



May 7, 2009

Submitted to: Ana Tinta
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Ministry of the Environment
Integrated Environmental Policy Division
Strategic Policy Branch
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Dear Ms. Tinta,

**RE: EBR Registry Number 010-6224
Comment on Bill 167, as proposed, The Toxics Reduction Act, 2009**

The comments and recommendations in this submission relate to considerations for improving the effectiveness of the proposed Toxics Reduction Act. These comments are submitted by **Pollution Probe**.

Pollution Probe supports the Ontario government's commitment to protecting the health and environment of Ontarians through the managements of chemicals. The proposed Toxics Reduction Act is an important piece of legislation in this regard. However, we have identified some potential issues that flow from the current wording of the Act, which we believe should be addressed to ensure the effectiveness of the legislation and subsequent regulations. The following submission outlines these issues and suggests options for resolution. Further, it is difficult to comment on the overall effectiveness of the Act given that much of the details will be defined within the regulations.

Issue #1: The Approach and Definition of “Toxic Substance”

The proposed Toxics Reduction Act encourages facilities to reduce the use of ‘substances on the toxics substance list’, which will be defined within the subsequent regulations. Pollution Probe submits that the following principles be considered when defining the approach to developing the list.

- The determination of the substances on the list requires a clear, transparent process that identifies specific criteria or considerations for inclusion in the list (and removal from it).
- The data and rationale used for inclusion or exclusion of a substance should be made publicly available.
- The analysis of alternatives for listed substances should be evaluated using the same criteria (one option is to consider using the methodologies developed in the European Union or the Toxics Use Reduction Institute of Massachusetts).
- An analysis of the impacts on the environment and human health from the use of alternative substances or substitutes to listed toxics should be required in addition to the required feasibility study.
- Currently in Canada the federal government is assessing 23,000 legacy substances for environmental and human health risks. Prioritization for assessment was completed in 2006. High priority substance evaluation is underway, and the entire inventory will be complete by 2020. Where assessment is pending for certain substances of concern, the precautionary principle should be applied and careful consideration be given to the potential impacts on human health and environment (this also applies to substitutes).
- In developing the list, Ontario should also consider the approaches and decisions used in other jurisdictions such as the European Union’s regulation on chemicals management — Registration, Evaluation, Authorization and restriction of Chemicals (REACH). Over the next ten years, starting in 2010 significant new data and information on effects and exposure will be generated through REACH. Mechanisms should be included in the legislation to encourage the consideration of the new data (see Appendix for more details).
- A potential effect of the Act is to discourage the use of listed substances that, while assessed as inherently toxic, would not result in a toxic exposure to the environment or human population. For example, nickel is toxic, but in many uses (i.e., nickel alloy in stainless steel), there may be low risk of exposure. An analysis of substance life-cycles may be a necessary part of the evaluation process for inclusion on the list (or exclusion).

Pollution Probe believes that these principles, if incorporated, will strengthen the effectiveness of the proposed Toxics Reduction Act.

Issue #2: Achieving the purpose — integrated monitoring

The purpose of the proposed Toxics Reduction Act is to “prevent pollution and protect human health and the environment by reducing the creation and use of toxic substances, and to inform Ontarians about toxic substances”. In order to evaluate the success of the proposed Act, the Government of Ontario should commit to an integrated monitoring program for the substances included on the list of toxic substances in the environment (i.e., water, air and soil) and human population (i.e., biomonitoring).

Not all sources of the toxic substances are addressed within the current scope of the proposed Act. The accompanying document, *The Proposed Toxics Reduction Act Planned Consultations and Next Steps*, suggests that the affected sectors will be limited to manufacturing and those undertaking mineral processing activities within the mining sector. Although the evidence from the National Pollutant Release Inventory (NPRI) suggests that these are the most significant sectors in terms of contribution to toxic exposures, important, smaller facilities and non-point sources are not included in the scope of the regulation. While small at the individual level, the sum of these sources may account for a significant total release to the environment and exposure to humans.

It is therefore important to track the environmental and human concentrations for the list of toxic substances, in order to identify where further action will be required to prevent pollution and protect human health and the environment. The importance of these types of monitoring programs was highlighted in a case study conducted by the Canadian Commissioner of the Environment and Sustainable Development (CESD) in its 2008 December report (see Appendix for more details).

Issue #3: Informing Ontarians

Pollution Probe is encouraged by the reference to “informing Ontarian about toxics” in the proposed Act. This is consistent with our promotion of the principles of ‘Right to Know’ and, subsequently, ‘Right to Understand’. In order to improve upon the commitments within the proposed Act we make the following recommendations:

- The Act should stipulate that information will be available electronically via the internet, and a timeline for the launch of this resource should be specified;
- The Director shall ensure that reports on the progress of the facilities towards achieving their toxics reductions targets will be made publicly available via the internet and not be limited to the discretion of the regulations;
- The information should be reported in a user-friendly manner (i.e., geographically, linked with regional maps). The information should be presented with consistent, interoperable standards such as Canadian Geospatial Data Infrastructure; and

- Additional contextual information should be provided on each of the toxic substances listed, including the rationale for inclusion on the list, and the subsequent management measures taking place at the company.

