

Response to Expert Panel recommendations

Bill 167 sets out the general framework for promoting reductions in the use and creation of toxic substances. The Bill lists other Acts that would need to be amended to accommodate this and sets out in detail compliance requirements. It also provides for public reporting. However much of the critical detail of this framework upon which the success of this endeavour rests is not in this Bill. These details will be left to future regulations. We have had to presume that the details contained in the September 2008 government consultation discussion paper Creating Ontario's Toxic Reduction Strategy are still in play. Those details set out; who this legislation will impact, what substances it will cover, when reporting on categories of substances will be required, and what will be required in pollution prevention plans. As these details are omitted from Bill 167 their status is not clear.

In April 2008 the government established "an expert medical and scientific panel to advise which toxics should be the focus of immediate attention, action and reductions as this legislation is developed". What follows is a look at the main recommendations of that Expert Panel (in Bold) and Bill 167.

One of the Expert Panel members was Ken Geiser a founding member of the Toxic Use Reduction Institute in Lowell Massachusetts that has successfully implemented their Toxic Use Reduction Program for 20 years. Industries subject to their program have reduced the State's toxic chemical use by 40%, their toxic by-products by 71% and releases on site by 91%.

Some of the Expert Panel recommendations that have echoed our Take Charge on Toxic campaign's recommendations are:
Have numerical goals in order to benchmark the process in Ontario. Bill 167 has no Provincial goals for overall reduction targets for toxic use, releases, or toxic waste. It is not clear if pending regulations on requirements for Pollution Prevention Plans will require facilities to set individual numerical goals for reduction.

Overall goals would assist the Province in targeting substances that make up their huge annual releases. In 2006 Ontario's largest polluters reported to the National Pollutant Release Inventory that they released **879,246,698 kilograms** of pollutants to the environment. Of these **2,736,369** were known carcinogens.

The timing for Phase Two of the Strategy be specified in the legislation
The schedule for timing of reporting on the four categories of toxic substances in the discussion paper is not in Bill 167. The earlier discussion paper set out deadlines for phase-in for 65 of the priority substances but was silent on when the remaining 410 substances could eventually be subject to regulation.

The TUR Legislation ultimately be extended to all sectors that use listed substances above the regulatory thresholds. The first phase of expansion within five years should cover energy facilities and municipal waste water treatment plants. These sectors were excluded in the discussion paper from the regulation.

The Ministry prioritize toxic use reduction in areas of the Province that are subject to higher than normal ambient contaminant levels (ie: pollution hot spots). These hot spots are not included in Bill 167. Unfortunately the sectors exempted in the discussion paper from Toxic Reduction the coal fired energy plants lead in Ontario emissions to the air and the wastewater treatment plants as polluters to water. Sarnia's chemical valley should be considered such a hotspot.

The TUR strategy be funded by fees levied on the regulated community, recognizing the cost saving potential of efficiencies discovered through toxics use reduction planning required by the TUR legislation.
Bill 167 does not require fees. The infrastructure necessary to implement and support successful toxic reduction programs in the US has been funded by fees. It is unclear whether the concerted effort necessary to transform Ontario from a pollution control to a pollution prevention focus will ever be successful without the funds to enable this change facility by facility. Technical advice and training will be key components of success.

An external academic institute with stable funding be established as it is essential to the successful implementation and sustained efficacy of TUR and the TUR legislation should be implemented in cooperation with this institute.

Bill 167 has not provided for an institute. Our campaign members agree with the Expert Panel that an institute (academic or otherwise) is central to providing the capacity for success. In Massachusetts pollution prevention planning, innovation, accreditation of pollution prevention and training of pollution prevention planners to work side by side with industry to achieve the strongest plans and persuade industry to voluntarily implement their plans have been accomplishments of their Institute. It appears that the Ministry of the Environment is leaving this to fate and hopes other research under development such as green energy is an adequate substitute. MOE has given itself compliance powers in Bill 167 but has paid little attention to friendly incentives and provision of technical assistance that will be necessary for successful pollution prevention planning for Ontario's diverse industrial and manufacturing sectors and the unique needs of each facility within those regulated sectors.

Other shared concerns

Another essential omission from Bill 167 where we share the concerns of the Expert Panel is safer substitution requirements to replace hazardous and

harmful substances with safe alternatives. The failure to address this will mean Ontario will continue to fall behind regulators in the EU who are working to foster substitution in their REACH regulations. The Expert Panel is also concerned about toxics in products. While Bill 167 may lead to disclosures about the incorporation of toxics into products, it is unclear if those products will be labelled or if the Province will be examining the risks of exposures to those products or will have a regime that could lead to banning them.

The Ontario public will have a very limited opportunity to quickly improve Bill 167 that will go to second reading as early as next week. The intention is to have this Bill passed by June 2009 and the long list of regulations through by the Fall. We urge concerned Ontarians to ask the government to take the advice of their Expert Panel on their recommendations above. As our polling indicates there is wide public support for

CCS can elaborate here.

