

To: National Pollutant Release Inventory, Environment and Climate Change Canada

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## **REVIEW ONTARIO TOXICS REDUCTION ACT TO EXPAND REPORTING UNDER THE NPRI**

The Ontario Toxics Reduction Act (TRA) passed in June 2009 and worked with Ontario Regulation 455/09, to require Ontario companies to develop plans that reduce the use and creation of toxic substances where possible. The TRA was the only toxics reduction legislation in place at the provincial or territorial level in Canada. The Ontario government repealed the TRA as of December 31, 2021. The repeal left behind an urgent need for the NPRI to ensure that the work done and data collected under the TRA are not lost, and to expand the NPRI to incorporate elements of the TRA not currently included in the NPRI as detailed below.

The issues raised in this brief commentary should be urgently explored by a subcommittee under the NPRI Work Group. The Ontario data and the requirements to provide them are too valuable to be lost. In addition, this is an opportunity to scale up some TRA to the federal level to help form the basis of a more complete, inclusive, and useful NPRI dataset for the entire country. Consideration should be made to conduct preliminary work to assess the Ontario Toxics Reduction Program including the design and presentation of the website in advance of substantive discussions for NPRI WG engagement.

Under the TRA the owners and operators of all regulated facilities in Ontario were required to take the following steps:

1. Track and quantify the toxic substances, prescribed in regulation, that are used, created, transformed, destroyed, released, disposed of, transferred and contained in product at the facility (Toxic Substance Accounting);
2. Prepare plans to reduce the use and creation of the toxic substances prescribed in regulation (Toxic Substance Reduction Planning) and have the plans certified both by the highest-ranking employee at the facility with management responsibilities and by a person with qualifications set out in the regulation (a toxic substance reduction planner);
3. Provide summaries of their plans to the public on the internet and to the Ministry of the Environment and Climate Change, notify employees within five days that those summaries are made public, and ensure that the most current plan summary remains posted on the Internet until the new version is posted;
4. Report annually to the ministry and the public on their progress in reducing the prescribed toxic substances, and notify employees the same day those reports are made public;

5. Review their plans in specific years.<sup>9</sup>

Under the TRA, Ontario facilities were required to prepare toxic reduction plans but implementing the plans was voluntary. Reporting to TRA began for the year 2011. The latest data available on the Ontario Toxics Reduction Program website is for 2018. No further annual reports have been released past 2018.

In 2018, the provincial government announced that the TRA will be repealed, effective December 31, 2021. Some of the non-governmental organizations, including the Canadian Environmental Law Association, submitted their disappointment and concern with this government decision in January 2019 (See: <https://cela.ca/wp-content/uploads/2019/07/1235-CELASubmissionsOnBill-66Schedule5.pdf>). Furthermore, it is important to note that the TRA had not yet been fully implemented when the provincial government made the decision to repeal the Act.

There are key obligations under the TRA that are not included in the National Pollutant Release Inventory (NPRI). Thus, there is an opportunity to expand the National Program by adopting key obligations under Ontario's program. Currently, the data collected and presented in Ontario's Toxics Reduction Program remain accessible. However, there has been no commitment made that this information will remain accessible to the public. The status of pollution data over the past 10 years is critical to maintain and make publicly accessible. Furthermore, it offers a clear opportunity for the NPRI to consider how elements of the Ontario program may be adopted and integrated into the NPRI.

We will highlight the following elements for consideration:

- Toxic Reduction Plans
- Toxics Substances Used Reporting
- Annual Reports
- Living List Framework

### **Toxics Reduction Plans**

Under the TRA, facilities are required to prepare toxic reduction plans but implementation of those plans are not mandatory. This feature is not required under NPRI. Under NPRI, facilities should report on pollution prevention activities. However, pollution prevention planning is a management tool that may be used under the Canadian Environmental Protection Act (CEPA) to address toxic substances. When used, Pollution Prevention Plans under CEPA target toxic substances relevant to specific sectors and focus on specific environmental media. Not all facilities or sectors covered under the Pollution Prevention Plans under CEPA may be reporting to the NPRI, whereas under TRA, facilities are required to prepare plans and summaries of those plans are made accessible under the Ontario Toxics Reduction Programs.

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<sup>9</sup> See: Ontario's Toxics Reduction Program. <https://www.ontario.ca/page/ontario-toxics-reduction-program-guide-regulated-facilities>

We seek consideration and support by the NPRI to review the toxic reduction plan requirements under TRA and evaluate how such plans can be integrated into the NPRI and how these would interact with CEPA. The information gathered in these toxic reduction plans would provide invaluable benefits in addition to setting goals for pollution reduction; promoting innovation and continuous improvement of facility operations, such as reducing or eliminating waste streams, and adopting circular economies. Ontario's analysis of pollution prevention plans suggest that reductions were achieved by facilities with toxic reduction plans in place for specific toxic substances. The features of toxic reduction plans can be adopted within the framework of NPRI, particularly in the section focused on Pollution Prevention activities. For example, see: *2017 Minister's Report on Toxics Reduction* at <https://www.ontario.ca/page/2017-ministers-report-toxics-reduction>.



