



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

VIA ELECTRONIC MAIL

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Dear Ms Tinta:

Re: Bill 167, Toxics Reduction Act, 2009 - EBR Registry No. 010-6224

INTRODUCTION

The following comments constitute the submissions of the Canadian Environmental Law Association ("CELA") on Bill 167, the *Toxics Reduction Act, 2009*.

On April 7, 2009, the Hon. John Gerretsen, Minister of the Environment, introduced Bill 167 for First Reading in the Ontario Legislature. The purposes of the Bill include preventing pollution and protecting human health and the environment by (1) reducing the use and creation of toxic substances, and (2) informing Ontarians about toxic substances (section 1).

Bill 167 would require facilities that are subject to its provisions (based on sectors, number of employees, type and quantity of substances to be prescribed by regulation) to (1) track and quantify toxic substances used and created at a facility, (2) prepare for each such substance a reduction plan and summary thereof meeting government specifications and certified by the highest ranking responsible company official and by a planner to be licensed under the Act, (3) report progress on reducing such substances to the Ministry of the Environment ("MOE"), and (4) make the plan summary and certain information from the report to MOE available to the public (sections 3-10). Development of the plan by a facility subject to the Act, but not its implementation, would be mandatory.

Bill 167 also contains extensive regulation-making authority including (1) the authority to prohibit or restrict the manufacture, sale or distribution of a toxic substance, or other substance of concern, or anything containing such substances, and (2) specifying circumstances where and how notice to the public should be given with respect thereto [section 49(1)(n.1)(n.2)].

Finally, Bill 167 contains extensive, if standard, provisions respecting such matters as compliance, enforcement, inspections, offences, and appeals (sections 12-48).

The Bill follows through on the commitment of the government of Ontario to introduce legislation with such characteristics made in its August 2008 *Toxics Reduction Strategy Discussion Paper*.

In this regard CELA, as it noted at the time of the release of the government strategy document: "...strongly supports measures to reduce toxic substances in the environment and the corresponding disease burden such substances impose on human health" (See Appendix A to this letter - *Submissions to the Ontario Ministry of the Environment on Creating Ontario's Toxics Reduction Strategy Discussion Paper*, EBR Registry No. 010-4374, September 2008, page 3; also found at < www.cela.ca >). Bill 167 can be viewed as a first step in the realization of this goal.

However, the teeth of Bill 167 will lie in its regulations, which are not yet public. Nonetheless, CELA assumes that, with some exceptions, the ultimate shape the Bill 167 regime (Act, regulations, and related programs) will take is as described in the MOE August 2008 *Discussion Paper*. Indeed, the EBR Registry Notice accompanying Bill 167 states that: "The Bill reflects the approach consulted on in the Discussion Paper..."¹ If that is so, then notwithstanding the importance of the MOE initiative, and CELA's general support for it, the concerns CELA expressed with the overall MOE approach on toxics reduction in the Fall 2008 remain valid today.

In this regard, in August 2008 CELA prepared both a report and model bill on toxics use reduction (See Appendix B to this letter - *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008; also found at < www.cela.ca >). In light of the contents of Bill 167 and the anticipated content of regulations thereunder (if the MOE August 2008 *Discussion Paper* is still the guide), CELA is of the view that in key respects the approaches identified in the report, model bill, and our September 2008 submissions remain superior to the MOE approach.

CELA has also reviewed with interest the recommendations of the Scientific and Expert Panel appointed by the government to provide advice on the development of their Toxic Reduction Strategy and have noted that many of the Panel recommendations concur with ours. CELA also had an Expert Steering Committee to assist us in the development of our Model Law and two members from our Committee were subsequently invited to be on the Government's Expert Panel. A brief review of what is not in Bill 167 (but should be), and what is in the Bill (but should be improved) follows.

¹ Ontario Ministry of the Environment, *Toxics Reduction Act, 2009- Proposal Notice*: EBR Registry No. 010-6224 (April 7, 2009).

MATTERS THAT ARE NOT CONTAINED IN BILL 167 BUT SHOULD BE

TARGETS

Bill 167 contains no provincial targets respecting reduction of toxic substances. The August 2008 *Discussion Paper* also was silent on this issue. CELA raised the following concerns in its September 2008 submissions:

The Discussion Paper does not discuss establishing numerical goals or targets for reduction of the use of toxic substances in the legislation. The CELA Report notes the importance of setting clear and ambitious goals for toxics use reduction in order to galvanize efforts to spur innovation as well as provide benchmarks to measure progress. The CELA Report proposes such goals and also points to statutory precedents for this approach in other jurisdictions (e.g. Massachusetts and New Jersey).² These targets have been included in the CELA Model Bill along with a provision requiring the government to report periodically on progress in achieving them. (See text of Model Bill for complete wording).³ [CELA Submissions - Appendix A].

