

Agreement Between the Government of the United States of America and the Government of Canada on Air Quality

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- The Government of the United States of America and the Government of Canada, hereinafter referred to as "the Parties",
- Convinced that transboundary air pollution can cause significant harm to natural resources of vital environmental, cultural and economic importance, and to human health in both countries;
- Desiring that emissions of air pollutants from sources within their countries not result in significant transboundary air pollution;
- Convinced that transboundary air pollution can effectively be reduced through cooperative or coordinated action providing for controlling emissions of air pollutants in both countries;
- Recalling the efforts they have made to control air pollution and the improved air quality that has resulted from such efforts in both countries;
- Intending to address air-related issues of a global nature, such as climate change and stratospheric ozone depletion, in other fora;

Reaffirming Principle 21 of the Stockholm Declaration, which provides that "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction";

Noting their tradition of environmental cooperation as reflected in the Boundary Waters Treaty of 1909, the Trail Smelter Arbitration of 1941, the Great Lakes Water Quality Agreement of 1978, as amended, the Memorandum of Intent Concerning Transboundary Air Pollution of 1980, the 1986 Joint Report of the Special Envoys on Acid Rain, as well as the ECE Convention on Long-Range Transboundary Air Pollution of 1979;

Convinced that a healthy environment is essential to assure the well-being of present and future generations in Canada and the United States, as well as of the global community;

Article I

Definitions

For the purposes of this Agreement:

1. "Air pollution" means the introduction by man, directly or indirectly, of substances into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment, and "air pollutants" shall be construed accordingly;
2. "Transboundary air pollution" means air pollution whose physical origin is situated wholly or in part with the area under the jurisdiction of one Party and which has adverse effects, other than effects of a global nature, in the area under the jurisdiction of the other Party;
3. "Boundary Waters Treaty" means the Treaty Relating to Boundary Waters and Questions Arising along the Boundary between Canada and the United States, signed at Washington on January 11, 1909;
4. "International Joint Commission" means the International Joint Commission established by the Boundary Waters Treaty.

Article II

Purpose

The purpose of the Parties is to establish, by this Agreement, a practical and effective instrument to address shared concerns regarding transboundary air pollution.

Article III

General Air Quality Objective

1. The general objective of the Parties is to control transboundary air pollution between the two countries.
2. To this end, the Parties shall:
 - in accordance with Article IV, establish specific objectives for emissions limitations or reductions of air pollutants and adopt the necessary programs and other measures to implement such specific objectives;
 - in accordance with Article V, undertake environmental impact assessment, prior notification, and, as appropriate, mitigation measures;
 - carry out coordinated or cooperative scientific and technical activities, and economic research, in accordance with Article VI, and exchange information, in accordance with Article VII;

- establish institutional arrangements, in accordance with Articles VIII and IX; and
- review and assess progress, consult, address issues of concern, and settle disputes, in accordance with Articles X, XI, XII and XIII.

Article IV

Specific Air Quality Objectives

1. Each Party shall establish specific objectives, which it undertakes to achieve, for emissions limitations or reductions of such air pollutants as the Parties agree to address. Such specific objectives will be set forth in annexes to this Agreement.
2. Each Party's specific objectives for emissions limitations or reductions of sulfur dioxide and nitrogen oxides, which will reduce transboundary flows of these acidic deposition precursors, are set forth in Annex 1. Specific objectives for such other air pollutants as the Parties agree to address should take into account, as appropriate, the activities undertaken pursuant to Article VI.
3. Each Party shall adopt the programs and other measures necessary to implement its specific objectives set forth in any annexes.
4. If either Party has concerns about the programs or other measures of the other Party referred to in paragraph 3, it may request consultations in accordance with Article XI.

Article V

Assessment, Notification, and Mitigation

1. Each Party shall, as appropriate and as required by its laws, regulations and policies, assess those proposed actions, activities and projects within the area under its jurisdiction that, if carried out, would be likely to cause significant transboundary air pollution, including consideration of appropriate mitigation measures.
2. Each Party shall notify the other Party concerning a proposed action, activity or project subject to assessment under paragraph 1 as early as practicable in advance of a decision concerning such action, activity or project and shall consult with the other Party at its request in accordance with Article XI.
3. In addition, each Party shall, at the request of the other Party, consult in accordance with Article XI concerning any continuing actions, activities or projects that may be causing significant transboundary air pollution, as well as concerning changes to its laws, regulation or policies that, if carried out, would be likely to affect significantly transboundary air pollution.

4. Consultations pursuant to paragraphs 2 and 3 concerning actions, activities or projects that would be likely to cause or may be causing significant transboundary air pollution shall include consideration of appropriate mitigation measures.
5. Each Party shall, as appropriate, take measures to avoid or mitigate the potential risk posed by actions, activities or projects that would be likely to cause or may be causing significant transboundary air pollution.
6. If either Party becomes aware of an air pollution problem that is of joint concern and requires an immediate response, it shall notify and consult the other Party forthwith.

Article VI

Scientific and Technical Activities and Economic Research

1. The Parties shall carry out scientific and technical activities, and economic research, as set forth in Appendix 2, in order to improve their understanding of transboundary air pollution concerns and to increase their capability to control such pollution.
2. In implementing this Article, the Parties may seek the advice of the International Joint Commission regarding the conduct of monitoring activities.

