

Response to Creating Ontario's Toxic Reduction Strategy Discussion Paper

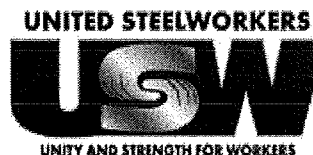
Environmental Defence

United Steelworkers

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ENVIRONMENTAL | DEFENCE



In November 2007, the McGuinty government promised to introduce new toxic reduction legislation, including a number of proactive measures to protect human health and the environment in Ontario: new standards to reduce harmful air emissions; a collaboration with Cancer Care Ontario and the Ontario Medical Association to identify and reduce known and suspected carcinogens released in the environment; a ban on the cosmetic use of pesticides; and new rules on the levels of lead in drinking water, especially where children are most at risk of exposure. Following this commitment, the Ontario government released the discussion paper, "Creating Ontario's Toxic Reduction Strategy," in August 2008.

This response from Environmental Defence and the United Steelworkers urges the Ontario government to ensure that the new policy framework takes a proactive approach to significantly reducing the use and emissions of toxic chemicals, for our health, our livelihoods and the protection of our natural environment. The recommendations presented here are the result of a new and evolving alliance between our two organizations.

We adopt the arguments and positions put forward by Canadian Environmental Law Association as a member of the advisory board for the CELA Toxic Use Reduction model law project. We also support and propose the principles of the Take Charge on Toxics coalition chaired by the Canadian Cancer Society (Ontario Division) with participation from prominent health, environment, and labour organizations including ourselves.

Scientific evidence has confirmed that toxic chemicals, in industry and our households, have an alarming impact on our short-term and long-term health. Increased rates of prostate and breast cancer, developmental problems, allergies and other adverse health effects have been linked to persistent chemicals found in consumer products and our environment. Increased lung and other forms of cancer are associated with exposure in many occupational. An effective and well-managed toxic reduction law can reduce and prevent many unnecessary exposures, and help improve the health of Ontarians.

Throughout the 60s and 70s, the United Steelworkers union and others warned Ontarians about occupational diseases resulting from exposure to toxic chemicals and the threat of secondary impact to people in the community through the environment. Today many Ontarians have cancer, lung disease, heart disease, and many other health problems from

The challenges of climate change and toxic chemicals must be met with opportunities to promote sustainable economic transition. This requires government investment, procurement, and regulation. Increasing fuel costs and increasing carbon footprints will make transportation of many goods over long distance costly and unsustainable. A committee of Cabinet chaired by the Premier has recently been established to look at Green economic possibilities. A toxic chemical use reduction and substitution strategy must be part of this discussion.

Introduction

Ontario is a vibrant growing province that continues to attract people from all around the world to live in its borders. While the province has taken measures to improve human health and protect the environment through such measures as source water protection, management of municipal waste, and restricting cosmetic pesticides, more work is still needed.

Among state and provincial jurisdictions, Ontario releases the second largest amount of toxic chemicals in all of North America, with Texas being number one.² These chemicals are some of the most toxic substances emitted to air, water and soil. Some might argue that Ontario's higher releases are linked to our greater economic activity, however, some of the largest economies in the U.S., such as New York State and California, produce considerably less pollution than Ontario.³ Even Ohio, which has more facilities than Ontario, reported lower total releases than Ontario's 277 million kilograms.

Information regarding occupational exposures is lacking. The Ministry of Labour stopped collecting data in the late 1990's and historical records have not been analyzed. There is no occupational health surveillance system although there is the potential to create one in conjunction with a toxic use reduction strategy.

It is estimated that 4-10% of cancers in developed countries are due to occupational exposure. In Ontario, that would mean 1000-2600 cancers per year. That burden is uneven. In some groups of workers the percentage may be as high as 30-40%. Mining, steelmaking, construction, automaking, firefighting, manufacturing are significant Ontario occupations known to have increased rates of occupational cancer. A wide arrange of workplace chemicals are known to be cancer causing. Cancer is only one of many illnesses associated with exposure at work.

