



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

***Remarks to the National Network on Environments and Women's
Health Conference Windsor, ON January 27, 2012
"Are Women Automotive Plastic Workers at Risk? Starting the
Conversation"***

**Ontario's *Toxic Reduction Act* ~ It's not easy becoming green in
Ontario**

How did Ontario's Toxic Reduction Act come to be?

In 2005 Cancer Care Ontario an advisory and research agency to the Province convened a Cancer and Environmental Stakeholder Group of medical, environmental and labour experts to consider advancing cancer prevention as part of their Cancer 2020 strategy in Ontario. This group focused their efforts on researching the state of regulation of carcinogens in Ontario. In July, 2007 this research was released in a report *Cancer and the Environment in Ontario: Gap Analysis on the Reduction of Environmental Carcinogens*.

This original group disbanded and some of its members formed another stakeholder group convened by the Canadian Cancer Society's Ontario division to advocate for action on the report's findings. As 2007 was an election year, the group met with all three parties who all promised, if elected, to improve regulation of carcinogens. Shortly after Premier McGuinty was re-elected he announced that his government "was reducing environmental toxins by tackling environmental causes of sickness" by introducing a Toxic Reduction Act and immediately banning Bisphenol A from baby bottles.

The quest for the best possible Act.

The Canadian Environmental Law Association (CELA) proceeded to consider what the best possible toxic reduction act could be. In 2008, CELA wrote a model bill Ontario Toxic Use Reduction and Safer Alternatives Act based on the best practices and advice drawn on the decade of experience in US States of Massachusetts and New Jersey with their toxic reduction laws. We briefed Ministry of Environment staff on this model and hoped they would draw from it.

Initially we were hopeful. We were asked to recommend appointments to an expert advisory panel to the government on their new act and were able to get several of our recommended appointments including Ken Geiser, a founding member of the University of Massachusetts at Lowell's remarkable Toxic Reduction Institute, on this advisory committee.

Our initial great expectations for the Act were:

- That the Act would have measurable toxic reduction targets and timetables.
- That the Act would create a Toxic Reduction Institute to train and build expertise to be brought into each regulated facility, assist with pollution prevention planning and educate on best practices,
- That the new law would require the involvement of people working in these facilities in the creation of pollution prevention plans for their facility because they would be the first to benefit from reductions in their exposures and would have the wisdom from their work place experiences,
- That the new law would provide for safer substitution of chemicals,
- That thresholds would be lowered from the National Pollutant Release Inventory (NPRI) reporting requirement levels so that more facilities using harmful substances would have to report,
- That the range of substances covered would be expanded to include emerging substances of concern not yet regulated in the Province, including some of the carcinogens we identified in our gap analysis report and other substances such as hormone disruptors,
- That pollution prevention planning could become a new career in Ontario and new green chemistry jobs and innovation could be driven by this Act.
- That old regulatory models that relied on voluntary reporting by industry could be changed by opening plant doors to allow outside expert pollution prevention planners inside to encourage and verify compliance with the law's pollution prevention priorities. and
- That the Ontario public would have increased access to and the right-to-know much more information about toxic exposures in their environment, work places and in the consumer products produced here.

Our stakeholder advocacy group has worked continuously since 2007 for these goals even though we have won few of them. We have felt it is important to be on record to continue to voice that Ontarians need laws that protect their health. We have attended countless consultations met continuously with the Ministry of Environment's Toxic Reduction Office staff, have advised on the law, regulations, technical reporting requirements and

guidance materials, on elements of pollution prevention plans and qualifications for pollution prevention planners.

Andy King of the Steelworkers and I convened several meetings with MOE and the Ministry of Labour to encourage them to include workplace health and safety considerations, information on exposures, data sharing and workers involvement in pollution prevention planning. We were not successful. In the end the government silos were too great and influenced by many of the regulated employers that opposed inclusion of worker involvement. We have committed to continue to consult next on the critical rules for the “Living List” component of the Act which will determine rules for how to add or remove the substances regulated.

What is the status of the Toxic Reduction Act?

