates new subs. 3 (4))	**Delete:** This provision would prevent regulation of a substance throughout the full-life cycle of a product in which it is contained, contradicting polluter pay and user-producer responsibility principles and long-standing policy of the Government of Canada (e.g. the TSMP).
Clause 4 - Would allow the Minister to establish a national advisory committee to study GHG and CAC regulations.	CEPA s. 6(1)(a) – gives the minister the power to establish an advisory committee for toxics regulations	**Delete:** This amendment is not needed, because the Minister can regulate GHGs and CACs as toxics, using the existing advisory committee provisions linked to s. 93(1).
Clause 10 - Would give the Minister the power to publish pollution prevention plans	CEPA s. 56 (1)	**Delete:** Since GHGs and CACs should remain listed on Schedule 1, this addition is not needed.

for air pollutants and greenhouse gases. The Minister already has the power to publish pollution prevention plans for substances listed on Schedule 1 (i.e. toxic substances).		
Clause 18 - Would create a new "Clean Air" Part 5.1 in CEPA.	After CEPA Part 5 (Controlling Toxic Substances) ends at section 103	**Delete with some minor exceptions:** This entire section (pp. 10-13 in C-30) is very problematic. It recreates authorities that already exist in Part 5 of CEPA, setting up a parallel structure that treats GHGs and CACs differently than the other toxic substances listed on Schedule 1 of CEPA. GHGs and CACs meet the definition of toxic in s. 64 of CEPA, and are currently listed on Schedule 1. The federal government's ability to regulate toxic substances, using the criminal law power, has been upheld by the Supreme Court. Removing GHGs and CACs from this section, as C-30 proposes, would at a minimum increase the risk of a legal challenge to regulations created under this new section. In fact, the new section could well serve to weaken the federal government's ability to regulate GHGs and CACs. Furthermore, the need for this section is undermined by the government's own decision to proceed with regulations for GHGs and CACs using the "toxics" power under Part 5 of the existing CEPA.
Clause 18 103.01 – The stated "Purpose" of the new Part is "to promote the reduction of air pollution and to improve air quality"	New	**Delete:** Instead, the committee should add language about Kyoto and the UNFCCC to the preamble of CEPA.
Clause 18 103.02 (1) – Guidelines: either or both Ministers may issues guidelines related to this new part	New – Replicates CEPA s. 69(1)	**Delete:** Redundant
Clause 18 103.02 (2)-(4) – Consultation: Ministers can consult on the guidelines with provinces, aboriginal governments, industry, labour, municipal authorities and others	New – replicates CEPA s. 69(2)-(3)	**Delete:** Redundant

Clause 18 103.03 – Information gathering: gives the Minister the power to collect data to see whether a substance contributes to air pollution	New – a modified version of CEPA s. 68	**Delete:** Redundant
Clause 18 103.04 – Notice to the Minister – where a person sells or uses a substance that may contribute to air pollution, they must inform the Minister (unless the Minister already knows)	New – replicates CEPA s. 70	**Delete:** Redundant
Clause 18 103.05 and 103.06 – Notice requiring information provisions	New – replicates CEPA s. 71 and s. 72 (with some modifications)	**Delete:** Redundant
Clause 18 103.07: National Air Quality objectives for respirable air matter and ozone. This section creates a mandatory duty on the part of the Ministers to establish air quality objectives for particulate matter less than or equal to 10 microns and ozone, within three years of the Act coming into force. The section also provides for monitoring, consultation, publication of the objectives, and an annual report to Parliament on "air pollution or air quality", "the effectiveness of measures taken by governments," and "the measures the Ministers will take to assist in attaining those objectives."	New, but replicates CEPA s. 54 and 55	**Amend:** It is worthwhile to have the Ministers provide a mandatory annual report to Parliament on air quality. The question is whether to limit it to air quality or make it environmental quality (i.e. mandate "state of the environment" reporting).
Clause 18 103.09 – Regulatory Matters: this section gives the Governor-in-Council the authority to regulate air pollutants and greenhouse gases. This section largely reproduces the existing s. 92 and 93 authorities, with the following exceptions: - 93(b), "the places or areas where the substance may be released" - 93(e), "the quantity of the substance that may be manufactured, processed, used, offered for sale or sold in Canada" - One item is added to the list of regulations under C-30 that does not	New, but replicates CEPA ss. 92 and 93	**Delete (with the exception of 103.9(p) which should not be limited to air pollutants and GHGs):** The best approach is to drop all of these amendments, except paragraph 103.09(p), which should be added to the existing authorities in s. 93.

