

MAC

**The Mining Association of Canada
L'Association minière du Canada**

June 1, 1994

MEMORANDUM TO:

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**N.W.T. CHAMBER
OF MINES**

JUN 1 0 1994

RECEIVED

FROM:

Raji Menon

SUBJECT:

Second SO2 Protocol - UN ECE

Please see attached.

RM



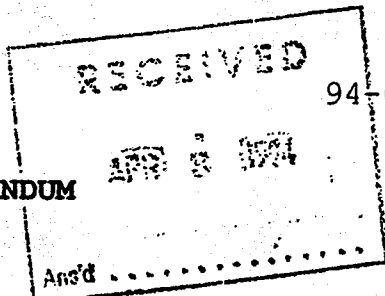
Environment
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SC2



CANADA'S GREEN PLAN
LE PLAN VERD DE CANADA



MEMORANDUM

94-03-28

To: Members, National Air Issues Coordinating Committee
Interested Federal Government Departments
Industry and ENGO Contacts
(See Lists Attached)

From: Associate Director
Air Issues Branch
Environmental Protection Service

SECOND SO2 PROTOCOL - UN ECE

The Second SO2 Protocol under the UN Economic Commission for Europe Convention on Long Range Transboundary Air Pollution was finalized in Geneva at the 12th Session of the ECE Working Group on Strategies (WGS) held February 28 - March 04, 1994.

The final text of the Protocol is attached for your information.

The only remaining issue for Canada is whether or not a paragraph in footnote 1 to Annex V dealing with high sulphur fuels is consistent with GATT. Canada is exempt from Annex V, but there is still concern that we would sign an international agreement containing a potentially GATT inconsistent provision. Although Canada succeeded in having the text of the paragraph changed to the current more flexible language, the GATT consistency question is still under consideration by the federal government.

Signing of the Protocol is scheduled to take place in Oslo on June 13-14, 1994.

D. W. Draper

cc F. Guimont
D. Russell
B. Lukaszewicz
EPS Regional Air Managers

Canada

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February 18, 1994

MEMBERS - NATIONAL AIR ISSUES COORDINATING COMMITTEE

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February 28, 1994

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FOR
SECOND SO₂ PROTOCOL**

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February 2, 1994

INDUSTRIAL ASSOCIATION AND ENGO CONTACTS

SECOND SO₂ PROTOCOL

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PROTOCOL

to the

**1979 Convention on Long-Range
Transboundary Air Pollution**

on

FURTHER REDUCTION

of

SULPHUR EMISSIONS

/

PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE
TRANSBOUNDARY AIR POLLUTION

on

FURTHER REDUCTION OF SULPHUR EMISSIONS

Preamble

The Parties,

Determined to implement the Convention on Long-range Transboundary Air Pollution,

Concerned that emissions of sulphur and other air pollutants continue to be transported across international boundaries and, in exposed parts of Europe and North America, are causing widespread damage to natural resources of vital environmental and economic importance, such as forests, soils and waters, and to materials, including historic monuments, and, under certain circumstances, have harmful effects on human health,

Resolved to take precautionary measures to anticipate, prevent or minimize emissions of air pollutants and mitigate their adverse effects,

Convinced that where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that such precautionary measures to deal with emissions of air pollutants should be cost-effective,

Mindful that measures to control emissions of sulphur and other air pollutants would also contribute to the protection of the sensitive Arctic environment,

Considering that the predominant sources of air pollution contributing to the acidification of the environment are the combustion of fossil fuels for energy production, and the main technological processes in various industrial sectors, as well as transport, which lead to emissions of sulphur, nitrogen oxides, and other pollutants,

Conscious of the need for a cost-effective regional approach to combatting air pollution that takes account of the variations in effects and abatement costs between countries,

Desiring to take further and more effective action to control and reduce sulphur emissions,

Cognizant that any sulphur control policy, however cost-effective it may be at the regional level, will result in a relatively heavy economic burden on countries with economies that are in transition to a market economy,

Bearing in mind that measures taken to reduce sulphur emissions should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international competition and trade,

Taking into consideration existing scientific and technical data on emissions, atmospheric processes and effects on the environment of sulphur oxides, as well as on abatement costs,

Aware that, in addition to emissions of sulphur, emissions of nitrogen oxides and of ammonia are also causing acidification of the environment,

