

**ONTARIO TOXICS USE REDUCTION AND
SAFER ALTERNATIVES ACT, 2008**

A MODEL BILL

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Ontario Toxics Use Reduction and Safer Alternatives Act, 2008

Explanatory Note

The purposes of the Act are to (1) promote public and workplace health and safety, and protection of the environment in Ontario by establishing provincial targets for the reduction in the manufacture, production, use, and release of toxic substances in the province, (2) promote the use of safer alternatives to toxic substances, and (3) recognize the public right to information on such substances. The targets are to be achieved by requiring industrial facilities that use more than a certain amount of listed toxic substances to (1) prepare a toxics use reduction plan in which they examine how, where, and why the substances are used at their facilities, (2) evaluate options for reducing such usage, and (3) report annually to the Minister of the Environment the quantities of such substances manufactured, processed, used, contained in products, or released to the environment.

For certain priority toxic substances identified pursuant to the requirements of the Act, the province, following the production of assessment reports on safer alternatives to such substances, will prepare alternatives action plans. These provincial plans will act as a model for individual implementation plans and reporting by manufacturers and users of priority toxic substances.

To assist firms in meeting the requirements of the Act, the law would authorize (1) establishment of an Ontario Toxics Use Reduction and Safer Alternatives Institute to educate and train professionals and the public as well as sponsor and conduct research, (2) certification of toxics use reduction and safer alternatives planners by the Institute, and (3) establishment of technical assistance programs for businesses and employees.

The Act would (1) recognize the right of the public to obtain certain information about toxic substances manufactured or used in their communities, and (2) authorize public access to the courts to ensure deadlines set out in the law were met with respect to such matters as the preparation of toxics use reduction and safer alternatives plans.

To offset the costs of administration of the Act and the Institute, the law would authorize the establishment of a Fund financed by an annual toxics use fee to be imposed on industrial facilities that are subject to the Act's requirements. The fee would vary depending on both the toxicity and annual quantity of each of the substances manufactured or used by a facility.

This model bill contains the full text for Parts I-VII of the Bill addressing the following matters: (1) interpretation, (2) administration, (3) toxics use reduction, (4) safer alternatives to toxic substances, (5) toxics use reduction and safer alternatives planning, (6) financial and technical assistance measures, and (7) public participation, as well as portions of Part XI consisting of miscellaneous matters such as confidential business information, conflicts, and regulation-making. Only the headings and subheadings have been provided for Parts VIII-X, which would address matters such as (1) inspections, compliance, and enforcement, (2) appeals, and (3) offences and penalties. The text for these Parts has not been provided as these are standard provisions that would be found, with appropriate changes, in various other provincial environmental laws.

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I. PART I – INTERPRETATION

1. Purposes

1. The purposes of this Act are:
 - (a) to promote public and workplace health and safety, including protection of sensitive populations, and the environment through the prevention, reduction, or elimination of the manufacture, use, processing, and release of toxic substances;
 - (b) to promote the use of safer alternatives to toxic substances;
 - (c) to recognize the right of Ontario residents to know the identity and amounts of toxic substances that are manufactured, used, processed, and released in the workplace and the environment; and
 - (d) to apply the precautionary principle and principles of sustainable development to the foregoing.

2. Definitions

2. In this Act,

“advisory committee” means the Advisory Committee to the Council on Toxic Use Reduction and Safer Alternatives appointed under section 5;

“byproduct” means all non-product outputs of toxic substances generated by a production process, prior to handling, transfer, treatment, or release;

“CAS number” means the identification number assigned to a substance by the Chemical Abstract Service;

“chemical name” means the scientific designation of a substance in accordance with the nomenclature system developed by the Chemical Abstract Service;

“confidential business information” means information provided to the Minister under this Act or the regulations that is designated as confidential business information by the person who provided it, and that concerns

- (a) manufacturing or quality control processes relating to a toxic substance;
- (b) methods for determining the composition of a toxic substance;

(c) trade secret, commercial, or financial information

but does not include information that the Minister decides is not confidential business information pursuant to section 56;

“council” means the Council on Toxic Use Reduction and Safer Alternatives appointed under section 5;

“environment” means the air, land, water, plant life, animal life and ecological systems of Ontario;

“Environmental Commissioner of Ontario” means the officer of the Assembly appointed pursuant to the *Environmental Bill of Rights*, S.O. 1993. c. 28;

“facility” means a building, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person, or a person responsible;

“hazardous waste” means any waste so listed or defined under Regulation 347 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended;

“improved operation and maintenance of production unit equipment and methods” means modifying or adding to existing equipment or methods including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, or production unit control equipment or methods;

“industrial facility” means any facility that manufactures, processes, or otherwise uses a toxic substance and that is classified in a NAICS code that is identified in regulations promulgated under this Act;

“input” means the sum of the following categories of each toxic substance:

1. inventory at the industrial facility at the beginning of the accounting period;
2. waste stored at the industrial facility at the beginning of the accounting period;
3. quantity produced at the facility;
4. quantity brought to the facility;

“input substitution” means replacing a toxic substance or raw material used in a production process with a non-toxic or less toxic substance;

“Institute” the Institute on Toxic Use Reduction and Safer Alternatives established under section 6;

“instrument” has the same meaning as that ascribed to the term under the *Environmental Bill of Rights*, S.O. 1993, c. 28;

“manufacture” means to

- (a) produce, prepare, import, or compound a toxic substance; and
- (b) produce a toxic substance coincidentally during the manufacture, processing, use or disposal of another substance or mixture of substances, including a toxic substance that is separated from that other substance or mixture of substances as a byproduct, and a toxic substance that remains in that other substance or mixture of substances as an impurity;

“materials balance” means an accounting of the flow of individual toxic substances into an industrial facility, through its processes, and into its products and wastes such that inputs equal outputs of each toxic substance to the accuracy of the smallest accounting units for each toxic substance;

“Minister” means the Minister of the Environment;

“Ministry” means the Ministry of the Environment;

“NAICS code” means the North American Industry Classification System (NAICS) 2007 – Canada, as amended from time to time,

“output” means the sum of the following categories of each toxic substance:

1. quantity chemically altered in the industrial facility’s processes;
2. quantity shipped from the facility in product;
3. quantity transferred away from the facility as waste;
4. waste stored at the facility at the end of the accounting period;
5. quantity emitted to the air;
6. quantity discharged into sewage systems;
7. quantity released into surface water;
8. quantity recharged to groundwater;
9. quantity eliminated through treatment at the industrial facility;
10. quantity eliminated through energy recovery at the facility;
11. quantity disposed on-site; and
12. inventory at the industrial facility at the end of the accounting period;

“operator” means any person in occupation or having the charge, management, or control of an industrial facility;

“owner” means any person who owns an industrial facility;

“person” means any individual, trust, partnership, company, joint stock company, corporation, association, society, firm, consortium, joint venture, or any commercial or other legal entity engaged in business or providing service;

“person responsible” means an owner or operator;

“precautionary principle” means that where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

“priority toxic substance” means a toxic substance designated pursuant to the requirements of section 13;

“process” means the preparation of a toxic substance, after its manufacture, for distribution, sale, or use in commerce:

- (a) in the same form or physical state, or in a different form or physical state, as that in which it was received at the industrial facility where it is processed; or
- (b) as part of an article or product containing the toxic substance;

“product” means a desired result or family of result of a production process that is used as a commodity in trade and commerce by the public in the same form as it is produced and includes a family of products, an intermediate product, or a family of intermediate products;

“product reformulation” means substituting for an existing end-product an end-product that is non-toxic or less toxic upon use, release, or disposal;

“production process” means a process, line, method, activity, or technique, or a series or combination of processes, lines, methods, or techniques used to produce a product or reach a planned result;

“production process modernization” means upgrading or replacing existing production process equipment and methods with other equipment and methods based on the same production process;

“production process redesign or modification” means developing and using production processes of a different design than those currently used;