The current mechanism for protecting workers from toxic chemicals is Occupational Exposure Limits (OELs). As observed in the response of the Occupational Health Clinics for Ontario Workers to the Ministry of Labour's recent proposals on OELs,

OEL's, while perhaps necessary as a bare minimum standard, are not the most effective method for reducing workplace exposures (in fact they often present a barrier to reductions in workplace toxic exposures). OEL's should be secondary to an **explicit regulatory requirement to identify**

Response to Discussion Paper Questions

Materials Accounting (Section 5.2.1)

We strongly support the proposed plan for facilities to undertake mandatory materials accounting. With this tool, facilities will identify their toxic inputs and outputs, which will help them recognize the best means for reduction and substitution.

Mandatory materials accounting is vital and necessary to lay the groundwork for knowing what, and where chemicals are being used and released in Ontario. Without this aspect, the Toxic Use Reduction Strategy will only replicate the already existing database of chemicals reported under the National Pollutant Release Inventory.

2. How would materials accounting information assist in your understanding of how toxics are used in your community?

Materials accounting is the foundation for informing the public on chemical use and releases, and we commend the province for proposing this strategy. Without well-managed and mandatory reporting of inputs and outputs, Ontarians cannot have full disclosure on the kind of toxic substances that are transported, used, and released in their province.

Materials accounting can also benefit downstream users who wish to gain information on the chemicals in products, or processes, and will help inform better choices with regard to the environment and health. There is also an economic benefit in being able to avoid future costs for damage that chemicals with unknown hazards might cause; this applies to both downstream users and manufacturers themselves.

This process could also integrate the Workplace Hazardous Information system.

3. Do you have comments about materials accounting and how it should work?

Annual reporting on materials accounting should be mandatory for each facility under the new Toxic Use Reduction Strategy. A chemical-by-chemical summary for each facility should be made public through a provincially administered website.

Toxics Reduction Plans (Section 5.2.2)

We support the proposal of mandatory Toxic Reduction Plans for facilities in Ontario. These plans should include a review and analysis of the existing industrial processes, as well as any projected processes. Each plan should propose a timetable for implementation of measures to reduce the use and generation of toxic substances, with an in-depth evaluation of the economic and practical feasibility of each measure.

3. Summaries must include information on specific **consumer products** that contain toxic chemicals. Facilities should be encouraged by the government to provide substitution alternatives to make products more environmentally friendly and benign to human health. [see question #21 for more on consumer products]
4. If summaries do not include data on specific toxic substances, they should indicate if **categories** of toxics are being used, processed or released in products by a given facility. For example, summaries should indicate if a facility uses, processes, or releases known or suspected carcinogens, reproductive or developmental toxins scheduled on the designated list.
5. The summaries should indicate specific reduction targets established by the facility, and a timeline for reaching those performance goals.
6. The summaries should include occupational objectives and describe progress with reducing the inventory under the Occupational Health and Safety Act.
7. Finally, the summary should specify whether or not the facility intends to take action on any particular aspect of their Toxic Reduction Plan.

Reporting to the Ministry or a Designated Body (Section 5.2.3)

COMMENT ON DESIGNATED BODY

7. Do you have any comments on the proposed reporting requirements?

1. We agree with the reporting requirements outlined in the discussion paper. We suggest that reporting occur every two years.

8. Do you have any comments on the frequency of reporting- annual, every two years, every five years unless significant changes to plans are made, other?

9. Are these right elements on which to report?

10. Are the proposed components of the report useful for determining where and how facilities in your community are working to reduce the use and release of toxic substances?