Noting that under the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992 there is agreement to establish national policies and take corresponding measures to combat climate change, which can be expected to lead to reductions of sulphur emissions,

Affirming the need to ensure environmentally sound and sustainable development,

Recognizing the need to continue scientific and technical cooperation to elaborate further the approach based on critical loads and critical levels including efforts to assess several air pollutants and various effects on the environment, materials and human health,

Underlining that scientific and technical knowledge is developing and that it will be necessary to take such developments into account when reviewing the adequacy of the obligations entered into under this Protocol and deciding on further action,

Acknowledging the Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent adopted in Helsinki on 8 July 1985 and the measures already taken by many countries which have had the effect of reducing sulphur emissions,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of the present Protocol,

1. "Convention" means the Convention on Long-range Transboundary Air Pollution, adopted in Geneva on 13 November 1979;
2. "EMEP" means the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe;
3. "Executive Body" means the Executive Body for the Convention constituted under article 10, paragraph 1, of the Convention;
4. "Commission" means the United Nations Economic Commission for Europe;
5. "Parties" means, unless the context otherwise requires, the Parties to the present Protocol;
6. "Geographical scope of EMEP" means the area defined in article 1, paragraph 4, of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), adopted in Geneva on 28 September 1984;
7. "SOMA" means a Sulphur ^O ^M ^A oxides management area designated in annex III under the conditions laid down in article 2, paragraph 3;
8. "Critical loads" means a quantitative estimate of an exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur, according to present knowledge;
9. "Critical levels" means the concentration of pollutants in the atmosphere above which direct adverse effects on receptors, such as human beings, plants, ecosystems or materials, may occur, according to present knowledge;
10. "Critical sulphur deposition" means a quantitative estimate of the exposure to oxidized sulphur compounds, taking into account the effects of base cation uptake and base cation deposition, below which significant harmful effects on specified sensitive elements of the environment do not occur, according to present knowledge;
11. "Emission" means the discharge of substances into the atmosphere;
12. "Sulphur emissions" means all emissions of sulphur compounds expressed as kilotonnes of sulphur dioxide (kt SO₂) to the atmosphere originating from anthropogenic sources excluding from ships in international traffic outside territorial waters;

13. "Fuel" means any solid, liquid or gaseous combustible material with the exception of domestic refuse and toxic or dangerous waste;
14. "Stationary combustion source" means any technical apparatus, or group of technical apparatus co-located on a common site and which is or could be discharging waste gases through a common stack, in which fuels are oxidized in order to use the heat generated;
15. "Major new stationary combustion source" means any stationary combustion source the construction or substantial modification of which is authorized after 31 December 1995 and the thermal input of which, when operating at rated capacity, is at least 50 MW_{th}. It is a matter for the competent national authorities to decide whether a modification is substantial or not, taking into account such factors as the environmental benefits of the modification;
16. "Major existing stationary combustion source" means any existing stationary combustion source the thermal input of which, when operating at rated capacity, is at least 50 MW_{th};
17. "Gas oil" means any petroleum product within HS 2710, ^{or} any petroleum product which, by reason of its distillation limits, falls within the category of middle distillates intended for use as fuel and of which at least 85% by volume, including distillation losses, distils at 350° C;
18. "Emission limit value" means the permissible concentration of sulphur compounds expressed as sulphur dioxide in the waste gases from a stationary combustion source expressed in terms of mass per volume of the waste gases expressed in mg SO₂/Nm³, assuming an oxygen content by volume in the waste gas of 3% in the case of liquid and gaseous fuels and 6% in the case of solid fuels;
19. "Emission limitation" means the permissible total quantity of sulphur compounds expressed as sulphur dioxide discharged from a combustion source, or group of combustion sources located either on a common site or within a defined geographic area, expressed in kilotonnes per year;
20. "Desulphurization rate" means the ratio of the quantity of sulphur which is separated at the combustion source site over a given period to the quantity of sulphur contained in the fuel which is introduced into the combustion source facilities and which is used over the same period;
21. "Sulphur budget" means a matrix of calculated contributions to the deposition of oxidized sulphur in receiving areas, originating from the emissions from specified areas.