CELA notes that the EBR Registry Notice accompanying Bill 167 also states that: “The Bill...builds on input received from...the Toxics Reduction Scientific Expert Panel...”⁴ However, CELA notes further that the Minister's Toxics Reduction Scientific Expert Panel twice recommended the establishment of targets in the legislation as follows:

“...Ontario's pollution prevention legislation should:

- Include clear, viable, and progressive goals (i.e. a percentage reduction in toxics use and release in the Province within a specified period of time); the statute should include renewable toxics reduction targets, and a mechanism for monitoring and public reporting on achievement of those targets. The Panel notes that goals are not set in the current discussion paper and therefore strongly encourages the addition of goals to the discussion paper and program.” (July 23, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

.....

- “The Panel *recommends that the legislation create a mandatory requirement for the Ministry to publicly report on its Toxics Use Reduction Strategy annually*. This report should include...a summary of Province-wide progress with respect to meeting the targets set out in the Toxics Use Reduction legislation...” (December 31, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

In the circumstances, CELA re-states its September 2008 recommendation that the legislation include provincial toxics use reduction targets.

² *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008 at 15.

³ *Ibid.* at 60 [section 7(1)(2)].

⁴ Ontario Ministry of the Environment, *Toxics Reduction Act, 2009- Proposal Notice*: EBR Registry No. 010-6224 (April 7, 2009).

FEES AND FUND

Bill 167 creates no Fund and imposes no fees on industry. The August 2008 *Discussion Paper* also was silent on these issues. CELA raised the following concerns in its September 2008 submissions:

The Discussion Paper is silent on the establishment of a Fund dedicated to financing the programs and institutions that will be needed to ensure proper implementation of the Act and achievement of its purposes. The value of a dedicated Fund includes: (1) crystallizing the importance within government of the on-going need for secure financing of a regime dedicated to reduction of toxic substances, (2) instilling confidence in the public that the necessary financing will be in place for the program, (3) underscoring for the regulated community the importance the government places on the program succeeding in achieving its objectives, including with respect to technical assistance measures for businesses that must make production adjustments as a result of meeting the Act's requirements, and (4) providing assurance to employees who must make re-employment adjustments that programs will be in place to meet their needs. The CELA Model Bill contains such a Fund. (See text of Model Bill for complete wording).⁵

....

The Discussion Paper also is silent on the need for a financial engine to ensure the toxics program will be funded adequately. In Massachusetts the program is entirely financed by a fee on the use of toxic substances and precedents exist under Ontario law for the imposition of environmental fees in a variety of contexts.⁶ The principle financing mechanism for the Fund should be a fee on industrial facilities and toxics use reduction and safer alternatives planners. The CELA Model Bill contains such a requirement. (See text of Model Bill for complete wording).⁷

CELA also notes that the Minister's Toxics Reduction Scientific Expert Panel recommended the imposition of fees as follows:

- “the TUR strategy be funded by fees levied on the regulated community, recognizing the cost saving potential of efficiencies discovered through the toxics use reduction planning required by the TUR legislation” (December 31, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

CELA re-states its September 2008 recommendation that the legislation establish a Fund, and impose fees on the regulated community. This recommendation was reinforced recently by correspondence with Dr. Ken Geiser on the experience in the US. “TUR legislation was passed in Oregon and Maine as well and several other states have language taken from Massachusetts and New Jersey, but no other states had the funding mechanism so they could not flourish.”

SUBSTITUTION OF SAFER ALTERNATIVES

Bill 167 does not address the issue of substitution of less toxic substances. As CELA noted in its September 2008 submissions on the MOE *Discussion Paper*:

⁵ *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008 at 77-78 [section 16].

⁶ *Ibid.* at 33-34.

⁷ *Ibid.* at 78-79 [section 17].

“...it appears that the province hopes that safer alternative substitution will occur as a result of the regulated community seeing the benefits thereof, not as a result of legal requirements to do so.