exist in CEPA - 103.09(p), "the monitoring and reporting to either Minister of the effects on the environment and human health from releases into the air of air pollutants or greenhouse gases." This could be useful. 103.09(5), "Factors to Consider" in prescribing a substance / making regulations: This clause instructs the Ministers or Governor-in-Council to consider "the importance of promoting the continued improvement of air quality," regional air quality, existing air quality objectives, and "Canada's international obligations in relation to the environment and human health." 103.09(6) allows the Governor-in-Council to delete a substance from Schedule 3.1 (the new schedule that this section creates) if the Ministers feel that regulation is no longer necessary.		Re 103.09 (6): **Delete:** Redundant. Equivalent provision for removing substances from Schedule 1 already exists in subs. 90 (2).
Clause 18 103.1 – allows either Minister to make interim orders limiting the release of GHGs and CACs for up to two years.	New, but replicates CEPA s. 94	**Delete:** Redundant
Clause 18 103.11 and 103.12 – Release of Air pollutants or greenhouse gases – these sections describe the notification and enforcement provisions for releases of GHGs and CACs.	New, but are slightly weakened versions of CEPA ss. 95 and 96	**Delete:** Redundant
Clause 18 103.13 – regulations – designating the people responsible in the event of a release	New, but replicates CEPA s. 97	**Delete:** Redundant
Clause 18 103.14 – recovery of expenses by Her Majesty	New, but replicates CEPA s. 98	**Delete:** Redundant
Clause 18 103.15 – remedial measures	New, but replicates CEPA s. 99	**Delete:** Redundant
Clause 24 - adds the new GHG/CAC regulations to a list of other potential	CEPA s. 195	**Delete:** Redundant. This change is not needed if the committee decides to retain GHGs and CACs in

CEPA regulations in a clause about research into environmental emergencies		Schedule 1.
Clause 25 - includes "air pollutants and greenhouse gases" with toxic substances in CEPA s. 199, which describes the requirements for environmental emergency plans	CEPA s. 199	**Delete:** Redundant. This change is not needed if the committee decides to retain GHGs and CACs in Schedule 1.
Clause 35 - once again, this adds the new regulations for GHG and CACs to a list of other CEPA regulations, this time pertaining to an exemption from the Statutory Instruments Act	CEPA s. 331	**Delete:** Redundant. This change is only necessary if the committee opts to regulate GHGs and CACs separately from other toxics.
Clause 38 - deletes particulate matter from CEPA Schedule 1	CEPA Schedule 1 (the List of Toxic Substances)	**Delete**.
Clause 39 - deletes several criteria air contaminants (gaseous ammonia, ozone, nitric oxide, nitrogen dioxide, sulphur dioxide, and volatile organic compounds) from CEPA Schedule 1	CEPA Schedule 1 (the List of Toxic Substances)	**Delete**.
Clause 40 - deletes the six Kyoto greenhouse gases from Schedule 1	CEPA Schedule 1	**Delete.**
Clause 41 - adds a new schedule (3.1) to CEPA, which lists excluded VOCs	CEPA Schedule 3	**Delete.**

2. Climate Change and Greenhouse gas emission reduction targets

Action needed:

Bill C-30 should be amended to create a new division in CEPA Part 7 (Division 6a) entitled "Climate Change."

The new division should include provisions setting out mandatory short-, medium- and long-term targets requiring Canada to meet its 2008-2012 commitments under the Kyoto Protocol and requiring Canadian greenhouse gas emission reductions of 25 per cent below 1990 levels by 2020, and 80 per cent below 1990 levels by 2050.

3. Equivalency Agreements

Section in C-30	Relevant CEPA section	Action needed/notes
Part 1, s. 5(1) - This adds new areas (air pollutants, aquatic vegetation growth from nutrient releases, and fuel blenders) to CEPA's equivalency provisions	CEPA s. 10(1)	**Delete:** We do not support the expansion of the use of equivalency agreements, given the lack of any meaningful analysis regarding the effectiveness of the existing agreements. Role of equivalency agreements should be considered in the CEPA review.
Part 1, s. 5(3) - Changes the current CEPA language from "provisions that are equivalent to a regulation" to "provisions, the effects of which are equivalent to those of a regulation".	CEPA s. 10(3)	**Delete:** This could have the effect of severely weakening equivalency agreements and reducing their legitimacy. "Equivalent to a regulation" is much stronger than "equivalent to the effect of a regulation". The provision makes it even more likely that a province will use unenforceable and/or voluntary instruments, rather than regulations, for control of GHGs, criteria air contaminants, and other substances.
Part 1, s. 5 (8) - Under CEPA, equivalency agreements end after 5 years. C-30 says the agreements end "at the time that is specified in the agreement".	CEPA s. 10(8)	**Delete:** In practice, the federal government would probably sign agreements of an indefinite term. Given the lack of any meaningful assessment of the effectiveness of the existing agreements, and lack of meaningful reporting on results, the use of these agreements should not be expanded. Note also that the minority of the Supreme Court of Canada in *Hydro-Quebec* identified the existence of equivalency agreements as one of the factors undermining the argument for the regulation of toxic substances as criminal law. No such provisions exist in relation to the Criminal Code or similar "criminal" legislation.
Part 1, s. 5(2) - Gives the Governor-in-Council the ability to make regulations respecting the circumstances and conditions of equivalency agreements.	New language added after CEPA s. 10(10)	**Delete:** The conditions and circumstances regarding the use of equivalency agreements should be spelled out in the legislation, not by regulation.