BASIC OBLIGATIONS

1. The Parties shall control and reduce their sulphur emissions in order to protect human health and the environment from adverse effects, in particular acidifying effects, and to ensure, as far as possible, without entailing excessive costs, that depositions of oxidized sulphur compounds in the long term do not exceed critical loads for sulphur, given, in annex I, as critical sulphur depositions, in accordance with present scientific knowledge.
2. As a first step, the Parties shall, as a minimum, reduce and maintain their annual sulphur emissions in accordance with the timing and levels specified in annex II.
3. In addition, any Party:
 - (a) Whose total land area is greater than 2,000,000 square kilometres;
 - (b) Which has committed itself under paragraph 2 to a national sulphur emission ceiling no greater than the lesser of its 1990 emissions or its obligation in the 1985 Helsinki Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent as indicated in annex II;
 - (c) Whose annual sulphur emissions that contribute to acidification in areas under the jurisdiction of one or more other Parties originate only from within areas under its jurisdiction that are listed as SOMAs in annex III, and has presented documentation to this effect; and
 - (d) Which has specified upon signature of, or accession to, the present Protocol its intention to act in accordance with this paragraph,shall, as a minimum, reduce and maintain its annual sulphur emissions in the area so listed in accordance with the timing and levels specified in annex II.
4. Furthermore, the Parties shall make use of the most effective measures for the reduction of sulphur emissions, appropriate in their particular circumstances, for new and existing sources, which include, inter alia:
 - Measures to increase energy efficiency;
 - Measures to increase the use of renewable energy;
 - Measures to reduce the sulphur content of particular fuels and to encourage the use of fuel with a low sulphur content, including the combined use of high-sulphur with low-sulphur or sulphur-free fuel;

- Measures to apply best available control technologies not entailing excessive cost,

using the guidance in annex IV.

5. Each Party, except those Parties subject to the United States/Canada Air Quality Agreement of 1991, shall as a minimum:

(a) Apply emission limit values at least as stringent as those specified in annex V to all major new stationary combustion sources;

(b) No later than 1 July 2004 apply, as far as possible without entailing excessive costs, emission limit values at least as stringent as those specified in annex V to those major existing stationary combustion sources above 500 MW_{th} taking into account the remaining life-time of a plant, calculated from the date of entry into force of the present Protocol, or apply equivalent emission limitations or other appropriate provisions, provided that these achieve the sulphur emission ceilings specified in annex II and, subsequently, further approach the critical loads as given by annex I; and no later than 1 July 2004 apply emission limit values or emission limitations to those major existing stationary combustion sources between 50 and 500 MW_{th} using annex V as guidance;

(c) No later than two years after the date of entry into force of the present Protocol apply national standards for the sulphur content of gas oil, at least as stringent as those specified in annex V. In cases where the supply of gas oil cannot otherwise be ensured, a State may extend the time period given in this subparagraph to a period of up to ten years. In this case it shall specify, in a declaration to be deposited together with the instrument of ratification, acceptance, approval or accession, its intention to extend the time period.

6. The Parties may, in addition, apply economic instruments to encourage the adoption of cost-effective approaches to the reduction of sulphur emissions.

7. The Parties to this Protocol may, at a session of the Executive Body, in accordance with rules and conditions which the Executive Body shall elaborate and adopt, decide whether two or more Parties may jointly implement the obligations set out in annex II. These rules and conditions shall ensure the fulfilment of the obligations set out in paragraph 2 of this article and also promote the achievement of the environmental objectives set out in paragraph 1 of this article.

8. The Parties shall, subject to the outcome of the first review under article 8 and no later than one year after the completion of that review, commence negotiations on further obligations to reduce emissions.

Article 3

EXCHANGE OF TECHNOLOGY

1. The Parties shall, consistent with their national laws, regulations and practices, facilitate the exchange of technologies and techniques, including those that increase energy efficiency, the use of renewable energy and the

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processing of low-sulphur fuels, to reduce emissions of sulphur, particularly through the promotion of:

- (a) The commercial exchange of available technology;
- (b) Direct industrial contacts and cooperation, including joint ventures;
- (c) The exchange of information and experience;
- (d) The provision of technical assistance.

2. In promoting the activities specified in paragraph 1 of this article, the Parties shall create favourable conditions by facilitating contacts and cooperation among appropriate organizations and individuals in the private and public sectors that are capable of providing technology, design and engineering services, equipment or finance.

3. The Parties shall, no later than six months after the date of entry into force of the present Protocol, commence consideration of procedures to create more favourable conditions for the exchange of technology to reduce sulphur emissions.

