CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

July 12, 2007

Louise Power
Director, Legislative Governance
Environment Canada
351 St Joseph Blvd
Gatineau, Quebec
K1A 0H3

Dear Ms. Power,

Re: Submissions concerning amendments to the *Canadian Environmental Protection Act*

Further to our recent conversations, we are pleased to send a package of materials concerning our ongoing work addressing the review of the *Canadian Environmental Protection Act*. The enclosed documents include:

1. *Using the Canadian Environmental Protection Act to Control Air Pollution, Protect Significant Areas and Reduce Greenhouse Gas Emissions* - Submissions to the House of Commons and the Government of Canada on the Legislative Committee Amendments to Bill C-30 (Canada's Clean Air and Climate Change Act). July, 2007.
2. *Using the Canadian Environmental Protection Act to Regulate Toxic Substances in Products. Lessons learned from two case studies – lead and phthalates.* Prepared under contract for Health Canada. March, 2007.
3. *The Canadian Environmental Protection Act, 1999 – Five Year Review. A Preliminary Response to the Standing Committee's Report.* Preliminary recommendations in response to selected recommendations made by the House of Commons Standing Committee on Environment and Sustainable Development in its April 2007 report on the review of the *Canadian Environmental Protection Act* (CEPA). July, 2007.
4. *Virtual Elimination.* A two-page submission presented to the Standing Committee during its hearings. January, 2007.

The above documents represent our most recent work on addressing key issues with respect to the management of toxic substances. They build upon a great deal of additional work prepared during the deliberations of the House and Senate Committee reviews of CEPA. We hope to consolidate this work into a more comprehensive set of proposed amendments to CEPA in the coming months. In doing so, we expect some slight revisions to the amendments proposed in the above documents to ensure consistency.

130 SPADINA AVENUE • SUITE 301 • TORONTO • ONTARIO • M5V 2L4
TEL: 416/960-2284 • FAX: 416/960-9392 • www.cela.ca

GETTING BACK ON TRACK: USING THE *CANADIAN ENVIRONMENTAL PROTECTION ACT* TO CONTROL AIR POLLUTION, PROTECT SIGNIFICANT AREAS AND REDUCE GREENHOUSE GAS EMISSIONS

SUBMISSIONS TO THE HOUSE OF COMMONS AND THE GOVERNMENT OF CANADA ON THE LEGISLATIVE COMMITTEE AMENDMENTS TO BILL C-30 (*Canada's Clean Air and Climate Change Act*)

PREPARED BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Joseph Castrilli
Counsel

Hugh Benevides
Counsel

Kathleen Cooper
Senior Researcher

Fe de Leon
Researcher

Jessica Ginsburg
Special Projects Counsel

July 2007

TABLE OF CONTENTS

ABOUT THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Canadian Environmental Law Association (CELA) was founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens' groups in the courts and before tribunals on a wide variety of environmental matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

In particular, CELA has played a central role, by way of written submissions, testimony and consultations, in the ongoing development, review and implementation of both the 1988 and current (1999) versions of the *Canadian Environmental Protection Act* (CEPA). CELA has also been instrumental in the formation and operation of the Canadian Partnership for Children's Health and Environment (CPCHE), a ten-member partnership of health, environment and child-focused groups addressing the special vulnerability and health risks to children of toxic substances and environmental pollution and advancing a policy agenda to address these risks. Of particular concern to CPCHE partners is the urgent need to address the well-established scientific evidence of harm to children from air pollution. Given CELA's long-standing involvement in child health issues and CEPA, the submissions herein are focused on provisions in Bill C-30 touching on CEPA, and do not include comments on Bill C-30's proposed amendments to the *Energy Efficiency Act* and the *Motor Vehicle Fuel Consumption Standards Act.*

I. INTRODUCTION

On March 30, 2007, a Legislative Committee reported to the House of Commons on proposed amendments to Bill C-30, "An Act to amend the *Canadian Environmental Protection Act, 1999*, the *Energy Efficiency Act* and the *Motor Vehicle Fuel Consumption Standards Act* (Canada's Clean Air Act)." [1]

The purpose of these submissions is to draw to the attention of the Government of Canada and Members of the Parliament of Canada the views of the Canadian Environmental Law Association ("CELA") on selected amendments proposed for Bill C-30 respecting climate change, air pollution, toxic substances, and related matters.

