



November 2, 2009

Ana Tinta
Ministry of the Environment
Toxics Reduction Project
135 St. Clair Avenue, Floor 5
Toronto Ontario
M4V 1P5

Dear Ms. Tinta:

**RE: Comments on Regulation made under the Toxics Reduction Act, 2009
EBR Registry Number: 010-7792**

The comments and recommendations in this submission relate to considerations for improving the effectiveness of the proposed regulations under the *Toxics Reduction Act*. These comments are submitted by **Pollution Probe** in follow up to our participation in the consultation process held by the Ontario Ministry of the Environment in July and August of 2009 in the development of regulations under the Toxics Reduction Act. Pollution Probe participated at both workshops (submitted two workbooks) and both information sessions.

Pollution Probe continues to support the Ontario government's commitment to protecting the health and environment of Ontarians through the managements of chemicals. It is our belief, however, that the regulations require several improvements in order to achieve the objective to "help protect the health and environment of Ontarians". Further, we feel that the current proposal may limit the opportunity to encourage innovation in the environmental performance of the regulated industries.

Many of our recommendations duplicate those made in our EBR Submission for EBR Registry Number 010-6224.

The following document outlines our specific concerns and provides suggestions for improving the proposed regulations under the *Toxics Reduction Act*.

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Specific Concerns

Public Right-to-Know and Right-to-Understand

- ***Ontarians should be informed of exposure to toxic substances at home, at work and in their environment.*** The government should clarify Section 19 (3) to ensure the information collected for public purposes must be made available to the public. We also recommend that the Ministry of the Environment be required to post the information on the internet upon receiving it from industry. As a legal requirement, the government will be required to commit dedicated funding to ensure the long-lasting of the program.
- ***Ensure the quantities used, created and contained in a product are communicated in exact numbers to ensure the public has the proper information to make informed decisions affecting their health and the environment.*** Pollution Probe is concerned that as drafted the regulations allow the proponent to determine the ranges of the quantity of toxic substances used, created and contained in a product when reporting to the public. This is disconcerting as it does not ensure that the ranges will be meaningful. In order to have meaningful ranges, they will have to be developed based on several criteria including: toxicity of a substance; the type of information (e.g., in consumer product versus use) and potentially the type of industry. The ranges must be fine enough for the public to gain any usable and meaningful information. Exact numbers are also valuable to professionals including academics, public health agencies, other governments and agencies (i.e., Cancer Care Ontario and Ontario Agency for Health Protection and Promotion) to carry out in-depth analysis.

At Pollution Probe, we maintain that not only does the public have a right-to-know but also a right-to-understand. The current proposal of ranges does not reflect this consideration and thus we recommend that absolute numeric values be provided to the public.

- ***The public information in the Toxic Substance Reduction Plan should be expanded to include methods, objectives and targets.*** A description of the method used by proponents to track and quantify the toxic substance should also be made available to the public not solely to the government. The methodology will inform the analyzer of the data on how it can be used appropriately. In addition, the objectives and targets of the plans should be made public in order to track progress.
- ***Content in Consumer Products.*** Pollution Probe supports the proposed regulation to provide to the public the amount of toxic substances contained in consumer products. This is potentially an important exposure pathway and a matter of public concern.
- ***The Medical Officers of Health, Ministry of Health and Ministry of Labour should have access to the Toxics Reduction Plans.*** The regulations should specify that the facility operator must make full toxic reduction plans available to the local Medical Officer of Health, the Ministry of Health and the Ministry of Labour within one week upon request. This information is crucial for government staff at local and provincial levels that have a responsibility to respond to concerns about health hazards.