The disclosure of the management measures used by facilities should be shared amongst facilities in order to develop 'best practices' throughout the industry.

Issue #4: Toxic Reduction Targets

Pollution Probe acknowledges that the government may require an evaluation of the data received under the proposed Act in order to set meaningful targets for the reduction of the use and creation of toxic substances in Ontario. However, we also recommend that a clause be added to the proposed Act to require the setting of targets within a fixed amount of time after the first reporting cycle. This target will encourage participating facilities to achieve reductions identified in their plans and allow the government to track the success of the overall strategy.

Issue #5: Requirements for Substances of Concern

Upon receipt of the first collection of data on the substances of concern, the Minister should be required to take action upon assessment of the information. Possible actions may include addition to the toxic substances list, removal from the list of substances of concern, or the development of an alternative strategy within a fixed timeframe.

Issue #6: Fees, Funds and an Institute

Although the Government of Ontario has committed twenty four million dollars to support the implementation of the proposed Toxics Reduction Act, this is a one time commitment. An improvement on this structure could be made through the development of a fee system to generate funds in order to sustain an Agency that could provide support to facilities for the implementation of the Act.

Pollution Probe commends the Government of Ontario for taking steps to protect the environment and Ontarians from the impacts of toxics substances, and we look forward to participating in the development of the Toxics Reduction Act and subsequent regulations. 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.

Sincerely,



Bob Oliver, P.Eng
Executive Director
Pollution Probe

Appendix

Chemicals Management Approaches: Registration, Evaluation, Authorization and restriction of Chemicals (REACH) and the proposed Ontario Toxics Reduction Act

REACH is an innovative policy model that requires industry to demonstrate the safe use of its substance along the entire supply chain, for the environment and human health, prior to gaining access to the European Economic Area. These requirements apply to both what was formerly considered as Existing Substances (similar to the 23,000 legacy substances in Canada) and the New Substances.

REACH requires manufacturers and importers of chemical substances (greater than or equal to one tonne per year) to obtain information on the physicochemical, health and environmental properties of their substances and use it to determine how these substances can be used safely. Each manufacturer and importer must submit a registration dossier documenting the data and assessments to the Agency. As a result significant new data on substances will be available following the implementation of REACH.

This approach provides the opportunity for industry to identify the uses for which their substance can be used safely, through risk assessment, and for those which it is not. The resulting information is a series of safe use guidelines throughout the supply chain of a substance to protect the environment and human health (occupational and general).

In the context of the proposed Ontario Toxics Reduction Strategy the approaches are strikingly different. REACH employs a risk-based approach, requiring both risk assessment and risk based management measures while the proposed Toxics Reduction Act identifies substances on a hazard basis and encourages facilities to reduce the use or creation of the substances.

This approach may be an over simplification of the chemicals industry and the subsequent releases to the environment and risks to human health. Many lessons can be learned from the Risk Assessments in other jurisdictions that have identified unexpected major sources of substance releases, levels and practices for safe use.

Further, the REACH approach under registration requires close communication along the entire supply chain of a substance resulting in meaningful exchange of safe use guidelines for particular industries. These lessons should also be shared amongst other jurisdictions and the communication approach should be considered in the development of domestic legislation such as the proposed Toxics Reduction Act.

For more details see: http://guidance.echa.europa.eu/about_reach_en.htm

Achieving the Purpose — Monitoring: Case Study by the Commissioner of the Environment and Sustainable Development (CESD)

The importance of monitoring the progress of chemicals management programs, both in environmental and human health performance and release data, was highlighted by a case study by the Canadian Commissioner of the Environment and Sustainable Development (CESD) in its 2008 December report. The audit examined Environment Canada's processes relating to reviewing and reporting on the *Notice Requiring the Preparation and Implementation of Pollution Prevention Plans in Respect of Acrylonitrile*, published in the *Canada Gazette* in May 2003. The audit found that although the government successfully reduced emissions from the one facility in its Pollution Prevention plan the original management plan did not take into consideration releases from other sources. As a result, total emissions of acrylonitrile increased over the four year time period (2003-2006). Recent activities at Environment Canada has reduced total emissions however in 2007 they were still three times higher than they were when the substance was first declared toxic under CEPA 1999 and 8.5 tonnes higher than when the Notice was published in 2003.

For more details see:

http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200812_e_31872.html