In the view of CELA, this might have been an acceptable approach two decades ago, but not today and certainly not in light of Ontario’s position as “one of the top dischargers of toxics in North America and the number one discharger in Canada.”⁸ After two decades of experience with toxics use reduction legislation in Massachusetts, that state has now decided that it is necessary to implement safer substitution requirements as a matter of law and currently has a Bill in the Massachusetts legislature in this regard. Other jurisdictions in North America and Europe have come to the same conclusion.⁹ It is past due for Ontario to reach the same conclusion. In this regard, the CELA Report and Model Bill make recommendations¹⁰ and contain explicit statutory wording, respectively, for establishing four key components of a safer alternatives legislative regime:

- Identification of priority substances for substitution;¹¹
- Safer alternatives assessment reports;¹²
- Provincial priority toxic substance alternative action plans;¹³ and
- Industrial facility substitution implementation plans.¹⁴

CELA notes that the Minister's Toxics Reduction Scientific Expert Panel supported “the development of pollution prevention legislation similar in principle to...the proposed *Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals*”(July 23, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel). The CELA model bill is similar in principle to, and was modeled on, the Massachusetts bill. Accordingly, CELA again urges the provincial government to include requirements for safer alternatives as a matter of law in Bill 167.

Ontario industry that operates in or sells products to the European Union already must comply with the EU’s new chemical management legislation REACH. This legislation places a clear responsibility placed on industry to generate health, environmental and use information is beginning to move to substitution for substances such as carcinogens. Ignoring this trend toward finding safer substitutes could lead to Ontario having a competitive disadvantage in the new greener marketplaces globally.

⁸ Ontario Ministry of the Environment, *Creating Ontario’s Toxics Reduction Strategy – A Discussion Paper*, EBR Registry Notice Number 010-4374 (August 2008) [hereinafter “*Discussion Paper*”] at 28-29.

⁹ *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008 at 31-32.

¹⁰ *Ibid.* at 33.

¹¹ *Ibid.* at 67-69 [section 11] (requirement to identify potential priority toxic substances from list of reportable toxic substances established elsewhere in Bill based on criteria set out in section 11 and following public consultation).

¹² *Ibid.* at 69-71 [section 12] (requirement for Minister to direct Institute established under Bill to prepare safer alternatives assessment report for each priority toxic substance selected based on report content requirements set out in section 12 and following public consultation).

¹³ *Ibid.* at 71-73 [section 13] (requirement for Minister to establish provincial alternatives action plan for each priority substance that is the subject of a safer alternatives assessment report based on plan content requirements set out in section 13 and following public consultation).

¹⁴ *Ibid.* at 73-76 [section 14] (requirement for industrial facility that manufactures, processes or uses priority toxic substance to develop and complete a substitution implementation plan for any substance that is the subject of a provincial alternatives action plan, with such plan becoming part of the facility’s toxics use reduction plan).

CONFLICT WITH MUNICIPAL BY-LAWS

Bill 167 does not address the question of potential conflict with municipal by-laws addressing the same subject matter. As CELA noted in its September 2008 submissions to MOE:

“...the Discussion Paper is otherwise silent on the issue of whether and, if so, how provincial legislation will address potential conflicts with municipal by-laws that might purport to impose greater toxics use reduction or other requirements on industrial facilities than that proposed under the new provincial law. In the respectful submission of CELA, the trend in both legislation¹⁵ and judicial interpretation,¹⁶ with some exceptions¹⁷ has been and should continue to be toward expanding, not contracting, municipal authority to act to protect the environment.¹⁸ In this regard, the CELA Model Bill contains explicit authority that would allow municipalities to enact more restrictive toxics use provisions, or grant greater information access, if necessary. (See text of Model Bill for complete wording).¹⁹”

As the provincial government is aware, the City of Toronto recently passed a toxics right to know by-law that will have some of the same characteristics as contemplated by the MOE *Discussion Paper* and presumably regulations under Bill 167. Although Bill 167 is silent on whether its provisions supercede those of municipal by-laws, there is always the potential for members of the regulated community to raise the argument in a judicial challenge to such by-laws. In such circumstance, it would be preferable for Bill 167 to put the matter to rest at the outset by clear and explicit language along the lines set out in CELA's model bill (which language is itself derived from existing provincial legislation in other contexts). Nothing is gained by fostering ambiguity and uncertainty on this issue.

ESTABLISHMENT OF TOXICS REDUCTION INSTITUTE

Bill 167 is silent on establishment of a toxics reduction institute. CELA had recommended establishment of such an institution in order to educate and train professionals (e.g. toxics reduction planners) and the public as well as sponsor and conduct research. Creation of such an institution also would help to protect MOE from a defence of officially induced error in the event of the need to prosecute under the Act, since the actions and advice of the institute would not be that of the MOE. Provision for such an institution was included in the CELA model bill.

