

**Caution:**

This draft regulation is provided solely to facilitate public consultation under the *Environmental Bill of Rights, 1993*. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the draft regulation are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

## **Consultation Draft**

Ontario Regulation to be made under the *Environmental Protection Act*

Amending O. Reg. 419/05

(AIR POLLUTION - LOCAL AIR QUALITY)

**1. Section 5.1 of Ontario Regulation 419/05 is amended by adding the following subsection:**

(2) A notice given by the Director under this Regulation may provide that it only applies in respect of the use of an approved dispersion model with one or more scenarios, as specified in the notice.

**2. (1) Subsection 10 (1) of the Regulation is amended by striking out “under section 19 or 20, whichever is applicable” in the portion before paragraph 1.**

**(2) Section 10 of the Regulation is amended by adding the following subsections:**

(1.1) If a facility is part of a class identified by NAICS code 324190 or 324110, in addition to being used in accordance with one of the scenarios mentioned in subsection (1), an approved dispersion model that is used for the purposes of this Part shall be used with respect to the discharge of sulphur dioxide from the facility in accordance with the scenario that, for a one-hour averaging period, assumes operating conditions for the facility that would result in the highest concentration of sulphur dioxide at a point of impingement that the facility is capable of when acid gas is flaring at the facility.

(1.2) In order to determine, for the purposes of subsection (1.1), which scenario will result in the highest concentration of a contaminant at a point of impingement, the person who discharges or causes or permits discharges of contaminants from the facility shall consider only the following types of scenarios:

1. A scenario that assumes operating conditions that occur when the flare system is operating at maximum design capacity.
2. Any other scenario that occurs at the facility when acid gas is flaring at the facility.

(1.3) In order to determine, for the purposes of paragraph 1 of subsection (1), which scenario will result in the highest concentration of a contaminant at a point of impingement that a facility is capable of, the person who discharges or causes or permits the discharge of contaminants from the facility shall consider only the following types of scenarios:

1. Scenarios that assume operating conditions that occur when the facility or part of the facility is being increased from an inoperative state to normal operating conditions.
2. Scenarios that assume operating conditions that occur when the facility or part of the facility is being decreased from normal operating conditions to an inoperative state.
3. Scenarios that assume operating conditions that occur when the facility is operating at its maximum design capacity.
4. Any other scenario that occurs at the facility other than a scenario that assumes operating conditions that occur when the facility fails to operate in a normal manner, whether the operating conditions were designed to occur or not.

(1.4) The Director may, by written notice, require a person making a determination under subsection (1.3) to consider a scenario specified in the notice if the scenario is a type of scenario mentioned in subsection (1.3) and the Director has reason to believe that the specified scenario may result in the highest concentration of the contaminant at a point of impingement that a facility is capable of.

(1.5) Despite subsection (1.3), the Director may, by written notice, require a person making a determination under subsection (1.3) to consider a scenario specified in the notice that is not of a type mentioned in subsection (1.3) for an averaging period specified in the notice, if the Director has reason to believe that the facility was designed to operate in the operating conditions assumed in the specified scenario and that at least one of the following criteria is met:

1. There is an acute effect associated with a contaminant discharged during the scenario.
2. The scenario may occur too frequently and permit discharges of a contaminant that may,
  - i. result in a contravention of section 19 or 20 if the scenario were considered under subsection (1.3), or

- ii. in the case of a contaminant in respect of which neither section 19 nor 20 applies, cause an adverse effect.

(1.6) The Director may give a person who discharges or causes or permits discharges of contaminants from a facility written notice mentioned in subsection (1.5) if the notice is requested in writing by the person.

(1.7) A person who receives notice from the Director under subsection (1.4) shall, if required to do so in the notice, provide the Director with the following information:

1. A description of the method used by the person in carrying out the consideration required by the notice.
2. Confirmation that the method used was an approved dispersion model if specified in the notice.
3. A determination by the person as to whether the scenario specified in the notice will result in the highest concentration of a contaminant at a point of impingement that the facility is capable of.
4. If the person determines that the scenario specified in the notice will not result in the highest concentration of a contaminant at a point of impingement that the facility is capable of, an explanation of which other scenario was determined to result in such a concentration of the contaminant and a justification of the determination.