Article 4

NATIONAL STRATEGIES, POLICIES, PROGRAMMES, MEASURES AND INFORMATION

1. Each Party shall, in order to implement its obligations under article 2:

- (a) No later than six months after the present Protocol enters into force for it, adopt national strategies, policies and programmes; and
- (b) Take and apply national measures,

to control and reduce its sulphur emissions.

2. Each Party shall collect and maintain information on:

- (a) Actual levels of sulphur emissions, and of ambient concentrations and depositions of oxidized sulphur and other acidifying compounds, taking into account, for those Parties within the geographical scope of EMEP, the work plan of EMEP; and
- (b) The effects of depositions of oxidized sulphur and other acidifying compounds.

Article 5

REPORTING

1. Each Party shall report, through the Executive Secretary of the Commission, to the Executive Body, on a periodic basis as determined by the Executive Body, information on:

- (a) The implementation of national strategies, policies, programmes and measures referred to in article 4, paragraph 1;

(b) The levels of national annual sulphur emissions in accordance with guidelines adopted by the Executive Body, containing emission data for all relevant source categories;

(c) The implementation of other obligations that it has entered into under the present Protocol;

in conformity with a decision regarding format and content to be adopted by the Parties at a session of the Executive Body. The terms of this decision shall be reviewed as necessary to identify any additional elements regarding format and/or content of the information that are to be included in the reports.

2. Each Party within the geographical scope of EMEP shall report, through the Executive Secretary of the Commission, to EMEP, on a periodic basis to be determined by the Steering Body of EMEP and approved by the Parties at a session of the Executive Body, information on the levels of sulphur emissions with temporal and spatial resolution as specified by the Steering Body of EMEP.

3. In good time before each annual session of the Executive Body, EMEP shall provide information on:

- (a) Ambient concentrations and deposition of oxidized sulphur compounds; and
- (b) Calculations of sulphur budgets.

Parties in areas outside the geographical scope of EMEP shall make available similar information if requested by the Executive Body.

4. The Executive Body shall, in accordance with article 10, paragraph 2 (b), of the Convention, arrange for the preparation of information on the effects of depositions of oxidized sulphur and other acidifying compounds.

5. The Parties at sessions of the Executive Body shall arrange for the preparation, at regular intervals, of revised information on calculated and internationally ~~and~~ optimized allocations of emission reductions for the States within the geographical scope of EMEP, with integrated assessment models, with a view to reducing further, for the purposes of paragraph 1 of article 2, the difference between actual depositions of oxidized sulphur compounds and critical load values. x

Article 6

RESEARCH, DEVELOPMENT AND MONITORING

The Parties shall encourage research, development, monitoring and cooperation related to:

(a) The international harmonization of methods for the establishment of critical loads and critical levels and the elaboration of procedures for such harmonization;

(b) The improvement of monitoring techniques and systems and of the modelling of transport, concentrations and deposition of sulphur compounds;

(c) Strategies for the further reduction of sulphur emissions based on critical loads and critical levels as well as on technical developments, and the improvement of integrated assessment modelling to calculate internationally optimized allocations of emission reductions taking into account an equitable distribution of abatement costs;

(d) The understanding of the wider effects of sulphur emissions on human health, the environment, in particular acidification, and materials, including historic and cultural monuments, taking into account the relationship between sulphur oxides, nitrogen oxides, ammonia, volatile organic compounds and tropospheric ozone;

(e) Emission abatement technologies, and technologies and techniques to enhance energy efficiency, energy conservation and the use of renewable energy;

(f) The economic evaluation of benefits for the environment and human health resulting from the reductions of sulphur emissions.

Article 7

COMPLIANCE

1. An Implementation Committee is hereby established to review the implementation of the present Protocol and compliance by the Parties with their obligations. It shall report to the Parties at sessions of the Executive Body and may make such recommendations to them as it considers appropriate.

2. Upon consideration of a report, and any recommendations, of the Implementation Committee, the Parties, taking into account the circumstances of a matter and in accordance with Convention practice, may decide upon and call for action to bring about full compliance with the Protocol, including measures to assist a Party's compliance with the Protocol, and to further the objectives of the present Protocol.

3. The Parties shall, at the first session of the Executive Body after the entry into force of the present Protocol, adopt a decision that sets out the structure and functions of the Implementation Committee as well as procedures for its review of compliance.