1. The proposed components are well suited to informing the public on toxic chemicals in their communities.
2. Reporting should also be used to track community involvement and engagement with individual facilities. For example, reporting should include a section on comments received by a facility from community members. This may also help encourage facilities to become involved in community outreach activities.

products. As a result, markets in Europe and other jurisdictions that are already demanding full disclosure of toxic chemical ingredients will become more accessible to Ontario companies.

13. Do you have any suggestions on how the Province should protect confidential business information?

The Province should have regard for the system in place under the Hazardous Materials Information Review Commission (HMIRC) which handles this issue for the workplace hazardous information system. HMIRC is an independent agency accountable to Parliament through the Minister of Health. The process requires the party asserting the trade secret to make an application for a review by a stakeholder tribunal.

The province should include measures in the new legislation to allow industry to make valid claims of confidentiality. At the same time, these claims should not obstruct the public's right to know and should be properly evaluated by the province. Moreover, this issue has not been a problem with existing reporting systems such as NPRI, which already discloses information on chemical emissions. We are confident that the Toxic Use Reduction Strategy will follow regular, established methods of protecting confidential information.

Many Ontario facilities sell their products on the international market and need to meet regulatory requirements regarding their toxic use and outputs. For example, under the European REACH (Registration, Evaluation, Authorisation and Restriction of Chemical substances) program there is a provision for public access to information allowing the public to request information on toxic chemicals being used by industry.⁸ Therefore, it is not unprecedented for Ontario to do the same, especially when Ontario facilities currently export products to Europe, such as Nova Chemicals and other chemical manufacturers. .

It is important that industry trust the current strategy, while at the same time companies need to commit to the basic principle of public disclosure for the sake of improving Ontario's environment and protecting human health. While materials accounting can be seen as exposing trade secrets, it is actually beneficial in the long run and can help facilities become more economically competitive. Materials accounting was identified by the existing program in Massachusetts as being the most valuable aspect for the industries involved.⁹

Scope of the Regulated Community (Section 5.3)

14. Do you have any comments on the proposed list of toxics?

We commend the province on working with the existing list of toxic substances on the National Pollutant Release Inventory. Regular updates should keep the list 'living' and we recommend the continued involvement of the Expert Panel to help the province make sound decisions on current research and prioritization of additional chemicals.

The province should consider that the NPRI itself recognizes that the thresholds of 10,000 kilograms is too high, and has established a lower reporting level (50 kilograms) for key substances: arsenic, lead, and hexavalent chromium.¹⁰

The city of Toronto is proposing a zero employee threshold. We challenge Ontario to move to a five-employee threshold within five years of implementing the Toxic Use Reduction regulation.

To take one example of how the current thresholds are inadequate, consider glycol dehydrators. These [EXPLAIN WHAT THEY ARE] emit large amounts of benzene, but are not covered under the NPRI requirements because their facilities have fewer than 10 employees. On the whole, glycol dehydrators release more carcinogenic substances than the facilities currently reporting through the NPRI. This loophole in our current pollution reporting system shows the need for a more expansive approach by the Ontario government.

19. What are the workable and effective approaches to address lower threshold emitters?

20. Are there additional sectors that the province should consider for inclusion?

We recommend the government consider incorporating other sectors that currently report under the NPRI requirements as part of a later phase of the strategy. Sectors reporting under the NPRI requirements could be considered, including electric utilities, hazardous waste treatment and solvent recovery facilities, chemical wholesalers, petroleum bulk terminals, sewage treatment plants, incinerators, and the oil and gas sector.

A toxic use reduction strategy must take into account the protection of the health of emergency responders. Firefighters unions have waged a campaign across North America for recognition of the cancers and other illnesses which firefighters contract because of their exposures especially in industrial fires. The Ontario experience of SARs as outlined in the findings of the royal commission is that the health and safety of health care workers was ignored. We need a comprehensive toxic chemical exposure surveillance program and a strategy to reduce risks by removing the sources. This is the most effective approach to protection in the hierarchy of controls, the fundamental principles of prevention.

