



Toxics Reduction: An Emerging Area of Ontario Law

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By

Joseph F. Castrilli, Counsel

Canadian Environmental Law Association

Toronto, Ontario, Canada



Nature of Problem

- ◆ Over 23,000 chemicals in use in Canada
- ◆ Problems with some include cancer, birth defects, etc.
- ◆ Ontario situation:
 - # 2 in North America for release of developmental/reproductive toxicants
 - # 4 in North America for release of known/suspected carcinogens
 - 36% of air/50% of water discharges in Canada



Nature of Problem (cont.)

- ◆ High Ontario release status not explained by higher GDP:
 - California # 1 GDP in North America: 3x Ontario's (\$1.5 trillion v. \$427 billion); but less than 1/2 of Ontario's on-site air releases of carcinogens (1.5 million kg v. 3.4 million kg)
 - Massachusetts GDP not much smaller than Ontario's (\$312 billion); but less than 1/20th Ontario's on-site air releases of carcinogens (0.15 million kg)



Nature of Problem (cont.)

- ◆ High Ontario release status not explained by greater number of facilities:
 - Ontario facilities reporting to NPRI/CEC in 2004: 1295
 - Ohio facilities reporting to TRI/CEC in 2004: 1465
 - But Ontario's on-site air releases of carcinogens almost double that of Ohio's (3.4 million kg v. 1.8 million kg)



Need for Toxics Reduction

- ◆ Above track record underscored need for reduction in use and release of toxic substances in Ontario
- ◆ In 2007, CELA & others produced report (a cancer gap analysis) showing that few of 200 carcinogens used in Ontario regulated
- ◆ Spurred government election commitment to reduce toxics



The Campaign Issues

- ◆ Ontario has a made-in-Ontario problem; no constitutional reason for Ontario to restrict itself to made-in-Ottawa solution (e.g. CEPA: NPRI & CMP)
- ◆ High NPRI reporting thresholds result in capture of small proportion of Ontario companies emitting toxic substances
- ◆ NPRI addresses release but not use of toxic substances



What Toxics Reduction Is & Is Not

- ◆ Not a “command and control” law that specifies technologies to be used to meet environmental standards, but
- ◆ “Information-based regulation” that seeks to spur reductions in industrial emissions by uncovering and disclosing information on pollution sources to industry managers, regulators, and public



Benefits of Toxics Reduction

- ◆ Less pollution = cleaner environment
- ◆ Less public health risks/safer workplaces
- ◆ Save companies \$ if implement TR Plans
- ◆ Cleaner technologies/greener products
- ◆ Lower company compliance costs
- ◆ Lower government enforcement costs
- ◆ Less need to manage hazardous waste



CELA's Report & Model Bill

- ◆ In anticipation of Ontario Toxics law, CELA produced Report & Model Bill -2008
- ◆ Report & Model Bill Steering Committee
- ◆ Report addresses
 - Why Ontario needs a TR law
 - Laws/proposals in other jurisdictions
 - Essential elements of TR law
- ◆ Model Bill draws from Mass., NJ, Eugene, OR laws



CELA's Model Bill

◆ OTURSAA, 2008

- Part I - Interpretation
- Part II - Administration
- Part III - Toxics Use Reduction
- Part IV - Safer Alternatives to Toxics
- Part V - TUR & SA Planning
- Part VI - Financial & Technical Assistance
- Part VII - Public Participation
- Part XI - Misc. (e.g. CBI, conflict)



Part III -Toxics Use Reduction

- ◆ Provincial Reduction Targets
- ◆ Reportable Toxic Substances
- ◆ Industrial Facility Annual Report on TS
- ◆ Toxics Use Reduction Plans



Part IV - Safer Alternatives

- ◆ Identification of Potential Priority TS
- ◆ Safer Alternatives Assessment Reports
- ◆ Provincial Priority TS Alternative Action Plans
- ◆ Industrial Facility Substitution Implementation Plans