In our view the First Reading version of Bill C-30 constituted a significant setback to the development of federal environmental law in Canada, and the version of Bill C-30 reported to the House of Commons by the Legislative Committee constitutes some improvement over the First Reading version of the Bill. While it still has significant shortcomings, it is our view that Bill C-30 contains kernels of potential that should be considered in future legislative proposals, either by continued debate on C-30 itself, or in further draft legislation.

[1] Among the Legislative Committee's proposals was to change the short title in clause 1 of the bill to *Canada's Clean Air* *and Climate Change* *Act*.

It should be noted that the Legislative Committee did its work while the House of Commons Standing Committee on Environment and Sustainable Development was in the final stages of writing its report on the legislative five-year review of the *Canadian Environmental Protection Act, 1999*, which it tabled shortly after Bill C-30 was reported back to the House of Commons. [2] In an ideal world, a single committee would have been able to undertake both studies simultaneously. The integrity of CEPA and other federal environmental legislation is most likely to be assured if the Parliament and Government of Canada can approach future federal environmental law reforms, including those pertaining to climate change, air pollution, toxic substances, and related matters, in the most integrated manner possible. The approach should also be premised on the principles of precaution and prevention that are contained in subsection 2 (1) ("Duties of the Government of Canada") of CEPA, 1999.

The submissions herein have been prepared with the above themes and principles in mind. CELA therefore strongly urges careful consideration of the recommendations in this submission.

II. DEFINITION OF AIR POLLUTANTS

An amended section 3(1) would introduce a definition for "air pollutant" that identifies eight specific substances (particulate matter less than 10 microns, ozone, sulphur dioxide, nitric oxide, nitrogen oxide, volatile organic compounds, gaseous ammonia, and mercury), and the authority to prescribe other substances.

Each of the identified air pollutants is already listed in Schedule 1 of the *Canadian Environmental Protection Act, 1999* ("*CEPA, 1999*") as a toxic substance. However, section 3(1) does not identify the eight air pollutants as toxic substances. As noted by CELA and other organizations previously, the Supreme Court of Canada in *R. v. Hydro Quebec* upheld the constitutionality of the provisions relating to control of toxic substances under the predecessor legislation to *CEPA, 1999*, in part because the statute did not purport to control the universe of environmental pollutants (and thereby potentially infringe on concurrent provincial environmental jurisdiction), but rather sought only to control a distinct subset of such pollutants, namely toxic substances as defined in the statute. Accordingly, the failure of Bill C-30 to identify the substances in section 3(1) as toxic substances creates uncertainty with respect to the purposes of the amendments in this regard and, therefore, risks jeopardizing the constitutional authority of the federal government to control these substances under *CEPA, 1999* should the amendments be challenged successfully in the courts.

Even if federal authority was eventually upheld, the amendments (1) invite re-litigation of matters that were settled by the Supreme Court in the *Hydro Quebec* decision, (2) re-introduce uncertainty as to the constitutional underpinnings of Part V ("Controlling Toxic Substances") of *CEPA, 1999*, and (3) have the potential to slow down the development by the Government of

---

[2] House of Commons, Standing Committee on Environment and Sustainable Development, *The Canadian Environmental Protection Act, 1999 – Five-Year Review: Closing the Gaps* (39th Parliament, 1st Session, April 2007).

Canada of needed programs under *CEPA, 1999* while the constitutional issues work their way through the courts.

Accordingly, if an amended section 3(1) definition for "air pollutant" is to remain in Bill C-30, it should be further amended to make clear that each and every air pollutant identified in the subsection remains a toxic substance listed under Schedule 1 of *CEPA, 1999*. In the (preferred) alternative, the amended section 3(1) definition for "air pollutant" should be deleted from Bill C-30.

