

US Court Decision on Transboundary Air Pollution

Date:	December 6, 2007
To:	Board of Health
From:	Medical Officer of Health
Wards:	All
Reference Number:	

SUMMARY

In 2000, City Council authorized the City Solicitor to seek status as a *Friend of the Court (Amicus Curiae)* in a civil lawsuit against American Electric Power (AEP). The City submitted information on the impact of transboundary air pollution from U.S. coal-fired electric plants on Toronto's population. Up to fifty percent of the air pollution that affects Toronto, especially during smog episodes, comes from the United States.

In 2001, the American court granted *Friend of the Court* status to Toronto. The City Solicitor and the Medical Officer of Health prepared a legal brief in support of the legal arguments advanced by the plaintiffs.

A settlement was announced in the lawsuit on October 9, 2007. The settlement requires AEP to reduce air emissions from its sixteen coal-fired power plants. These reductions will translate into better air quality in Toronto and will bring about improved health for people living here. If related lawsuits which are ongoing in the United States have a similar positive outcome, the health benefits to Toronto will increase as transboundary air pollution decreases. The State Attorneys General of the eight states, as well as the twelve NGOs that participated in the litigation, should be recognized for their leadership in addressing air pollution from coal-fired power plants.

RECOMMENDATIONS

The Medical Officer of Health recommends that the Board of Health:

1. recommend that City Council commend the United States Environmental Protection Agency (U.S. EPA) and the State Attorneys General of Connecticut, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, for their commitment to reducing air pollution through U.S. Power plant litigation, and in particular, their intervention in the case against American Electric Power Corporation, Inc., the result of which will lead to improvements in Toronto's air quality, diminish the frequency and severity of smog episodes, and reduce the health impact of air pollution in Toronto; and
2. recommend that City Council thank the following organizations for their championship of the case against American Electric Power Corporation, Inc.: Ohio Citizen Action, Citizens Action Coalition of Indiana, Hoosier Environmental Council, Valley Watch, Ohio Valley Environmental Coalition, West Virginia Environmental Council, Clean Air Council, Izaak Walton League of America, United States Public Interest Research Group, National Wildlife Federation, Indiana Wildlife Federation, League of Ohio Sportsmen, Sierra Club and Natural Resources Defence Council.

Financial Impact

There are no financial implications arising from the adoption of this report.

DECISION HISTORY

In 1999, the U.S. Government with several States and NGOs filed a lawsuit in U.S. courts which could affect the amount of transboundary air pollution reaching Toronto. In 2000, City Council authorized the City Solicitor to seek status as a *Friend of the Court (Amicus Curiae)* in the U.S. action against the American Electric Power Services Corporation, Inc. (AEP) (See <http://www.toronto.ca/legdocs/2000/minutes/council/cc000201.pdf>). In 2001, the American court granted this status. The City Solicitor and the Medical Officer of Health prepared a legal brief in support of the American government and citizen parties. After the discovery process was complete and as preparations for trial were starting, the brief was submitted to the court in 2005. A settlement was announced in the lawsuit on October 9, 2007.

This report summarizes the outcome of the legal case against AEP.

ISSUE BACKGROUND

Toronto Public Health estimates that 1,700 premature deaths and 6,000 hospitalizations occur in Toronto annually as a result of air pollution. The Ontario Ministry of the Environment estimates that up to fifty percent of the air pollution that affects Toronto during smog episodes comes from the United States. American coal-fired power plants

are a significant source of this transboundary pollution. According to a 2004 report by the Commission for Environmental Cooperation, of all U.S. sectors, electric utilities release the largest amounts of chemicals into the air, including 69% of all sulphur dioxide (SO₂) emissions and 22% of nitrogen oxide (NO_x) emissions.

In the United States, emissions from large facilities such as power plants are regulated under the *Clean Air Act* (CAA). When the *Clean Air Act* came into effect, power-generating facilities built before 1977 were “grandfathered”, such that the new emissions limits did not apply to them. However, the CAA stated that if grandfathered facilities subsequently underwent major modifications (excluding routine maintenance, repair, and replacement), they were required to undergo permitting and review, and to implement state-of-the-art pollution controls.

In 1999, the United States Environmental Protection Agency (U.S. EPA) filed a lawsuit against American Electric Power Corporation, Inc. (AEP). Eight U.S. States and twelve NGOs joined the suit, which claimed that the company violated the requirements of the *Clean Air Act*. The suit claimed that AEP made “major modifications” to nine of its plants without adding best available emission control technologies. AEP is one of the largest utilities in the United States, and the highest emitter of SO₂ and NO_x of all American electric utilities.

