



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

May 22, 2009

To the Standing Committee on General Governance,

**Further submissions of the Canadian Environmental Law Association Regarding Bill 167, the Toxic Reduction Act**

At the May 13, 2009 Committee hearings on Bill 167 there was some confusion regarding the lists that Bill 167 should cover in its pollution prevention planning regime. The Canadian Environmental Law Association is submitting these additional comments in the hopes they will be useful in understanding differences in programs and choices Ontario has made in regard to their strategy outlined most recently in their *Backgrounder: the Proposed Toxics Reduction Act Planned Consultations and Next Steps* posted on the Ministry of the Environment's website.

**Background**

Our organization has been involved in the chemical by chemical assessments being carried out under Canada's Chemical Management Plan (CMP) and, for many years prior to the CMP, in addressing assessments of pesticides, chemicals and related product safety issues addressed under the Pest Control Products Act, the Canadian Environmental Protection Act (CEPA), and the Hazardous Products Act, respectively. We have also for many years maintained a PollutionWatch website on emissions [www.pollutionwatch.org](http://www.pollutionwatch.org) with Environmental Defence where the public can access annual emissions levels reported under the National Pollutant Release Inventory (NPRI). This work has occurred within the context of implementation of the *Canadian Environmental Protection Act* (CEPA). As Canada's principal tool for controlling toxic chemicals, we have often sought to integrate this law with related legal requirements flowing from the *Hazardous Products Act* and the *Pest Control Products Act*.

With respect to reforming CEPA (requirements exist in this law for it to be reviewed every five years), CELA has been involved extensively in the improvements to this Act since its inception, for example by serving on Advisory Committees and making frequent submissions and testimonies on these programs. We are currently involved in seeking better integration between CEPA and the *Hazardous Products Act*, in Bill C-6 now under review by the Standing Committee on Health.

**Our recommendations:**

**We agree with the Ontario government's Expert Panel on toxic reduction that the NPRI reporting system is the appropriate reporting system for the framework for Bill 167** firstly because industrial facilities already use this system to submit annual reports on their emissions and secondly because use of that list has more immediate exposure reduction potential. Environment Canada's website describes the National Pollutant Release Inventory as follows:

The National Pollutant Release Inventory (NPRI) is Canada's legislated, publicly accessible inventory of pollutant releases (to air, water and land), disposals and transfers for recycling. It is a key resource for:

- identifying pollution prevention priorities;
- supporting the assessment and risk management of chemicals, and air quality modeling;
- helping develop targeted regulations for reducing releases of toxic substances and air pollutants;
- Encouraging actions to reduce the release of pollutants into the environment; and improving public understanding.

Bill 167 proposes to add additional requirements for Ontario facilities to report on their **use** of specified substances; not just their emissions of those substances. This is appropriate and within the province's constitutional rights to act to protect public health. Benefits of NPRI are:

- The NPRI list already captures the substances that make up the largest emissions in Ontario.
- Industries that report to the NPRI will have had the experience in using this existing reporting mechanism.
- NPRI will be able to indicate whether reductions are occurring in comparison with historical reporting records since 1993.
- Because the larger Ontario emitters already report to NPRI, Ontario's scheme first sets out to include all NPRI substances in the first 2 phases of their reporting.
- A significant difference is that they will now have to report on use as well as emissions. Industry representatives present at the consultation held in Hamilton on the government Discussion Paper stated that they already track use data in order to arrive at the emissions data they currently report to NPRI.
- The use of this existing list would not cause duplication or cost significantly more money. Using NPRI will avoid duplication since it is already part of existing industrial annual operations.
- This approach is consistent with the model used in the states of New Jersey and Massachusetts and in Eugene, Oregon. All base their reporting and toxics use reduction efforts on the Toxics Release Inventory (TRI), the American counterpart to NPRI,
- The existence of NPRI reporting requirements for pollution emissions since 1993 provides a clear indication, among many, that plenty of scientific information exists to demonstrate the reality of an ongoing problem of industrial emissions of toxic substances, and
- There is already well established public accessibility to and transparency in NPRI reporting.

