

August 6, 2015

Barry Duffey
Project Manager
Ministry of the Environment and Climate Change
Climate Change and Environmental Policy Division
Air Policy and Climate Change Branch
77 Wellesley Street West
Floor 10
Toronto Ontario
M7A2T5

VIA FAX: 416-314-2979

Re: Delineation of Ontario Air Zones
Response to Policy Proposal, EBR Registry Number 012-4347

Dear Mr Duffey:

We write in response to the above noted proposal posted to the *Environmental Bill of Rights* public registry.

About CELA

The Canadian Environmental Law Association (CELA) is a public interest organization 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 groups in the courts and before administrative tribunals on a wide variety of environmental and public health matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

CELA has a long history of work addressing the regulation of toxic substances and air pollution. We currently represent clients faced by air pollution problems and have for many years participated in consultations with the Ontario government on matters related to air pollution law and regulation. Our work with low income groups across Ontario has included discussions about the cumulative burden of environmental risks in their communities, particularly from air pollution. As well, we have conducted extensive research into the human health implications, particularly in children, of air pollution as well as the long term implications of air pollution on chronic disease.

The Delineation of Ontario Air Zones

We welcome continued efforts towards implementation of the Canadian Council of Ministers of the Environment (CCME) Air Quality Management System (AQMS). We note however the need for action to occur more swiftly on the AQMS, particularly the commitments made by the federal

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government to regulate industrial air polluters, now long overdue. With Ontario now joining most other provinces across Canada in delineating Air Zones, this component of the AQMS is nearing completion for the entire country. We recognize that the establishment of local air zones and regional airsheds will provide a useful tool to assist with air quality management within the AQMS. We also recognize and support the approach to delineate air zones such that there is recognition that greater air pollution pressure exists in some areas of the province due to multiple sources.

In general, we support the three air zone categories as proposed and focus our comments on proposed Zone 2, most of Southern Ontario impacted by multiple sources, and Zone 3, the Sarnia area and the city of Hamilton containing high concentrations of industrial emission sources.

The Need to Address the Cumulative Impact of Air Pollution

We accept that it is important and necessary that Zones 2 and 3 account for the multiple air pollution sources mainly located in southern Ontario, including the additional burdens faced in Sarnia and Hamilton. Implicitly, this approach could be seen to be addressing the cumulative burden of air pollution. However, **we urge the Ministry to state explicitly that this framework is intended to be used, and will be used, to address the cumulative impact of air pollution in each Zone and specifically when considering any new or expanded applications for industrial air emissions.**

As stated in the Ministry of Environment and Climate Change (MOECC) Statement of Environmental Values (SEV) adopted under the *Environmental Bill of Rights*, the MOECC adopts an ecosystem approach and “considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.”

As well, the Ontario Divisional Court has held, in *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)* [2008] that under the MOECC’s ecosystem approach, the Ontario government must consider the cumulative environmental effects of issuing an approval license for air emissions. Despite this judicial finding in 2008, Ontario’s Environmental Commissioner noted in his 2013-14 Annual Report that the MOECC regulates air emissions “on a stand-alone, facility-by-facility basis” without consideration being given to “the potential cumulative or synergistic impacts on human health or the environment in locales where emitters are clustered together.”

Despite these criticisms, and seven years since the Lafarge decision, the MOECC still does not consider cumulative effects in its regulatory framework governing air pollution.

While the decision to create air zones arose from the CCME-initiated AQMS, there is every reason for Ontario to incorporate its proposed air zones into the broader ecosystem approach contemplated in the SEV and more specifically into a framework for assessing cumulative effects during the air emission approvals process. **We therefore recommend that the MOECC specifically state its intention to use the proposed air zones within a cumulative effects approach to air pollution.** Doing so would provide greater clarity for the public and the

regulated community through a clear statement about how the various components of the province's air quality management system are intended to work together as a coherent whole.

The delineation of air zones and an explicit intention of using them to address cumulative effects of air pollution in Ontario also provide a start at addressing the even greater burden of pollution faced in certain communities. Indeed, the proposed Zone 3 addresses two such communities by including the Sarnia area and the City of Hamilton. **For greater certainty, we recommend that the air zone delineation indicate that the Zone 3 areas are also included in Zone 2 and thus cumulatively affected by the multiple air pollution stressors of both of Zones 2 and 3.**

Addressing Environmental Equity

Another aspect of the proposed air zone delineation that could be improved is to directly address the issue of environmental equity. The proposed Zone 3 offers an initial approach, once it is more clearly noted as being nested within Zone 2, and thus an area additionally impacted.

Environmental equity, also referred to as environmental justice in the United States, is defined by Canada's Centre for Environmental Health Equity (www.cehe.ca) as "the inadequate, unresponsive, and/or discriminatory policies that result in the concentration of multiple environmental risks, as well as inadequate access to environmental benefits among disadvantaged Canadian communities." Inherent in this definition is recognition of the disproportionate and cumulative risk to these communities that result from multiple environmental stressors. In the above-noted 2013-14 Annual Report, Ontario's Environmental Commissioner referred to the high levels of pollution and adverse health effects among the Aamjiwnaang First Nation near Sarnia and stressed the need for proactive efforts to address the adverse effects air emissions have on certain populations.

While the proposed Zone 3 includes the Sarnia area and would include the Aamjiwnaang First Nation, Aamjiwnaang is one of the most egregious but certainly not the only example of environmental inequities faced by disadvantaged communities in Ontario. Likewise, the proposed Zone 3 includes Hamilton where Canadian researchers have demonstrated that neighbourhoods with high incidences of single parents and low education (factors that frequently coincide with lower incomes) bear most of the city's ambient pollution exposure. In CELA's Pollution and Poverty report, published in 2008, and in extensive work since then, we have documented a significant positive correlation between elevated air pollution and poverty. We are continuing research in this area towards developing law reform proposals similar to environmental justice measures that have existed in the United States for over twenty years.


In the context of Ontario's air zone delineation work towards achieving the goals of the AQMS and related responses to the issues raised herein, we recommend that the MOECC entertain a consultation process to develop an additional air zone delineation that can account for greater air pollution burdens associated with economic disadvantage.

Delineation of such communities could very well occur in existing portions of the proposed Zones 2 and 3 and perhaps even in certain areas of the proposed Zone 1. Addressing environmental equity concerns within the context of air zone delineation, including developing a methodology for doing so, deserves careful consideration. CELA is actively researching such

options and is well placed and enthusiastic about participating in such an important addition to Ontario's air pollution management system.

All of which is respectfully submitted.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Kathleen Cooper". The signature is fluid and cursive, with a large loop at the end.

Kathleen Cooper
Senior Researcher and Paralegal