**(3) Subsection 10 (2) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:**

(2) Despite subsection (1), the Director may give written notice to a person who discharges or causes or permits discharges of a contaminant requiring that an approved dispersion model that is used for the purposes of this Part be used with the scenario described in paragraph 2 of subsection (1) and in accordance with the notice, if,

**(4) Subsection 10 (3) of the Regulation is amended by striking out “subsection (2)” and substituting “subsection (1.3), (1.4) or (2)”.**

**3. Subsection 11 (1) of the Regulation is amended by striking out “under section 19 or 20, whichever is applicable” in the portion before paragraph 1.**

**4. (1) Paragraph 2 of subsection 13 (1) of the Regulation is amended by striking out “that has been refined to reflect” and substituting “that, in the opinion of the Director, has been refined to accurately reflect”.**

**(2) Paragraph 3 of subsection 13 (1) of the Regulation is amended by striking out “meteorological conditions” and substituting “meteorological and local land use conditions”.**

**5. The Regulation is amended by adding the following section:**

**Incident-specific ESDM report**

**24.1** (1) The Director may order a person to prepare a report in accordance with section 26 and to submit the report to the Director not later than a date specified in the order, if the Director has reasonable grounds to believe that a contaminant was discharged from the facility and, as a result of the discharge, the person may have,

- (a) contravened section 19 or 20; or
- (b) if section 19 or 20 do not apply to discharges of the relevant contaminant, caused an adverse effect.

(2) An order made under subsection (1) may,

- (a) require that the report only be prepared with respect to contaminants and, despite subsection 17 (4), averaging periods specified in the order and need not list all contaminants that are discharged from the property, despite anything to the contrary in section 26;
- (b) despite section 10, require that an approved dispersion model be used in accordance with a scenario that uses actual operating data for the facility during the time at which the discharge referred to in subsection (1) occurred, as specified in the order;
- (c) despite section 11, require that an approved dispersion model be used with an emission rate that is an accurate reflection of the emission rate at the time the discharge referred to in the subsection (1) occurred, as specified in the order; and
- (d) require that the approved dispersion model be used with meteorological data approved by the Director as an accurate reflection of meteorological and local land use conditions at the time the discharge referred to in subsection (1) occurred, as specified in the order.

(3) An order made under subsection (1) may require the person to include the following information in the report:

1. The cause of the discharge referred to in subsection (1), if known, and the circumstances surrounding the discharge.

2. If the cause of the discharge is not known, an assessment of the most likely cause based on the best information available and an explanation of steps that have been taken or will be taken to determine the cause.

**6. Subsection 26 (1.1) of the Regulation is amended by striking out “both of the scenarios described in subsection 10 (1)” and substituting “more than one scenario described in section 10”.**

**7. (1) Subsection 30 (1) of the Regulation is amended by adding “the concentration of the contaminant exceeding” at the end of the portion before clause (a).**

**(2) Clause 30 (1) (a) of the Regulation is amended by striking out “the concentration of the contaminant exceeding” at the beginning.**

**8. (1) Subsection 42 (1) of the Regulation is amended by adding “24.1” after “24” in the portion before clause (a).**

**(2) Subsection 42 (2) of the Regulation is amended by adding “24.1” after “24”.**

**9. (1) Subsection 43 (1) of the Regulation is amended by adding “24.1” after “24” in the portion before clause (a).**

**(2) Subsection 43 (2) of the Regulation is amended by adding “24.1” after “24”.**

**10. (1) Subsection 44 (1) of the Regulation is amended by adding “24.1” after “24” in the portion before clause (a).**

**(2) Subsection 44 (2) of the Regulation is amended by adding “24.1” after “24” in each case where it appears.**

**11. The title of Schedule 2 to the Regulation is amended by striking out “Updated”.**

**12. Item 88 of Schedule 3 to the Regulation is revoked and the following substituted:**

88.	7446-09-5	Sulphur Dioxide	100	none	10; annual
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**13. Schedule 6 to the Regulation is amended by adding the following item:**

33.2	7446-09-5	Sulphur Dioxide	830	690 (1 hour)
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**14. Schedule 7 to the Regulation is amended by adding the following item:**

28.2	7446-09-5	Sulphur Dioxide		
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## **Commencement**

**15. [commencement]**