4. International and Inter-provincial Air Pollution

4.1 CEPA and Canada's International Environmental Obligations

Actions needed:

Add a clause to Bill C-30 creating a new section (s.2(1)(p)) in the administrative duties section of CEPA requiring that the Government of Canada "ensure that Canada fulfils its international obligations with respect to the environment including the international agreements binding on Canada in relation to the prevention, control or correction of pollution listed in Schedule 7 of the Act."

Add a clause to Bill C-30 creating a new schedule (7) entitled "International agreements binding on Canada in relation to the prevention, control or correction of pollution." The schedule should include (but not be limited to) the following agreements:

- *The United Nations Framework Convention on Climate Change and subsidiary agreements, including the Kyoto Protocol*
- *The Canada-US Air Quality Agreement and subsidiary agreements*
- *The Boundary Waters Treaty, Great Lakes Water Quality Agreement and subsidiary agreements*
- *The United Nations Economic Commission for Europe Air Quality Agreements and protocols*
- *The Vienna Convention for the Protection of the Ozone Layer and its subsidiary agreements*
- *The Stockholm Convention on Persistent Organic Pollutants*
- *The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides*
- *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*
- *The North American Agreement for Environmental Cooperation*
- *The International Convention for the Prevention of Marine Pollution from Ships—MARPOL*

4.2. Recommended Revisions to CEPA Part 7, Division 6: International Air Pollution

Current CEPA provisions	**Our Proposed amendments for International Air Pollution**	**Our Proposed new provisions for Inter-provincial Air Pollution**	**Action Needed/Notes**
166. (1) Subject to subsection (4), the Minister	**166.** (1) Subject to subsection (4), the Minister	**DIVISION 6.1 INTER-PROVINCIAL AIR POLLUTION**	The scope of current s. 166 is limited to international air pollution. The federal

shall act under subsections (2) and (3) only if the Ministers have reason to believe that a substance released from a source in Canada into the air creates, or may reasonably be anticipated to contribute to (*a*) air pollution in a country other than Canada; or (*b*) air pollution that violates, or is likely to violate, an international agreement binding on Canada in relation to the prevention, control or correction of pollution. (2) If the source referred to in subsection (1) is not a federal source, the Minister shall (*a*) consult with the government responsible for the area in which the source is situated to determine whether that government can prevent, control or correct the air pollution under its laws; and (*b*) if the government referred to in paragraph (*a*) can prevent, control or correct the air pollution, offer it an opportunity to do so. **Ministerial action** (3) If the source referred to in subsection (1) is a federal source or if the government referred to in paragraph (2)(*a*) cannot prevent, control or correct the air pollution under its laws or does not do so, the Minister shall take at least one of the following courses of action: (*a*) on approval by the	shall act under subsections (2) and (3) <u>where</u> ~~the Ministers have reason to believe that~~ a substance released from a source in Canada into the air creates, or may reasonably be anticipated to contribute to (*a*) air pollution in a country other than Canada; or (*b*) air pollution that violates, or is likely to violate, an international agreement binding on Canada in relation to the prevention, control or correction of pollution. (2) If the source referred to in subsection (1) is not a federal source, the Minister shall (*a*) <u>forthwith</u> consult with the government(s) responsible for the area in which the source is situated to determine whether that government(s) can prevent, control or correct the air pollution under its laws; and (*b*) if the government(s) referred to in paragraph (*a*) can prevent, control or correct the air pollution, offer it an opportunity to do so <u>forthwith</u>. **Ministerial action** (3) If the source referred to in subsection (1) is a federal source or if the government(s) referred to in paragraph (2)(*a*) cannot prevent, control or correct the air pollution under its laws or does not do so forthwith, the Minister shall ~~take at least one of the following courses of action:~~	<u>174.1 (1) Where a substance released from a source that is wholly or partially located in a province or territory creates, or may reasonably be anticipated to contribute to air pollution in a different province or territory, and the government(s) of that province or territory has not acted or cannot act under its laws to prevent, control or correct the pollution the Minister shall</u> <u>(a) publish a notice under subs. 56 (1); and</u> <u>(b) recommend regulations to the governor in Council for the purpose of preventing, controlling or correcting the air pollution</u>	government has clear jurisdiction to take action on pollution crossing provincial, territorial boundaries as well as "international" air pollution having a Canadian source. The proposed provisions do not require that substances are first listed on Schedule 1; the constitutional authority is not the criminal law jurisdiction but rather, it is the fact that the pollution is transboundary in nature. However, in most circumstances the substances of concern are already currently listed on Schedule 1 (for example, GHGs and CACs), so there should be no question about the federal authority to act. The new provisions simply provide a mechanism for swift, decisive action. During the current legislative CEPA Review, the notion that mandatory timelines for action on chemicals should be included in CEPA has attracted much interest. Use of the strengthened provisions recommended here could be enhanced by including deadlines for action where the conditions for enacting a regulation are met.

