

March 7, 2019

**BY EMAIL & REGULAR MAIL**

Dave Smith, MPP  
Chair, Standing Committee on General Government  
Queen's Park  
99 Wellesley Street West  
Toronto, ON M7A 1A2

Dear Mr. Smith:

**RE: BILL 66 – SCHEDULES 5 AND 10**

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On behalf of the Canadian Environmental Law Association (CELA), I am writing to provide comments in relation to Schedules 5 and 10 of Bill 66 (*Restoring Ontario's Competitiveness Act, 2018*).

For the reasons outlined below, CELA is strongly opposed to both schedules. We therefore respectfully request that the Standing Committee pass amendments that fully remove Schedules 5 and 10 from Bill 66.

**(a) Schedule 5 of Bill 66**

Schedule 5 of Bill 66 proposes to repeal Ontario's *Toxics Reduction Act, 2009 (TRA)* and the implementing regulations on December 31, 2021.

During the public comment period under the *Environmental Bill of Rights (EBR)* regarding Bill 66, CELA filed a detailed brief<sup>1</sup> that refuted the Ontario government's unfounded claim that the *TRA* is unduly burdensome and duplicative of requirements under federal law on control of toxic substances.

CELA notes that the public interest purpose of the *TRA* is to prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances and informing Ontarians about toxic substances. However, despite the fact that the *TRA* has been in force since 2010, there are key provisions under the Act that are still not in force. In addition, other environmental laws in Ontario (e.g. *Environmental Protection Act* and *Ontario Water Resources Act*) are primarily focused on pollution abatement, not pollution prevention.

In our view, this significant gap in the province's legislative framework demonstrates the need to retain and strengthen the *TRA*, and explains, at least in part, why Ontario's emissions of toxic substances to air, land, and water are some of the highest in North America.

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<sup>1</sup> See <http://www.cela.ca/SubmissionsOnBill66-Schedule5>.  
Canadian Environmental Law Association

Accordingly, CELA recommends that the *TRA* and its regulations should not be repealed. Instead, CELA calls upon the Ontario government to:

- proclaim in force sections 11, 15.1, 20.1, 26.1, 30, 38, and 50(1)(o.1)(o.2) of the *TRA*;
- list under the *TRA* as substances of concern the 135 substances (e.g. reproductive toxins, neurotoxins, mutagens, and carcinogens) identified in Ontario's 2008 Discussion Paper that are not covered by federal requirements, provided that such substances are still present in commerce and the environment in Ontario; and
- set targets relating to toxic substances under O. Reg. 455/09, pursuant to the authority under s. 50(1)(d) of the *TRA*.

In order for these recommendations to be acted upon, it is clear that Schedule 5 should be removed from Bill 66. CELA concludes that retaining and improving the *TRA* will help Ontarians derive the numerous environmental and socio-economic benefits of toxics reduction, including:

- less pollution, leading to a cleaner environment and safer products;
- reduction in public health risks, and contribution to safer and cleaner workplaces;
- savings in money to companies through implementation of pollution prevention plans;
- promotion of cleaner, more innovative technologies and development of greener products;
- lower compliance costs for companies and lower enforcement costs for government agencies; and
- reduction in the need for further management of hazardous wastes.

#### **(b) Schedule 10 of Bill 66**

Schedule 10 of Bill proposes to amend the *Planning Act* by creating a new tool – the so-called “open-for-business planning by-law” – that would allow municipalities to attract and approve new major development.

Schedule 10 exempts these extraordinary by-laws from current *Planning Act* provisions regarding public notice, comment and appeal. In addition, Schedule 10 specifies that open-for-business planning by-laws do not have to comply with important environmental protections and land use controls established under other provincial laws, plans and policies, including the *Clean Water Act*, *Greenbelt Act, 2005*, *Great Lakes Protection Act*, *Lake Simcoe Protection Act, 2008*, *Oak Ridges Moraine Conservation Act, 2001* and the Provincial Policy Statement issued under the *Planning Act*.

During the *EBR* public comment period regarding Bill 66, CELA filed a comprehensive brief<sup>2</sup> that strongly opposed Schedule 10 on various grounds. CELA is particularly concerned about the Schedule 10's proposal to exempt open-for-business planning by-laws from section 39 of the *Clean Water Act (CWA)*. This key section of the *CWA* currently (and correctly) requires all *Planning Act* decisions to conform to policies in approved source protection plans that address significant drinking water threats.

However, Schedule 10 of Bill 66 enables municipalities to pass open-for-business planning by-laws that approve large-scale projects at sensitive locations that may be contrary to significant threat policies in source protection plans. In effect, such by-laws would override these protective policies in *CWA*-approved plans.

For example, open-for-business planning by-laws could permit industrial projects to be constructed and operated in wellhead protection areas or surface water intake protection zones established by source protection plans, even if project-related activities (e.g. high-volume water-takings, on-site sewage works, waste disposal facilities, or the handling or storage of solvents, fuel, or other prescribed chemicals) may constitute significant drinking water threats.

CELA acknowledges that the Minister of Municipal Affairs and Housing is required by Schedule 10 to review and approve municipal requests to pass open-for-business planning by-laws. However, Schedule 10 does not legally require the Minister to refuse such requests (or to impose strict health-based terms or conditions) if the proposed development may contravene significant threat policies in the applicable source protection plan.

In CELA's view, there is no legal justification or compelling public policy rationale for allowing open-for-business planning by-laws to circumvent or undermine significant threat policies in source protection plans approved under the *CWA*.

Accordingly, CELA concludes that Schedule 10 of Bill 66 is a regressive, unwarranted and potentially risky proposal that is inconsistent with the public interest. In our view, the Ontario government must not rollback key legal requirements that were specifically enacted under the *CWA* to prevent a recurrence of the Walkerton Tragedy.

On January 23, 2019, mere days after the close of the *EBR* comment period, the Hon. Steve Clark, Minister of Municipal Affairs and Housing, announced that Schedule 10 will be removed from Bill 66. Minister Clark indicated that this move was prompted by MPPs, municipalities and stakeholders who raised concerns about Schedule 10.

In light of this Ministerial announcement, CELA wrote<sup>3</sup> to the Ontario government to support the provincial decision to delete Schedule 10 in its entirety from Bill 66. In our view, Schedule 10 puts the environment and public health at considerable risk, particularly since the *CWA* is automatically excluded from applying to open-for-business planning by-laws.

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<sup>2</sup> See <http://www.cela.ca/CELABrief-Bill66>.

<sup>3</sup> See <http://www.cela.ca/publications/removal-schedule-10-bill-66>.

Now that Bill 66 has received Second Reading and has been referred to the Standing Committee, CELA repeats its request that Schedule 10 be removed forthwith, as per the government's commitment in January 2019. In order to keep this governmental promise, Schedule 10 must be deleted from Bill 66 in its entirety, not merely tweaked or amended by the Committee.

**(c) Conclusion**

For the foregoing reasons, CELA respectfully requests that the Standing Committee pass amendments that remove Schedules 5 and 10 from Bill 66 in order to safeguard the environment and the public interest. Please contact the undersigned if you have any questions arising from this submission.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Richard D. Lindgren  
Counsel

- cc. All Standing Committee Members  
The Hon. Todd Smith, Minister of Economic Development, Job Creation and Trade  
The Hon. Steve Clark, Minister of Municipal Affairs and Housing  
The Hon. Rod Phillips, Minister of Environment, Conservation and Parks  
Dr. Dianne Saxe, Environmental Commissioner of Ontario