



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

May 13, 2009

**Remarks to the Standing Committee on General Governance
Re: Bill 167 An Act to promote reductions in the use and creation of toxic
substances and to amend other Acts**

Good afternoon Chairman and Committee Members, thank you for the opportunity to address you on this critical piece of legislation. Bill 167 has the potential to substantially reduce the exposures to harmful toxic substances that Ontario facilities release in record levels to the air and water sheds of North America. In 2006 Ontario facilities reported releases of 879,246,698 kilograms of toxics to all media. Constitutionally Ontario has the right to design its own solutions to address this made in Ontario problem. We see no conflict with federal chemical management programs.

The Canadian Environmental Law Association (CELA), a public interest legal aid clinic with a law reform mandate, has worked since 1970 to reduce toxic use and influence a shift to a precautionary approach toward harmful substances. We congratulate the Premier and all members of Parliament for recognising that this is first and foremost a health issue and we are here to prevent avoidable diseases caused by chronic exposures to these substances in workplaces and the environment. CELA worked closely with the Take Charge of Toxics Coalition and our contribution to their Campaign was the drafting in August 2008 of a Model Toxic Use Reduction Act for Ontario setting out our suggestions for the best model for fast effective action. Our remarks here to day will touch on differences in our Act and Bill 167 and will briefly list matters that need to be included in the Act in the form of amendments, and other components necessary for successful Ontario toxic reduction. Many of the recommendations made by the government's Expert Panel concur with ours. We have provided you with our report *Our Toxic-Free Future: an Action Plan and Model Toxics Use Reduction Law for Ontario* as well as our other submissions.

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* and in the April 7, 2009 *Backgrounder* setting out Next Steps and the proposed content of the regulations.

Matters that should be included in Bill 167 in amendments are:

- 1. Targets** The legislation should include provincial toxic use reduction targets to set out clear objectives and to measure progress. We recommend 50% within 5 years.
- 2. Fees and Fund** A successful program requires a financial engine. The success of the Massachusetts TUR program has been enhanced by fees on the use of toxic substances. These fees imposed on the regulated community financed the programs and institutions needed to

achieve the purpose of their Act. Other efforts in Maine and Oregon that lacked a funding mechanism have not been as successful.

3. Substitution of Safer Alternatives The legislation should include requirements for safer alternatives. This will ensure Ontario industry is competitive and in compliance with European Union regulations.

4. Conflict with Municipal By-laws Bill 167 is 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. Explicit language should be put in the Act to avoid ambiguity. The CELA model bill provides this language.

5. Establishment of a Toxic Use Reduction Institute Establishment of an Institute is central to the success of toxic reduction. Training toxic reduction planners, acting as a resource for best practices and for information for the public has led the Toxic Use Reduction Institute in Massachusetts to become the lead global center of excellence in toxic reduction. 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.

6. Employee Assistance Programs Bill 167 is silent on programs needed for employees that could be impacted by this Bill.

7. Technical and Financial Assistance Programs for Small Businesses Bill 167 is silent on technical and financial assistance programs for small facilities and businesses. Such assistance should be made available even if small businesses are not subject to the requirements of Bill 167.

8. Enhanced Public Participation Further provisions are needed to provide for adequate public access to information. A public right to apply for review of pollution prevention and substitution plans under the EBR, and a public right of action to enforce provisions of Bill 167.

Other matters that require improvement in Bill 167

1. The purpose of the Bill should include the precautionary principle and substitution of safer substances.
2. The Bill needs to cover all sectors that meet the Legislative thresholds.
3. The Minister of the Environment should lower thresholds in the Bill to capture small and medium sized facilities and particularly for carcinogens, reproductive toxins and toxins that are bioaccumulative and persistent.
4. The application of Bill 167 to consumer products should be clarified in regard to bans, restrictions, labelling and warnings.

In conclusion we urge you to look to our Model Law for ways CELA has outlined to improve Bill 167 and consider the advice of the Minister's Toxic Reduction Scientific Expert Panel. In our September 2008 submission we stated:

“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.”

These concerns remain today.

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