¹⁵ See, e.g., *Smoke-Free Ontario Act*, S.O. 1994, c. 10, s. 12 (if there is a conflict between certain sections of Act and a provision of another Act, regulation, or municipal by-law that deals with smoking, the provision that is more restrictive of smoking prevails).

¹⁶ See, e.g., *Croplife Canada v. Toronto (City)* (2005), 75 O.R. (3d) 357 (Ont. C.A.) (upholding by-law limiting application of pesticides within City under s. 130 of *Municipal Act* despite existence of federal and provincial pesticide legislation dealing with same subject matter).

¹⁷ See *Pesticides Act*, R.S.O. 1990, c. P.11, s. 7.1(5) (municipal by-laws inoperative if address use, sale, offer for sale or transfer of pesticide that may be used for cosmetic purpose) (not yet in force).

¹⁸ Graham Rempe, “How Green is My By-Law? The Expanding Role of Canadian Municipalities in Environmental Regulation” in *Environmental Law: The Year in Review – 2006*, Stanley Berger & Dianne Saxe, eds. (Aurora: Canada Law Book, 2007) at 177 (historic municipal mandate to act to protect environment recently expanded by provincial legislators as well as by approach courts have taken in relation to environmental jurisdiction, interpretation of municipal statutes, and application of principle that law-making and implementation often best achieved at local level).

¹⁹ *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008 at 91 [section 58].

However, while Bill 167 does appear to contemplate licensing of qualified persons to certify facility reduction plans [sections 4(3) and 49(1)(e)], the Bill does not contemplate establishment of an institute to train such persons.

CELA also notes that the Minister's Toxics Reduction Scientific Expert Panel recommended that the provincial government:

- “Establish a well-resourced, arms-length agency and/or academic-affiliated institute to: assess alternatives; support regulated firms training, planning, compliance and their development of innovative processes; provide public information and a neutral forum for constructive dialogue among the public, industry and government; and provide consistency across political mandates. The Massachusetts Toxics Use Reduction Institute is an appropriate model.” (July 23, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

CELA recommends that Bill 167 be amended to establish such an institution. The success of toxic reduction rests on the capacity of an enabling institute to work side by side with all Ontario facilities on pollution prevention plans unique to their needs. This has been demonstrated in Massachusetts.

TECHNICAL ASSISTANCE PROGRAMS FOR EMPLOYEES

Bill 167 does not establish a regime to provide technical assistance to employees. CELA had noted a similar gap in the MOE *Discussion Paper*:

“While the Discussion Paper addresses the issue of technical assistance for businesses,²⁰ the document is silent on technical assistance for employees who may require re-employment assistance, vocational re-training, or other assistance as a result of the implementation of the new law. The CELA Model Bill explicitly addresses this issue. (See text of Model Bill for complete wording).²¹”

Bill 167 should explicitly address this issue.

ROLE OF THE PUBLIC

Bill 167 authorizes public access to toxic substance reduction plan summaries prepared by facilities (section 8) and may authorize public access to other information prepared by facilities under the requirements of the new law, though this is unclear (section 10(3) states that certain information may be disclosed to the public “if required by the regulations”).

In the view of CELA, these are minimum requirements for expanding the role of the public in the processes established under such a law. The CELA model bill and September 2008 submissions identified three other areas of reform: (1) public right to know other information compiled under the authority of existing environmental laws; (2) public right to apply to the Minister for review of toxics use reduction (and safer alternative) plans or, in the alternative, amendment of the *Environmental Bill of Rights* (“EBR”) to ensure that such plans are included in the definition of

²⁰ *Discussion Paper*, *supra* note 8, at 25-26.

²¹ *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008, at 80-81 [section 19].

“instruments” and, therefore, subject to review under the *EBR*; and (3) public right of action to enforce key provisions of the Act. Bill 167 should be amended to include such provisions.