Transportation of hazardous goods is becoming more and more costly with increasing public concern. In the United States, there is a major movement to require rerouting of hazardous materials out of urban areas. The transportation of hazardous goods was a major issue during the recent review of rail safety in Canada, especially in light of a number of high profile spills. Spills of hazardous materials are a major source of emergency response calls. Recent high profile industrial fires and explosions in Toronto have drawn attention to the risks to communities as well as to emergency responders, firefighters, police, and paramedics.

management and the Ministry of Labour to apply the principle to protect workers health. We should not be relying solely on the study of sick and dying workers after the fact.

Within a precautionary policy framework, the government can decide to take various directions, including: mandatory substitution of chemicals found to pose a serious risk to human health or the environment; or, suspended use of a chemical until industry can prove that a chemical is safe.

23. What are workable and effective ways to ensure the public has useful information on toxics and consumer products?

Labelling of products made in Ontario and certified under the toxics reduction program will give consumers information on the safety of their products and will create a market for Ontario made products.

Improve WHMIS information, reporting, and dissemination through reenacting the inventory provisions of the Occupational Health and Safety Act and require public reporting of its progress and emergency response access to critical information.

We recommend that the government further discuss the best way to communicate toxics and consumer safety information to the public through a series of stakeholder consultations.

Governance Model (Section 5.5)

The government has identified the need for an external body to help administer the Toxic Use Reduction Strategy. This is a positive and necessary measure to ensure there is adequate capacity to deal with the various phases and aspects of the proposed legislation.

24. What should be the division of responsibilities between the government and other parties? Why?

The government should maintain responsibility for enforcement. Only the government has the authority to legally impose fines or punitive measures on companies who do not comply with the legislation.

Government must be independent of business and responsive to the community and labour concerns. The Toronto Sunrise Propane explosion in August and the recent Maple Leaf listeriosis outbreak reveal the limits of industry self regulation. The effectiveness of the Massachusetts Toxic Use Reduction law is based in its legitimacy and credibility with all interests, environmental, labour, community, and business. The Toxic Use Reduction Institute has a mandate for research, training, and community engagement. The strategy is supported with a clear legislative mandate to reduce toxic exposures by 50% within a specified time frame, a goal which was achieved.

27. *Would the services of a trained and certified toxics reduction planner be helpful to your operation? If not, why?*

N/A

28. *What are the key opportunities regarding the implementation of toxics reductions?*

As discussed above, we are confident that a provincial strategy for reducing toxics creates many opportunities:

1. Protection of human health and the environment by identifying/implementing plans to reduce carcinogens, reproductive toxins, mutagens, and ecologically hazardous substances in the workplace and the environment.
2. Creation of incentives and a regulatory environment that supports new sectors for economic growth, such as green manufacturing and green chemistry.
3. Decreased spending on mitigation of environmental contamination and health cost related to human exposure to toxic chemicals.
4. Improved manufacturing and mining practices will gain Ontario facilities access to markets with stringent product and environmental standards.
5. Improved consumer safety through reporting and product information.

29. *What are the key barriers regarding the implementation of toxics reductions?*

Industry needs to consider this strategy as advantageous and an investment in long-term economic growth. Based on comments from the consultations on this discussion paper, some industry stakeholders appear reticent to commit to the regulatory requirements, such as materials accounting and public disclosure.

The failure of industry to respond to clear public opinion signals regarding the importance of the environment is a profound market failure and now requires government correction. If industry resists this level of guidance and accounting, the government needs to consider much stronger legislation with more mandatory provisions.

The financial commitment from the province should increase to realistically encompass the burden of technical, administrative and enforcement provisions necessary to effectively implement a Toxics Use Reduction Strategy.

Developing knowledge of safer technologies is essential. While research into new substances and processes is ongoing in the academic and industrial sector, this knowledge needs to be made widely accessible and shared to facilitate Toxic Use Reduction Plans.

