



19 January 2019

Michael Friesen
Toxics Reduction Program
Ministry of the Environment, Conservation and Parks
40 St. Clair Avenue West – 4th Floor
Toronto, Ontario M4V 1M2
Via Email: Michael.Friesen@ontario.ca

Dear Mr. Friesen:

Re: Bill 66 – Restoring Ontario’s Competitiveness Act, 2018 – Schedule 5:
ERO 013-4234 - Repeal of the Toxics Reduction Act, 2009 and all associated
regulations by 31 December 2021
ERO 013-4235 – Planning and reporting changes under the toxics reduction program
and Ontario Regulation 455/09

The Ontario Rivers Alliance (ORA) is a Not-for-Profit grassroots organization acting as a voice for several stewardships, organizations, individuals and Indigenous members who have come together to protect, conserve and restore healthy river ecosystems.

The Ministry of Environment Conservation and Parks (MECP) proposals identified above are part of a broader omnibus bill (Bill 66, Schedule 5). **ORA strongly opposes Bill 66, Schedule 5**, which would repeal the *Toxic Reductions Act, 2009* (TRA) by December 31, 2021, and revoke both of its regulations, O. Reg. 455/09 (general) and O. Reg. 296/18 (service of documents).

ORA disagrees with the MECP that the *TRA* duplicates requirements under federal law on control of toxic substances and, therefore, don’t find the MECP argument persuasive that repealing the *TRA* will reduce a burden on industry from having to comply with duplicative programs. Ontario has also previously identified many toxic substances in Ontario not covered by federal requirements that, if still present in the province, could benefit from application of the *TRA*.

The MECP proposals are based on the mistaken assumptions that:

1. The *TRA* and its planning and reporting requirements are duplicative of federal requirements; and
2. Eliminating the *TRA* and its requirements will save industry money but still result in protecting human health and the environment.

The concept at the heart of *TRA* of mandatory preparation, but voluntary implementation of toxics reduction plans has a record of demonstrated success in jurisdictions such as Massachusetts that have had such a law in place for approximately three decades. The *TRA* has only really been fully in effect since 2013. There is no reason, and more importantly, no evidence, to assume it cannot work in Ontario given time and dedication.



The purpose of the *TRA* is to prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances and informing Ontarians about toxic substances. Pre-*TRA* legislation in Ontario (e.g. EPA, OWRA) focused on, and continues to focus on, pollution abatement, not pollution prevention. This problem explained, and continues to explain, why Ontario's emissions of toxic substances to air, land, and water are some of the highest in North America.

TRA was designed to deal with the Achilles heel of *Canadian Environmental Protection Act* (*CEPA*); its failure to deal more aggressively with preventing pollution from toxic substances on a company by company basis. To fill that gap, Ontario enacted the *TRA* to reduce the use and creation of toxic substances by requiring companies to develop and hopefully implement plans that do just that, modelled on the very successful Massachusetts *Toxics Use Reduction Act*. *TRA* was not modelled on *CEPA*.

There are several limitations under *CEPA*. The reporting requirements, pursuant to notices issued under s. 46 of *CEPA* that result in the Canada's National Pollutant Release Inventory (NPRI), address the obligation on companies to report on the release but not the use of toxic substances. Accordingly, a focus on the use (and creation) of toxic substances, as is the case with *TRA*, represents new, not duplicative, legal authority in Ontario.

As the Environmental Commissioner of Ontario has observed, "While the existing federal NPRI program focuses on gathering and publishing information on industrial emissions... the driving intent of the *TRA* is toxics reduction".¹

When tabling Bill 66, the Minister of Economic Development, Job Creation and Trade indicated that Bill 66 was aimed at eliminating "red tape" and "burdensome regulations" in order to promote business growth and create employment. However, by any objective standard, the repealing of the *TRA* and its regulations are neither "red tape" nor "burdensome regulations." To the contrary, the legislative framework being ousted by Schedule 5 was carefully developed by the province with considerable input from Ontarians, non-government organizations and other stakeholders. In addition, the various components of this framework were put in place in order to safeguard public and private interests throughout Ontario.

We must have both sustainable development and a healthy environment. We all want safe, healthy and resilient communities, so it is important that we protect our freshwater and groundwater resources, our farmland and the environment.

ORA submits that Schedule 5 of Bill 66 is a regressive, unwarranted and potentially risky proposal that is inconsistent with the public interest and does not adequately safeguard the health and safety of Ontarians. Does the MECP really want to set the stage for another Grassy Narrows mercury disaster? Instead, the MECP should be focusing on improving the *TRA* and its regulations to better protect communities.

Accordingly, ORA respectfully recommends that:

1. Schedule 5 be completely removed from Bill 66;
2. MECP not repeal the *TRA*; and
3. MECP not revoke the regulations or eliminate any of the planning and reporting requirements of the *TRA*, including the requirement on industry to prepare toxics reduction plans.



The ORA is in strong support of the Canadian Environmental Law Association's submission in this regard, dated 18 January 2019.

Respectfully,

Linda Heron
Chair, Ontario Rivers Alliance
(705) 866-1677

ⁱ Environmental Commissioner of Ontario, "Moving from End-of-Pipe to Front-End Toxics Reduction in Ontario", in *Redefining Conservation: Annual Report 2009/2010* (September 2010) at 94.