



Ministry of Environment, Conservation and Parks
Client Services and Permissions Branch
135 St Clair Ave West
1st Floor
Toronto, ON
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November 1, 2024

Re: ERO #019-9084 – Algoma Steel Environmental Compliance Approval (air and noise)

The Canadian Environmental Law Association (CELA) is a legal aid clinic which represents low-income, under-served and under-represented communities in litigation and undertakes law reform on public interest environmental issues. We have reviewed the proposal for an Environmental Compliance Approval (“ECA”) for Algoma Steel Inc. that was placed on the Environmental Registry of Ontario for a 59-day comment period and provide the following comments.

Algoma Steel Inc. is a steel producer in Sault Ste. Marie. It has applied for a site-wide ECA for air and noise emissions for the current, transition, and future periods when it plans to replace its existing manufacturing process with electric arc furnaces. We are hopeful that the transition to electric arc furnaces will significantly decrease both greenhouse gas and local air pollutant emissions.

Algoma Steel’s operations currently cause a significant amount of air pollution in Sault Ste. Marie, which disproportionately impacts the lower-income communities living near the facility. It’s critical that the impacts of these air emissions are considered during the current and transition periods and that measures are taken to protect human health and the environment. These measures are also necessary from a standpoint of environmental justice, which requires that decisions about significant environmental proposals prioritize input from the impacted communities and consider the health impacts on communities disproportionately impacted by pollution.

We urge the Ministry not to make a decision on the proposal for a new site-wide ECA until it has disclosed all supporting documents to the public and provided an opportunity for meaningful public comment. Furthermore, we urge the Ministry to provide a draft of the proposed ECA to the public to review before it is issued.

It is our understanding that the Ministry has approved an Air Emissions Abatement Plan to govern the emissions from the Algoma Steel facility. We are not in a position to provide any detailed comments on the Air Emissions Abatement Plan as it has not been disclosed. An Abatement Plan is not a substitute for air emissions standards.

Algoma Steel has also applied for site-specific standards for benzene, benzo(a)pyrene, total suspended particulate matter and sulphur dioxide. We note that the requested site-specific standards are well above provincial standards and a detailed assessment of the impacts on human

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health and the environment should be completed. CELA, therefore, recommends that the Ministry not issue a new site-wide ECA before considering the site-specific standard applications. We urge the Ministry not to issue site-specific standards at the levels requested by Algoma Steel.

After the transition to electric arc furnaces, we recommend that Algoma Steel not be granted any alternative standards for air emissions. Instead, it should be required to comply with the provincial air standards established under O. Reg 419/05: Air Pollution – Local Air Quality (“O. Reg 419/05”).

1- Insufficient Disclosure of Information

i. Background on Requests for Further Disclosure of Information

Algoma Steel’s application to transition to electric arc furnaces is an environmentally significant proposal. The Environmental Registry of Ontario is the means for public participation pursuant to the *Environmental Bill of Rights, 1993*, SO 1993, c 28 (“*EBR*”).

The Registry posting includes no supporting documentation and little detail about the proposed transition to new technology for manufacturing steel. There is also no draft ECA language to review.

Upon request, three PDF documents were provided: (1) an executive summary of the Emissions Summary and Dispersion Modelling (“ESDM”) report, (2) a 1-page executive summary of an acoustic assessment report, and (3) a copy of an application checklist which marks every application document as confidential.

On October 1, 2024, in response to the limited disclosure provided, CELA requested unredacted copies of all documentation filed in support of Algoma Steel’s application to the Ministry, including unredacted copies of Algoma Steel’s Abatement Plan for Air Emissions, the ESDM report including dispersion modelling files, the Acoustic Assessment Report, the Noise Abatement Action Plan, and all application documents marked confidential in the application checklist.

The Ministry advised CELA to make *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31 (“*FIPPA*”) requests for any further documentary disclosure. In response to our *FIPPA* request for the supporting documents for ERO #019-9084, we received a letter from the Ministry extending the time period to respond to **March 18, 2025**, long past the deadline for comments.

ii. Case Law Supports Disclosure of Information

The Ministry’s reliance on the *FIPPA* appeal process makes meaningful participation rights pursuant to the *EBR* illusory. For the *EBR* to serve its intended purpose to provide a means for the public to influence and meaningfully participate in significant environmental decision-making, documentary disclosure must be provided prior to the comment deadline. CELA reiterates its request to re-post Algoma Steel’s proposal with a deadline to comment only after the requested supporting documentation has been disclosed.