30. *How can technical assistance best be targeted to reduce barriers?*

The government needs to create a system that will collect the latest research on chemical toxicity, as well as substitution alternatives. The creation of a Toxic Reduction Institute, similar to the one in Massachusetts, should provide this technical service to industry in Ontario.

We believe that a partnership between unions and environmentalists can integrate the best in occupational and environmental health protection with a concern for a sustainable economy, a clean environment and good jobs.

35. How can innovations encourage green economic development in Ontario?

Innovation is important. Investment in new manufacturing opportunities to actually build in Ontario is critical. Without an Ontario green jobs strategy, Ontario innovation simply goes overseas. Ontario needs an investment and procurement strategy to promote green economic development.

36. In what ways could incentives assist in toxics reduction?

Economic transition is never easy and in these times is not going to become easy at first. Incentives can help if targeted at the transitions that are needed.

37. What barriers to implementation of toxic reduction actions could incentives best address?

Fees to facilities who continue to use toxic substances should be phased-in after the first Toxic Reduction Plan is due in January 2012

38. What incentives would be the most effective and efficient at encouraging toxics reductions?

39. What other types of incentives could assist in encouraging toxics reductions?

40. What information would you like to know about toxics in your community?

1. Where are toxic chemicals being used, processes, and released (via environmental emissions and/or products)?
2. Where do the products that contain toxic chemicals end-up?
3. What quantity of toxic chemicals is present in my community?
4. What occupational inventory has been established and what is the progress in reducing toxic use?
5. Have there been any reported cases of adverse human health effects, or environmental damage linked to the toxic substance?
6. How are the toxics transported to my area?
7. How long has the toxic been in my area?
8. What are the environmental effects and human health impacts of a particular toxic substance? Am I at risk?
9. Are they carcinogenic, reproductive toxins, mutagens, developmental toxins, endocrine disruptors or allergens?
10. What is the facility that uses the toxic substance doing towards reduction or substitution?

cooperation of retailers, the province can create an outreach campaign that directly links to Ontarians in the places that they shop.

Local workshops and educationals have played an important role in making these programs usable to workers and communities.

Environmental Defence and the United Steelworkers appreciate the opportunity to provide comment to the provincial government in regards to the Toxic Reduction Strategy discussion paper. We would be pleased to further discuss our comments and recommendations with you and your colleagues.

¹ Lang, Iain et al. 2008. Association of Urinary Bisphenol A Concentration with Medical Disorders and Laboratory Abnormalities in Adults. *Journal of the American Medical Association*. Vol 300, No. 11, 1303-1310.

² North American Commission on Environmental Cooperation, 2006. *Toxic Chemicals and Children's Health in North America*, p25.

³ Canadian Environmental Law Association, 2008. *Toxic Use Reduction in Ontario: an Agenda for Action*, p6.

⁴ Kreiger, Nancy. Ashbury, Frederick D. Purdue, Mark P. Marrett, Loraine D, 2003. *Workshop Report: Environmental Exposures and Cancer Prevention*. Environmental Health Perspectives. Vol 111, No. 1

⁵ Breast Cancer Fund, 2008. *State of the Evidence: the Connection Between Breast Cancer and the Environment- 5th edition*.

⁶ Vom Saal, F.S., Myers, J.P. 2008. Bisphenol A and Risk of Metabolic Disorders. *Journal of the American Medical Association*. 300(11), 1353-1355.

⁷ Environmental Defence, 2006. *Toxic Nation: A Report on Pollution in Canadians*.

⁸ European Commission. 2007. REACH in Brief. Environment Directorate General.

⁹ Massachusetts Toxic Use Reduction Institute, "Survey Evaluation of the Massachusetts Toxics Use Reduction Program", Methods and Policy Report No. 14, 1997, p.18

¹⁰ Canadian Environmental Law Association, 2008. *Toxic Use Reduction in Ontario: an Agenda for Action*, p.19