III. EQUIVALENCY PROVISIONS

Amended section 10(3) would introduce a further principle of equivalency to existing *CEPA, 1999* provisions on equivalency. The amendment would allow the federal cabinet to declare by order that a regulation under *CEPA, 1999* would not apply, for example, in a particular province if the federal Ministers of Environment and Health and the provincial government agree that the "effects" of the provincial law "will demonstrably provide an equivalent or superior level of protection of the environment and human health based on, *amongst other factors*, the *quantifiable effects* of the regulation on the environment and human health and the effective enforcement and compliance of the *federal regulation*." (Italics added). Section 10(3.1) would require any agreement between the federal ministers and the particular government to also include "a method of determining whether the terms and conditions of the agreement are being fully met."

CELA submits that section 10(3) is vague, confusing, and inferior to even the weak equivalency provisions that already exist in *CEPA, 1999*. The concept of equivalency in *CEPA, 1999* has always been controversial because of the extent to which it had the potential to remove the application of federal environmental law in a province and substitute inexact standards of equivalency and inadequate federal oversight of whether provincial laws were an appropriate substitute for the job intended with the enactment of *CEPA, 1999*.

Indeed, the history of equivalency provisions has not demonstrated that the country is well-served by the approach. In its 1999 Report to the House of Commons on federal- provincial environmental agreements, the office of the Commissioner of the Environment and Sustainable Development ("CESD") reviewed whether (1) equivalency agreements under the predecessor to *CEPA, 1999*, and (2) administrative agreements under *CEPA* and the *Fisheries Act*, were working.[3] In general, the CESD found several common implementation problems with respect to all of the federal-provincial environmental agreements it reviewed including:

(1) lack of ongoing analysis once agreements were in place;
(2) failure to analyze whether duplication in government administration was reduced even though this was a primary motivation for the agreements in the first place; and
(3) weak annual reporting of meaningful results under the agreements.[4]

[3] Commissioner of the Environment and Sustainable Development, *Chapter 5 - Streamlining Environmental Protection Through Federal-Provincial Agreements: Are They Working?* (Ottawa: Minister of Public Works and Government Services Canada, 1999).
[4] *Ibid.* at 5-11 to 5-12.

With respect to the only equivalency agreement in place at the time (with Alberta), the CESD noted that while industry and the Alberta and federal governments were satisfied with how the agreement was working, the CESD found the following deficiencies with implementation of, and reporting with respect to, the agreement:

- The federal government did not have detailed provincial information, particularly information on provincial inspections and associated enforcement activities;

- The lack of complete information on provincial activity was a problem (given that the existing equivalency provisions provide that federal regulations are suspended in favour of supposedly equivalent provincial regulations);

- Without such information, Environment Canada was not in a position to ensure that the equivalent federal requirements are satisfactorily enforced and that its legislated responsibilities are being carried out; and

- Parliament had little information on how well the *CEPA* agreement was working because reporting to Parliament was incomplete and out-of-date.[5]

In the circumstances, the CESD recommended that: "In its reports to Parliament, Environment Canada should include more meaningful, complete, timely, reliable, understandable and results-based information on the *CEPA* equivalency [agreement]."[6]

Indeed, the CESD noted that the House of Commons Standing Committee on Environment and Sustainable Development recommended as long ago as 1995 that: "...at a minimum, the report [to Parliament] should contain information on provincial inspection, investigation, verification and enforcement activities, data on spills and releases, and information on disputes that have arisen under the agreements."[7]

In the intervening years since both the CESD and the Standing Committee have reported on these matters, it is not at all clear that the problems they identified have been resolved.

Furthermore, the proposed wording of section 10(3) is vague and confusing so as to have the potential to worsen the situation. For example, what is meant by a phrase such as "amongst other factors"? Section 10(3) does not set out or define what these "other factors" might be or establish a methodology for how they are to be determined. Nor is there any regulation-making authority established that would allow such factors to be standardized and made subject to prior public notice and opportunity for comment.

How are "quantifiable effects of the regulation on the environment and human health" to be determined? Indeed, what is a "quantifiable effect"?