The (former) Environmental Appeal Board has recognized the importance of disclosure of relevant information about proposals in the consultation process under the *EBR*, particularly as it relates to the subsequent leave to appeal process:

. . . the process followed in this case also reveals problems in the interpretation of the *EBR*. There appears to be a problem, for example, when the Ministry's Director withholds much of the relevant information about an approval process from the public because she perceives it to require confidentiality, but the Ministry's Access to Information and Privacy Co-ordinator considers most of the concealed information not to be confidential. **There is a problem when leave applicants must make their applications to this Board based on information that is incomplete and out-of-date, because they have not been provided with relevant information.**¹ [*emphasis added*]

Likewise, in PO-1688, the Information and Privacy Commissioner ("IPC") ordered disclosure of air pollution modelling relating to an application to the Ministry for a Certificate of Approval (now Environmental Compliance Approval).² The IPC stated that there is a compelling public interest in (1) the public being able to evaluate whether the Ministry conducted a full and fair assessment of the proposal before deciding whether to grant approval, (2) the public has an interest in knowing the extent to which the proposal will impact the environment, and (3) the role of the public in protecting the environment and participating in environmental decision-making is enshrined in the *EBR*:

The public has an interest, from the perspective of protecting the natural environment and protecting public health and safety, in seeing that the Ministry conducts a full and fair assessment before deciding whether or not to grant the appellant a certificate of approval to discharge air emissions into the natural environment. **This necessarily entails disclosure of the relevant data contained in the record. In addition, the public has an interest in knowing the extent to which the appellant's proposal to change its operations, if implemented, will impact the environment.**

My finding is consistent with one of the fundamental, public interest purposes of the *EBR* which, as the ECO has stated, is the protection of the environment, in part by providing mechanisms to ensure that government ministries act in the public interest when making decisions about the environment. **I agree with the ECO's submission that disclosure of relevant information is crucial if these mechanisms are to work effectively and that, therefore, disclosure of a record regarding the environmental impacts of proposed air emissions, such as the record in this case, would be in the public interest.**³ [*emphasis added*]

There are also a number of IPC decisions ordering disclosure of information similar to what has been requested in this matter. For example, the IPC in PO-4000 ordered disclosure of an

¹ *Residents Against Company Pollution Inc. v. Ontario (Ministry of Environment and Energy)*, [1996] O.E.A.B. No. 29, at para 351.

² *Ministry of the Environment* (1999), PO-1688, online: IPCO <<https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/130807/index.do>> at 14-16 [*Order PO-1688*].

³ *Order PO-1688, ibid* at 20-22.

unredacted version of a report that would shed light on potential environmental harm, *Assessment Report: Sulphur Contaminant Emissions from Ontario Petroleum Refineries*, March 2014.⁴ The IPC rejected the argument that disclosure would prejudice a third party's competitive position vis-à-vis other facilities.⁵ The Ministry could compel similar information so that disclosure would not affect provision of this type of information.⁶

The IPC also found in PO-2399 that disclosure of a report relating to a proposed quarry application was a compelling public interest:

In my view, the public interest in this case is the interest in ensuring the integrity of the various legislated planning and approval processes and public consultation processes in relation to a serious public concern – the protection of the environment and public health.⁷

However, the Ministry's requirement to seek documentary disclosure through the *FIPPA* process results in serious delays. In this case, we have received a letter from the Ministry extending the deadline to respond to the *FIPPA* request to March 18, 2025, which is four and a half months after the deadline for comments on the ERO posting of November 4, 2024.

iii. No wording for Environmental Compliance Approval Provided

The ERO posting suggests that Algoma Steel has requested an amendment to its site-wide ECA, however no draft language has been provided. There is no indication of what issues will be addressed through the new language, especially because the site-specific standard applications relating to air emissions of benzene, benzo(a)pyrene, total suspended particulate matter, and sulphur dioxide remain outstanding.

iv. Conclusion: Lack of Information Undermines Meaningful Public Participation

A key tenet of environmental justice is that local communities must have the opportunity to meaningfully understand and influence decisions that affect their environment and health. While government has the primary responsibility for achieving the goal of protection, conservation and restoration of the natural environment for the benefit of present and future generations, the “people should have means to ensure that it is achieved in an effective, timely, open and fair manner”.⁸ The *EBR* seeks to fulfil its purpose to protect the environment by providing a “means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario” and to increase accountability of the government of Ontario's

⁴ *Ministry of Environment, Conservation and Parks* (28 October 2019), PO-4000, online: IPCO <<https://decisions.ipc.on.ca/ipc-cipvp/orders/en/424256/1/document.do>> at paras 76-84 [*Order PO-4000*].

