

Draft Regulation Spells Out Proposed Toxics Requirements

September 18, 2009

The draft regulation under Ontario's Toxics Reduction Act, 2009 sets out the requirements that regulated facilities would have to meet.

It has been posted on the Environmental Registry (www.ebr.gov.on.ca under registry #010-7792) until October 19, 2009 for public comment.

During the posting period, the Ministry of the Environment will continue to consult with industry stakeholders, non-governmental health, labour and environmental organizations, as well as the public. This is a continuation of the consultation that has been ongoing since the Toxics Reduction Strategy was first proposed in 2008.

The Toxics Reduction Act is a cornerstone of Ontario's Toxics Reduction Strategy. The goal of the strategy is to protect the health and environment of Ontarians by reducing toxic substances in air, land, water and consumer products while fostering the green economy. The act and proposed regulation intend to encourage regulated facilities (about 2,000) to find greener alternatives to toxic substances and new technologies that are less dependent on toxics.

Tracking and reporting of toxics required

The act requires regulated facilities to track and quantify the toxics they use and create, to develop plans to reduce their toxics, and to make summaries of their plans available to the public. The regulation would outline the rules for tracking, quantifying, planning and reporting on the substances they use and/or create, as well as the timelines for these activities. While accounting, planning and reporting for prescribed toxic substances is mandatory, implementation is voluntary.

Information collected through the reporting requirements of the act and proposed regulations would be made available to the public so that Ontarians can be aware of toxic substances being used and created around them, as well as the actions facilities are taking to reduce them. This made-in-Ontario approach would assist industries in voluntarily reducing their toxics use and provide useful information to Ontarians.

Regulated facilities already submit toxics release information to the National Pollutant Release Inventory (NPRI), a federal government inventory of substances designed to support the assessment and risk management of chemicals and encourage the reduction and release of pollutants into the environment. To ease the administrative burden on facilities, Ontario has closely aligned its proposed regulatory requirements, timelines and list of substances with the NPRI.

First Phase Applies To Priority Toxics

The substances included in the regulation are being rolled out in two phases. The first phase will apply to the list of 47 substances and substance groups in the list of priority toxics (Table A) in the draft regulation. To develop the list, the ministry worked in consultation with the Toxics Reduction Scientific Expert Panel to rank substances on the NPRI based on emissions and hazard.

From the ranking exercise, 34 substances, including 11 known or probable carcinogens, were prioritized. The ministry also reviewed carcinogens in consultation with Cancer Care Ontario and identified an additional 13 known or probable carcinogens for inclusion in the priority list. It is anticipated that the balance of NPRI substances will follow in two years in the second phase.

The act requires that the lists of substances be reviewed at least once every five years.

Regulated facilities

The draft regulation would apply to facilities at which manufacturing and mineral processing activities (except physical extraction, crushing and grinding) take place that meet prescribed toxic substance and employee thresholds. The proposed thresholds are generally the same as NPRI thresholds.

The draft regulation would require about 2,000 facilities to report to the Ministry of the Environment and the public on their use and creation of toxic substances. It also asks the facilities to consider how they plan to reduce their use and creation.

Timing

The draft regulation proposes that regulated facilities be required to undertake toxic substance accounting on an annual basis, to submit reports on their toxic substance reduction plans on an annual basis and update these plans at least every five years. Annual reporting from facilities is proposed to enable Ontario to develop a detailed picture of how toxics are used and what happens to them in industrial processes.

The regulation further proposes that the first reports on toxic substance reduction plans from regulated facilities would be due by June 1, 2011 for the priority substances in Table A, covering the calendar year 2010. Once the first reports are prepared, facilities would complete their toxics reduction plans by December 31, 2011 and submit a summary of their plan to the ministry and make it available to the public.

Facilities that use or create a substance listed in the NPRI, but which is not listed in Table A, would provide their first report to the ministry by June 1, 2013, covering the calendar year 2012. Facilities would complete a plan and provide a summary of their plan to the public and the ministry by December 31, 2013.

The draft regulation also includes provisions for exempting a facility from undertaking toxic substance accounting and preparing reports, if a facility consistently falls below the thresholds.

Next Steps

An additional draft regulation is anticipated next spring. It would define substances of concern for the purposes of the act, the requirements for certified planners, administrative penalties and related requirements. The substances that have been proposed as substances of concern are not tracked through the NPRI and there is little information regarding their use, release or environmental presence in Ontario.

Information collected on substances of concern will assist Ontario in determining whether further actions are required and will support the federal government's Chemicals Management Plan, where the same substances have been prioritized by both governments.

The draft regulation next spring is expected to propose that facilities using these substances be subject to a one-time reporting requirement. These substances could at a future date be added to the list of prescribed substances and become subject to reporting and reduction planning.

John Karapita, Minister's Office, 416-314-6736
Kate Jordan, Communications Branch, 416-314-6666

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