Governor in Council, publish a notice under subsection 56(1); or (*b*) recommend regulations to the Governor in Council for the purpose of preventing, controlling or correcting the air pollution. **Reciprocity with other country** (4) If the air pollution referred to in paragraph (1)(*a*) is in a country where Canada does not have substantially the same rights with respect to the prevention, control or correction of air pollution as that country has under this Division, the Minister shall decide whether to act under subsections (2) and (3) or to take no action at all. **Other factors** (5) When recommending regulations under paragraph (3)(*b*), the Minister shall take into account comments made under subsection 168(2), notices of objection filed under subsection 332(2) and any report of a board of review submitted under subsection 340(1).	*(a)* ~~on approval by the Governor in Council,~~ publish a notice under subsection 56(1);~~ or~~ and *(b)* recommend regulations to the Governor in Council for the purpose of preventing, controlling or correcting the air pollution **Reciprocity with other country** (4) If the air pollution referred to in paragraph (1)(*a*) is in a country where Canada does not have substantially the same rights with respect to the prevention, control or correction of air pollution as that country has under this Division, the Minister shall decide whether to act under subsections (2) and (3) or to take no action at all. **Other factors** (5) When recommending regulations under paragraph (3) ~~(*b*)~~, the Minister shall take into account comments made under subsection 168(2), notices of objection filed under subsection 332(2) and any report of a board of review submitted under subsection 340(1).		
167. The Governor in Council may, on the recommendation of the Minister, make regulations with respect to a substance released from a source in Canada into the air that creates, or may reasonably be anticipated to contribute to air pollution referred to in subsection 166(1) for the purpose of preventing,	**167.** The Governor in Council may, on the recommendation of the Minister~~,~~ make regulations with respect to a substance released from a source in Canada into the air that creates, or may reasonably be anticipated to contribute to air pollution referred to in subsection 166(1) for the purpose of preventing,	**174.2.** The Minister shall make regulations with respect to a substance released from the source referred to in subsection 174.1 for the purpose of preventing, controlling or correcting the air pollution. The regulations may address (*a*) the quantity or	

controlling or correcting the air pollution, including regulations respecting (*a*) the quantity or concentration of the substance that may be released into the air; (*b*) the manner in which and conditions under which the substance may be released into the air, either alone or in combination with any other substance; (*c*) the maintenance of books and records for the administration of any regulation made under this section; (*d*) the conduct of sampling, analyses, tests, measurements or monitoring of the substance and the submission of the results to the Minister; and (*e*) the conditions, test procedures and laboratory practices to be followed for conducting sampling, analyses, tests, measurements or monitoring of the substance.	controlling or correcting the air pollution, including regulations respecting (*a*) the quantity or concentration of the substance that may be released into the air; (*b*) the manner in which and conditions under which the substance may be released into the air, either alone or in combination with any other substance; (*c*) the maintenance of books and records for the administration of any regulation made under this section; (*d*) the conduct of sampling, analyses, tests, measurements or monitoring of the substance and the submission of the results to the Minister; and (*e*) the conditions, test procedures and laboratory practices to be followed for conducting sampling, analyses, tests, measurements or monitoring of the substance.	concentration of the substance that may be released into the air; (*b*) the manner in which and conditions under which the substance may be released into the air, either alone or in combination with any other substance; (*c*) the maintenance of books and records for the administration of any regulation made under this section; (*d*) the conduct of sampling, analyses, tests, measurements or monitoring of the substance and the submission of the results to the Minister; and (*e*) the conditions, test procedures and laboratory practices to be followed for conducting sampling, analyses, tests, measurements or monitoring of the substance.	