“registry” means the Toxics Use Reduction and Safer Alternatives Registry established under section 20;

“regulated person” means a person who holds or is required to hold

- (a) a certificate of approval, provisional certificate of approval, certificate of property use, licence, or permit under the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, or
- (b) an approval, licence, or permit under the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended;

“regulations” means regulations made under this Act;

“release” includes discharge, spray, inject, inoculate, abandon, deposit, dispose, spill, leak, seep, pour, emit, empty, throw, pump, leach, dump, place, or exhaust;

“reportable toxic substance” means a toxic substance that is subject to the requirements of section 8;

“reporting base year” means the year established by regulation for assessing reductions in the use of toxic substances at an industrial facility;

“safer alternative” means an option that includes input substitution as well as including a change in chemical, material, product, process, function, system or other action, whose adoption to replace a toxic substance currently in use would be the most effective in reducing overall potential harm to public and workplace health, safety, or the environment;

“sensitive populations” includes present and future generations of groups including pregnant women, infants, children, women, seniors, and individuals with compromised immune systems;

“smallest accounting unit” means 1 kilogram of a toxic substance, unless otherwise defined in the regulations to be a smaller amount;

“sustainable development” means development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

“threshold quantity” means the amount of a toxic substance established by regulation that is manufactured, processed, or otherwise used each year at an industrial facility at or above which the person responsible shall be required to comply with the requirements of this Act;

“toxic substance” any chemical substance in a gaseous, liquid, or solid state that is identified on the toxic substance list established pursuant to section 8 of this Act, but does not include any substance when it is

- (a) present in an article;
- (b) used as a structural component of a facility;
- (c) present in a product used for routine janitorial or facility grounds maintenance;
- (d) present in foods, drugs, cosmetics, or other personal items used by employees or other persons at a facility;
- (e) present in a product used for the purpose of maintaining motor vehicles operated by a facility;

- (f) present in process water or non-contact cooling water as drawn from the environment or municipal sources, or present in air used either as compressed air or part of combustion;
- (g) present in a pesticide or herbicide when used in non-cosmetic agricultural operations;
- (h) present in crude, lubricating, or fuel oils or other petroleum materials being held for direct wholesale or retail sale; or
- (i) present in crude or fuel oils used in combustion to produce electricity, steam or heat except when production of electricity, steam or heat is the primary business of a facility;

“toxics use reduction” (1) means in-plant changes in the production process of raw materials that reduce, avoid, or eliminate the use of toxic substances or the generation of toxic substance byproducts per unit of product, so as to reduce risks to the health of the public, workers, consumers, or the environment, without shifting risks between the public, workers, consumers, or parts of the environment, (2) shall be achieved through input substitution, product reformulation, production process redesign or modification, production process modernization, improved operation and maintenance of production process equipment and methods, or recycling, reuse, or extended use of toxic substances by using equipment or methods that become an integral part of the production process of concern, (3) but does not include incineration, transfer from one medium of release to other media, off-site or out-of-production process waste recycling, or methods of end-of-pipe treatment of toxic substances as waste;

“toxics use reduction plan” means the plan required to be prepared by an industrial facility under section 10;

“toxics use reduction plan summary” means a summary of a toxics use reduction plan required to be prepared by the person responsible for an industrial facility and submitted to the Ministry under section 10;

“trade secret” means information that is exempted from disclosure as a trade secret pursuant to any law of Canada or Ontario;

“Tribunal” means the Environmental Review Tribunal;

“waste” includes ashes, garbage, refuse, domestic waste, industrial waste, or municipal waste and such other materials as are designated in Regulation 347 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended;

“water” means surface water and groundwater, or either of them.

II. PART II – ADMINISTRATION

3. Powers and Duties of the Minister

3. (1) In the Administration of this Act, the Minister shall,
- (a) identify all ministry requirements for reporting on toxic substance use, release, and disposal and, to the maximum extent possible, shall standardize, consolidate, and coordinate these reporting requirements to minimize unnecessary duplication;
 - (b) ensure that, to the maximum extent practicable, any industrial facility that is a regulated person found to be violating any Act, regulation, or instrument for which the ministry has statutory responsibility, shall practice toxics use reduction and, where appropriate, adopt safer alternatives in order to come into compliance with the violated statute, regulation, or instrument;
 - (c) compile, analyze, and summarize the reports and plan summaries required by section 9 and subsection (6) of section 10 of this Act and submit to the Assembly an annual report on the Minister's findings regarding progress achieved, and progress expected, with respect to toxics use reduction in the province;
 - (d) investigate concerns and recommend standards relating to toxics use reduction and safer alternatives in the province;
 - (e) conduct research programs and prepare statistics relating to toxics use reduction and safer alternatives;
 - (f) convene and conduct conferences, seminars and educational programs relating to toxics use reduction and safer alternatives;
 - (g) develop, implement, and facilitate training courses and programs relating to toxics use reduction and safer alternatives;
 - (h) collect, test, publish and otherwise disseminate information on toxics use reduction and safer alternatives;
 - (i) provide technical assistance to persons responsible for industrial facilities required to comply with this Act;
 - (j) engage in joint discussions and initiatives with other levels of government to facilitate toxics use reduction and the adoption of safer alternatives in the province;

- (k) make grants and loans in such amounts and on such terms as the Minister considers advisable to support research and training relating to toxics use reduction and safer alternatives; and
- (l) perform such other functions or carry out such other duties as may be assigned from time to time by the Lieutenant Governor in Council relating to toxics use reduction and safer alternatives.

Delegation

(2) The Minister may in writing delegate any of his or her powers or duties under this Act to an employee of the ministry specified in the delegation, other than the power to make regulations.

Agreements

(3) The Minister may enter into agreements with such persons, entities, including the Institute established under section 6, as well as governments, as the Minister considers appropriate for the purposes of this Act.

Precautionary Principle

(4) The Minister shall use the precautionary principle and the principles of sustainable development in carrying out its duties and responsibilities under subsections (1) to (3).

4. Duties of the Government of Ontario

4. (1) In order to facilitate coordination of the implementation of this Act with existing provincial programs pertaining to toxic substance production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxic substances, or release of toxic substances to the environment, provincial ministries which administer such programs shall:

- (a) review their programs and associated regulations and ascertain how toxics use reduction and safer alternatives can be promoted and achieved;
- (b) amend those programs or associated regulations, where feasible, so as to promote toxics use reduction and the adoption of safer alternatives as the preferred methods for achieving the goals of such programs and the purposes of this Act and submit to the Lieutenant Governor in Council recommendations for coordinating toxics use reduction and safer alternatives efforts with the programs established by this Act within the ministry and the Institute established under section 6;

- (c) not more than two years after the coming into force of this Act, coordinate, to the maximum extent feasible, reporting requirements and guidelines concerning the manufacture, use, processing, or release of toxic substances in a manner that will provide for up-to-date and consistent information regarding manufacturing, worker exposure, distribution, process, sale, storage, release, or other use of toxic substances on a facility, regional, and province-wide basis;
- (d) develop, on a biennial basis, a multi-media inspection manual and training program for all inspectors on multi-media inspections related to toxic substances. Where feasible, inspector training shall include cross-training with other ministries that administer inspections regarding toxic substances. Ministries may request that the Institute, established under section 6, assist with the training of inspectors to carry out multi-media inspections.

Precautionary Principle

- (2) The Government shall use the precautionary principle and the principles of sustainable development in carrying out its duties and responsibilities under subsection (1).

5. Advisory Council on Toxics Use Reduction and Safer Alternatives

- 5. (1) The Minister shall establish an advisory body known as the Advisory Council on Toxics Use Reduction and Safer Alternatives.