Article VII

Exchange of Information

1. The Parties agree to exchange, on a regular basis and through the Air Quality Committee established under Article VIII, information on:
 - o monitoring;
 - o emissions;
 - o technologies, measures and mechanisms for controlling emissions;
 - o atmospheric processes; and
 - o effects of air pollutants,

as provided in Appendix 2.

2. Notwithstanding any other provisions of this Agreement, the Air Quality Committee and the International Joint Commission shall not release, without the consent of the owner, any information identified to them as proprietary information under the laws of the place where such information has been acquired.

Article VIII

The Air Quality Committee

1. The Parties agree to establish and maintain a bilateral Air Quality Committee to assist in the implementation of this Agreement. The Committee shall be composed of an equal number of members representing each Party. It may be supported by subcommittees, as appropriate.
2. The Committee's responsibilities shall include:
 - reviewing progress made in the implementation of this Agreement, including its general and specific objectives;
 - preparing and submitting to the Parties a progress report within a year after entry into force of this Agreement and at least every two years thereafter;
 - referring each progress report to the International joint Commission for action in accordance with Article IX of this Agreement; and
 - releasing each progress report to the public after its submission to the Parties.
3. The Committee shall meet at least once a year and additionally at the request of either Party.

Article IX

Responsibilities of the International Joint Commission

1. The International Joint Commission is hereby given, by a Reference pursuant to Article IX of the Boundary Waters Treaty, the following responsibilities for the sole purpose of assisting the Parties in the implementation of this Agreement:
 - to invite comments, including through public hearings as appropriate, on each progress report prepared by the Air Quality Committee pursuant to Article VIII;
 - to submit to the Parties a synthesis of the views presented pursuant to subparagraph (a), as well as the record of such views if either Party so requests; and
 - to release the synthesis of views to the public after its submission to the Parties.
2. In addition, the Parties shall consider such other joint references to the International Joint Commission as may be appropriate for the effective implementation of this Agreement.

Article X

Review and Assessment

1. Following the receipt of each progress report submitted to them by the Air Quality Committee in accordance with Article VIII and the views presented to the International Joint Commission on that report in accordance with Article IX, the Parties shall consult on the contents of the progress report, including any recommendations therein.
2. The Parties shall conduct a comprehensive review and assessment of this Agreement, and its implementation, during the fifth year after its entry into force and every five years thereafter, unless otherwise agreed.
3. Following the consultations referred to in paragraph 1, as well as the review and assessment referred to in paragraph 2, the Parties shall consider such action as may be appropriate, including:
 - o the modification of this Agreement;
 - o the modification of existing policies, programs or measures.

Article XI

Consultations

The Parties shall consult, at the request of either Party, on any matter within the scope of this Agreement. Such consultations shall commence as soon as practicable, but in any event not later than thirty days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.

Article XII

Referrals

With respect to cases other than those subject to Article XIII, if, after consultations in accordance with Article XI, an issue remains concerning a proposed or continuing action, activity, or project that is causing or would be likely to cause significant transboundary air pollution, the Parties shall refer the matter to an appropriate third party in accordance with agreed terms of reference.

Article XIII

Settlement of Disputes

1. If, after consultations in accordance with Article XI, a dispute remains between the Parties over the interpretation or the implementation of this Agreement, they

shall seek to resolve such dispute by negotiations between them. Such negotiations shall commence as soon as practicable, but in any event not later than ninety days from the date of receipt of the request for negotiation, unless otherwise agreed by the Parties.

2. If a dispute is not resolved through negotiation, the Parties shall consider whether to submit that dispute to the International Joint Commission in accordance with either Article IX or Article X of the Boundary Waters Treaty. If, after such consideration, the Parties do not elect either of these options, they shall, at the request of either Party, submit the dispute to another agreed form of dispute resolution.

Article XIV

Implementation

1. The obligations undertaken under this Agreement shall be subject to the availability of appropriated funds in accordance with the respective constitutional procedures of the Parties.
2. The Parties shall seek:
 - o the appropriation of funds required to implement this Agreement;
 - o the enactment of any additional legislation that may be necessary to implement this Agreement;
 - o the cooperation of Provincial and State Governments as necessary to implement this Agreement.
3. In implementing this Agreement, the Parties shall, as appropriate, consult with Provincial or State Governments, interested organizations, and the public.

Article XV

Existing Rights and Obligations

Nothing in this Agreement shall be deemed to diminish the rights and obligations of the Parties in other international agreements between them, including those contained in the Boundary Waters Treaty and the Great Lakes Water Quality Agreement of 1978, as amended.

Article XVI

Entry into Force, Amendment, Termination

1. This Agreement, including Appendices 1 and 2, shall enter into force upon signature by the Parties.
2. This Agreement may be amended at any time by agreement of the Parties in writing.
3. Either Party may terminate this Agreement upon one year's written notice to the other Party, in which case any appendices will also terminate.
4. Appendices constitute an integral part of this Agreement, except that, if an annex so provides, either Party may terminate such appendix in accordance with the terms of that appendix.