

July 18, 2014

Mae Lee
Toronto Works and Emergency Services
Public Consultation Unit - Metro Hall
55 John St. 19th Floor
PO Box 15266 Stn BRN B
Toronto ON, M7Y 2W1
p2program@toronto.ca

Via Email

Dear Ms. Lee:

Re: Proposed changes to the Pollution Prevention (P2) Program (Sewers By-law, Section 5, Municipal Code Chapter 681) – Creation of a Subject Pollutant Threshold Reporting List

The following constitute the submissions of the Canadian Environmental Law Association (CELA) regarding the above matter.

Background

CELA is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate environmental law reforms. One of CELA's objectives includes advocating for comprehensive laws, standards and policies that will protect and enhance public health and environmental quality in Ontario and throughout Canada.

Summary of Recommendations

1. The City of Toronto should not proceed with the proposed creation of a subject pollutant threshold reporting list at this time without providing additional rationale and public consultation on why such thresholds are required or which pollutants would be appropriate to target thresholds. Establishing thresholds may weaken/undermine the City's program to promote pollution prevention and does very little to advance protection of the Great Lakes basin from toxic chemicals or the goals under the GLWQA.
 - a. No thresholds should be considered for pollutants listed as "toxic substances" under Schedule 1 of CEPA or pollutants addressed under the Canada-Ontario Agreement.
 - b. Pollutants that exhibit potential for endocrine disruption should not be subject to thresholds.
 - c. Gaining a better knowledge of the cumulative impacts from pollutants covered through the By-laws should be advanced in the review of the Sewers By-law. The

Canadian Environmental Law Association

T 416 960-2284 • **F** 416 960-9392 • 130 Spadina Avenue, Suite 301 Toronto, Ontario M5V 2L4 • cela.ca

use of thresholds will underestimate pollutant releases to receiving waters and does not advance protection of water quality.

2. The City of Toronto should take steps to expand the list of pollutants subject to pollution prevention plan requirements under Chapter 681 – Sewers By-law.
3. If the City adopts the proposed subject pollutant threshold reporting list, it is imperative that the City not adopt the thresholds applied in other inventories including the NPRI or TRA, which are too high and would only capture the largest of facilities. Furthermore, thresholds should only be considered for those pollutants that have undergone tailored individual analysis and have been found not to be persistent, bioaccumulative, or toxic in the environment.
4. The pollutants, triclosan, bisphenol-A (BPA), polybrominated diphenyl ethers (PBDEs), toluene diisocyanates, and atrazine should be included in the list of subject pollutants under Appendix 2 of the Sewers By-law with additional pollutants added on an ongoing basis under the principled approach of the precautionary principle.

The Proposal

The proposed amendments to Sewers By-law, Section 5, Municipal Code Chapter 681 would result in the creation of a subject pollutant threshold reporting list that would supplant the current requirement for subject industries that discharge any amount of a subject pollutant to submit a P2 Plan acknowledging the discharge and the steps to reduce or eliminate it. By creating subject pollutant threshold limits, which is the minimum level of a subject pollutant that requires a P2 Plan submission, the City can eliminate the requirement of industries to report trace amounts of subject pollutants that may be present in the effluent discharged from a property.

The P2 Program

The City of Toronto bears the substantial responsibility of treating sewage created by a population of 2.8 million and its companion industries. This translates into a yearly burden of tens of billions of litres of wastewater that require treatment by the four municipal wastewater treatment plants before it can be released into the natural environment. According to the City of Toronto's website, in the past decade, industrial waste generation and discharge in the Toronto area has increased significantly. This discharge represents not only a loss of valuable raw materials but also a threat to public health and aquatic and terrestrial ecosystems.

The problems with Toronto's out-dated sewage system, almost at inception, are well known. Lacking the foresight to implement a progressive sanitary system, Toronto City Council opted for a cheaper solution that has saddled Torontonians for the last eighty years. The introduction of mandatory reporting of a P2 program in the Sewers By-law in 2000 has been one of the few highlights of the City's wastewater treatment system. Indeed, when implemented, Toronto had the privilege of claiming it was the only municipality in Canada to have such a program.

Mandatory reporting of P2 planning has been part of the By-law from the outset of the Program's inclusion. According to the City itself, "the purpose of this requirement was to improve the quality of wastewater reaching the wastewater treatment plants thereby protecting the biological treatment process at the plants and removing contaminants that otherwise could not be fully

removed by the treatment plants”. The P2 Program is currently based on 39 subject pollutants that include 12 heavy metals and 27 organic compounds.

Since Toronto’s initiative, a number of other Canadian municipalities such as Hamilton and Winnipeg have included P2 programs to protect aquatic ecosystems. P2 programs are also found in a number of U.S. states, notably Massachusetts, New Jersey, and New Mexico. The implementation of these programs has shown a significant reduction in waste generation resulting in a boon to both the environment and the relevant sector. In addition, the federal *Canadian Environmental Protection Act* (CEPA) also includes provisions for the Minister of the Environment to require the development and implementation of pollution prevention plans from facilities manufacturing, processing, generating or using substances found to be “toxic” for the purposes of CEPA, or which are involved in international air or water pollution. The Act also authorizes judges to require those in violation of the Act to prepare and implement a pollution prevention plan.

