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File No.: 386

January 20, 2019

Sent via e-mail and the Environmental Registry of Ontario

Michael Friesen
Toxics Reduction Program
Ministry of the Environment, Conservation and Parks
40 St. Clair Avenue West, 4th Floor
Toronto, ON M4V 1M2

Dear Mr. Friesen:

**Re: Bill 66, *Restoring Ontario's Competitiveness Act, 2018* (ERO 013-4293)
Repeal the *Toxics Reduction Act, 2009* and all associated regulations by December 31, 2021 (ERO 013-4234)
Planning and reporting changes under the toxics reduction program and Ontario Regulation 455/09 (ERO 013-4235)**

We write on behalf of Ecojustice Canada Society (“Ecojustice”) to provide comments on Schedule 5 of Bill 66, *Restoring Ontario's Competitiveness Act, 2018* (ERO 013-4293) and the related above-noted proposals posted on the Environmental Registry of Ontario on December 6, 2018 concerning the proposed repeal of the *Toxics Reduction Act, 2009* (“*Toxics Reduction Act*”) and regulations. We have also reviewed, and endorse, the comments of the Canadian Environmental Law Association dated January 18, 2019.¹ A separate comment concerning Schedule 10 of Bill 66 was submitted January 18, 2019.

For the reasons that follow, **Ecojustice recommends that Schedule 5 be withdrawn. The *Toxics Reduction Act* should be strengthened, not repealed.**

Ecojustice is Canada's largest environmental charity, with offices in five cities across Canada and over 17,000 supporters in Ontario. Ecojustice uses the power of the law to defend nature, combat climate change, and fight for a healthy environment for all. Our strategic, innovative public interest lawsuits lead to legal precedents that deliver lasting solutions to our most urgent environmental problems. Ecojustice is 100% donor-funded.

The repeal of the *Toxics Reduction Act* would abandon mandatory requirements for toxics reduction planning and reporting on the use and release of toxic substances in favour of non-

¹ Letter from Canadian Environmental Law Association dated January 18, 2019, online:
<https://www.cela.ca/sites/cela.ca/files/1235-CELASubmissionsOnBill%2066%2CSchedule5.pdf>

binding policy guidelines in the federal Chemicals Management Plan. The *Toxics Reduction Act* is not duplicative of the federal Chemicals Management Program and is an important tool for reducing toxic pollution in Ontario. Rather than being repealed, the *Toxics Reduction Act* should be strengthened in order to further encourage the reduction of toxic substances in Ontario.

I. Proposed Repeal of the *Toxics Reduction Act*

Schedule 5 of Bill 66 proposes to repeal the *Toxics Reduction Act* and the regulations thereunder, effective December 31, 2021. In lieu of the *Toxics Reduction Act*, the government intends to rely on the federal Chemicals Management Plan.²

Schedule 5 also proposes a number of other program changes intended to amend and reduce the *Toxics Reduction Act General Regulations*³ until the *Toxics Reduction Act* and the regulations are fully repealed:⁴

- (1) no longer requiring facilities with existing toxics reduction plans to conduct reviews of those plans;
- (2) exempting certain facilities from all future planning and reporting obligations for certain substances; and
- (3) maintaining annual reporting obligations only for facilities with existing plans.⁵

The rationale provided for the repeal of the *Toxics Reduction Act* and regulations is that it will “remove unnecessary duplication with the federal program and reduce burden for industry by not having to comply with duplicative programs.”⁶ Ontario states that it expects the Chemicals Management Plan to have finished assessing all the substances on the federal Domestic Substances List by 2021, by which time all of the substances in Ontario will be “covered” by the Chemicals Management Plan.

Rather than removing duplicative red tape, the repeal of the *Toxics Reduction Act* and related program changes take away Ontario’s only legally binding requirements for toxics reduction planning and reporting on toxic substances entering the environment from industrial facilities.