Appointment of members

- (2) The members of the Advisory Council shall be appointed by the Minister and shall consist of fifteen individuals as follows:

- (a) three individuals with experience or training in the field of environmental compliance, one each from a large, a mid-sized, and a small industrial facility;
- (b) two individuals representing provincial non-governmental environmental organizations;
- (c) two individuals representing organized labour that have training or experience in the field of occupational diseases and health;
- (d) two individuals with academic training in the field of environmental economics, and industrial processes, respectively;

- (e) two individuals with experience in municipal government;
- (f) two individuals from provincial non-governmental health organizations; and
- (g) two individuals from the general public, one of whom must be nominated from a local non-governmental environmental organization that has dealt with issues relating to toxic substances in the community.

Council purposes and duties

(3) The purposes of the Advisory Council are to consider issues relating to toxic substances including their manufacture, use, processing, and release and the availability of safer alternatives with respect thereto and to make recommendations to the Minister, including,

- (a) reviewing any matters submitted to it by the Minister concerning any aspect of the provisions or implementation of this Act;
- (b) conducting an on-going review of the implementation of this Act and any administrative or legislative amendments it deems necessary;
- (c) investigating techniques to develop standardized classifications of production processes employed by industrial facilities, including the feasibility of using such techniques in the development and implementation of toxics use reduction and substitution implementation plans;
- (d) advising on the interpretation and content of information submitted in toxics use reduction summaries and progress reports;
- (e) reviewing the scientific literature concerning occupational, public health, and environmental risks posed by exposures to specific toxic substances, evaluating scientific interpretation of these risks, and assessing the risks of the release of these substances into different environmental media;
- (f) reviewing and evaluating the impact of reductions in the use and release of specific toxic substances on employment levels;
- (g) conducting periodic reviews of the criteria adopted by the Ministry for the preparation of toxics use reduction plans, summaries, and progress reports; and

- (h) studying and evaluating the practicability and feasibility of achieving reductions in the manufacture, use, processing, and release of specific toxic substances through the use of safer alternatives without causing reductions in employment levels.

Advisory committees

(4) The Minister may, at the request of the Council, establish one or more technical advisory committees to assist the Council in the performance of its duties under subsection (3).

Precautionary Principle

(5) The Council, under subsection (3), and any technical advisory committees established under subsection (4), shall use the precautionary principle and the principles of sustainable development in providing their recommendations and advice.

6. Institute on Toxics Use Reduction and Safer Alternatives

6. (1) The Minister shall establish a body known as the Ontario Toxics Use Reduction and Safer Alternatives Institute, which may be affiliated as part of one or more universities or colleges in the province.

Purposes of Institute

(2) The purposes of the Institute shall include:

- (a) providing general information about, and publicizing advantages of and developments in, toxics use reduction and safer alternatives;
- (b) establishing courses, seminars, conferences, and other events, reports, updates, guides, publications, and other means of providing technical information for industrial facilities, and may as appropriate work in cooperation with the Ministry, the Council, other ministries, and other levels of government regarding promotion of toxics use reduction and safer alternatives;
- (c) developing and providing curriculum and training for higher education students and faculty on toxics use reduction and safer alternatives;
- (d) engaging in research, development, and demonstration of toxics use reduction and safer alternatives methods including, but not limited to, assessments of the impact of adopting such methods on the environment, public and workplace health, the economy and employment within affected industrial facilities;

- (e) developing by a date to be determined by regulation and in conjunction with the Ministry, and any other ministries identified by regulation, a toxics use reduction and safer alternatives planning program for individuals who wish to be certified as toxics use reduction and safer alternatives planners by the Institute, such program to include training toxics use reduction and safer alternatives planners to be qualified to:
 - (i) assist industrial facilities in the development and implementation of current toxics use reduction and safer alternatives techniques; and
 - (ii) prepare, review, and approve toxics use reduction plans and substitution implementation plans required under sections 10 and 14, respectively, of this Act;
- (f) sponsoring research or pilot projects to develop and demonstrate innovative technologies for toxics use reduction and safer alternatives;
- (g) assisting in the training of inspectors and others, if so requested by the Ministry;
- (h) providing toxics use reduction training and assistance to individuals, community groups, workers, and municipal government representatives so as to allow them to understand and review reporting requirements, toxics use reduction and safer alternative plan summaries, and other information available to the public under this Act;
- (i) conducting studies on potential restrictions on the use of toxic substances in the province including, but not limited to:
 - (i) existing provincial, national, and international experiences with restrictions;
 - (ii) social, environmental, and economic costs and benefits of adopting restrictions;
 - (iii) specific toxic substances that should be considered for restrictions in the province and how such restrictions could be implemented.

Precautionary Principle

(3) The Institute shall use the precautionary principle and the principles of sustainable development in carrying out its duties and responsibilities under this Act.

III. PART III – TOXICS USE REDUCTION

7. Provincial Reduction Targets

7. (1) It shall be the goal of the province to achieve through the use of toxics use reduction and safer alternatives methods, the following reduction targets:

- (a) within five years after the coming into force of this Act, a 50 percent reduction in the release of toxic substances in the province from quantities released in the year the Act came into force;
- (b) within five years after the coming into force of this Act, a 20 percent reduction in the use of toxic substances in the province from quantities used in the year the Act came into force; and
- (c) within ten years after the coming into force of this Act, a 40 percent reduction in the use of toxic substances in the province from quantities used in the year the Act came into force.

Report

(2) Three years after the coming into force of this Act, and each year thereafter, the Minister shall compile the goals of all toxic use reduction plans submitted by industrial facilities under section 10 and submit to the Legislative Assembly within six months of the compilation, a report that compares such goals to the province-wide goals established pursuant to subsection (1).

8. Reportable Toxic Substances

8. (1) A substance contained in any of the following lists shall be deemed to be a reportable toxic substance and shall be listed by the Minister in a schedule to, and be subject to the requirements of, this Act:

- (a) any substance identified in the National Pollutant Release Inventory issued from time to time under the authority of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33;

- (b) any substance identified as a high hazard substance pursuant to the Chemicals Management Plan under the authority of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33;
- (c) any substance capable of causing cancer to humans, or probably capable of causing cancer to humans, and identified as such in monographs issued from time to time by the International Agency for Research on Cancer;
- (d) any substance capable of causing cancer or reproductive toxicity and identified as such from time to time by the California Environmental Protection Agency under the authority of the State of California *Safe Drinking Water and Toxic Enforcement Act of 1986*; and
- (e) any substance known to be capable of causing cancer in humans and identified as such in the *Report on Carcinogens* issued from time to time by the National Toxicology Program, United States Department of Health and Human Services.

Addition of substances to schedule on recommendation of council

(2) In addition to the substances identified in any of the lists in subsection (1)(a)-(e), the Minister may add to the schedule established under subsection (1) any other substance recommended for inclusion therein by the Council pursuant to recommendations made under section 5 of this Act.

Addition of medium hazard substances to schedule

(3) Five years after the coming into force of this Act, the Minister shall add to the schedule of reportable toxic substances identified in subsection (1), any substance identified as a medium hazard substance pursuant to the Chemicals Management Plan under the authority of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

Addition of low hazard substances to schedule

(3) Eight years after the coming into force of this Act, the Minister shall add to the schedule of reportable toxic substances identified in subsection (1), any substance identified as a low hazard substance pursuant to the Chemicals Management Plan under the authority of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

Precautionary Principle

(4) The Council and the Minister shall have regard to the precautionary principle and the principles of sustainable development when exercising the duties and responsibilities set out in subsection (2).

9. Industrial Facility Annual Report on Toxic Substances

9. (1) Subject to subsection (2), each industrial facility shall file with the Minister by April 1 of each year for the previous calendar year an annual report for each toxic substance manufactured, processed, or otherwise used at that facility in amounts equal to or exceeding the applicable threshold quantity for that substance.