While CELA commends the City of Toronto for including a P2 planning requirement in its Sewer use By-law, it has grave concerns regarding the proposed changes to the By-law.

Concern with Proposed Creation of Subject Pollutant Thresholds

The proposed amendments to Sewers By-law, Section 5, Municipal Code Chapter 681 would result in the creation of a subject pollutant threshold reporting list that would supplant the current requirements for subject sectors that discharge any amount of a subject pollutant into the sewage system. The proposal would not require a subject sector to submit a P2 Plan unless a subject pollutant is discharged at a level above a yet to be identified threshold. The City states that the reason behind creating subject pollutant threshold limits is so the City can eliminate the requirement of industries to report trace amounts of subject pollutants that may be present in the effluent discharged from a property.

CELA has a number of concerns with this proposal. First, relaxing mandatory P2 plan submissions for subject sectors that discharge pollutants is a step backward for any instrument that purports to improve the quality of wastewater. The proposed change will result in an elevation of subject pollutants passing through the sewage system and increasing the burden placed on Toronto's wastewater treatment plants. In addition, it has been well established that even small amounts of certain pollutants can accumulate and have a devastating effect on ecosystems. By creating thresholds for subject pollutants, Toronto is weakening its stance on pollution prevention.

Second, the City's proposal runs contrary to both Canada's obligations under the Great Lakes Water Quality Agreement (GLWQA), and emerging scientific evidence of an expanding list of aquatic toxins. The GLWQA along with a number of domestic laws and international agreements require governments to mitigate, restore and protect the Great Lakes Basin ecosystem as a valuable natural resource and heritage for current and future generations.

Third, evidenced based science would suggest an expanding list of aquatic pollutants are being released by subject sectors that should lead to more stringent enforcement and a mandatory requirement of a P2 Plan, not the proposed relaxed approach. Examples of emerging pollutants that have attracted the concern of the scientific community include triclosan, bisphenol-A (BPA), polybrominated diphenyl ethers (PBDEs), toluene diisocyanates, and atrazine. This is not an

exhaustive list by any means. Many of these pollutants have been found to be persistent, bioaccumulative, and toxic. Some, such as BPA, PBDE's, atrazine, and arsenic have also been classified as endocrine disruptors. Most disturbing however is their presence in common consumer products such as deodorants, shampoos, toothpaste, and food additives. These toxins should be included in the list of subject pollutants with additional pollutants added on an ongoing basis under the principled approach of the precautionary principle.

If, despite the aforementioned concerns, the City nevertheless chooses to implement the proposed subject pollutant threshold reporting list, it should not apply the thresholds used under the National Pollutant Release Inventory (NPRI) or Ontario's *Toxics Reduction Act* (TRA) and should adopt thresholds on a case by case basis. Each of the subject pollutants pose a separate and distinct risk to the aquatic environment and human health and thus the determination of a threshold for each pollutant should be tailored to the specific pollutant. The analysis should also involve a determination of whether a threshold is appropriate for the subject pollutant. A number of the subject pollutants, especially those listed as a "toxic substance" under Schedule 1 of CEPA and those listed under Tier 1 of Annex 2 of the Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem 2007 (COA) should not be included in the proposed subject pollutant threshold reporting list.

CELA's Recommendations

1. The City of Toronto should not proceed with the proposed creation of a subject pollutant threshold reporting list at this time without providing additional rationale and public consultation on why such thresholds are required or which pollutants would be appropriate to target thresholds. Establishing thresholds may weaken/undermine the City's program to promote pollution prevention and does very little to advance protection of the Great Lakes basin from toxic chemicals or the goals under the GLWQA.
 - a. No thresholds should be considered for pollutants listed as "toxic substances" under Schedule 1 of CEPA or pollutants addressed under the Canada-Ontario Agreement.
 - b. Pollutants that exhibit potential for endocrine disruption should not be subject to thresholds.
 - c. Gaining a better knowledge of the cumulative impacts from pollutants covered through the By-laws should be advanced in the review of the Sewers By-law. The use of thresholds will underestimate pollutant releases to receiving waters and does not advance protection of water quality.
2. The City of Toronto should take steps to expand the list of pollutants subject to pollution prevention plan requirements under Chapter 681 – Sewers By-law.
3. If the City adopts the proposed subject pollutant threshold reporting list, it is imperative that the City not adopt the thresholds applied in other inventories including the NPRI or TRA, which are too high and would only capture the largest of facilities. Furthermore, thresholds should only be considered for those pollutants that have undergone tailored individual analysis and have been found not to be persistent, bioaccumulative, or toxic in the environment.

4. The pollutants, triclosan, bisphenol-A (BPA), polybrominated diphenyl ethers (PBDEs), toluene diisocyanates, and atrazine should be included in the list of subject pollutants under Appendix 2 of the Sewers By-law with additional pollutants added on an ongoing basis under the principled approach of the precautionary principle.

Conclusion

The City of Toronto's Sewer Use By-Law represents an important initiative on toxic substances pollution prevention currently under way. The City's By-Law has provided a model for other municipalities, not only in Ontario, but elsewhere in Canada as well. CELA asks that Toronto City Council move to reject adoption of the proposal that would weaken the By-Law and amend it, as per CELA's recommendations, at the earliest possible opportunity.

Your truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Joseph Castrilli
Counsel



Rizwan Khan
Counsel