Furthermore Bill 167 sets out to establish they will be expanding reporting in Phase 2 to other chemicals of concern that may be in use in Ontario that are not yet being reported by NPRI. These include chemicals with very real health impacts for Ontarians.

**We support the focus of the proposed Bill for specified facilities to prepare mandatory Pollution Prevention Plans, using material use audits to determine and report on the fate of all harmful substances in use in all production processes.** We feel this is best accomplished with the assistance of a Toxic Reduction Institute. These measures will bring a long overdue improvement to Ontario with respect to how facilities account for their use of toxic materials. We would urge you to refer to the government 2008 Discussion Paper and the CELA report *Our Toxic-Free Future: an action Plan and Model Toxics*

*Use Reduction Law for Ontario* for a more extensive description of the potential for Pollution Prevention Plan content and process.

In other successful toxic reduction programs in Massachusetts and in New Jersey, tracking and reporting on all uses has led to the identification of safer alternatives to toxics, improved production processes, significant reductions in hazardous waste in need of costly disposal and cleaner, healthier workplaces. New Jersey's industrial sectors regulated under their Act are closest to Ontario's industrial sectors.

**Preparation of these Pollution Prevention Plans needs to be mandatory as is proposed in Bill 167; and the plans must also be certified by Pollution Prevention Planners who in turn are trained and certified as proposed in Bill 167.** CELA supports these proposals in Bill 167. Ontario's large levels of emissions demonstrate that most industrial facilities in this province are not voluntarily doing successful pollution prevention planning that results in significant toxic reductions. They are not obligated to prepare such plans under CEPA.

**We submit that it would be very appropriate exercise of provincial jurisdiction and an essential amendment to Bill 167 to create an arms length Institute to train Pollution Prevention Planners and to encourage and develop Best Practices for Pollution Prevention for all of Ontario's diverse industrial sectors.** We concur that the implementation of the Plans need not be mandatory. The US experience demonstrates that doing the Plans stimulates commitment to reduction. However, should future reporting show that reductions are not occurring in Ontario we would want subsequent governments to revisit this point.

We understand that the Canadian Chemical Producers Association (CPPA) and others have suggested that Ontario should be basing their program on the *Canadian Environmental Protection Act* (CEPA). Specifically, they suggests that reporting under Ontario's planned toxics reduction program should be limited to those few chemicals for which a designation of toxicity has occurred under the federal law.

#### **CELA concerns about shifting Ontario's reporting to CEPA and or CMP**

**CELA strongly disagrees with restricting the purview of Ontario's toxic reduction to CEPA-toxic substances or CEPA and it's narrower approach to pollution prevention planning.**

- This suggestion would dramatically shrink the number of substances to which the Ontario program would apply. It would allow industries to avoid having to consider toxic reduction across a large percentage of their routine activities and pollution emissions they are already required to report on those emissions to the federal government NPRI program.
- The CEPA approach would not ensure the kind of comprehensive pollution prevention planning on a facility by facility basis that is required and is contemplated in Ontario's proposed Toxics Reduction Act.
- Pollution prevention approaches under CEPA are inconsistently applied since industry is given the flexibility to design the elements to be included in a plan and far narrower in scope than what is contemplated in Ontario. The carcinogens caught by Ontario's program are not a focus of CEPA. There have only been 8 Notices for Pollution Prevention Planning under CEPA see <http://www.ec.gc.ca/CEPARegistry/plans/P2/> for

further information. Very little reporting on the progress made under the plans have been released.

- Currently, pollution prevention plans required under CEPA are limited to a few toxic chemicals (e.g., mercury, acrylonitrile, dichloromethane, and nonylphenol and its ethoxylates) and to the type of industry sectors required to prepare plans (e.g., base metal smelting plants, wood preservation plants see <http://www.ec.gc.ca/CEPARRegistry/plans/P2/>).
- This would be a recipe for delay and inaction for achieving reductions in use and release of toxic materials.
- Moreover, it ignores other scientifically valid ways other than risk assessment to identify toxic substances to which a toxics reduction program in Ontario would apply.