The City of Toronto participated in the lawsuit as a “Friend of the Court” (*Amicus Curiae*), submitting information to the court about the health impact that transboundary air pollution from U.S. coal-fired electric plants has on Toronto’s population and legal arguments in support of the plaintiffs. This report was prepared in consultation with staff from City Legal.

COMMENTS

In 2005, the City Solicitor, in collaboration with Toronto Public Health, filed a legal brief with the U.S. courts in support of a civil lawsuit against American Electric Power Corporation for violation of the U.S. Clean Air Act. By participating in the lawsuit as a *Friend of the Court*, the City of Toronto formally registered its concern in the American courts about the health impacts associated with old, highly polluting power plants still operating in the United States.

On October 9, 2007 the U.S. EPA, eight States, twelve NGOs, and the defendant AEP reached a settlement in the lawsuit. The settlement includes emissions reductions of 69% for NO_x and 79% for SO₂ over 10 years, \$4.6 billion-worth of upgrades to AEP’s equipment, \$15 million in environmental penalties, and \$60 million in environmental cleanup and mitigation costs.

According to the U.S. EPA, the total emissions reductions of NO_x and SO₂ at the 16 AEP power plants will reach 813,000 tons annually. This is the largest pollution reduction ever obtained from the owner or operator of a Clean Air Act stationary source. Under the terms of the settlement, AEP will reduce NO_x emissions from 231,000 tons per year to

72,000 tons per year by 2016, and will reduce SO₂ emissions from 828,000 tons per year in 2006 to 174,000 tonnes per year by 2018 (See Figures 1 and 2).

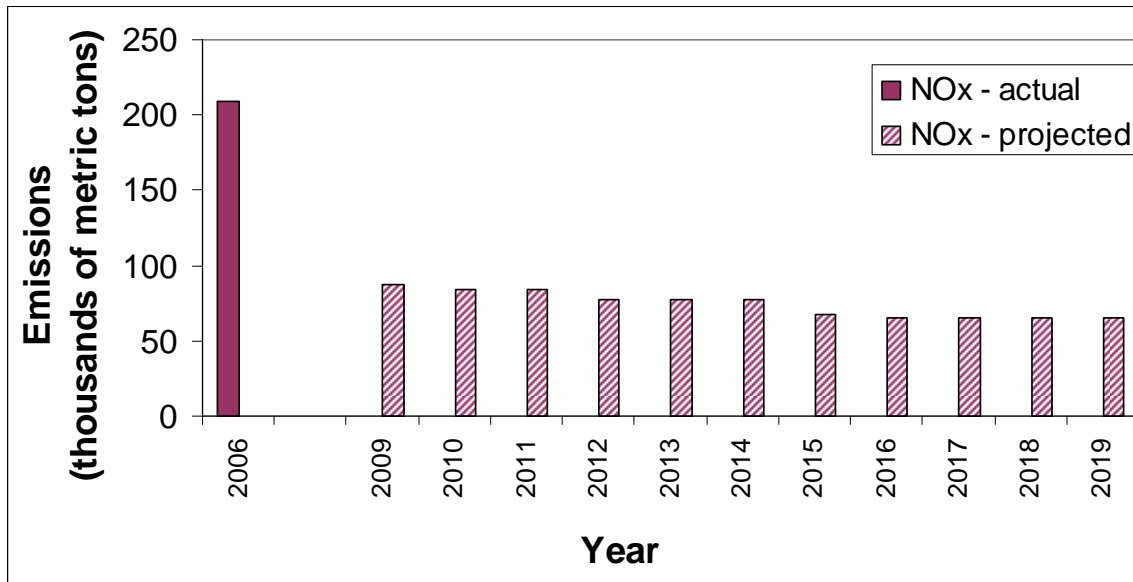


Figure 1: Actual emissions in 2006 and projected emissions for 2009-2019. Projected emissions are based on the annual tonnage limitations placed on AEP's sixteen coal-fired power plants by the settlement.