Exceptions

(2) Notwithstanding subsection (1), an industrial facility is exempt from the annual reporting requirement if the industrial facility:

- (a) manufactured, processed, or otherwise used in a calendar year less than the threshold quantity for a toxic substance as set out in regulations promulgated under this Act; or
- (b) has fewer than the equivalent of five full-time employees unless the industrial facility is a:
 - a. non-hazardous solid waste incinerator, including a conical or beehive burner;
 - b. biomedical or hospital waste incinerator;
 - c. hazardous waste incinerator;
 - d. sewage sludge incinerator;
 - e. wood preserver using heat, pressure treatment, or both;
 - f. terminal operation;
 - g. wastewater collection system discharging the equivalent of or greater than 10,000 cubic meters per day into surface waters;
 - h. pit or quarry where annual production is equivalent to or greater than 100,000 tonnes; or
- (c) falls into any one of the following categories of activities:
 - a. education or training institution, including a university, college, or school;
 - b. research or testing institution;
 - c. maintenance and repair of vehicles, including automobiles, trucks, locomotives, ships, or aircraft, except the painting and stripping of vehicles or their components, or the rebuilding or remanufacturing of vehicle components;
 - d. distribution, storage, or retail sale of fuels, except as part of terminal operations;

- e. wholesale or retail sale of articles or products that contain the substance, if the substance is not released to the environment during use at the facility;
 - f. retail sale of the substance;
 - g. growing, harvesting, or management of renewable natural resources, including fisheries, forestry, or agriculture, except processing or otherwise using renewable natural resources;
 - h. practice of dentistry; and
- (d) maintains on-site documentation supporting all exemption claims.

Report content

(3) Each annual report required to be provided to the Minister by an industrial facility shall include:

- (a) the name and location of the industrial facility;
- (b) the reporting base year;
- (c) information required to be submitted pursuant to the National Pollutant Release Inventory under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c.33 except that the threshold quantity for a reportable toxic substance shall be that required under regulations promulgated under this Act, and the employee threshold shall be that set out in subsection (2) of this Act;
- (d) quantities of the toxic substance at the industrial facility that are:
 - a. manufactured,
 - b. processed,
 - c. otherwise used,
 - d. generated as byproduct prior to any handling, transfer, treatment, or release; and
 - e. shipped as or in product from the industrial facility;
- (e) a materials balance for each toxic substance designated by chemical name and CAS number;
- (f) a declaration signed by the highest ranking representative with direct operating responsibility at the industrial facility and with authority to bind the owner certifying that:
 - a. the facility has filed the report,
 - b. the report is true, accurate, and complete to the best of his or her knowledge, and

- c. the documentation necessary to substantiate the information submitted including, but not limited to, documentation of the quantity of the toxic substance used in each production process, and the quantity generated as byproduct by each production process is maintained at the facility;
- (g) such further and other information as specified by regulation, including information to be provided for each production process at an industrial facility.

Effect of failure to file annual report on regulated persons

(4) The person responsible for an industrial facility who is also a regulated person is not eligible to obtain a new or amended certificate, approval, licence, or permit under the applicable laws of Ontario if not in compliance with the requirements of this section at the time of application.

10. Toxics Use Reduction Plan

10. (1) By April 1 of the year following the year in which this section is proclaimed in force, which proclamation shall be no later than two years after the Act has received Royal Assent, an owner whose industrial facility is subject to the requirements of this Act shall prepare and complete a toxics use reduction plan for those toxic substances manufactured, processed, or otherwise used by the industrial facility in the previous calendar year.

Plan content

- (2) The content of a toxics use reduction plan shall include:
 - (a) a statement of facility-wide management policy regarding toxics use reduction;
 - (b) a statement of the scope and objectives of the plan, including the planned reductions in facility-wide use and byproduct generation from the reporting base year for each toxic substance during the next two years and during the next five years;
 - (c) for each production process in which a toxic substance is manufactured, processed, or otherwise used:
 - (i) a description of each production process;
 - (ii) a comprehensive economic and technical evaluation of appropriate technologies, equipment, procedures, and

training programs for potentially achieving toxics use reduction for each toxic substance;

- (iii) a feasibility analysis of reduction options identified in subsection (ii), which shall include, but not be limited to, a full-cost accounting of the options, and any technological obstacles to adopting the options;
 - (iv) an analysis of current and projected toxics use, byproduct generation, and releases;
 - (v) an evaluation of the types and amounts of toxic substances used;
 - (vi) an identification of the economic impacts of the use of each toxic substance in the production process including, but not limited to, raw material and byproduct storage and handling costs, potential liability costs, and costs associated with regulation;
 - (vii) an identification of each technology, equipment, procedure, or training program to be implemented for the purposes of achieving toxics use reduction, the anticipated costs of implementation of each, and the anticipated savings expected due to each;
 - (viii) a schedule for implementation of such technologies, equipment, procedures, and training programs;
 - (ix) a two-year and a five-year numeric goal for planned reductions for each toxic substance per unit of product;
 - (x) a description of the valuation methods used to determine not to install or use an option that would have resulted in a greater percentage reduction in the use of a toxic substance than the option chosen;
- (d) a declaration signed by the highest ranking representative with direct operating responsibility at the industrial facility and with authority to bind the owner certifying that:
- (i) he or she has read and is familiar with the toxics use reduction plan;
 - (ii) the plan is true, accurate, and complete to the best of his or her knowledge; and

- (iii) it is the corporate policy of that industrial facility to achieve the goals of the plan;
- (e) a certification by a toxics use reduction and safer alternatives planner that the plan meets the requirements of this Act for an acceptable plan.

Retention of plan at industrial facility

(3) The owner of, or the highest ranking representative with direct operating responsibility at, an industrial facility shall ensure that the toxics use reduction plan for the facility is kept on the premises of that facility, and shall make the plan available on the premises for inspection by the Ministry on request.

Plan update

(4) The owner of, or the highest ranking representative with direct operating responsibility at, an industrial facility and with authority to bind the owner shall update the toxics use reduction plan for the facility and issue a new declaration with respect thereto every two years by April 1 of the applicable year.

Notice and solicitation of comments from employees for initial plan and updates

(5) Six months prior to the date when an initial toxics use reduction plan or an update must be completed, each owner of, or the highest ranking representative with direct operating responsibility at, an industrial facility shall:

- (a) notify all employees at the facility of the requirements for the plan or update;
- (b) identify the toxic substances and production processes for which a plan or update will be submitted;
- (c) provide the criteria for plans specified by the Ministry; and
- (d) solicit in the notice, comments or suggestions from all employees on toxics use reduction options.

Plan summary

(6) The owner of, or the highest ranking representative with direct operating responsibility at, an industrial facility and with authority to bind the owner shall file a summary of its toxics use reduction plan or an update with the Ministry on or before April 1 of the applicable year consisting of:

- (a) a copy of the declaration required pursuant to subsection (2)(d) of section 10;
- (b) a copy of the plan certification by a toxics use reduction and safer alternatives planner required pursuant to subsection (2)(e) of section 10;
- (c) the goals contained in the plan as specified pursuant to subsection (2)(b) of section 10 and subsection (2)(c)(ix) of section 10; and
- (d) such further or other information from the plan as specified by regulation.

Effect of failure to have plan on regulated persons

(7) The person responsible for an industrial facility who is also a regulated person is not eligible to obtain a new or amended certificate, approval, licence, or permit under the applicable laws of Ontario if not in compliance with the requirements of this section at the time of application.

Precautionary Principle

(8) When carrying out the duties and responsibilities set out in subsections (1) and (4), the owner of a facility shall have regard to the precautionary principle and the principles of sustainable development.

IV. PART IV – SAFER ALTERNATIVES TO TOXIC SUBSTANCES

11. Identification of Potential Priority Toxic Substances

11. (1) Not more than one year following the coming into force of this Act, and at two year intervals thereafter, the Minister, in consultation with the Institute, the Council, and any advisory committee established by the Council, shall identify and publish a list pursuant to subsections (4) and (5) of not more than ten potential priority toxic substances of concern commonly used in Ontario industry or used in products sold in Ontario that are contained in the schedule established under section 8.