The *Toxics Reduction Act, O. Reg. 455* was passed in 2009. However, the Act has still not been fully implemented. We are still waiting for a regulation on enforcement of the act and the original 2009 regulation was amended effective July 1, 2011 regarding requirements for pollution prevention planners and to extend the deadline for Phase I Pollution Prevention Plans and Plan Summaries by one year from December 31 2011 to December 2012. New amendments also allowed for an additional option for a single certification for multiple plans.

The amended Act focuses on reducing the front-end production of toxic substances within the manufacturing process by requiring that pollution prevention plans be done for each one of the designated toxic substances in the manufacturing process. There are no provisions requiring safer substitution of less harmful substances if they exist. The Act requires Ontario manufacturers to report on toxic substances commencing January 1, 2010 and create pollution prevention plans and plan summaries for Phase 1 substances completed now by December 31, 2012. Reporting on the remaining 250 Phase II substances will now be December 2013. It is required that these plans be certified by the highest ranking employee of the company as well as a certified pollution prevention planner. However the Act does **not** require facilities to implement the plans. This is also the case for the Massachusetts Act. However the failure to create goals and targets for reduction in Ontario or to create a Toxic Reduction Institute here guarantee that we will not be shifting to a pollution prevention culture soon in Ontario as Massachusetts did. Unless company executives and planners recognize pollution prevention can result in long term savings and benefits, they will have little incentive to implement their plans in the short term during these hard economic times.

The government's expert panel recommended that the list of substances regulated be expanded and that the NPRI federal thresholds be lowered to capture more harmful substances. This advice was not taken and the substances regulated mirror the NPRI list with the addition of acetone. The NPRI thresholds that report on end of the pipe discharges are very high. The reporting thresholds under NPRI for most of pollutants include meeting a 10 tonne threshold for manufacture, production or otherwise use of the pollutant and a 20,000 employee work hours for reporting.

Left dangling are substances of concern, hazardous substances not yet regulated or whose presence and use is indicated but not quantified in Ontario. These substances include some of the carcinogens identified in our original report and other emerging concerns with impacts from low exposures like endocrine disrupting substances we heard about this morning. It is of great concern to us is that these are not specified in the Act. A list of substances of concern was reduced from the 150 substances recommended by the expert panel to 19 in a paper discussing how they determined substances to be regulated. We remain concerned that these 19 have not appeared in the law or regulations. There is no clarity on if or when they might be considered.

In the midst of the implementation of this Act, the economy bucketed. The Canadian Manufacturers and Exporters lobbied hard for less constraints and regulation. This resulted in sweeping regulatory changes in environmental regulation in Ontario in the Open for Business and Modernization of Approvals programs. These initiatives were meant to create faster smarter streamlined government to business approvals. This deregulation climate had impacts on the implementation of this Act. It resulted in the 2011 amendments to the regulation and changed the government's focus from disease prevention to business friendly priorities.

The delays in settling qualifications for planners may mean Phase I Pollution Prevention Plans could proceed without the benefit of planners. Most facilities in Ontario have expressed their preference to appoint an existing employee to be their pollution prevention planner. This raises concerns for how impartial or comfortable these employees will be to suggest pollution prevention initiatives to their employers which will require new investments.

The MOE has just put out a call for people interested in becoming pollution prevention planners. The Ministry of the Environment will be training and licensing these planners who must have a degree in a related field and/or varying degrees of work experience, complete the Ministry course and pass the exam.

There is and will continue to be pushback on this act. It will be costly for facilities to do a mass balance study of the fate of each substance in use at each phase of the manufacturing process and to train employees or hire outside licensed planners.

As employees you will not have any preferred access to information generated in these plans and will have to try and access them along with other members of the public on each individual facility website. There are no plans for a website where Ontarians can access the information for all reporting facilities. The Act requires that the facility only share a summary of their plans with the public and they can choose to report in bands and ranges or choose to report actual amounts for use, transfer and discharges. This will mean the onus will be on all of us to find and review this information facility by facility. We will need to rely on the Ministry of the Environment to elect to produce cumulative reports on overall pollution prevention planning and actual toxic use reductions which may result from this Act.

Our best bet as always is ourselves in the health, labour and environmental communities. As more and more of us work together for changes and alternatives to substitute for poisons in use are found we will need to continue to push for the very real benefits that pioneers like the TURI Institute and the EU REACH programs keep proving are possible and profitable. In the meantime we in Ontario remain only green with envy.

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