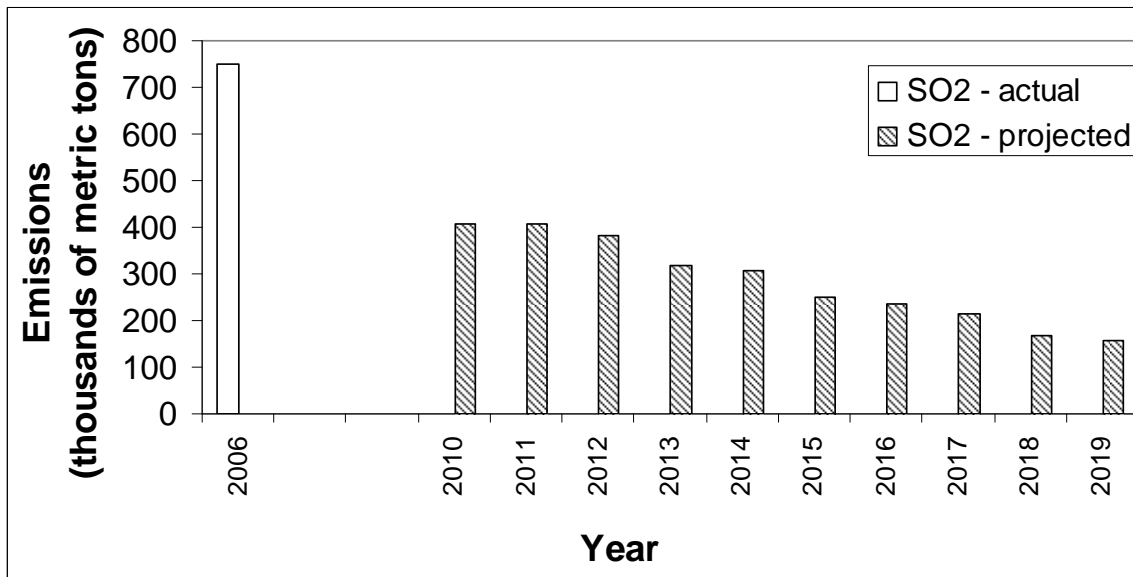


Figure 2: Actual emissions in 2006 and projected emissions for 2010-2019. Projected emissions are based on the annual tonnage limitations placed on AEP's sixteen coal-fired power plants by the settlement.

Similar suits are pending against other high-emitting electric utilities in the United States. In 2004, the U.S. EPA estimated that if all ongoing litigations were settled, SO₂ and NO_x emissions from electric utilities would be reduced by 1,750,000 tons for SO₂ and 629,000 tons for NO_x. This is equivalent to a 17% reduction in emissions of each pollutant from the electrical sector as a whole.

The benefits of the planned reductions in emissions will be substantial. The U.S. EPA estimated that the planned emissions reductions from the AEP settlement will save \$32 billion per year for Americans in avoided health-related costs associated with cardiovascular and respiratory illnesses. The reductions will also benefit Ontarians. In 2005, the Ontario Ministry of the Environment (OMOE) estimated that U.S. transboundary pollution contributes to 2750 premature deaths (about 55% of the Ontario total for premature deaths from air pollution) and \$5 billion in environmental damages annually in the province.

The impact of emissions from American electric utilities has not been quantified for the City of Toronto. However, the nine AEP plants identified in the lawsuit are all upwind of Toronto, and share an air shed with the city. The settlement stipulates significant emissions reductions, which should lead to improvements in Toronto's air quality, diminish the frequency and severity of smog episodes, and reduce the health impact of air pollution in Toronto.

The City of Toronto supported a concerted effort by the U.S. EPA, eight states and twelve NGOs in the litigation against AEP. The collaboration among these agencies and their submissions to the court likely influenced the outcome of the case – including the large emissions reductions and payments required by the settlement. They should be commended for their accomplishments and participation in the lawsuit.

CONTACT

Stephanie Gower
Research Consultant
Environmental Protection Office
Toronto Public Health
Tel: 416-338-8101
Fax: 416-392-7418
Email: sgower@toronto.ca

Graham Rempe
Solicitor
Legal Litigation
Legal Services
Tel: 416-392-2887
Fax: 416-392-3848
Email: grempe@toronto.ca

Monica Campbell
Manager
Environmental Protection Office
Toronto Public Health
Tel: 416-338-8091
Fax: 416-392-7418
Email: mcampbe2@toronto.ca

Rosana Pellizzari
Director, Planning & Policy and
Associate Medical Officer of Health
Toronto Public Health
Tel: 416-392-7463
Fax: 416-392-0713
Email: rpelliz@toronto.ca

SIGNATURE

Dr. David McKeown
Medical Officer of Health