4. The application of the compliance procedure shall be without prejudice to the provisions of article 9 of the present Protocol.

Article 8

REVIEWS BY THE PARTIES AT SESSIONS OF THE EXECUTIVE BODY

1. The Parties shall, at sessions of the Executive Body, pursuant to article 10, paragraph 2 (a), of the Convention, review the information supplied by the Parties and EMEP, the data on the effects of depositions of sulphur and other acidifying compounds and the reports of the Implementation Committee referred to in article 7, paragraph 1, of the present Protocol.

2. (a) The Parties shall, at sessions of the Executive Body, keep under review the obligations of the present Protocol including:

(i) Their obligations in relation to their calculated and internationally optimized allocations of emission reductions referred to in article 5, paragraph 5; and

(ii) The adequacy of the obligations and the progress made towards the achievement of the objectives of the present Protocol;

(b) Reviews shall take into account the best available scientific information on acidification, including assessments of critical loads, technological developments, changing economic conditions and the fulfilment of the obligations on emission levels;

(c) In the context of such reviews, any Party whose obligations on sulphur emission ceilings under annex II hereto do not conform to the calculated and internationally optimized allocations of emission reductions for that Party, required to reduce the difference between depositions of sulphur in 1990 and critical sulphur depositions within the geographical scope of EMEP by at least 60%, shall make every effort to undertake revised obligations;

(d) The procedures, methods and timing for such reviews shall be specified by the Parties at a session of the Executive Body. The first such review shall be completed in 1997.

Article 9

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the present Protocol, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. The parties to the dispute shall inform the Executive Body of their dispute.

2. When ratifying, accepting, approving or acceding to the present Protocol, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Protocol, it recognizes one or both of the following means of dispute settlement as compulsory ipso facto and without agreement, in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with procedures to be adopted by the Parties at a session of the Executive Body as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute agree otherwise.

5. Except in a case where the ^pParties to a dispute have accepted the same means of dispute settlement under paragraph 2, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. For the purpose of paragraph 5, a conciliation commission shall be created. The commission shall be composed of an equal number of members appointed by each party concerned or, where parties in conciliation share the same interest, by the group sharing that interest, and a chairman chosen jointly by the members so appointed. The commission shall render a recommendatory award, which the parties shall consider in good faith.

Article 10

ANNEXES

The annexes to the present Protocol shall form an integral part of the Protocol. Annexes I and IV are recommendatory in character.

Article 11

AMENDMENTS AND ADJUSTMENTS

1. Any Party may propose amendments to the present Protocol. Any Party to the Convention may propose an adjustment to annex II to the present Protocol to add to it its name, together with emission levels, sulphur emission ceilings and percentage emission reductions.
2. Such proposed amendments and adjustments shall be submitted in writing to the Executive Secretary of the Commission, who shall communicate them to all Parties. The Parties shall discuss the proposed amendments and adjustments at the next session of the Executive Body, provided that those proposals have been circulated by the Executive Secretary to the Parties at least 90 days in advance.
3. Amendments to the present Protocol and to its annexes II, III and V shall be adopted by consensus of the Parties present at a session of the Executive Body, and shall enter into force for the Parties which have accepted them on the ninetieth day after the date on which two thirds of the Parties have deposited their instruments of acceptance thereof. Amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party has deposited its instrument of acceptance thereof.
4. Amendments to the annexes to the present Protocol, other than to the annexes referred to in paragraph 3 above, shall be adopted by consensus of the Parties present at a session of the Executive Body. On the expiry of ninety days from the date of its communication by the Executive Secretary of the Commission, an amendment to any such annex shall become effective for those Parties which have not submitted a notification in accordance with the provisions of paragraph 5 of this article, provided that at least sixteen Parties have not submitted such a notification.
5. Any Party that is unable to approve an amendment to an annex, other than to an annex referred to in paragraph 3 above, shall so notify the Depositary in writing within ninety days from the date of the communication of the adoption. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for its previous notification and the amendment to such an annex shall thereupon become effective for that Party.
6. Adjustments to annex II shall be adopted by consensus of the Parties present at a session of the Executive Body and shall become effective for all Parties to the present Protocol on the ninetieth day following the date on which the Executive Secretary of the Commission notifies those Parties in writing of the adoption of the adjustment.