



Toxics Use Reduction: CELA & MOE Law Reform Proposals

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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
 - # 5 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 only 1/4 of Ontario's pollution releases/transfers (58 million kg v. 277 million kg)
 - Massachusetts GDP not much smaller than Ontario's (\$312 billion); but less than 1/10 Ontario's pollution releases/transfers (21 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 versus Ohio facilities reporting to TRI/CEC in 2004: 1465 but Ontario pollution releases/transfers 30% higher than Ohio's (277 million kg v. 193 million kg)
 - Yet Ohio has reputation of being “dirty” state



Need for Toxics Reduction

- ◆ Above track record underscores need for reduction in the use and release of toxic substances in Ontario
- ◆ Ontario, with one of biggest economies in North America, should be in same league as cleanest jurisdictions
- ◆ A toxics reduction law could help achieve this goal



Jurisdictional 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 is Toxics Use Reduction

- ◆ 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 Use Reduction

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



CELA's Report & Model Bill

- ◆ Report & Bill Funded by ELJB Foundation
- ◆ Released August 2008
- ◆ Report addresses
 - Why Ontario needs a TUR law
 - Laws/proposals in other jurisdictions
 - Essential elements of TUR law



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

- ◆ Released August 2008
- ◆ Strategy to be comprised of:
 - legislation,
 - capacity building,
 - information outreach



MOE Legislation - Overview

- ◆ New Requirements for Toxics
- ◆ Scope of Regulated Community
- ◆ Toxics in Consumer Products
- ◆ Governance Model



New Requirements for Toxics

- ◆ Materials Accounting
- ◆ TUR Plans
- ◆ Reporting
- ◆ Public Disclosure



Scope of Regulated Community – Problems with MOE Approach

- ◆ Too few toxics designated for immediate action
- ◆ Too many schedules that defer action indefinitely
- ◆ Phasing too slow, even if appropriate
- ◆ Thresholds too high



Other Problems With MOE Approach

- ◆ Unclear that safer alternatives to be addressed as a matter of law
- ◆ Unclear if technical assistance to be part of law for businesses or employees
- ◆ No establishment of Fund or imposition of Fee
- ◆ No provincial reduction targets or process for review of progress



CELA Suggestions to MOE

- ◆ On what MOE proposes to address:
 - Broaden scope of regulated community by increasing # of chemicals covered by law
 - Reduce number of chemical schedules & firm-up phasing
 - Reduce thresholds for applying law, & increase number of sectors covered;
 - Clarify application of law to consumer products



CELA Suggestions to MOE

- ◆ On what MOE strategy silent on:
 - 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
 - Set out law's purposes



Conclusions

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