MATTERS CONTAINED IN BILL 167 THAT REQUIRE IMPROVEMENT

TIMING AND NUMBER OF TOXIC SUBSTANCES TO BE PRESCRIBED

Bill 167 authorizes the provincial cabinet to prescribe substances as toxic substances or substances of concern for the purposes of the Act [section 49(1)(a)]. The MOE August 2008 *Discussion Paper* set out how and over what timeframe the government proposed to proceed to designate substances. In the view of CELA, the government proposed to designate too few toxic substances for immediate action and to expand that number at far too leisurely a pace (14 per cent of the total number of substances (320) that currently are subject to the NPRI by 2012, representing just 1.5 percent of the total annual tonnage of emissions of NPRI reportable chemicals for the two industrial sectors - manufacturing and mineral processing - that MOE proposes to address under the new legislation). Even some substances that met MOE requirements for early designation, such as VOCs, are to be excluded until later. Bill 167 does nothing to alleviate CELA's concerns in this regard.

CELA notes that the Minister's Toxics Reduction Scientific Expert Panel also expressed concern about undue delay in designating VOCs and PM 2.5 (July 23, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

SECTORS COVERED

Bill 167 does not identify the sectors covered by the law. However, the MOE August 2008 *Discussion Paper* did so (identifying manufacturing and mineral processing). As CELA noted in its September 2008 submissions to MOE:

“The Discussion Paper indicates that the proposed legislation will apply to the manufacturing and mineral processing sectors.²² As noted above, the emissions covered by these two sectors would constitute approximately 75 per cent of the total emissions of all sectors reporting under the NPRI program (once all 320 NPRI chemicals are covered by the new legislation). Accordingly, MOE does not propose to capture 25 per cent of the pollutant emissions of NPRI-reporting sectors under the new law. Based on information from the Toronto Consultation this would amount to almost 200,000 tonnes of pollutants per year.²³ This would appear to be a significant gap in coverage under the new law and a step back from NPRI itself.

In the circumstances, it would appear appropriate for MOE to consider options for expanding the number of sectors to which the new law would apply. One option is for the law to cover all sectors that report to NPRI, which is recommended in the CELA Report.²⁴ A further option is to consider applying the law to any industrial facility that has an approval to emit contaminants to air or deposit them on land under the *Environmental Protection Act* (“EPA”) or discharge contaminants to water under the *Ontario Water Resources Act* (“OWRA”).”

²² *Discussion Paper*, *supra* note 8, at 21-22.

²³ MOE - Toronto Consultation.

²⁴ *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008, at 21 (Recommendation # 5).

CELA notes that the Minister's Toxics Reduction Scientific Expert Panel recommended that the law apply to all sectors that meet the legislative thresholds (July 23, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

THRESHOLDS

Bill 167 will apply to facilities that (1) employ more than the number of employees specified by regulation, and (2) use or create more than the quantity of a prescribed toxic substance set out in the regulations (section 3). Although not stated in the Bill, MOE will likely use NPRI employee and quantity thresholds based on its August 2008 *Discussion Paper*. In our September 2008 submissions we raised concerns with this approach:

“There are some very cogent and compelling reasons for MOE to lower the thresholds from those used in the NPRI program. NPRI data analyzed by the Commission for Environmental Cooperation (“CEC”) for 2004 shows that many smaller facilities (i.e. those reporting total pollutant releases and transfers of less than 10,000 kg in 1998) showed substantial increases in all types of releases and transfers, in contrast with a decreasing trend for the largest facilities (i.e. those reporting more than 1,000,000 kg in 1998). The CEC also noted that facilities reporting that they undertook pollution prevention measures are generally showing greater progress in reducing their pollutant releases and transfers than those not having undertaken pollution prevention. The CEC recommended that to make better progress in reducing pollution all categories of reporting facilities should be showing decreases.²⁵ Accordingly, unless MOE reduces its proposed thresholds it likely will not be capturing smaller facilities and their corresponding emissions and use of toxic substances under the proposed new legislation.”

CELA notes that the Minister's Toxics Reduction Scientific Expert Panel also had concerns in this regard:

“...on the issue of regulatory thresholds, the Panel notes that the current proposal incorporates the thresholds as set out in the NPRI. Although NPRI is a well-known reporting mechanism, MOE emissions modeling and assessments indicate that there are numerous NPRI chemicals for which point source (reporting facilities) form only a small portion of total estimated provincial emissions. Area estimates (from small and medium emitters based on densities of certain types of businesses in a regional area) in some cases form a high percentage of the emissions. As a result, the Panel recommends implementing pollution prevention obligations to facilities with lower thresholds than NPRI for certain substances.” (July 23, 2008 Memorandum to Environment Minister John Gerretsen from the Toxics Reduction Scientific Expert Panel).