### Canada's Chemical Management Plan

We acknowledge that Canada has made progress to identify chemicals that require further attention through its legal obligation to categorize the 23,000 chemicals in commerce in Canada. Under the Chemicals Management Plan (CMP) a short-list of approximately 200 chemicals from the 4,300 chemicals identified in categorization are a focus for more detailed review, and to then determine if they should be declared CEPA-toxic. However, the CMP is not without its shortcomings, a matter CELA has commented upon extensively during the implementation of the CMP (see <http://www.cela.ca/collections/pollution/toxic-substances-consumer-products> and <http://www.cela.ca/collections/pollution/regulation-existing-and-new-toxic-substances>).

Key among these shortcomings is the reality that federal assessment of substances occurs on a single chemical basis, or in some cases on groups of similar chemicals. Not considered in such assessments however is the daily reality of multiple exposures to substances that can often be associated with many health or environmental problems that Ontario's TRA sets out to address.

More importantly, the CMP is focused on very few of the worst toxic substances and will be for many years yet as the development of management regimes for toxic chemicals are prescribed under CEPA. These regimes each take several years to develop for each chemical.

**We urge the Ontario government to continue to recognize that toxics reduction is not solely about taking action on individual substances. It is about action to reduce exposures to the multitude of hazardous substances in the environment and workplaces.** Bill 167 toxics reduction initiatives are far more progressive and more precautionary than the federal regimes. They recognize the reality that ongoing exposure to multiple pollutants in the environment and substances added to or contaminating consumer products create environmental and health hazards that can and should be reduced. Workers are among those who are first to benefit from such progressive action.

The notion of so dramatically shrinking the purview of substances to which the Ontario program will apply would fundamentally reverse the stated commitments made by Premier McGuinty which was "to reduce the environmental causes of sickness in Ontario".

Simply on the numbers of substances involved, we note that the current list of CEPA-toxic substances contains approximately **85** substances or groups of substances. Even with progress occurring within the CMP this list will not grow significantly in the foreseeable future. It certainly

will be a long time, if ever that the list of CEPA-toxic substances will approach the **475** substances set out in the schedule to the Ontario government's Discussion Paper on Toxic Reduction. Nor does the list of CEPA-toxic substances comprehensively include the 202 carcinogens in use and largely unregulated in Ontario, as identified in the July 2007 report *Cancer and the Environment in Ontario: GAP Analysis on the Reduction of Carcinogens*. We recall that all three political parties in Ontario promised to act on this Report before the 2007 election. CELA sees the NPRI list of chemicals as the necessary first steps for establishing the TRA but urges that efforts to expand the list of chemicals be taken at the earliest opportunity to account for new information and development from other jurisdictions on toxic chemicals.

Furthermore, the government Discussion Paper and the Expert Panel, targeted other emerging substances that are known to be neurotoxins, reproductive toxins and mutagens that are not currently reported under NPRI, as worthy of eventually being covered by Ontario's toxics reduction program.

In conclusion CELA submits that the proposed Bill takes a complementary approach to federal programs and most importantly a more immediate health protective approach by basing the proposed requirements for toxic use reporting on the existing and available NPRI system, for convenience, and by adding other chemicals that are in use in Ontario and are of concern in Ontario. **We urge you as a Committee to ensure that there is flexibility in Bill 167 and subsequent regulations pursuant to the legislation to add new substances of concern and extended the reach of this legislation to other polluting sectors in the future.** For example, sewage treatment plants are shown in the NPRI to be the largest emitters to water and the Ontario energy sector is the largest emitter to air are not proposed to be captured at this time by Bill 167.

*This supplementary submission was prepared by CELA Researchers Kathleen Cooper, Fe de Leon, Sarah Miller and Anne Wordsworth and Executive Director Theresa McClenaghan.*

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