II. The *Toxics Reduction Act*

The *Toxics Reduction Act* aims to protect human health and the environment by encouraging regulated facilities to reduce their use and creation of toxic substances and by providing public

² Government of Ontario, *Bill 66: Restoring Ontario’s Competitiveness Act, 2018* (December 6, 2018), online: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTM2NzI0&statusId=MjA4MzU1&language=en>; see also Government of Canada, “Chemicals Management Plan” (June 2, 2016) online: <https://www.canada.ca/en/health-canada/services/chemical-substances/chemicals-management-plan.html>.

³ *General*, O Reg 455/09.

⁴ *Supra* note 2.

⁵ *Ibid.*

⁶ Government of Ontario, *Repeal the Toxics Reduction Act, 2009 and All Associated Regulations by December 31, 2021*, (December 6, 2018), online: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTM2NjY2&statusId=MjA4MjYz&language=en>.

access to information and data reported by facilities under the program.⁷ The primary mechanisms to achieve these goals are mandatory requirements for toxics reduction planning and reporting.

The *Toxics Reduction Act* requires owners and operators of regulated facilities⁸ to prepare a toxic substance reduction plan.⁹ The toxic substance reduction plan must be made publicly available on the internet¹⁰ and must include:

- a statement that the owner or operator of the facility intends to reduce the use or creation of toxic substances at the facility, or reasons for not including that statement if it is not included;
- the objectives of the plan, including targets for reducing the use or creation of toxic substances at the facility;
- a description of each process at the facility that uses or creates the toxic substance, including quantities and processes used, how the toxic substance entered the process, whether it was created, destroyed or transformed, how it left the process and what happened to it after it left the process;
- a description and analysis of options considered for reducing the use and creation of the toxic substance at the facility, including the feasibility of each option;
- a statement identifying which of the preceding options will be implemented, or a statement that none will be implemented; and
- if one of the preceding options will be implemented, a description of the steps to be taken to implement the option, a timetable for the steps, an estimate of the amount by which the toxic substance will be reduced at the facility, and an estimate of the amount by which the discharges of the toxic substance to air, land or water will be reduced as a result of implementing the option.¹¹

The *Toxics Reduction Act* also includes mandatory reporting requirements. Section 9 provides that owners and operators of facilities who are required to prepare toxic substance reduction plans must track and quantify each substance to show how the substance enters the process, whether it is created, destroyed or transformed during the process, how it leaves the process and what happens to it after it leaves the process.¹² The owners and operators must also prepare reports on their toxic substance reduction plans, to be submitted to the Director, which include:

⁷ Ontario, “Toxics Reduction Program”, online: <https://www.ontario.ca/page/toxics-reduction-program>

⁸ The *TRA*’s toxics reduction plan requirements apply to facilities that (1) are manufacturing facilities identified by NAICS codes commencing with digits ‘31’, ‘32’, ‘33’ or facilities identified by NAICS code ‘212’ that process minerals by using chemicals for separation, concentration, smelting or refining metallic or non-metallic minerals from an ore, (2) employ more than zero persons, (3) use or create more than zero toxic substances, and (4) if processing NPRI substances, the owner and operator of the facility must have a requirement to provide information in a year subsequent to the year in which the NPRI Notice applies or, if the substance is acetone, section 4 of O Reg 127/01 must apply (see *TRA* s 3; see also O Reg 455/09, s 4-7).

⁹ *Toxics Reduction Act*, 2009, SO 2009, c 19, s 3.

¹⁰ *Ibid*, s 8(1)(b).

¹¹ *Ibid*, s 4(1).

¹² *Ibid*, s 9.