⁵ Order PO-4000, *ibid* at para 59.

⁶ Order PO-4000, *ibid* at para 82.

⁷ *Ministry of Northern Development and Mines* (9 June 2005), PO-2399, online: IPCO <https://decisions.ipc.on.ca/ipc-cipvp/orders/en/item/132293/index.do?site_preference=normal> at 21.

⁸ *Environmental Bill of Rights, 1993*, SO 1993, c 28, at preamble [*EBR*].

environmental decision-making.⁹ Without sufficient disclosure, the *EBR*'s goals cannot be achieved.

2- Scope of the Environmental Registry Posting is Too Narrow

Air emissions from Algoma Steel are a significant source of pollution and requests by Algoma Steel to the Ministry for site-specific standards for benzene, benzo(a)pyrene, total suspended particulate matter, and sulphur dioxide remain outstanding. A decision on a new site-wide ECA should not be made prior to a determination on the air emissions standards that will apply to this facility.

3- Site-Specific Standards and Air Emissions from the Facility

Algoma Steel has applied for site-specific standards for benzene, benzo(a)pyrene, total suspended particulate matter and sulphur dioxide, which are well above the provincial air standards. The Ministry regulates contaminants to air to protect communities who live close to these sources. O. Reg 419/05 aims to limit substances released into the air that can affect human health and the environment, and requires industry to operate responsibly under a set of rules that are publicly transparent.¹⁰

Site-specific standards may only be granted if the requirements in s.35 of O. Reg 419/05 are met. The Ministry has not yet posted the requests for site-specific standards for comment. In particular, there is a requirement that the difference between the provincial standard set out in Schedule 3 and the requested site-specific standards are the “minimum difference necessary” to enable the facility to comply.¹¹ The Ministry must also consider whether there is a public interest reason to deny the request for a site-specific standard.¹²

The Ministry states in its *Guide to Requesting a Site-Specific Standard* that the goal of the site-specific standard regime is “continuous improvement of emissions”.¹³ The current requests for site-specific standards are less stringent than the standards previously in place for this facility. Improvement to the calculations of emissions through updates to the air dispersion models cannot be considered a justification for lowering the stringency of the air emissions standards applied to this facility. We are concerned that Algoma Steel's requested site-specific standards, well above the provincial air standards, would allow for air emissions at levels that will not be protective of human health and the environment. Therefore, we urge the Ministry not to grant Algoma Steel's requests for site-specific standards at the requested levels.

i. Air Emissions in the Current and Interim Periods are Too High

⁹ *EBR*, *supra* note 8 at ss 2(2) and 2(3).

¹⁰ Guideline for the Implementation of Air Standards in Ontario [Guideline A-12]” (2017), online (pdf): <https://files.ontario.ca/moecc_46_giaso_aoda_en_0.pdf> at 78 [Guideline A-12].

¹¹ *Air Pollution – Local Air Quality*, O. Reg. 419/05, ss 35(1)(b)(ii) [O. Reg. 419/05].

¹² O. Reg. 419/05, *ibid* at ss 35(1)(b)(iii).

¹³ Ministry of Environment and Climate Change, *Guide To Requesting a Site-Specific Standard*, (pdf guide) version 2.0, (Ottawa: Ministry of Environment and Climate Change, February 2017) at 5.

Algoma Steel is predicting exceedances of the provincial standards for its emission in the current and transition periods for benzene, benzo(a)pyrene, total suspended particulate matter and sulphur dioxide. The ESDM report also predicts exceedances of the Air Contaminants Benchmark List levels for acenaphthene, fluorene, and pyrene. We urge the Ministry not to issue a site-wide ECA without first assessing these requests and ensuring that the health of the local community is protected. More measures need to be taken to protect the health of the local community in the current and transitions periods.

(a) Benzene

Benzene is classified as genotoxic and a human carcinogen by Health Canada and carcinogenic to humans (group 1) by the International Agency for Research on Cancer.¹⁴

The provincial standard for benzene is $0.45 \mu\text{g}/\text{m}^3$ (Annual).¹⁵

Algoma Steel's previous site-specific standard for benzene, which is expired, was $2.2 \mu\text{g}/\text{m}^3$ (Annual). It has now requested a new site-specific standard for benzene of $3.98 \mu\text{g}/\text{m}^3$ (Annual).¹⁶

Algoma Steel has modelled a maximum predicted point of impingement concentration for benzene in the current and transition periods of $5.58 \mu\text{g}/\text{m}^3$.