Part VI - Financial & Technical Assistance

- ◆ TUR & SA Fund
- ◆ Industrial Facility Toxics Use Fee
- ◆ Technical Assistance for Businesses
- ◆ Technical Assistance for Employees



Part VII - Public Participation

- ◆ TUR & SA Registry
- ◆ Public Access to Provincial Plans, Annual Reports
- ◆ Right to Know Other Information
- ◆ Right to Apply for Review of Plans
- ◆ Right of Action



MOE Discussion Paper – Toxics Reduction Strategy

- ◆ Government Bill preceded by Strategy Paper & Expert Advisory Panel
- ◆ Strategy comprised of:
 - legislation,
 - capacity building,
 - information outreach



Toxics Reduction Act, 2009 - Overview

- ◆ Purposes
- ◆ New Requirements for Toxics
- ◆ Scope of Regulated Community
- ◆ Toxics in Consumer Products
- ◆ Compliance and Enforcement
- ◆ Comes into force January 2010

TRA - Purposes

- ◆ Prevent pollution & protect human health & environment by reducing use & creation of toxic substances; &
- ◆ Inform Ontarians about toxic substances (s. 1)





TRA - New Requirements for Toxics

- ◆ Toxic Substance Reduction Plans (ss. 3-7)
- ◆ Toxic Substance Accounting (s. 9)
- ◆ Reporting (on progress under plans and “substances of concern” i.e. non-NPRI substances) (ss. 10, 11)
- ◆ Public Disclosure (plan summaries & aspects of plan reporting) (ss. 8, 10(5))



Scope of Regulated Community – Problems with TRA Approach

- ◆ Too few toxics designated for immediate action (47 NPRI chemicals; 13% of 367 total NPRI chemicals) or 1% of NPRI emissions
- ◆ Too few sectors covered (manufacturing & mineral processing) or 75% of NPRI emissions
- ◆ Thresholds too high (using NPRI thresholds for quantities / employees); emissions of smaller facilities missed



Other Problems With TRA Approach

- ◆ Safer alternatives not addressed in law
- ◆ Technical assistance not part of law for businesses or employees
- ◆ No establishment of Fund or Fee
- ◆ No provincial reduction targets or process for review of government progress
- ◆ No institute established in the law (but Queen's Green Chemistry Centre may be substitute outside of law)



CELA Suggestions to MOE

- ◆ On what TRA does address:
 - Broaden scope of regulated community by accelerating # of chemicals covered by law
 - Reduce thresholds for applying law
 - Increase number of sectors covered by law
 - Clarify when applying law to consumer products



CELA Suggestions to MOE

- ◆ On what TRA does not address:
 - Introduce regime of substitution of safer alternatives (the trend in Europe & US)
 - Establish reduction targets
 - Facilitate municipal by-laws
 - Include financial engine to ensure law has adequate resources
 - Clarify position on technical assistance



Current Developments

- ◆ TRA regulations posted on EBR Registry for comment until November 2009
- ◆ Regulations focus on identifying toxic substances, facilities, accounting, plan development, reporting & public information
- ◆ Future regulations to address accreditation of toxics reduction planners, substances of concern, & administrative penalties



Conclusions

- ◆ Some similarities between CELA Model Bill & TRA
- ◆ Some key differences
- ◆ Both recognize opportunities to improve environmental health with a toxics reduction law
- ◆ Record elsewhere shows such a law also reduces industry production & compliance costs



Additional Information

- ◆ CELA: Report and Model Bill on Toxics Use Reduction, 2008 -

< <http://www.cela.ca> >

- ◆ Government of Ontario: Toxics Reduction Act, 2009 -

< <http://www.ene.gov.on.ca/en/toxics/index.php> >



Additional Information (cont.)

- ◆ Take Charge on Toxics Campaign -
< <http://takechargeontoxics.ca> >