---

[5] *Ibid.* at 5-12, 5-13, and 5-20.
[6] *Ibid.* at 5-20.
[7] *Ibid.* (referring to 1995 report entitled "It's About Our Health! Towards Pollution Prevention").

All of these matters appear to be left to be fleshed out, if at all, through any future agreements that might be entered into between governments instead of being subject to a more transparent process, such as regulation-making, which would at least subject the process to public notice and opportunity for comment.

Finally, the last part of the amended section 10(3) respecting "the effective enforcement and compliance of [sic] the *federal regulation*" (emphasis added) makes no sense since, by definition, where an equivalency agreement is in place there is no federal regulation.

In the circumstances,the proposed section 10(3) cannot be supported as it would open the door to greater use of equivalency agreements, rather than establishing the needed checks on their use. It does not appear prudent to expand the scope of equivalency provisions either in the manner proposed by the Government of Canada in the First Reading bill, or as amended by the Legislative Committee. The fact that the current equivalency provisions in *CEPA 1999* are very weak, as noted above, may provide justification for eliminating altogether the concept of equivalency from *CEPA, 1999*, and/or from its successor.

IV. SIGNIFICANT AREAS

Under a proposed new section 53.1(1), Bill C-30 would grant the Minister the authority to designate a region as a significant area if, in the opinion of the Minister:

- The region is particularly environmentally vulnerable to the effects of toxic substances; or
- A significant volume of toxic substances is released into the environment of the region.

The Legislative Committee also proposed a number of comparatively minor notice, information-gathering, research, and related amendments with respect to significant areas [section 53.1 (2)-(4)].

Several major problems with the proposed section 53.1(1) can be identified. First, the amendment is not that different from authority that already exists under section 330(3.1) of *CEPA, 1999* to promulgate regulations with respect to toxic substances that are applicable in only a part or parts of Canada in order to protect the environment, biological diversity, or human health.

Second, the proposed section 53.1(1) is discretionary, not mandatory. Accordingly, there is no guarantee that anything will happen as result of the amendment.

Third, controlling toxic substances in significant areas needs to be comprehensive in its approach. Therefore, if *CEPA, 1999* is to be the vehicle for such an approach, far more of the existing statute would have to be amended than what is proposed under section 53.1(1)-(4).

CELA has, therefore, drafted comprehensive amendments to *CEPA, 1999* respecting designation by the Minister of the Environment, and protection of "significant geographic areas" from toxic substances. These amendments are appended to these submissions (see Appendix A). These new provisions are intended to replace the new s. 53.1 proposed by the Legislative Committee.

V. GREEN INVESTMENT BANK

A proposed section 63.1 would authorize establishment of a Green Investment Bank of Canada (referred to as the "Bank") following negotiations among federal, provincial and territorial governments, aboriginal communities, the private sector, and non-governmental organizations. The Bank would be responsible for monitoring and regulating the greenhouse gas emissions of large industrial emitters (defined elsewhere in Bill C-30 and discussed below).

While the intention to control large industrial greenhouse gas emitters is laudable, section 63.1 creates confusion about the respective roles and responsibilities of government regulators and the Bank.

By contrast, the trend in countries that are moving to control greenhouse gas emissions is essentially to employ a two-step process: (1) impose a cap (often a sliding scale downward cap over time), and (2) authorize emissions trading as a method of achieving compliance with the cap.

Second, the regulatory authority proposed for the Bank in s. 63.1 ("the Green Investment Bank of Canada … is to be responsible for monitoring and regulating the greenhouse gas emissions of large industrial emitters") has the potential to come into conflict with the regulatory authority vested with the Minister elsewhere in Bill C-30 (such as the proposed subsection 103.05 (2) authority to set "sectoral carbon budgets").

Third, the authority granted the Bank is potentially capable of conflicting with the regulatory authority vested elsewhere in current *CEPA, 1999* with the federal cabinet (such as the existing authority in subsection 94.1 (1) to make regulations establishing a domestic greenhouse gas emissions trading and offset system).

Fourth, the proposed obligation for the government to enter first into unnecessarily long and protracted negotiations with the above-noted stakeholders includes no provision for their conclusion in the event of stalemate, meanwhile allowing emissions to continue to grow unchecked.