Algoma Steel's requested new site-specific standard for benzene is **884%** of the provincial standard.

(b) Benzo(a)pyrene

Benzo(a)pyrene is classified by Health Canada as a human carcinogen and by the International Agency for Research on Cancer as carcinogenic to humans (group 1).¹⁷

The provincial standard for benzo(a)pyrene is $0.00001 \mu\text{g}/\text{m}^3$ (Annual).¹⁸

Algoma Steel's previous site-specific standard for benzo(a)pyrene, which is expired, was $0.004 \mu\text{g}/\text{m}^3$ (Annual). It has now requested a new site-specific standard for benzo(a)pyrene of $0.0053 \mu\text{g}/\text{m}^3$ (Annual).¹⁹

Algoma Steel has modelled a maximum predicted point of impingement concentration for benzo(a)pyrene in the current and transitions periods of $0.0107 \mu\text{g}/\text{m}^3$.

¹⁴ International Agency for Research on Cancer, "Benzene" (2018) 120: *IARC Monographs* 33; Canada Department of Health, "Government Notices" (September 30, 2023) 157: 39 *Can Gaz.*

¹⁵ O. Reg. 419/05, *supra* note 11, schedule 3.

¹⁶ Algoma Steel Inc., "Emission Summary and Dispersion Modelling Report," (September 13, 2024) at 4, 8 [ESDM].

¹⁷ Health Canada, *Guidelines for Canadian Drinking Water Quality: Benzo[a]pyrene*, Catalogue No H144-35/2016E-PDF (Guideline Technical Document) (Ottawa: Health Canada, January 2016) at 1-2.

¹⁸ O. Reg. 419/05, *supra* note 11, schedule 3

¹⁹ ESDM, *supra* note 16, at 4, 16.

Algoma Steel's requested standard is **53,000%** of the provincial standard.

(c) Total Suspended Particulate Matter

The provincial standard for total suspended particulate matter is $120 \mu\text{g}/\text{m}^3$ (24 hours).

Algoma Steel's previous site-specific standard for total suspended particulate matter, which has expired, was $127 \mu\text{g}/\text{m}^3$ (24 hours). Algoma Steel has now requested a new site-specific standard of $135 \mu\text{g}/\text{m}^3$ (24 hours).

Algoma Steel has modelled a maximum predicted point of impingement concentration for total suspended particulate matter in the current and transition periods of $110 \mu\text{g}/\text{m}^3$.

Provincial Standard is Algoma Steel's requested standard is **112.5%** of the provincial standard.

(d) Sulphur Dioxide

Algoma Steel did not previously have a site-specific standard for sulphur dioxide.

O. Reg 419/05, Schedule 3 limits for SO_2 were strengthened to "better protect human health and the environment" and came into force on July 1, 2023.²⁰ However, Algoma Steel has determined it will not comply with the new standard and instead has requested site-specific standards.

The provincial standard for sulphur dioxide is $100 \mu\text{g}/\text{m}^3$ (1 hour). Algoma Steel has requested a standard of $615 \mu\text{g}/\text{m}^3$ (1 hour) and has modelled a maximum point of impingement concentration of $686 \mu\text{g}/\text{m}^3$ (1 hour). The requested site specific standard is **615%** of the provincial standard.

The provincial standard for sulphur dioxide is $10 \mu\text{g}/\text{m}^3$ (Annual). Algoma Steel has requested a site-specific standard of $34 \mu\text{g}/\text{m}^3$ and has modelled a maximum point of impingement concentration of $41.5 \mu\text{g}/\text{m}^3$ (annual). Algoma Steel's requested site specific standard is **340%** of the provincial standard.

(e) Conclusion

Air pollution is a significant environmental concern, particularly because of its health impacts on local communities. For instance, in *Analysis of Acute Myeloid Leukemia Incidence and Geographic Distribution in Canada from 1992 to 2010 Reveals Disease Clusters in Sarnia and Other Industrial US Border Cities in Ontario*, Sault Ste. Marie was identified as a city with higher than provincial levels of Acute Myeloid Leukemia.²¹ The promise of a transition to cleaner technology, while welcome, does not mean that potential adverse air pollution impacts in the current and transitions periods can be ignored.

²⁰ Environmental Registry of Ontario, #013-0903 "Regulatory Amendments Related to Air Emissions of Sulphur Dioxide and Other Items" (March 20, 2018), online: <<https://ero.ontario.ca/notice/013-0903>>.

²¹ Ghazawi, F et al., "Analysis of Acute Myeloid Leukemia Incidence and Geographic Distribution in Canada from 1992 to 2010 Reveals Disease Clusters in Sarnia and Other Industrial US Border Cities in Ontario," (2019) 125:1885-1897 *Cancer*, at 1890, 1894.