Toxics Reduction Options

- **Industry should be required to make all reasonable efforts to consider substance reduction methods.** We are concerned that the present proposal to consider at least one option in each of the seven categories of pollution prevention identified in the NPRI, will limit the scope of options that might be evaluated. Within each of these categories there may be a range of options – including very expensive to inexpensive, efficient to inefficient, long term payoff to immediate pay off, etc. The previous proposal required the consideration of ALL options, the current proposal in contrast is much too narrow and potentially would not encourage proponents to allocate the resources required to evaluate several meaningful options. The Ministry might want to consider at a minimum things like Best Available Technologies and a scan of emerging technologies. An example to consider is the approach used by the EU in The IPPC Directive 2008/1/EC concerning integrated pollution prevention and control (the IPPC Directive) and the development of the Best Available Technology (BAT) Reference documents (please see <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/summary.htm> for more information).
- **Substance reduction methods should be further defined.** Few of the seven techniques identified are defined in the regulation. Accordingly, this raises the potential for confusion and/or disagreement between MOE and facility owners about whether there has been compliance with the requirements of the regulation. In contrast, the Massachusetts regulations define each of the toxics use reduction techniques that are to be addressed by facilities [Massachusetts Toxic Use Reduction Regulations, 310 CMR 50.10 – definition of “toxics use reduction” – and 310 CMR 50.45 (1)]. Second, while some of the options identified in the draft regulation appear to be the same as those listed, for example, under the Massachusetts regime (e.g. materials or feedstock substitution, product design or reformulation, equipment or process modification), others identified in the Massachusetts regulations do not appear to have been identified in the draft regulation (e.g. production unit modernization – [Massachusetts Toxic Use Reduction Regulations, 310 CMR 50.10 – definition of “toxics use reduction]). However, due to the lack of definitions for these terms in the draft regulation it is difficult to determine whether or not all options considered in the Massachusetts regime have been considered.
- **Options may not result in a net negative impact on the environment and human health.** Although Pollution Probe agrees with the intent that the options may not result in a net negative impact on the environment and human health we are concerned that it is substantially open to interpretation.
- **Economic Feasibility - Amend s. 12(2)4 to require that the economic feasibility analysis to be undertaken consider each of the items listed under Massachusetts Toxic Use Reduction Regulations, 310 CMR 50.46A(1).** The draft regulation requires an economic feasibility analysis be conducted for each option identified its, including anticipated savings and payback period from implementing an option [s. 12(2)4]. However, the Massachusetts regulations require a far more robust approach to evaluating economic feasibility, listing no fewer than nine items to be considered: (i.e., indirect and direct labour and material costs; purchase or manufacturing cost of the toxic and its alternative chemical; capital and equipment costs; storage, accumulation, treatment, disposal, and handling costs associated with toxics and

by-products; costs associated with activities required to comply with local, state, federal laws or regulations, including but not limited to, fees, taxes, and costs associated with treatment, disposal, reporting and labelling; worker health or safety costs associated with the toxic and its alternative chemical, including but not limited to, protective equipment, and lost employee time due to accidents or routine exposure to the toxic; insurance; potential liability costs that may arise from intentional, unintentional, or accidental activities or occurrences; and loss of community goodwill and product sales lost to competing non-toxic products) [Massachusetts Toxic Use Reduction Regulations, 310 CMR 50.46A (1)].

Outstanding Regulations

- The inclusion of Certified Planners is essential for the transparency and enforcement of this Act. In order to build trust and confidence with the stakeholders it would be useful to have this in more detail at this time. Considering the current proposed regulations do not require their approval. The living list procedure and substances of concern will also help to ensure the maintenance and evolution of the effectiveness of the Act.

Repository of Best Practices

- Without the creation of a Toxics Use Reduction Institute many of the roles it plays will need to be picked up by the Ontario Government. In moving forward, it will be essential for the Ontario Government to develop mechanisms to share best practices amongst industry for the development of best practices. The Government of Ontario should be prepared to produce comprehensive guidance documents on toxics reduction best practices on a sector by sector basis that draw on such practices world-wide. A best practice repository should be established and be required as part of the reporting to the public. Safer substitution and elimination are best practices and, as such, should be encouraged in plans and reporting requirements under *Toxics Reduction Act*.

Conclusion

Pollution Probe appreciates the opportunity to provide comments on the proposed regulations under the *Toxics Reduction Act*. In order to ensure that we reach our objective of help protect the health and environment of Ontarians” we recommend the regulations be strengthened as described above.

For further discussion or clarification on any of the comments made in this submission, or to discuss any other issues, please do not hesitate to contact me. We look forward to ongoing participation in the development of the regulations and their implementation.

Sincerely,



Bob Oliver, P.Eng.
Executive Director
Pollution Probe