Same

(2) The first list to be so published shall be known as List 1, with the second and subsequent lists to be numbered sequentially thereafter, with each such subsequent list to contain, subject to subsection (6) not more than ten such substances at a time.

Criteria for identification

(3) The criteria for identification of potential priority toxic substances under subsection (1) shall include, but not be limited to, whether the substances are recognized as:

- (a) carcinogens, mutagens, or reproductive toxins;
- (b) persistent or bioaccumulative;
- (c) endocrine disruptors; or
- (d) possessing other characteristics of equivalent concern including but not limited to,
 - (i) inherent toxicity;
 - (ii) magnitude of use in Ontario industry or in products sold in Ontario;
 - (iii) magnitude of exposure to sensitive populations; or
 - (iv) such other characteristics as set out by regulation.

Consultation on potential priority toxic substances

(4) The Minister shall ensure that notice of the first and subsequent lists referred to in subsection (1) is published on the registry and shall seek comment from the public regarding prioritization of assessment of substances on, that should be added to, or that should be deleted from, the lists.

Final version of list to be published on registry

(5) Following the consultation referred to in subsection (4), the Minister shall publish on the registry the final version of the first and subsequent lists containing the order in which priority toxic substances on the lists shall be the subject of safer alternative assessment reports under section 12.

Ministerial authority to add to list

(6) Notwithstanding subsection (1), the Minister may at any time add a substance to the first or subsequent lists if it meets one or more of the criteria set out in subsection (2), in which case subsections (4) and (5) shall apply and each such list may contain more than ten priority toxic substances at any one time.

Precautionary Principle

(7) When exercising the duties and responsibilities set out in this section, the Minister, the Institute, the Council, and any advisory committee established by the Council shall have regard to the precautionary principle and the principles of sustainable development.

12. Safer Alternatives Assessment Reports

12. (1) Within 180 days after the publication of a list referred to in subsection (5) of section 11, and annually thereafter, the Minister shall select priority toxic substances from the list in the order in which they appear on the list and direct the Institute subject to subsection (3) to conduct and publish a safer alternatives assessment report that evaluates the availability of safer alternatives to these substances.

Content of report

(2) The content of a safer alternatives assessment report shall include:

- (a) the uses and functions of the priority toxic substance;
- (b) the uses that result in the greatest volume or dispersion of, or highest exposure to, the priority toxic substance in the indoor, workplace, and natural environment;
- (c) consideration of the potential impacts to human health and the environment of the continued use of a priority toxic substance;
- (d) whether any of the existing uses of the priority toxic substance are trivial, or clearly unnecessary;
- (e) the public policy implications of a reduction in the use of the priority toxic substance where its current use is non-trivial or clearly necessary;
- (f) whether alternatives are available for the uses and functions of the priority toxic substance;
- (g) whether the alternatives identified in subsection (f) are unacceptable, require further study, or are safer than the priority toxic substance;
- (h) a qualitative discussion of the economic feasibility, opportunities, or costs associated with adopting and implementing any safer alternatives to the priority toxic substance including a qualitative characterization of,

- (i) the economic impacts of adopting and implementing a safer alternative on the Ontario economy,
 - (ii) any impacts on the workforce or quality of work life,
 - (iii) potential costs or benefits to existing business,
 - (iv) potential impact on the cost of providing health care if the product is a medical product, and
 - (v) the extent of human exposure to the priority toxic substance that could be eliminated and health care costs saved by adopting and implementing a safer alternative;
- (i) recommendations on a course of action that should be employed with respect to the priority toxic substance including, but not limited to, whether all uses of the substance should be prohibited; and
 - (j) such further or other matters as set out by regulation.

Consultation on report

(3) The Minister shall ensure that notice of a draft of a safer alternative assessment report referred to in subsection (1) is published on the registry and shall seek comment from the public on the contents of the draft report before the report is finalized by the Institute.

Final version of report to be published on registry

(4) Following the consultation referred to in subsection (3), the Minister shall publish on the registry the final version of a safer assessment report prepared by the Institute.

Timing for completion of reports

(5) Not more than three years after the publication of a list pursuant to section 11 shall elapse before all priority toxic substances on a list shall have an assessment report drafted and finalized by the Institute.

Precautionary Principle

(6) When exercising the duties and responsibilities set out under subsection (1), the Institute shall have regard to the precautionary principle and the principles of sustainable development.

13. Provincial Priority Toxic Substance Alternatives Action Plans

13. (1) Not more than one year after the publication by the Institute of a safer alternative assessment report for a priority toxic substance pursuant to section 12, the Minister shall utilize the report to establish a provincial alternatives action plan for that substance.

Goal of plans

(2) The goal of a provincial priority toxic substance alternatives action plan shall be to coordinate the activities of the government of Ontario and to require users of priority toxic substances to

- (a) act as expeditiously as possible to ensure substitution of a priority toxic substance with a safer alternative while
 - (i) minimizing job loss; and
 - (ii) mitigating any other potential unintended negative impacts; and
- (b) achieve such other goals as may be specified by regulation.

Content of plans

- (3) Each provincial priority toxic substance alternatives action plan shall contain:
- (a) timetables, schedules, and deadlines for achieving substitution of a priority toxic substance with safer alternatives for specified uses;
 - (b) requirements for all industrial facilities that manufacture, process, or otherwise use a priority toxic substance to create substitution implementation plans that demonstrate how such facilities will substitute all specified uses of the substance with a safer alternative, including with respect to consumer products containing the priority toxic substance;
 - (c) where the safer alternatives assessment report indicated that safer alternatives are feasible and of comparable cost, and that all uses of the substance should be prohibited, a requirement that the Minister promulgate regulations requiring the substitution of a priority toxic substance with a safer alternative;
 - (d) where the Minister determines that implementation of the provincial priority toxic substance alternatives action plan for the substitution of a substance, or specified uses of a substance, will take longer than five years, a requirement for plain language labelling of products

containing the substance identifying that the substance is present in the product, and the impact of the substance on human health and the environment;

- (e) where the safer alternatives assessment report finds that safer alternatives are feasible, but require extensive capital expenditure or training, the Minister shall implement a technical assistance programs for businesses and employees pursuant to sections 18 and 19 of this Act;
- (f) where the safer alternatives assessment report finds that safer alternatives are not feasible, the provincial priority toxic substance alternatives action plan shall designate research and development activities to be undertaken by the Institute with a view to examining the future feasibility of finding safer alternatives for the substance; and
- (g) such other measures as established by regulation.

Consultation on plan

(4) The Minister shall ensure that notice of a draft of a provincial priority toxic substance alternatives action plan referred to in subsection (1) is published on the registry and shall seek comment from the public on the contents of the draft plan before the plan is finalized.

Final version of plan to be published on registry

(5) Following the consultation referred to in subsection (4), the Minister shall publish on the registry the final version of a provincial priority toxic substance alternatives action plan for a substance.

Action by other ministries

(6) Following the publication on the registry of the plan referred to in subsection (5), all other ministries shall take any required implementing actions as set out in the plan and this Act.

Precautionary Principle

(7) When exercising the duties and responsibilities set out under this section, the Minister shall have regard to the precautionary principle and the principles of sustainable development.

14. Industrial Facility Substitution Implementation Plan

14. (1) Where a final version of a provincial alternatives action plan has been published on the registry pursuant to subsection 13(5), any industrial facility that manufactures, processes, or otherwise uses the priority toxic substance identified therein shall, within one year of registry publication, develop and complete a substitution implementation plan.