- ii. No Exemptions from the Provincial Standards After the Transition to Electric Arc Furnaces

Algoma Steel is transitioning to electric arc furnaces. CELA is concerned to note that Algoma Steel has suggested it may still require site-specific standards or technical standards after the transition. At page 3 of the ESDM Executive Summary, it states:

As the Facility expects to be in full compliance by 2029, alternate standards will no longer be required however, subject to changes in the future operation and/or source testing the Facility **may elect to remain registered to an alternate standard.**²²

CELA opposes any issuance of site-specific standards for Algoma Steel after the electric arc furnaces have been installed. This approach would be fundamentally at odds with the purpose of site-specific standards to ensure continuous improvement in emissions through the use of new technologies. CELA, therefore, recommends that the Ministry ensures that Algoma Steel complies with the provincial air quality standards for all contaminants after the transition period.

4- An Air Emissions Abatement Plan Cannot Replace an Air Pollution Standard

Algoma Steel has stated that an Abatement Plan has been prepared and accepted by the Ministry to bridge the gap until an alternative standard is available.²³

An Abatement Plan is not a substitute for complying with the provincial air emissions standard for a facility pursuant to O. Reg 419/05. There are only three available means to set limits for air emissions for a facility: (1) compliance with the provincial standards in Schedule 3 of O. Reg 419/05, (2) a site-specific standard pursuant to O. Reg 419/05, and (3) registration pursuant to a technical standard. Algoma Steel is not currently meeting air emissions standards under any of these provisions of the regulation.²⁴

Abatement plans are one of two methods the Ministry may use to bring a violating party into compliance with a regulation, the other method entailing enforcement measures. Abatement plans are “undertaken by the responsible person to correct a violation or implement preventive measures.”²⁵ The Ministry’s guidance provides that the MECP will not tolerate “unsatisfactory progress on voluntary abatement plans beyond 6 months (180 days).”²⁶ Abatement plans, however, cannot be utilized as a substitute for a facility’s air emission standards. Given that the site-specific standards have expired, the Ministry needs to clarify precisely what air standard applies for contaminants released by Algoma Steel.

5- Noise Emissions from the Facility

²² ESDM, *supra* note 16, at 3.

²³ ESDM, *supra* note 16, at 1.

²⁴ O. Reg. 419/05, *supra* note 11, at schedule 3 and s 32 and 38.

²⁵ Ministry of Environment, Conservation and Parks, “Compliance Policy Applying Abatement and Enforcement Tools” (2007), online (webpage): *Ontario* <<https://www.ontario.ca/page/compliance-policy-applying-abatement-and-enforcement-tools>> [*Compliance Policy*].

²⁶ Guideline A-12, *supra* note 10 at 78.

There has been very limited disclosure of information regarding the Acoustic Assessment Report and Noise Abatement Action Plan. The executive summary states that the facility's steady state noise sources result in predicted noise levels that exceed applicable noise criteria.²⁷ According to NPC-300, temporary construction activities are not included in any stationary source calculations.²⁸ The public cannot meaningfully comment on the noise emissions without more information.

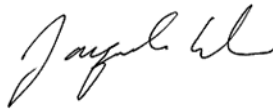
6- Conclusion

Algoma Steel is a significant source of air pollution in Sault Ste. Marie. Algoma Steel's current emissions for several known and harmful carcinogens are well above the provincial standards. This pollution poses a threat to the health and well-being of people living in Sault Ste. Marie, which disproportionately impacts lower-income communities near the facility. Environmental justice requires that decisions about significant environmental proposals prioritize input from the impacted communities and consider the potential adverse health impacts on communities that are disproportionately impacted by pollution.

The ERO posting provided no supporting documents and those provided by the Ministry upon request are insufficient for the public to meaningfully comment on and understand the proposal. CELA urges the Ministry to postpone its decision on the proposal for a new site-wide ECA until it has disclosed all supporting documents to the public and provided an opportunity for meaningful public comment.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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²⁷ Dillon Consulting, "Algoma Steel Inc.: Acoustic Assessment Report" (March 2022) (Executive Summary) at iii.

²⁸ Ministry of Environment, Conservation and Parks, "Environmental Noise Guideline – Stationary and Transportation Sources – Approval and Planning (NPC-300)" (2013), online: *Ontario* <<https://www.ontario.ca/page/environmental-noise-guideline-stationary-and-transportation-sources-approval-and-planning>>.