

March 3, 2021

via email

Kelly Miki
Ministry of the Environment, Conservation and Parks
Client Services and Permissions Branch
135 St Clair Ave West, 1st Floor
Toronto, ON M4V 1P5, Canada

Re: Proposed Sulphur Dioxide Emission Exemptions (ERO Number 019-1107)

Dear Ms. Miki,

As the government of Ontario prepares to implement its Made-in-Ontario environmental plan, the Canadian Environmental Law Association (“CELA”) takes this opportunity to share concerns about the Ministry’s proposal to exempt high-polluting industry from certain emissions-reduction targets.¹ As we detail below, decisions to exempt smelting and refining by regulation not only delays industry compliance with environmental standards, it actively harms Ontarians who are meant to be protected from the harmful pollutants regulated under provincial air standards.

CELA is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment. For nearly 50 years, CELA has used legal tools, undertaken ground-breaking research and conducted public interest advocacy to increase environmental protection and the safeguarding of communities. CELA works towards protecting human health and the environment by actively engaging in policy planning and seeking justice for those harmed by pollution or poor environmental decision-making.

Comments on Proposed Regulation

(a) Equal levels of protection for public health

CELA is particularly concerned that the Ministry’s recent proposal to exempt three nickel smelting/refining facilities in the Sudbury region from sulphur dioxide emissions regulations demonstrates a lack of concern for the health of Ontarians. In the Environmental Registry notice for this proposal, the Ministry notes that the government of Ontario takes sulphur dioxide emissions seriously and acknowledges the health risks associated with exposure to the chemical, such as respiratory distress, heart disease and premature death.² In fact, both the governments of Ontario and Canada have published public information outlining the health effects caused by

¹ Environmental Registry of Ontario, “Proposed regulation for the nickel and smelting and refining industry,” Registry No. 019-1107, online: <https://ero.ontario.ca/notice/019-1107>

² Government of Ontario, “Proposed Regulation for the Nickel Smelting and Refining Industry” (20 January 2021), online: *Environmental Registry of Ontario* <<https://ero.ontario.ca/notice/019-1107>>

exposure to sulphur dioxide, particularly with respect to its inhalation.³ For instance, when inhaled, sulphur dioxide is very toxic, can cause severe irritation of the nose and throat, and in high enough concentrations can cause pulmonary edema, a life-threatening condition caused by the accumulation of fluid in the lungs.⁴ These risks become of greater concern as COVID-19 has demonstrated the destructiveness of respiratory illness.

With the health risks of sulphur dioxide being so severe, we are disappointed that the government of Ontario has promised Ontarians more stringent air standards for sulphur dioxide and yet, in the same breath it promises industry exemptions from those same standards.⁵ As the Ministry notes, “air standards are used to assess the performance of regulated facilities against benchmarks that protect public health and the environment”.⁶ However, we question how air standards can properly assess these facilities and protect public health and the environment, if the highest polluting facilities are exempt? The health of Ontarians and residents of the Sudbury deserve equal protection under Ontario’s air standards and public health, and should not be secondary to industry that has lagged in achieving conformance with provincial air standards.

Furthermore, this is not the first emissions exemption the government of Ontario has granted to the smelting/refining industry in Sudbury. In 2016, Glencore’s Sudbury smelter was given allowance to exceed nickel emissions until 2026, while Vale was granted a similar exemption valid until 2021 that allows it to emit 25 times more nickel than allowed for by regulations introduced that year.⁷ As previously mentioned by Ramani Nadarajah of the Canadian Environmental Law Association in a CBC article from 2016, “these exemptions would just allow companies quite a long period of time to effectively operate without making an effort to meet the more stringent standards”.⁸ Now five years later, we are again faced with provincial plans to exempt these same industries from new air emissions regulations coming into effect in 2023.

(b) Furthering commitments in the Made-in-Ontario environment plan

Throughout the Made-in-Ontario environment plan, the Ministry celebrates its commitment to protecting Ontario’s air by reducing greenhouse gas emissions in line with Canada’s 2030 reduction targets under the Paris Agreement.⁹ The Ministry also trumpets the closing of coal plants in Ontario since 2001, an initiative developed by the previous government, which has reduced the amount of harmful pollutants including sulphur dioxide, entering our air.¹⁰ This achievement has indeed played an important role in fighting climate change and reducing greenhouse gas emissions.¹¹ However, if the current government is to continue “doing Canada’s heavy lifting on

³ Government of Canada, “Sulfur Dioxide” (2 February 2021), online: *Canadian Centre for Occupational Health and Safety* <https://www.ccohs.ca/oshanswers/chemicals/chem_profiles/sulfurdi.html>

⁴ *Ibid.*

⁵ *Supra* note 1.

⁶ Government of Ontario, “New Regulation to Help Manage Sulphur Dioxide Emissions from the Sudbury Area Nickel Smelting and Refining Industry” (2021), online: <https://prod-environmental-registry.s3.amazonaws.com/2021-01/Plain%20Language%20EN.pdf> at p.1.

⁷ <https://www.cbc.ca/news/canada/toronto/ontario-pollution-emissions-exemptions-1.3432090>

⁸ *Ibid.*

⁹ Ministry of the Environment, Conservation and Parks, “A Made-in-Ontario Environmental Plan” (2018), online (pdf): <https://prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf> at p.2 & 3.

¹⁰ *Ibid* at p.5.

¹¹ *Ibid* at p.17.

greenhouse gas emissions”¹² and flaunt previous achievements, then Ontario must not undermine such strides in improving air quality by exempting certain industries from sulphur dioxide emissions.

Sulphur dioxide also damages trees and crops, and is a major precursor to acid rain, which contributes to the acidification of lakes and streams, and accelerates building corrosion.¹³ Additionally, sulphur dioxide causes the formation of microscopic acid aerosols that contribute to climate change.¹⁴ By exempting three high emitting facilities in the Sudbury region from sulphur dioxide air emission standards, the Ministry is failing to follow the guiding principles set out in the Made-in-Ontario plan.¹⁵ Specifically, the creation of clear rules with strong enforcement meant to ensure that polluters are held accountable through tougher penalties.¹⁶

Ontario’s air and water are the life support systems of this province and its people.¹⁷ Pollution in our air and water increase healthcare costs, contribute to lost economic opportunity, and decrease the enjoyment of the outdoors.¹⁸ Accordingly, the Ministry’s promise to address climate change, hold polluters accountable, and protect the environment and public health by enforcing local air quality standards as outlined in the Made-in-Ontario environmental plan, must come to fruition. We believe that it is the duty of the Ministry and the government of Ontario to follow through on their promise to Ontarians, and not undermine public health with these proposed sulphur dioxide exemptions.

Sincerely,



Adam De Luca
JD Candidate, Bora Laskin Law School



Kerrie Blaise
Northern Services Counsel, CELA

¹² *Ibid.*

¹³ Government of Ontario, “Sulphur Dioxide (SO₂)” (2010), online: *Ministry of the Environment, Conservation and Parks* <<http://www.airqualityontario.com/science/pollutants/sulphur.php>>.

¹⁴ *Ibid.*

¹⁵ *Supra* note 7 at p.8.

¹⁶ *Ibid.*

¹⁷ *Ibid* at p.9.

¹⁸ *Ibid.*