Content of plan

(2) The content of a substitution implementation plan shall include:

- (a) identification of all uses of a priority toxic substance by the industrial facility;
- (b) identification of all alternatives considered, including cost and feasibility considerations;
- (c) selection of preferred alternatives that will achieve the objectives, timetables, schedules, deadlines, and any prohibitions set out in the applicable provincial alternatives action plan for the priority toxic substance, including with respect to consumer products containing the priority toxic substance;
- (d) a declaration signed by the highest ranking representative with direct operating responsibility at the industrial facility and with authority to bind the owner certifying that:
 - (i) he or she has read and is familiar with the substitution implementation plan;
 - (ii) the plan is true, accurate, and complete to the best of his or her knowledge; and
 - (iii) it is the corporate policy of that industrial facility to achieve the objectives, timetables, schedules, and deadlines of the plan;
- (e) a certification by a toxics use reduction and safer alternatives planner that the plan meets the requirements of this Act, is complete and reasonable in every respect, and is capable of meeting the objectives, timetables, schedules, and deadlines of the applicable provincial alternatives action plan for the priority toxic substance, including with respect to consumer products containing the priority toxic substance, where applicable; and

- (f) such other content as established by regulation.

Variance application

(3) Notwithstanding subsection (1), an industrial facility may file an application for a variance of the deadline set out in subsection (1), certifying that there is no safer alternative that is technically or economically feasible for the facility's particular use of the substance.

Content of variance application

(4) The content of the variance application referred to in subsection (3) shall include:

- (a) identification of all uses by the industrial facility of the priority toxic substance;
- (b) identification of all alternatives considered and their cost and feasibility considerations;
- (c) the basis for the certification that there is no feasible safer alternative;
- (d) documentation of efforts to be taken by the industrial facility to minimize the use of the priority toxic substance and human and environmental exposures to the substance until safer alternatives are found and implemented;
- (e) steps the industrial facility will take to identify safer alternatives in the one year period subsequent to the date of the variance application;
- (f) such other content as established by regulation.

Consideration by Minister of variance application

(5) The Minister, following review of the variance application referred to in subsections (3) and (4), shall accept or reject such application within 60 days of receipt of the application after applying the criteria set out in subsection (6).

Criteria

(6) The criteria to be considered by the Minister before granting a variance application shall include whether:

- (a) there is a need for the use of the substance;
- (b) there is no safer alternative;

(c) use of the product would cause human exposure or environmental contamination; and

(d) such other criteria as established by regulation.

Duration of variance

(7) A variance granted under this section shall expire one year after its issuance, unless a new application for variance has been granted by the Minister before the expiry date.

Employee consultation

(8) An industrial facility evaluating the substitution of safer alternatives shall consult with facility employees prior to filing the plan referred to in subsection (1) or a variance referred to in subsection (3). Such consultation shall include:

(a) a minimum thirty day period for the provision of comments;

(b) maintenance of documentation of employee input and how it was utilized;

(c) opportunity for anonymous employee comments;

(d) analysis of the impact substitution may have on all aspects of the quality of working conditions and work life;

(e) such other matters as established by regulation.

Substitution implementation plan part of toxics use reduction plan

(9) An industrial facility required to prepare a substitution implementation plan shall include the plan in its toxics use reduction plan.

Precautionary Principle

(10) The duties and responsibilities set out in subsection (1) shall be exercised in accordance with the precautionary principle and the principles of sustainable development.

V. PART V – TOXICS USE REDUCTION AND SAFER ALTERNATIVES PLANNING

15. Toxics Use Reduction and Safer Alternatives Planners

15. (1) Where an individual wishes to be certified as a toxics use reduction and safer alternatives planner under this Act, the individual shall:

- (a) satisfactorily complete a toxics use reduction and safer alternatives planning program developed by the Institute pursuant to the requirements of this Act and the regulations;
- (b) pass a uniform certification examination which the Ministry in consultation with the Institute shall develop by the date established by regulation; or
- (c) have at least two years of work experience in toxic use reduction and safer alternatives planning activities as approved by the Minister following consultation with the Institute; and
- (d) meet such further requirements as established by regulation.

Restriction where certification based only on work experience

(2) Where an individual satisfies the requirement of at least two years of work experience as set out in subsection (1)(c), but has not satisfactorily completed a toxic use reduction and safer alternatives planning program and passed the uniform certification examination as set out in subsection (1)(a) and (b), the individual shall only be certified to engage in toxics use reduction and safer alternatives planning activities in industrial facilities owned or operated by his or her employer.

Duration of certification

(3) The duration of the certification authorized under subsection (1) shall not exceed a period greater than two years after its issuance unless renewed before its expiry pursuant to subsection (4).

Renewal of certification

(4) An individual may renew a certification issued pursuant to subsection (1) for an additional two years and thereafter under this subsection at two year intervals before its expiry if he or she successfully completes a course of continuing education instruction in toxics use reduction and safer alternatives planning activities offered by the Institute.

Fees for certification or renewal

(5) The Minister shall establish by regulation a fee to be assessed any individual when such individual obtains his or her certificate as a toxics use reduction and safer alternatives planner for the first time under subsection (1) or upon renewal pursuant to subsection (4). Such fees shall be deposited in the Toxics Use Reduction and Safer Alternatives Fund established under this Act.

Suspension or revocation of certification

(6) The Minister may suspend or revoke the certification of an individual upon:

- (a) a finding of fraud, gross negligence in the certification of toxics use reduction or substitution implementation plans, or for other good cause; or
- (b) a failure by the individual to re-apply for certification by the expiry date applicable to the individual's existing certification; or
- (c) a failure by the individual to pay the requisite fee established pursuant to subsection (5).

Reinstatement of certification

(7) The Minister may re-instate an individual's certification that has been suspended or revoked under subsection (5)(b) or (c) upon the filing by the individual of an application and the payment of the appropriate fee.

VI. PART VI – FINANCIAL AND TECHNICAL ASSISTANCE MEASURES

16. Toxics Use Reduction and Safer Alternatives Fund

16. (1) Upon the coming into force of this Act, the Minister shall,
- (a) establish a fund to be known as the Toxics Use Reduction and Safer Alternatives Fund; and
 - (b) appoint an administrator who shall be responsible to the Minister for meeting the purpose of the Fund.

Fund purpose

(2) The purpose of the Fund is to provide monies, which shall be dedicated and used solely, to enable the Minister to meet the obligations of the Ministry, the Council, the Institute, and other ministries in implementing the provisions of this Act.

Fund sources

(3) The Fund shall have credited and transferred to it on an annual basis monies from the following sources:

- (a) all fees imposed on industrial facilities pursuant to section 17;
- (b) all fees imposed on individuals pursuant to section 15;
- (c) all penalties collected for violations of this Act;
- (d) any grant, gift, or other contribution explicitly made to the Fund;
- (e) any interest earned on monies in the Fund; and
- (f) any other monies that may be available, or appropriated, to the Ministry from consolidated revenue for the implementation of this Act.

17. Industrial Facility Toxics Use Fee

17. (1) Upon the coming into force of this Act, the Minister shall have established by regulation a schedule of initial and annual fees to be paid by an industrial facility to the Ministry for the purposes of enabling the Minister to meet the obligations of the Ministry, the Council, and the Institute in implementing the provisions of this Act.

Criteria for establishing fee

(2) The criteria for establishing the schedule of fees referred to in subsection (1) shall include:

- (a) the number of employees at an industrial facility;
- (b) whether a chemical that appears on the schedule of reportable substances established by section 8, is manufactured, processed, or otherwise used at such facility;
- (c) the annual quantity of each such chemical referred to in subsection (b) that is manufactured, processed, or otherwise used at such facility;

(d) the characteristics of each such chemical as set out in subsection (3) of section 11; and

(e) such other criteria as established by regulation.

Ministerial survey notice for obtaining information from industrial facility

(3) For the purposes of obtaining information from an industrial facility with respect to matters addressed in subsection (2), the Minister shall be authorized to publish a survey notice requiring regulated persons and other industrial facilities to provide information requested in the survey notice by the date specified in the notice.

Declaration

(4) The owner of, or the highest ranking representative with direct operating responsibility at, an industrial facility and with authority to bind the owner shall, at the time of filing the response to the survey notice, file a declaration certifying that:

(a) he or she has read and is familiar with the information provided in response to the survey notice; and

(b) the information provided is true, accurate, and complete to the best of his or her knowledge.

