



CANADIAN INSTITUTE FOR
ENVIRONMENTAL LAW AND POLICY

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By email to ana.tinta@ontario.ca

Dear Ms. Tinta

Re: Bill 167 – *Toxics Reduction Act, 2009*, EBR Registry Number 010-6224

I am writing on behalf of the Canadian Institute for Environmental Law and Policy (CIELAP) to provide comments on the Ministry of the Environment's proposed Bill 167, the *Toxics Reduction Act, 2009*. CIELAP was founded in 1970 with the mission to provide leadership in the research and development of environmental law and policy that promotes the public interest and sustainability.

Overall, CIELAP is in strong support of the stated objectives of Bill 167, which are to prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances, and to inform Ontarians about toxic substances. CIELAP views this legislation as a means to increase transparency about the toxic chemicals prevalent in our communities and to encourage companies to seek innovative alternatives in order to satisfy increasing demand for non-toxic products. It is also hoped that introducing this legislation will encourage the use of safe alternatives which will reduce the cost of waste disposal and decrease health care costs for the Government, thus resulting in financial gain in the long term.

CIELAP supports the fundamental elements of Bill 167 that would require facilities using or creating designated toxic substances in specified amounts to:

- examine how they are using those substances and identify reduction opportunities, through toxic substances accounting and other procedures);
- develop a Toxic Substance Reduction Plan to identify and develop options for reducing their use of designated toxic substances;
- prepare a report to the Ministry of the Environment (MOE) on how much of each designated substance is being used and created, as well as progress on the implementation of their Plan; and

Advancing the Environmental Agenda

- inform the public about the use and creation of designated toxic substances by requiring public access to summaries of facilities' Plans as well as information in their reports to MOE.

CIELAP also fully endorses the recommendations put forth by the Canadian Environmental Law Association (CELA) in its submission dated May 5, 2009 on the proposed *Toxics Reduction Act*. Many of these recommendations have been made in previous submissions by CELA and CIELAP, in particular those made in response to MOE's 2008 Toxics Reduction Strategy Discussion Paper. Given their significance, CIELAP wishes to re-emphasize these recommendations and encourage MOE to further consider their inclusion in the Bill.

CIELAP supports CELA's recommendations that the following measures be added to the Bill:

- **Need for Provincial Targets**
The proposed Act contains no defined, numerical provincial targets for the reduction of toxic substances. Such targets are necessary to stimulate innovative industrial process and alternative chemical inputs. Targets are also essential for the measurement of success.
- **Fees and Funding**
Bill 167 does not currently direct any funds to finance the programs and institutions necessary to effectively implement the Act. These funds could be secured through fees imposed on the regulated community. Such fees could also catalyze immediate and active implementation of reduction strategies. Financial support of these programs will emphasize their importance and communicate to the public that the Government is committed to their success.
- **Inclusion of Substitution of Safer Alternatives**
CIELAP believes that it is the responsibility of the Government to require industry to substitute toxic substances with safer alternatives, and such requirements should be included in the Toxics Reduction Act.
- **Conflict with Existing Municipal By-laws**
Bill 167 does not address the potential conflicts that may arise between it and municipal by-laws that both address the reduction of toxics use and emissions. It is important to clearly state whether provincial law overrides municipal law in areas where they differ.
- **Establishment of a Toxics Reduction Institute**
Should the Government require that professionals assess and certify facility reduction strategies, it will be essential to establish a facility to train toxics reduction planners and educate the public. Such an institution has been instrumental to the success of the Massachusetts *Toxics Use Reduction Act*, implemented in 1989. CIELAP recommends that the Ontario Government create this type of institution to educate and train professionals and the public, and to sponsor and conduct research.
- **Granting Programs for Small Businesses**
Many small businesses that will not be subject to the Bill based on their size will, all the same, contribute significant quantities of toxic emissions. It is not clear, however, whether provincial grants will extend to include such businesses and the Bill should make this point clear. Small businesses will require assistance to make adequate reductions in their toxics emissions and CIELAP encourages the Government to include them in granting programs.

- **Public Right to Know**

In addition to the public information requirements set out in Bill 167, CIELAP recommends that Bill 167 be amended to provide the public with rights to: know other information compiled under the authority of existing environmental laws; apply to the Minister for reviews of toxics use reduction (and safer alternative) plans (or, in the alternative, be provided with such a right through amendment of the *Environmental Bill of Rights* (EBR) to ensure that such plans are included in the definition of “instruments” and, therefore, subject to review under the EBR); and act to enforce key provisions of the *Toxics Reduction Act*.

CIELAP also supports CELA’s recommendations that the following measures be improved:

- **Purposes**

In addition to the stated purposes set out in the proposed Act, the following purposes should be added: promotion of the use of safer alternatives; and the application of the precautionary and sustainable development principles.

- **Timing and Number of Toxic Substances to be Prescribed**

Based on MOE’s August 2008 discussion paper, too few toxic substances have been designated to require immediate action and the time allotted for adding more toxics is too long. The Government must take steps to ensure significant reforms to toxics use and creation in Ontario if the Act is to be effective. To designate only a small number of toxic substances that require immediate attention undermines the importance of this Act and impedes the Bill’s intention to support the development of alternatives, including green chemistry.

- **Sectors Covered**

Although Bill 167 suggests that the Act will apply to varying sizes of facilities, there is no mention of which sectors the Bill will target. While the province’s August 2008 discussion paper suggested that the law would apply to the manufacturing and mineral processing sectors, these sectors only constitute about 75 per cent of the total emissions of the sectors that report under the NPRI program. It is also important that MOE consider expanding the number of sectors to which the proposed Act will apply to reflect all sources of emissions.

- **Thresholds**

It is anticipated that the Ontario Government will likely use Federal National Pollutant Release Inventory (NPRI) employee and quantity thresholds to determine the application of Bill 167. However, smaller businesses may emit toxins at levels below NPRI thresholds. MOE should consider establishing lower thresholds than those contained in NPRI, at least for substances that are carcinogens, reproductive toxins, persistent and bioaccumulative.

- **Consumer Products**

Bill 167 provides authority to enable the Government to develop regulations addressing toxic substances in consumer products and imposing public notice obligations on the regulated community in this regard. In addition, the Government should clarify the application of the proposed toxics law to consumer products and consider including 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.

In conclusion, CIELAP commends the provincial government for the creation of this legislation, which has great potential to ensure environmental and human health and safety, address public concerns, encourage progressive research, and promote green industrial processes. The proposed legislation does not duplicate existing requirements; it introduces new mechanisms to further protect people's health and the environment from toxic substances. We encourage the Government to consider the recommendations presented here for inclusion in the legislation.

Thank you for this opportunity to provide input. Please contact me or Maureen Carter-Whitney, CIELAP's Research Director, if you wish to discuss any of these comments further.

Yours sincerely,

A handwritten signature in black ink that reads "Anne Mitchell". The signature is written in a cursive, flowing style.

Anne Mitchell
Executive Director

Cc: Hon. John Gerretsen, Minister of the Environment
Gord Miller, Environmental Commissioner of Ontario