5. Other provisions of Bill C-30 amending CEPA

Clause 14(1) - This change relates to the section of CEPA that allows the Governor-in-Council to regulate toxic substances. CEPA now allows the Governor-in-Council to regulate the "purposes" and "manner" in which a toxic substance is sold, imported, etc. C-30 would add, after the word "product", "that contains or may	CEPA s. 93(1)(f) and (g)	**Retain:** This change allows the government not only to regulate toxic products, but to regulate products that may contain or release toxic substances. This is an addition to the Ministers' powers that should be maintained. The focus of this amendment is consumer products that contain toxic

release it into the environment."		substances, but cannot be regulated per se (up to now, only the toxic substances in them could be regulated).
Clause 14(2) - Continues the same theme: in each case, changing the phrase "substance or product" to "substance or product that contains or may release it into the environment"	CEPA s. 93(1)(l) to (r)	**Retain:** Again, this is useful, because it gives the Governor-in-Council the ability to regulate products containing toxic substances, even if the product itself is not toxic.
Clause 15 - This limits enforcement officers' acess to property in the event of the release of a toxic substance. Currently, CEPA gives enforcement officers "access to any place or property, and may do any reasonable things that may be necessary." C-30 changes that to say "access to any place or property that is the location where a release occurs or is likely to occur or any place or property that is reasonably suspected to be affected by the release…"	CEPA s. 95(7)	**Delete:** This may well be too limiting. It's easy to imagine scenarios where an enforcement officer might need access to property other than the exact area where the release occurred. For example, if the enforcement officer suspected that key documents pertaining to the release were being kept at another location? When dealing with the release of a toxic substance, is better to err on the side of more latitude rather than less.
Clause 19 - Amends the "Fuels" (Division 4) section of CEPA by giving the Minister the specific power to send a notice requiring a person to conduct research and study the environmental and human health effects of "the fuel or element, component or additive".	CEPA s. 138 (but is quite similar to CEPA ss. 70-72)	**Retain:** This is likely aimed at ethanol and biodiesel. It gives the Minister the specific power to study fuels and fuel additives. The Minister already has the power to require this type of research, so this section may be unnecessary, but it probably does no harm to retain. Exemption for people importing or producing 400 cu m. per year should be deleted 138.1(e)
Clause 20 - Minor improvements to clarify the wording of CEPA s. 139(2)(b) to (d)	CEPA s. 139(b) to (d)	**Retain**
Clause 21 - Fuel blending	CEPA s. 140 (1)	**Retain:** This adds fuel blending to the list of fuel activities that may be regulated. This is probably a helpful addition/clarification. Section 21(4) may be the most important, as it specifically mentions "the adverse effects from the use of fuel, or any additive contained in the fuel" – which could include any ethanol or biodiesel additive.

		Section 21(5) of C-30 allows for "the submission of reports on the quantity of fuel produced or sold for export" – a useful addition to the Minister's powers and is worth retaining.
Clause 23 - CEPA s. 146 allows for different fuel regulations according to commercial designations, source, physical properties, etc. C-30 adds the words "manufacturing process," "feedstocks", and "use" to that list.	CEPA s. 146	**Retain:** This is a helpful change, because it allows the government to treat cellulosic ethanol (manufactured from waste grains) differently than corn-based ethanol. Environmentalists would support regulations that privilege cellulosic biofuels (which have much lower GHG emissions in their production) and this language makes it easier for the government to provide for this.
Clause 36 - Lists of regulations "and instruments" (C-30 addition) that must be published in the Canada Gazette by the minister.	CEPA s. 332(1)	**Amend:** Retain existing wording of s. 332(1) which requires publication of all orders and instruments with limited exceptions. Add a reference to the publication of instruments as well as orders and regulations. Define "instruments" as all permits, licenses, and orders issued under the Act. Proposed instruments should also be required to be published in the CEPA Registry.
Clause 37 - Incorporates the new provision for regulations concerning equivalency agreements into a list of regulations that can be reviewed by a board of review in the case of public complaint.	CEPA s. 333	**Retain:** This opens the possibility of creating a board of review in relation to an equivalency agreement, but we do not support the relaxation of the rules around the scope, criteria and timeframe for equivalency agreements.

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