In this regard, CELA recommended in its September 2008 submissions that MOE consider lower thresholds than those contained in NPRI at least for substances that are carcinogens, reproductive toxins, persistent and bioaccumulative.

CONSUMER PRODUCTS

As noted above, Bill 167 contains enabling authority for the MOE to address toxic substances in consumer products and to impose public notice obligations on the regulated community with respect thereto [section 49(1)(n.1)(n.2)]. CELA supports such authority. However, as we noted in our September 2008 submissions:

²⁵ Commission for Environmental Cooperation, *Taking Stock: 2004 North American Pollutant Releases and Transfers* (September 2007) at 3, 67-69 [hereinafter “CEC Report”].

“From the Toronto Consultation, however, it appeared that (1) MOE is not currently going to propose regulations for consumer products, and (2) MOE was only proposing to address consumer products where the federal government does not act. If the MOE is only proposing residual authority to act it is not clear what form of action this would take or whether it will be on a substance by substance basis or more systematic (e.g. enabling authority to address a broad range of consumer products by regulation; emergency authority to ban or restrict only individual substances in products where another level of government does not act; selective labeling, etc.). It would be helpful to know what exactly MOE has in mind with respect to consumer products.

The CELA Model Bill would authorize labeling and warnings with respect to toxic substances in consumer products where the substances are capable of causing cancer or effects such as reproductive toxicity.²⁶”

Accordingly, CELA recommended that MOE clarify the application of the proposed toxics law to consumer products (e.g. enabling authority to address broadly toxic substances in consumer products and, if so, how; emergency authority to ban or restrict individual products, etc.). At a minimum, CELA recommended that MOE consider including in the Bill authorization for immediate labelling and warnings for toxic substances in consumer products where the substances are capable of causing cancer or effects such as reproductive toxicity. Enabling authority without an explicit plan for action is not a sound strategy. CELA submits that its September 2008 recommendations are still appropriate in relation to Bill 167.

OTHER MATTERS

Concerns have been raised that Bill 167 would place undue burdens on industry. CELA was interested to learn in the public consultation sessions held in Hamilton that industry that now reports to the NPRI goes through a audit of their materials use to determine their final emission data. Reporting on the data tracing the use of substances in their processes should be a relatively simple thing as this use is already audited to determine emissions.

A Fact Sheet released in April 2008 and currently found on MOE’s web site on Toxic use reduction does commit to:

- “Grants to small businesses to offset costs associated with their first round of toxic substances accounting planning and to further build capacity to reduce toxics.”

However it is unclear if Bill 167 will include provisions to extend pollution prevention planning to small and medium sized businesses although there is evidence they contribute significant loadings to the Province’s pollution burden.

A lot of concerns have been voiced that the failure of Bill 167 to take advantage of the Federal Chemicals Management Plan. The Chemical Management Plan (CMP) does not cover all substances of concern in Ontario. For instance it has no priorities for many of harmful carcinogens that Ontarians are known to be exposed to in their daily lives. Bill 167 sets out provisions for facilities to examine ways they are contributing to these exposures and plan to reduce their contributions. The CMP does not require this pollution prevention planning. Its schedule for risk analysis of individual substances will take years and will not necessarily lead to actions that will minimise human exposures to those substances.

²⁶ *Our Toxic-Free Future: An Action Plan and Model Toxics Use Reduction Law for Ontario*, August 2008, at 84-85 [section 22(2)(j), (7)].

CONCLUSIONS AND RECOMMENDATIONS

In our September 2008 submissions to the MOE, CELA concluded the following:

“Ontario has proposed an important legislative initiative on the reduction of toxic substances to protect human health and the environment. CELA supports strong measures in this area and submits that in certain respects the provincial proposal has made the correct policy choices. However, in other respects it has not. Given that Ontario is one of the top dischargers of toxics in North America and the number one discharger in Canada, CELA has some serious reservations about what the provincial proposal is silent or ambiguous about, as well as what appears to be aspects of the initiative that are too narrow, limited, or will be implemented too slowly.” (See Appendix A).

To correct these problems CELA provided MOE with 17 recommendations to consider as the provincial government moved forward with the toxics initiative. For the reasons stated in our current submissions on Bill 167, CELA submits that the bulk of our earlier recommendations are still applicable and, if implemented, would improve the Bill significantly. In many key respects, the independent advice of the Minister's Toxics Reduction Scientific Expert Panel also appears consistent with CELA's views as noted above. CELA strongly urges that Bill 167 be amended accordingly.

Yours truly,

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