CELA therefore proposes that section 63.1 be deleted in favour of a more straight-forward cap and trade regime.

VI. ASSESSMENT AND ACTION PLAN

A proposed subsection 68.1(1) would oblige the Minister to require an assessment of certain substances of concern and an action plan for achieving their "substitution." The substances of concern are:

(1) known or suspected carcinogens identified by the International Agency for Research on Cancer ("IARC") that have not been identified for assessment under section 74 of *CEPA, 1999*; and
(2) other substances of concern identified by the Minister.

Under proposed subsection 68.1(2), a substance slated for "safe substitution" must be phased out for use within ten years of the coming into force of the section.

While these are laudable provisions, they require both clarification and expansion. First, neither "substitution" nor "safe substitution" is defined in Bill C-30. Reform of European chemicals law has included a requirement to encourage the substitution of dangerous by less dangerous substances or technologies where suitable alternatives are available. The purpose of such an approach is to ensure that the risks from substances of very high concern are properly controlled, or that these substances are replaced by suitable alternative substances or technologies.

Second, instead of "known or suspected carcinogens identified by [IARC]", it would be more accurate to identify the list of substances that are carcinogenic to humans (Group 1) and probably carcinogenic to humans (Group 2A) as identified by IARC. These two groups alone constitute 168 substances or classes of substances. A Group 2B – "possibly carcinogenic to humans" – consists of 246 additional substances or classes of substances. [8]

Moreover, the exclusive focus on carcinogens implied by these proposals is needlessly limiting given what is known about developmental toxicity of additional substances.

CELA recommends that these provisions be further expanded to include, at a minimum, the list prepared by law under the State of California *Safe Drinking Water and Toxic Enforcement Act of 1986* (also known as Proposition 65). The Proposition 65 list includes chemicals known to cause cancer or reproductive toxicity. It provides a minimum level of protection as it addresses known health risks in these two areas. A much large number of chemicals are suspected of these and other serious health impacts, particularly in the fetus and developing child.

VII. REGULATIONS

The proposed subsection 94.1(1) identifies a category of regulation-making authority that is mandatory on the federal cabinet. The proposed subsection 94.1(2) identifies a category of regulation-making authority that is discretionary with the federal cabinet.

The inclusion of mandatory regulation-making authority is laudable. However, if the purpose of Bill C-30 is to ensure that Canada meets its obligations under the Kyoto Protocol then more

[8] All figures cited here are accurate to January 24, 2007.

items that appear in the discretionary regulation-making category should instead be placed in the mandatory category (e.g. regulations linking domestic greenhouse gas emission trading system with international trading systems that also establish verifiable greenhouse gas emission reductions so as to comply with the requirements of the Kyoto Protocol). In addition, timelines for developing and implementing regulations should be outlined in subsection 94.1 (1).

VIII. CLIMATE CHANGE ACTION

A proposed new Part 5.1 for CEPA, 1999 would establish a regime for action on climate change. The following is a brief evaluation of the adequacy of the various components of that regime.

A. Purpose

A new section 103.01 sets out the purpose of Part 5.1 as reducing "Canada's greenhouse gas emissions to below *current and historical levels* in order to protect the environment..." (emphasis added).

It is not at all clear from Bill C-30 what is meant by "current and historical levels" of greenhouse gas emissions in Canada. Both "current" and "historical" levels should be defined in Bill C-30.

B. Carbon Budget

A new paragraph 103.02(1)(b) would establish a national carbon budget for Canada. Projecting into the future, the section would require that Canada's domestic greenhouse gas emissions for 2020 be at least 20% lower than 1990 levels and for 2050, 60% to 80% lower than 1990 levels.

In general, the approach taken in section 103.02 is appropriate. However, there is consensus in the domestic and international scientific community that the long-term targets for Canada's domestic greenhouse gas emissions for 2020 should be at least 25% lower than 1990 levels and for 2050 should be 80% lower than 1990 levels. Section 103.02(1)(b) should be amended accordingly.