Report under Canadian Environmental Protection Act

(5) An industrial facility required to file an annual report pursuant to the National Pollutant Release Inventory under sections 46 or 71 of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33 shall file a copy of such report with the Minister.

Consequences of failure to pay fee, respond to survey notice, file declaration, or provide report

(6) An industrial facility that fails to pay the fee, respond to the survey notice, file a true, accurate, and complete declaration, or provide the report required by this section is guilty of an offence.

18. Technical Assistance Programs for Businesses

18. (1) The Minister shall, in consultation with the Institute, other ministries, colleges and universities, and private consortia, facilitate business transition to toxics use reduction and safer alternatives measures in the province by establishing a technical assistance program for businesses.

Program content

(2) The technical assistance program for businesses shall include:

- (a) programs to evaluate technologies, encourage university research and industrial collaboration, attract funding, and additional support through federal and private sector grant and financial assistance;
- (b) direct grants and loans to businesses for costs required to implement toxics use reduction and safer alternatives;
- (c) technical support for individual companies or sectors;
- (d) technical assistance in assessing toxics use reduction and safer alternatives and assistance in forming groups to assess and develop safer alternatives;
- (e) research and development of safer alternatives, including demonstration projects;
- (f) market development programs to create demand for safer alternatives;
- (g) conferences, seminars, and workshops focused on solving problems and evaluating technology development opportunities for particular sectors;
- (h) publications to assist particular sectors develop and implement toxics use reduction and safer alternatives; and
- (i) such other measures as established by regulation.

19. Technical Assistance Programs for Employees

19. (1) The Minister shall, in consultation with the Minister of Labour, the Institute, and colleges and universities, cooperate in facilitating employee transition to toxics use reduction and safer alternatives measures in the province by establishing a technical assistance program for employees.

Program content

(2) The Ministers shall jointly develop a plan to ensure just and fair transition to re-employment assistance, vocational re-training, or other support or arrangements such that any employee displaced in the province as a result of the implementation of toxics use reduction or safer alternatives measures will be:

- (a) eligible for an available job with at least equivalent wages, benefits, and working conditions;
- (b) eligible for vocational re-training and job placement;
- (c) entitled to receive re-employment assistance and health benefits; and
- (d) entitled to receive any additional benefits pursuant to the provisions of a collective bargaining agreement.

VII. PART VII – PUBLIC PARTICIPATION

20. Toxics Use Reduction and Safer Alternatives Registry

20. (1) The Ministry shall establish, maintain, and operate a registry known as the Toxics Use Reduction and Safer Alternatives Registry.

Purposes

- (2) The purposes of the Registry are:
 - (a) to facilitate public access to information listed in sections 21 and 22 of this Act and to other information that may be prescribed in accordance with this Act or the regulations; and
 - (b) such other purposes as are prescribed by the regulations.

21. Public Access to Provincial Plans, Notices, Annual Reports, and Information on Registry

21. (1) The following information shall be posted on the Registry established under section 20 and shall be accessible to the public:

- (a) agreements entered into pursuant to subsection (3) of section 3;
- (b) reports and recommendations of the Advisory Council and any of its committees pursuant to subsections (3) and (4) of section 5;
- (c) information generated by the Institute pursuant to subsection (2) of section 6;

- (d) the report comparing the compiled goals of toxics use reduction plans and province-wide targets authorized pursuant to subsection (2) of section 7;
- (e) the schedule of reportable toxic substances established pursuant to subsection (1) of section 8;
- (f) each industrial facility annual report on toxic substances pursuant to section 9;
- (g) each toxics use reduction plan summary produced pursuant to subsection (6) of section 10;
- (h) each draft list of potential, and final list of, priority toxic substances pursuant to section 11;
- (i) each draft and final version of the safer alternatives assessments reports, and notices issued with respect thereto, prepared pursuant to section 12;
- (j) each draft and final version of the provincial alternatives action plans, and notices issued with respect thereto, prepared pursuant to section 13;
- (k) survey notices issued to industrial facilities pursuant to subsection (3) of section 17; and
- (l) such other information generated pursuant to this Act as required by regulation.

Other information generated under Act

(2) In addition to subsection (1), all information submitted to the Minister pursuant to this Act shall, except as set out in section 56, be available for disclosure to the public in accordance with the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31.

Information access additional to any other requirements of law

(3) The public right to access the information set out in subsections (1) and (2) and section 22 is in addition to any other right to such information that exists as a requirement of the laws of Ontario.

22. Right to Know Other Information

22. (1) The public shall be entitled as of right to access the information set out in subsection (2) by the means identified in subsections (3), (4), (5), (6), and (7) of this section.

Pollutant inventory

(2) The Minister shall establish, maintain, and post on the Registry established under section 20, a pollutant inventory that contains at least the following information:

- (a) The alphabetical index record referred to in subsection 9 of section 19 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- (b) All records that are filed in the Environmental Site Registry established under section 168.3 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- (c) All reports submitted under section 6 of Ontario Regulation 127/01 (Airborne Contaminant Monitoring and reporting) made under the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- (d) All reports supplied to the Ministry under the following regulations made under the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
 - i. Ontario Regulation 560/94 (Effluent Monitoring and Effluent Limits – Metal Mining Sector);
 - ii. Ontario Regulation 215/95 (Effluent Monitoring and Effluent Limits – Electric Power Generation Sector);
 - iii. Ontario Regulation 561/94 (Effluent Monitoring and Effluent Limits – Industrial Minerals Sector);
 - iv. Ontario Regulation 64/95 (Effluent Monitoring and Effluent Limits – Inorganic Chemical Sector);
 - v. Ontario Regulation 214/95 (Effluent Monitoring and Effluent Limits – Iron and Steel Manufacturing Sector);
 - vi. Ontario Regulation 562/94 (Effluent Monitoring and Effluent Limits – Metal Casting Sector);
 - vii. Ontario Regulation 63/95 (Effluent Monitoring and Effluent Limits – Organic Chemical Manufacturing Sector);

- viii. Ontario Regulation 537/93 (Effluent Monitoring and Effluent Limits – Petroleum Sector);
 - ix. Ontario Regulation 760/93 (Effluent Monitoring and Effluent Limits – Pulp and Paper Sector);
- (e) The alphabetical index record referred to in subsection (9) of section 13 of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40;
 - (f) All reports required under sections 61 and 81 of the *Clean Water Act*, 2006, S.O. 2006, c. 22;
 - (g) All notices provided to the Ministry under section 29 of the *Pesticides Act*, R.S.O. 1990, c. P.11;
 - (h) The alphabetical index of orders required under subsection (8) of section 31 of the *Pesticides Act*, R.S.O. 1990, c. P.11;
 - (i) All adverse drinking water test results reported under section 18 of the *Safe Drinking Water Act*, 2002, S.O. 2002, c. 32;
 - (j) Prescribed information, including but not limited to consumer product labeling information, about the impacts of the prescribed pollutants on the environment and human health.

Publication requirements

- (3) The inventory established pursuant to subsection (2) shall:
 - (a) be kept current; and
 - (b) include instructions in plain English and French on how to use the inventory.

Searchable information on inventory

- (4) The information contained in the inventory shall be capable of being searched by:
 - (a) the name of the pollutant;
 - (b) the name of the person responsible for the pollutant;
 - (c) the geographic region, including postal code;

- (d) the number of the regulation under which the information was filed;
- (e) the instrument to which the information relates;
- (f) the type of impact on the environment; and
- (g) the type of impact on human health.

Reports

(5) The Registry shall include a function allowing the user of the inventory to create reports organized by the criteria set out in subsection (4) and by such further criteria as prescribed by regulation.

