



October 14, 2008

The Honourable John Gerretsen  
Minister of the Environment  
135 St. Clair Ave. W., 12<sup>th</sup> Floor  
Toronto, ON M4V 1P5

Dear Minister Gerretsen:

**Proposed Toxics Reduction Legislation – Discussion Paper  
EBR Registry Number #010-4374**

**1. Introduction**

The Ontario Bar Association (OBA) welcomes the opportunity to comment on your Ministry's proposed toxics reduction legislation described in *Creating Ontario's Toxics Reduction Strategy – Discussion Paper*. The OBA supports your Ministry's goals to reduce pollution and better inform Ontarians about toxics.

**2. Background**

The OBA represents more than 17,000 lawyers from a broad range of sectors, including those working in private practice, government, non-governmental organizations and in-house counsel. Our members have analyzed and provided comments to the Ontario government on numerous legislation and policy initiatives. More than 500 of these lawyers belong to our active Environmental Law Section. Our members represent many points of view and have considerable expertise and experience in how environmental laws and policy are interpreted and applied.

**3. Comments**

We have three general comments on the proposed legislation for your consideration.

(i) Proposed List of Designated Toxics

In our view, the interjurisdictional components of regulating toxics necessitates significant intergovernmental (federal, provincial/territorial and municipal) cooperation to ensure that regulatory efforts are coordinated, efficient and made as uniform as possible.<sup>1</sup>

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<sup>1</sup> For example, jurisdiction over the regulation of toxics does not fall clearly under any of the powers assigned to either the federal or the provincial governments under the Canadian

Developing the list of designated toxics will be a key element of the proposed legislation, as it will determine the number and type of substances that will be regulated. We understand that your Ministry currently proposes to designate approximately 475 substances, which will be taken from the federal National Pollutant Release Inventory (NPRI) made under the *Canadian Environmental Protection Act, 1999* (CEPA, 1999), the Great Lakes Regional Toxic Air Emissions Inventory (administered by the Great Lakes Commission), Ontario Regulation 127/01 (*i.e.*, acetone); substances identified by the Ministry's expert panel as priority carcinogens, and the State of California's *Safe Drinking Water and Toxic Enforcement Act, 1986* (*i.e.*, Proposition 65).

From a harmonization and efficiency perspective, we recommend that your Ministry consider regulating only NPRI substances (currently ~320 substances). As noted in the Discussion Paper, the proposed non-NPRI substances (~155 substances) are less well known, making it more difficult to assess their risks. While we understand (and agree with) the importance of evaluating such risks, and appreciate that the Toxics Reduction Scientific Expert Panel will play an important role in that regard, we encourage your Ministry to conserve valuable public resources by working within the existing federal Chemicals Management Plan (CMP) to assess and designate, as appropriate, the non-NPRI substances pursuant to CEPA, 1999. In other words, it is our view that Ontario should work with the federal government to expand, where necessary, the NPRI substances list.<sup>2</sup>

The federal CMP process is transparent, comprehensive and well respected. By adopting an approach that harmonizes provincial and federal processes, you will meet your Ministry's goal of developing a "living list" (which could be updated to reflect new developments such as emerging science), ensuring a more uniform approach to regulating toxics in Ontario and permitting your Ministry to focus public resources on building capacity and support for Ontario's proposed *Toxics Reduction Strategy*. In our view, this cooperative approach would ensure efficient and effective use of public and private resources.

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constitution. While some areas of the regulation of toxics have been regulated by the federal government, other areas have fallen to the provinces; for other areas, laws are overlapping, concurrent or joint. Further, municipal governments also are taking an increasingly active role in the regulation of toxics. For example, the City of Toronto has been considering an environmental reporting and disclosure program that would track and reduce key toxics present in Toronto. It is our understanding that the City of Toronto's Medical Officer of Health is reviewing your Ministry's proposed legislation to ensure that the proposed Toronto program does not conflict with or duplicate the provincial program.

<sup>2</sup> To be clear, we are not advocating that there is a constitutional reason for Ontario to restrict itself just to the NPRI substances. As noted above, it is our view that this is an area of dual jurisdiction. However, it is also our view that it would be prudent for your Ministry to take all reasonable steps to minimize overlap, duplication and conflict with the federal CMP so as to ensure that regulatory efforts are as efficient and uniform as possible.

In addition, we strongly support the Ministry's efforts noted in the Discussion Paper to align the existing NPRI reporting requirements with the proposed legislation to reduce potential burdens on reporting facilities.

(ii) Confidential Business Information

The proposed legislation must protect confidential business information. Our experience with chemical management programs to date (*e.g.*, the federal New Substances Notification Program and Workplace Hazardous Management Information System)<sup>3</sup> highlights the importance of balancing the community's right-to-know with a regulated facility's need to protect genuinely confidential business information. Such balance was a fundamental consideration during the development of these programs.

We also recommend that your Ministry consider a regulated facility's security concerns associated with reporting on certain toxics (*e.g.*, toxics that are pre-cursors of chemical weapons or illegal drugs).

(iii) New Authorities to Address Toxics in Consumer Products

Your Ministry recommends a number of new legislative authorities in the proposed legislation that would enable your Ministry to (i) ban or restrict the manufacture, distribution or sale of a designated toxic and products known to contain a toxic and (ii) require manufacturers and/or sellers of consumer products to publicly report on products containing toxics.

While we agree that Ontario has an important role to play in ensuring the health and safety of Ontarians, it is our view that additional consideration should be given to the benefits of working with the federal government to enhance the existing (and complex) federal regulatory framework, which is designed to prevent and respond to dangers to human health or safety posed by consumer products.<sup>4</sup>

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<sup>3</sup> For example, the Workplace Hazardous Materials Information System program includes a mechanism for ruling on claims for exemption from disclosure of confidential business information on labels and material safety data sheets as well as appeals to these rulings. Chemical identities and other information required by the *Hazardous Products Act* and Canada Labour Code can be claimed as a trade secret under the *Hazardous Materials Information Review Act*. The trade secret mechanism is administered by the Hazardous Materials Information Review Commission. Appeals are heard by independent boards with members nominated by industry, labour and government, to ensure that all points of view are represented.

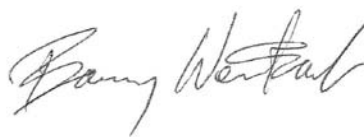
<sup>4</sup> The federal government has primary jurisdiction over the control of consumer products through a broad and complex legislative framework that includes the federal *Pest Control Products Act*, the *Hazardous Substances Act*, CEPA, 1999 and the *Food and Drugs Act*, *Consumer Packaging and Labelling Act* and, if introduced at the next session of Parliament, Bill C-52 - *Canada Consumer Product Safety Act*.

From a harmonization and efficiency perspective, therefore, we respectfully recommend that additional consideration be given to the potential costs and benefits of implementing new provincial restrictions or requirements on consumer products manufactured, distributed or sold in Ontario. In particular, additional consultation with stakeholders would be prudent to ensure that any proposed consumer protection actions would not create an unlevel playing field for consumer products that are manufactured in Ontario.

Yours truly,

A handwritten signature in black ink, appearing to read "Jamie Trimble". The signature is fluid and cursive, with a large loop at the beginning.

Jamie Trimble  
President

A handwritten signature in black ink, appearing to read "Barry Weintraub". The signature is cursive and somewhat stylized.

Barry Weintraub  
Chair, OBA Environmental Law Section

cc: Mr. Greg Mouchian, Senior Policy Advisor, Ministry of the Environment