A new section 103.02(2) states that the sectoral carbon budgets established by Bill C-30 are portions of the national carbon budget determined by the Minister to be appropriate for each group of persons that the Minister considers is responsible for "a large portion of Canada's greenhouse gas emissions."

Bill C-30 should define what is meant by "a large portion."

Finally, section 103.02(6) would authorize the Minister to issue a carbon permit to any person emitting greenhouse gases who is required by regulation to possess such a permit.

Establishment of a carbon permit system is an important component of a regime designed to control greenhouse gas emissions. However, the permit regime should be designed on the basis of a permit per tonne of greenhouse gases released, not on the basis of a single permit per person. Alternatively, the permit system should be designed to grant carbon allowances on an annual basis with each tonne of greenhouse gas emitted being the equivalent of one allowance.

C. Climate Change Plan

A proposed section 103.03 would require the Minister to establish an annual Climate Change Plan that includes certain characteristics set out in the section.

However, while a Ministerial failure to prepare such an annual plan could attract legal consequences, Bill C-30 contains no consequences for failing to implement the contents of the plan itself. Section 103.03 should be amended accordingly.

In particular, consequences could be attached to proposed section 103.03(1)(f) (respecting plan implementation) in the form of depriving large industrial emitters of greenhouse gases (to be identified pursuant to section 103.05) who are not meeting their obligations under section 103.05 of subsidies, tax breaks, or both.

D. Large Industrial Emitters

A proposed section 103.05 would authorize the Minister, in consultation with the federal cabinet, to designate as "large industrial emitters" persons in the electricity generation, oil and gas, and energy-intensive industrial sectors that the Minister considers are particularly responsible for a large portion of Canada's greenhouse gas emissions.

Bill C-30 should authorize establishment of a schedule or schedules to the Act designating such persons. Such persons would then be subject to the consequences outlined in Section C above.

E. Greenhouse Gases – Territorial Approach

A proposed section 103.051 would allow the federal cabinet to exempt a province from the requirements of Bill C-30, or a regulation promulgated thereunder, where the Ministers recommend, and the Green Investment Bank determines by notice in writing, that the provincial government has greenhouse gas emission reduction requirements in force that are equivalent to those under Bill C-30.

Section 103.051, like amended subsection 10 (3) discussed in Part III above, deals with equivalency. For the reasons set out in Part III, section 103.051 should be deleted.

IX. AMBIENT AIR QUALITY STANDARDS AND AIR EMISSION STANDARDS

A proposed section 103.07 would authorize the Minister among other things to (1) issue ambient air quality standards in respect of each "air pollutant" (identified under amended section 3(1) discussed above), (2) divide Canada into zones for the purpose of setting air emission standards applicable in each zone, and (3) impose the air emission standards on each industrial facility in a zone where there is not compliance over a six month period, with an ambient air quality standard for a particular air pollutant in that zone.

In general, the approach contemplated by section 103.07 is laudable. However, the approach appears to be predicated on that found in the United States *Clean Air Act Amendments of 1990* ("*CAAA*"), a much more sophisticated and complex regulatory regime than that contemplated by section 103.07. First, the *CAAA* applies to both stationary and mobile sources of air pollution, whereas section 103.07 would only impose obligations on stationary sources. Second, the *CAAA* imposes compliance obligations on states in order to ensure that the ambient air quality standards in each zone in the state are met through a broad array of regulatory, fiscal, planning, and technical measures. The states, in turn, impose these measures locally.

By contrast, section 103.07 would appear to impose only regulatory obligations directly on polluters without regard to other fiscal, planning, and technical measures that might also be necessary to achieve compliance. In the circumstances, and having regard to the constitutional considerations applicable in Canada, section 103.07 should be re-considered with a view to applying to both stationary and mobile sources.

Finally, for the reasons set out in Part II above, the de-coupling of air pollutants from the List of Toxic Substances under Schedule 1 of *CEPA, 1999* raises concerns about the constitutionality of section 103.07. Accordingly, we repeat our recommendation made above.

X. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

As noted in the introduction to these submissions, it is important for both the Government of Canada and the Parliament of Canada to make future federal environmental law reforms in an integrated, consistent and comprehensive manner, including those pertaining to climate change, air pollution, toxic substances, and related matters. In light of this, CELA urges both the Parliament of Canada and the Government of Canada to consider the present submissions together with our earlier submissions on both *CEPA, 1999* and Bill C-30. We would be pleased to provide any further information or clarifications.

B. Recommendations

In light of the foregoing, CELA makes the following recommendations:

1. If an amended subsection 3(1) definition for "air pollutant" is to remain in Bill C-30, it should be further amended to make clear that each and every air pollutant identified in the

subsection is already, and shall remain, listed as a toxic substance in Schedule 1 of *CEPA, 1999*. In the alternative, the amended subsection 3(1) definition of "air pollutant" should be deleted from Bill C-30.

2. Delete the amendments made to subsection 10(3).

3. Delete subsections 53.1(1)-(4) and substitute protection of significant geographic areas from toxic substances in the manner set out in Appendix A herein.

4. Section 63.1 should be deleted in favour of a more straight-forward cap and trade regime.

5. Define "substitution" as proposed in the attached s. 3 definition, and enact the new obligation on the Minister of the Environment to investigate safer substitutes for toxic substances proposed in s. 68.1, also attached.

6. Instead of using the phrase "known or suspected carcinogens identified by [IARC]" in section 68.1, it would be more accurate to identify by listing in a schedule to *CEPA, 1999* the substances that are carcinogenic to humans (Group 1) and probably carcinogenic to humans (Group 2A) as identified by IARC. In addition, this schedule should include the State of California *Safe Drinking Water and Toxic Enforcement Act of 1986* (Proposition 65) list of chemicals known to cause cancer or reproductive toxicity.

7. If a purpose of Bill C-30 is to ensure that Canada meets its obligations under the Kyoto Protocol, then more items that appear in the discretionary regulation-making category under section 94.1 should instead be placed in the mandatory category (e.g. regulations linking a domestic greenhouse gas emission trading system with international trading systems that also establish verifiable greenhouse gas emission reductions so as to comply with the requirements of the Kyoto Protocol).

8. Both "current" and "historical" levels of greenhouse gas emissions in Canada should be defined in connection with section 103.01 of Bill C-30.

9. Paragraph 103.02(1)(b) should be amended to read that the targets for Canada's domestic greenhouse gas emissions for 2020 should be at least 25% lower than 1990 levels and for 2050, should be 80% lower than 1990 levels.

10. Subsection 103.02(2) should be amended to define what is meant by "a large portion of Canada's greenhouse gas emissions."

11. Subsection 103.02(6) should be amended to authorize the establishment of a permit regime designed on the basis of a permit per tonne of greenhouse gases released, not on the basis of a single permit per person. Alternatively, the permit system should be designed to grant carbon allowances to greenhouse gas emitters on an annual basis, with each tonne of greenhouse gas emitted being the equivalent of one allowance.

12. Section 103.03 should be amended to require the Minister to implement the contents of the annual Climate Change Plan required to be prepared under this section.

13. Consequences should be attached to proposed paragraph 103.03(1)(f) (respecting plan implementation) in the form of denying subsidies, tax breaks, or both from large industrial emitters of greenhouse gases where they are not meeting their obligations under section 103.05.

14. Pursuant to proposed section 103.05, Bill C-30 should authorize establishment of a schedule or schedules to the Act designating persons in the electricity generation, oil and gas, and energy-intensive industrial sectors, as "large industrial emitters."

15. Section 103.051 should be deleted.

16. Having regard to the constitutional considerations applicable in Canada, section 103.07 should be re-considered with a view to applying to both stationary and mobile sources.

17. With respect to section 103.07, see Recommendation 1, above.

Please also see the proposed amendments in Appendix A.

Joseph F. Castrilli, Counsel
Hugh J. Benevides, Counsel
Kathleen Cooper, Senior Researcher
Fe de Leon, Researcher
Jessica Ginsburg, Special Projects Counsel
Canadian Environmental Law Association