Public Access

- (6) The requirement to publish and maintain the pollutant inventory applies,
 - (a) in addition to any other provisions set out in this Act or any other Act or regulations respecting public access to the documents listed in subsection (2); and
 - (b) despite any provision in any other Act or regulation that would limit the disclosure or use of any information listed in subsection (2).

Consumer product warnings

(7) No prescribed supplier shall supply to a consumer products that expose the consumer to a toxic substance listed in section 8(1)(c), (d), or (e) unless the supplier includes a warning of the exposure in the prescribed manner.

Occupational Health and Safety Act

(8) Notwithstanding section 38(1)(d) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, upon the coming into force of this Act, an employer shall furnish forthwith to the fire department which serves the location in which the workplace is located, a copy of every unexpired material safety data sheet required by that Act in respect of hazardous materials in the workplace as defined under that Act.

23. Right to Apply for Review of Plans

23. (1) Any two persons resident in Ontario and living within ten kilometres of an industrial facility required to prepare a toxics use reduction plan under section 10, or a substitution implementation plan under section 14, may apply to the Minister to review,

for the purpose of determining whether the requirements of this Act and the regulations are being complied with,

- (a) the facility's toxic use reduction plan, plan summary, or any updates thereof pursuant to section 10;
- (b) the facility's substitution implementation plan pursuant to section 14;
- (c) or both.

Environmental Commissioner

(2) The persons making the application pursuant to subsection (1) shall also forward a copy of their request to the person responsible for the industrial facility and to the Environmental Commissioner of Ontario.

Application contents

(3) An application for review under subsection (1) shall be in the form provided for this purpose by the office of the Environmental Commissioner and shall include:

- (a) the names and addresses of the applicants;
- (b) an explanation of why the applicants believe that the review applied for should be undertaken in light of the purposes and requirements of the Act; and
- (c) a summary of the evidence in support thereof.

Ministerial report

(4) The Minister shall report his or her determination in writing within a reasonable period of time to:

- (a) the persons who made the request under subsection (1);
- (b) the industrial facility; and
- (c) the Environmental Commissioner.

24. Right of Action

24. (1) Any person resident in Ontario may bring an action in the Superior Court of Ontario for the failure of a person responsible to file with the Minister:

- (a) An annual report meeting the requirements of section 9;
- (b) A toxics use reduction plan meeting the requirements of section 10;
- (c) A toxics use reduction plan summary meeting the requirements of subsection (6) of section 10; or
- (d) An industrial facility substitution implementation plan meeting the requirements of section 14.

Same

(2) Any person resident in Ontario may bring an action in the Superior Court of Ontario for the failure of the Minister, or any other minister, to perform any duty under the Act including, but not limited to:

- (a) the production of a draft or final list of priority toxic substances meeting the requirements of section 11;
- (b) the production of a draft or final safer alternative assessment report meeting the requirements of section 12;
- (c) the production of a draft or final priority toxic substance alternative action plan meeting the requirements of section 13;
- (d) the production of the report in response to an application for review required by section 23.

Remedies

(3) If the court finds that the person bringing the action is entitled to judgment in an action brought under subsection (1) or (2), the court may:

- (a) grant declaratory relief;
- (b) order the production of the list, report, plan, plan summary, or the taking of such other action as complies with the Act;
- (c) make any other order, including an order as to costs, that the court considers appropriate.

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56. Confidential Business Information

56. (1) Where a person submitting information to the Minister under the requirements of this Act indicates that the information may be confidential business information and otherwise exempt from disclosure under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and requests that the information be so treated under this Act, the person submitting the information shall identify that information upon its submission to the Minister and shall provide sufficient details in writing in support of reasons why the information should be treated as confidential and exempted from disclosure.

Reasons for requesting confidentiality

(2) A request under subsection (1) may only be based on any of the following reasons:

- (a) the information concerns manufacturing or quality control processes relating to a toxic substance;
- (b) the information concerns methods for determining the composition of a toxic substance;
- (c) the information otherwise constitutes a trade secret;
- (d) the disclosure of the information would likely cause material commercial or financial loss to, or prejudice to the competitive position of, the person providing the information or on whose behalf it is provided;
- (e) the disclosure of the information would likely interfere with contractual or other negotiations being conducted by the person providing the information or on whose behalf it is provided.

Minister's decision

(3) In determining whether to accept or reject the request referred to in subsection (1), the Minister shall consider whether the reasons provided pursuant to subsection (2) are well-founded in the circumstances and, if they are, the Minister may nevertheless reject the request if,

- (a) disclosure is in the interest of environmental protection, public health, or public safety; and
- (b) the public interest in the disclosure outweighs in importance any material commercial or financial loss or prejudice to the competitive position of the person who provided the information or on whose behalf it was provided.

Where result of decision is acceptance of request

(4) Where the Minister accepts the request, the information shall not be made available on the Registry or otherwise be subject to disclosure.

Where result of decision is rejection of request

(5) Where the Minister rejects the request, the information shall be made available on the Registry and shall otherwise be subject to disclosure.

Procedure for determining validity of Ministerial decision

(6) The procedure for determining the validity of a decision by the Minister under this section shall be that set out in the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 except that section 58 of this Act shall apply.

57. Annual Reports

58. Conflict

58. If there is a conflict between this Act or regulations and a provision of another Act, regulation, or municipal by-law dealing with toxics use reduction, safer alternatives, or the public right to know, the provision that is the most protective of human health or the environment, or provides for the most access to information prevails.

59. Regulations

59. The Lieutenant Governor in Council may make regulations,
- (a) governing the terms of any agreements entered into pursuant to subsection 3 of section 3;
 - (b) governing the operation of the council and any advisory committees thereto under section 5;
 - (c) governing the operation of the Institute under section 6;
 - (d) governing the schedule of reportable toxic substances established under section 8;
 - (e) governing the additional content, if any, of annual reports by industrial facilities under section 9;
 - (f) governing the additional content, if any, of a toxics use reduction plan under subsection 2 of section 10, a plan update under subsection (4) of section 10, and a plan summary under subsection (6) of section 10;
 - (g) governing additional criteria, if any, for the identification of potential priority toxic substances under subsection (3) of section 11;
 - (h) governing the additional content, if any, of a safer alternatives assessment report under subsection (2) of section 12;
 - (i) authorizing additional goals, if any, of a provincial priority toxic substance alternatives action plan under subsection (2), or governing the additional content, if any, of a plan under subsection (3) of section 13;
 - (j) governing the additional content, if any, of a substitution implementation plan for an industrial facility under subsection (2), the additional content, if any, for a variance application under subsection (4), the additional criteria, if any, to be considered by the Minister under subsection (6), or additional employee consultation factors, if any, to be considered under subsection (8) of section 14;
 - (k) governing additional requirements, if any, to be met by an individual seeking certification as a toxics use reduction and safer alternatives planner under subsection (1), or the fees to be paid for certification or renewal thereof under subsection (5) of section 15;
 - (l) governing administrative matters, if any, respecting the Toxics Use Reduction and Safer Alternatives Fund established under section 16;

- (m) governing the initial and annual fees to be paid by an industrial facility under subsection (1), or the additional criteria, if any, for establishing such fees under subsection (2) of section 17;
- (n) governing the additional content, if any, of the technical assistance programs for businesses under subsection (2) of section 18;
- (o) governing the additional content, if any, of the technical assistance programs for employees under subsection (2) of section 19;
- (p) authorizing further purposes, if any, respecting the Registry under subsection (2) of section 20;
- (q) authorizing further information, if any, that may be posted on the Registry under subsection (1) of section 21;
- (r) governing any matter respecting the right to know other information under section 22;
- (s) governing any matter respecting the right to apply for review of plans under section 23;
- (t) governing any other matter that, in the opinion of the Lieutenant Governor in Council, is necessary or desirable to facilitate the implementation of this Act in light of its purposes.

60. Short Title

60. The short title of this Act is the *Ontario Toxics Use Reduction and Safer Alternatives Act, 2008*.