- a summary of the results of tracking and quantification;
- if the toxic substance reduction plan was prepared for the substance before or during the reporting period, (1) describe the steps taken during the period towards achieving the objectives of the plan, (2) assess the effectiveness of those steps with regard to the targets of the plan, and (3) describe any amendments made to the plan during the reporting period; and
- any other information prescribed by regulations.¹³

Owners and operators must also prepare additional reports on substances of concern.¹⁴ Finally, the *Toxics Reduction Act* requires the Minister to report annually on progress in implementing the *Act* and make that report publicly available on the internet.¹⁵

While the toxics reduction planning and reporting requirements in the *Toxics Reduction Act* are important tools to further the goal of reducing the use and emission of toxic substances, the *Toxics Reduction Act* does need improvements to better meet this goal. In particular, several key provisions of the *Act* should be proclaimed in force, including ss. 11, 15.1, 20.1, 16.1, 30, 38, and 50(1)(o.1)-(o.2); a robust list of substances of concern should be established; and toxics reduction targets should be set.¹⁶

III. The *Toxics Reduction Act* is Not Duplicative of the Federal Chemicals Management Plan

The Chemicals Management Plan is a non-binding policy guideline meant primarily to organize the risk assessments for substances on the federal Domestic Substances List, a requirement under the *Canadian Environmental Protection Act, 1999* (“*CEPA*”), and inform responses thereto, including restrictions or prohibitions.

The *Toxics Reduction Act* is not duplicative of the Chemicals Management Plan or other toxics regulation under *CEPA*. Most of the substances covered by the *Toxics Reduction Act* are not subject to any pollution prevention measures under *CEPA*.

While *CEPA* provides the Minister the discretionary power to require “pollution prevention plans” for substances listed in *CEPA* Schedule 1, these plans are more limited in scope than toxic substance reduction plans under the *Toxics Reduction Act* and apply to fewer substances. In practice, the Minister has rarely exercised the pollution prevention plan tool.¹⁷ There are only 14 published notices requiring pollution prevention plans, and each is limited in scope to a single substance.¹⁸ In contrast, *Toxics Reduction Act* toxic substances reduction plans apply across a wide range of facilities involving numerous substances.

¹³ *Ibid*, s 10(2).

¹⁴ *Ibid*, s 11(1).

¹⁵ *Ibid*, s 12.

¹⁶ See Letter from Canadian Environmental Law Association dated January 18, 2019, *supra* note 1, p 8.

¹⁷ See Joseph F Castrilli, “Annotated Guide to the Canadian Environmental Protection Act” (Toronto: Thomson Reuters, 2018) at CEPA-73.

¹⁸ Canada, “Pollution Prevention Plans”, online: <https://www.canada.ca/en/environment-climate-change/services/canadian-environmental-protection-act-registry/plans-policies/pollution-prevention.html>

Further, while some companies are subject to reporting requirements to the National Pollutant Release Inventory (“**NPRI**”) program, these requirements are only to report the “release” of toxic substances, and not the use or creation of such substances.

The *Toxics Reduction Act* fills a gap left by *CEPA* by covering more substances, requiring additional reporting, and encouraging reduction of the use and creation of toxic substances on a company by company basis.

IV. Conclusion

Repealing the *Toxics Reduction Act* would remove important tools aimed at reducing the creation and use of toxic substances in Ontario. Far from being duplicative of the federal Chemicals Management Program, the *Toxics Reduction Act* fills a regulatory gap left by the federal toxics management regime.

Ecojustice recommends that Schedule 5 be withdrawn. Rather than being repealed, the *Toxics Reduction Act* should be strengthened in order to further encourage the reduction of toxic pollution in Ontario. To strengthen the *Toxics Reduction Act*, key provisions not yet in force should be proclaimed in force, including sections 11, 15.1, 20.1, 26.1, 30, 38, and 50(1)(o.1)-(o.2); a robust list of substances of concern should be established; and toxics reduction targets should be set.

We appreciate your consideration of Ecojustice’s comments and trust that they will be taken into consideration. Please do not hesitate to contact the undersigned should you have any questions arising from this submission. We would be pleased to discuss this important issue further.

Sincerely,



Bronwyn Roe
Barrister & Solicitor