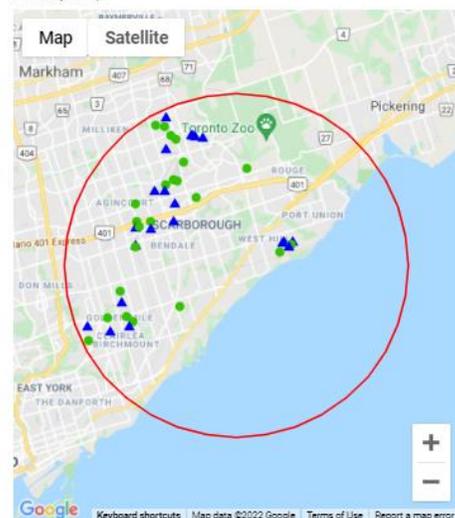
[- Facility information table and map](#)

Facility information table

The table is sorted in ascending alphabetical order. Select the table header to sort in descending order. Select the facility name to zoom in and identify the facility on the map and access links to their reports.

Organization Name - Facility Name - NPRI ID
<a href="#">▲ A.G. Simpson Automotive Inc. - Scarborough Plant - 2640</a>
<a href="#">▲ AEP Canada Inc. - West Hill Resinite - 5819</a>
<a href="#">▲ Allied Halo Industries Inc. - Allied-Halo - 11175</a>
<a href="#">▲ Aqua Bond Inc. - Aqua Bond Inc. - 4433</a>
<a href="#">● Atlantic Packaging Products Ltd. - 111 Progress - 5688</a>
<a href="#">▲ Atlantic Packaging Products Ltd. - 80 Progress - 28453</a>
<a href="#">● Atlantic Packaging Products Ltd. - Gran Packaging - 7435</a>
<a href="#">● DART Canada Inc. - DART Canada Inc. - 10435</a>
<a href="#">● De Luxe Produits de Papier Inc. - Division Toronto - 10455</a>
<a href="#">● Dextran Products Ltd. - DEXTRAN PRODUCTS LIMITED - 577</a>

Facility map



Source: Ontario Toxics Reduction Plan for postal code east Scarborough, ON. Presentation of results including those facilities which have pollution prevention plans in place and those facilities which do not.

## Toxics Substances Use Reporting

Under the TRA, section 3 states a requirement for regulated facilities to prepare toxic substance reduction plans. Specifically, this section states:

- 3 (1) The owner and the operator of a facility shall ensure that a toxic substance reduction plan is prepared for a toxic substance in accordance with this Act and the regulations if all of the following criteria are met:
1. The facility belongs to a class of facilities prescribed by the regulations.
  2. The number of persons employed at the facility exceeds the number of persons prescribed by the regulations.
  3. The toxic substance is used or created at the facility and the amounts of the substance that are used or created meet the criteria prescribed by the regulations.
  4. Such other criteria as are prescribed by the regulations.<sup>10</sup>

The requirement to include toxic substances that are used or created at the facilities is a feature not required in reporting to the under NPRI. NPRI reporting could be modified to also require reporting of all NPRI substances that are used, transferred off site as product or in products. This would fill a serious gap in current reporting. This information would serve to connect the life cycle of toxic substances in facilities that use, create and release substances to the air, water, land and transfers off site for disposal or recycling as well as transferred off site as product or in product. Public, government, and industrial access to this information would promote activities aimed at prevention and reduction of toxic substances. Further consideration by NPRI to examine the need for reporting use of substances has been raised and discussed by the NPRI Task Force established in 1992. However, there has been no progress under NPRI to address this issue. Our groups have also provided comments on this issue in another brief titled: **NGO proposal to include the reporting of NPRI substances contained in goods and products transferred off-site for purposes other than disposal in the *Work Plan for Work Group Activities from 2022 to -2024***. The use of data collected by facilities does not represent a significant barrier to facilities as the OTRA has demonstrated. Such information may be useful in promoting improved pollution prevention activities under NPRI which does take into consideration the use of substances in the definition of pollution prevention.

The presentation of the substance use and creation data presented on the Ontario Toxics Reduction Program should also be a focus of discussion. Providing this information along with the release and disposal data would provide a more comprehensive profile for facilities reporting to the program and supporting improved right to know framework.

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<sup>10</sup> Toxics Reduction Act, 2009, [S.o. 2009, chapter 19](#).

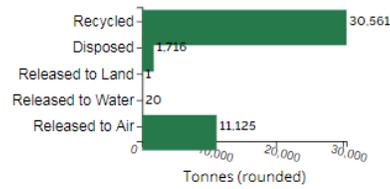
**- Substance information**

**Toxics substance table**

The table is sorted in ascending alphabetical order.  
 Select the table header to sort in descending order.  
 Select a substance name to access additional information about that substance.

