

## MEDIA RELEASE

### CANADIANS TAKE ON U. S. COAL-FIRED PLANTS OVER SMOG AND CLIMATE CHANGE

(Windsor, Canada) Conservation and environmental organizations from across Eastern Canada today filed a *Section 115 Petition* with the U.S. EPA Administrator. This action seeks emission reductions of contaminants from the 250 U.S. Midwest coal-fired power plants that cause smog and acid rain in Canada. Emissions from these plants also have serious global consequences associated with climate change.

Windsor is a fitting location for Derek Coronado of the Citizens Environment Alliance of Southwestern Ontario, and Albert Koehl, a lawyer from Sierra Legal Defence Fund, to launch the Petition. Windsor is one of the areas hardest hit by transboundary air pollution, where the mortality rate from dirty air is twice as high as the next highest ranked city, Toronto. Ninety percent of some smog-causing pollutants in Windsor come from Detroit and other parts of the U.S. Midwest. In major cities like Toronto and Montreal up to half of the smog contribution is from US sources.

Sierra Legal filed the Petition on behalf of the coalition of groups (Friends of the Earth-Canada, Citizens Environment Alliance of Southwestern Ontario, Toronto Environmental Alliance, Centre for Environmentally Sustainable Development, STOP, Ecology Action Centre and Conservation Council of New Brunswick). The petitioners are all situated in the path of the U.S. Midwest contaminant plume.

The Section 115 Petition of the US *Clean Air Act* is the first step for litigation that can proceed if the Director of the US Environmental Protection Agency fails or refuses to take action to reduce emissions from the coal fired power plants.

“This petition is both a challenge to the EPA and an opportunity for it,” said Albert Koehl, the lawyer representing the groups. “We would rather sit down and work with the EPA to clean the air and protect our climate than face off against them in court. My clients will not stand idly by as tens of thousands of Canadian and American lives are cut short by preventable emissions of poisons from coal-fired power plants.”

The Midwest power plants emit millions of tons of SO<sub>2</sub> and NO<sub>x</sub> annually. Carried by prevailing winds into the populous Windsor to Quebec City corridor, they contribute to the smog that results in thousands of premature deaths each year and causes respiratory illnesses in children and other vulnerable groups. These emissions contribute to acid rain in Eastern Canada, particularly Atlantic Canada. Also emitted are millions of tons of CO<sub>2</sub>, which cause climate change impacts such as heat waves, drought, and violent storms.

“We cannot wait any longer for clean air,” said Derek Coronado of the Citizens Environment Alliance of Southwestern Ontario. “After the smog episodes of the last several weeks, who can blame us for demanding it? This isn't just for our benefit because millions of our American friends and neighbours breathe this dirty air first before the wind brings it our way.”

“We are at the end of North America’s tailpipe,” said David Coon of New Brunswick's Conservation Council.

Ontario Premier Dalton McGuinty was commended for closing the first of five Ontario coal fired power plants and for convening the upcoming *Share the Air Summit* between U.S. and Canadian government and industry representatives. The Coalition organizations remain anxious to see real and measurable progress in the form of cleaner air as the Summit’s outcome, and immediate attention to curbing emissions from both Canadian and US sources.



## **Contacts**

### **Don Huff, Huff Strategy & Communications 416-972-7404**

Albert Koehl, Staff Lawyer, Sierra Legal Defence Fund 416-368-7533 ext 26 Cell: 416-573-4258

Derek Coronado, Citizens Environment Alliance of Southwestern Ontario (Windsor) 519-973-1116

### **The petitioning groups are:**

Citizens Environment Alliance of Southwestern Ontario [Windsor]

Toronto Environmental Alliance [Toronto]

Friends of the Earth Canada [nationally-based, Ottawa]

Ecology Action Centre [Halifax, Nova Scotia]

Centre for Environmentally Sustainable Development

STOP [Montreal, Quebec]

Conservation Council of New Brunswick

## **Backgrounder**

S. 115 of the *Clean Air Act* (CAA) requires the EPA Administrator to act if he has reason to believe that pollutants from the U.S. are endangering the health of Canadians. S. 115 of the Act says:

Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country ... the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

There have been two previous cases involving acid rain where groups launched actions under s. 115 to force EPA action. Both cases were dismissed on technical or procedural grounds. In the most recent case filed by the government of Ontario in the late 1980's, the court concluded that the action was premature because the EPA had not yet fully determined the source of the contaminants.

The *Canadian Environmental Protection Act* provides a similar remedy to Americans for pollution emanating from Canada. In 2003, the NY Attorney General filed a complaint with NAFTA's Commission for Environmental Cooperation (CEC) alleging that Canada was failing to enforce pollution laws, including s. 166 of CEPA, against Ontario's dirty coal fired power plants resulting in pollution in downwind US states. The complaint, supported by various Canadian groups including Sierra Legal, was ultimately dismissed, partly on the basis of Ontario's promise to close its coal-fired power plants.

If the EPA Administrator fails to act or delays in acting then he can be sued under provisions of the Clean Air Act or the Administrative Procedures Act. Although the Administrator has no deadline for deciding on the petition, a failure to deal with it or a denial allows the groups to sue him in US courts at any time.

The evidence of transboundary pollutants and the resultant endangerment to Canadians is documented in numerous international reports from the United Nations, OECD, CEC, and the International Joint Commission. These reports could be used in a suit under s. 115 of the Clean Air Act to show that the EPA's refusal to act constituted arbitrary or capricious conduct or an abuse of the Administrator's discretion. On the issue of climate change, the US National Academy of Sciences, which advises Congress, and the EPA itself have confirmed the fact of climate change and its associated dangers.

According to the EPA and NAFTA's Commission for Environmental Cooperation, there are available and affordable technologies that could reduce emissions of SO<sub>2</sub> and NO<sub>x</sub> by 90% or more.