Substance
<a href="#">1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin</a>
<a href="#">1,2,3,4,6,7,8-Heptachlorodibenzofuran</a>
<a href="#">1,2,3,4,7,8,9-Heptachlorodibenzofuran</a>
<a href="#">1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin</a>
<a href="#">1,2,3,4,7,8-Hexachlorodibenzofuran</a>
<a href="#">1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin</a>
<a href="#">1,2,3,6,7,8-Hexachlorodibenzofuran</a>
<a href="#">1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin</a>
<a href="#">1,2,3,7,8,9-Hexachlorodibenzofuran</a>
<a href="#">1,2,3,7,8-Pentachlorodibenzo-p-dioxin</a>

Amount released, disposed, and recycled



The graph shows the amount of substance(s) released, disposed, and recycled based on your search criteria. [Detailed description of graph.](#)

Number of times substance(s) were reported by facilities

Range (tonnes)	Used (entered facility)	Created at facility	Contained in product
>0 to 1	467	1088	587
>1 to 10	259	61	21
>10 to 100	382	61	129
>100 to 1,000	130	13	56
>1,000 to 10,000	54	0	7
>10,000 to 100,000	11	0	0
>100,000 to 1,000,000	0	0	0

Source: Substance Information for HALLTECH INC., Scarborough, ON at <https://www.ontario.ca/page/map-toxics-reduction#/>

## Annual Reports

Under the Ontario TRA, Annual reports were submitted and posted to the Toxics Reduction Program website. The information presented in the Annual Report covers all pollutants relevant to a facility as well as present facility performance information with additional analysis including data used for the reportable pollutant, estimates for a change in releases of pollutants from the previous reporting year and reasons for change. NPRI now provides facility profiles for releases and transfer data and access to previous years' pollution data. Additional analysis conducted under NPRI for sectors or specific environmental media releases and transfer are often provided in another section of the website that may not include all facilities. Further review and discussion on reviewing the information from annual reports prepared under the OTRA should be undertaken and determine which features from the Annual Report would provide added value to the information covered under NPRI.

For example, the information on substances used (entered) by facility (including substances used, created or contained in products), as well as the estimated changes from previous years are beyond the information currently provided through NPRI. However, it is reasonable to suppose that this information would improve the interpretation of NPRI data, particularly the analysis of temporal trends—a feature currently absent from NPRI data tools and difficult to clearly decipher without also (somehow) incorporating, or accounting for, changes in NPRI reporting. Facility-based Annual Reports could help elucidate the difference between increased release, and increased reporting, for instance. Reports of substances used in a process, or transferred off-site in products, would also aid in making the NPRI a more complete repository for data on the cumulative quantities of harmful substances entering the Canadian environment. See example of Annual Report highlighting Ontario based facility, [Halltech Inc. \(NPRI ID: 374\)](#) for information presented in its annual report for 2018 Reporting Period. We also reviewed the [NPRI results for Halltech Inc \(NPRI ID: 374\)](#) based on dashboard search.

### **List of Toxic Substances and a Living List Framework**

The list of toxic substances under TRA is similar to the NPRI. However, acetone was added for reporting to the TRA. Acetone is not included as a reportable pollutant in the NPRI. The NPRI should ensure that all substances reported under TRA should be required under NPRI. Under the TRA, there was an obligation to require the development of a Living List Framework to identify substances of concern. This framework was designed specifically to identify substances that are not currently reported under TRA (known as toxic substances) and may include different criteria for reporting. Specifically, the act states under Section 49:

*49. (1) The Minister shall, at least once every five years, consult with experts and the public about, (a) possible changes to the lists of substances that are prescribed as toxic substances and as substances of concern; and (b) possible changes to the regulations prescribed for the purposes of paragraphs 2 and 3 of subsection 3 (1) and paragraph 2 of subsection 11 (1). 2009,c.19, s.49 (1). 6  
(2) The Minister shall from time to time publish lists of substances that are not toxic substances or substances of concern but that the Minister proposes to consider during the next consultation under clause (1) (a). 2009,c.19, s.49 (2)*

A Living List Framework was completed under TRA in 2014 and is described in, The Living List Framework under Ontario's Toxics Reduction Program which was released in December 2014. No further work was completed to implement the Living List as relevant sections of the act had not been proclaimed.

The Living List Framework demonstrates similarity to the nomination framework outlined under NPRI which is used to consider the addition (and sometimes deletion) of substances reported to the NPRI. However, there are several elements in the TRA that should be explored, including the creation of a substantive list of substances for further investigation and the requirements to review the list within a specified timeframe. Currently, NPRI has set out a nomination process for stakeholders to consider submission for proposed additions or deletions of substances. NPRI

also relies on the Chemicals Management Plan to inform what substances should be given further consideration.

The issues raised in this brief commentary should be urgently explored by a subcommittee under the NPRI Work Group. These data and the requirements to provide them are too valuable to be lost, and can foreseeably be scaled to the federal level to help form the basis of a more complete, inclusive, and useful NPRI dataset.

**Submitted by the NGO members of the NPRI Multi-Stakeholder Working Group**