

***Bill 167, the proposed Toxics Reduction Act, 2009***

**COMPENDIUM**

The following document is to be used as a guidance document only and should be read in conjunction with the proposed *Toxics Reduction Act, 2009*.

The proposed legislation is designed to improve the protection of the environment and human health by encouraging reduction in the use, creation and release of toxic substances into the environment, and to better inform Ontarians of the presence of toxic substances in their communities. Under this proposed legislation, facilities using or creating designated toxic substances in specified amounts would be required to: examine how they are using those substances and to identify reduction opportunities (i.e. through toxic substances accounting and other procedures); develop a Toxic Substance Reduction Plan (Plan) to identify and develop options for reducing their use of designated toxic substances; and, to prepare a report to the Ministry of the Environment on how much of each designated substance is being used and created, as well as progress on the implementation of their Plan.

The proposed legislation would also inform Ontarians on the use and creation of designated toxic substances by requiring owners and operators of facilities, as well as the Director of the Ministry of the Environment to provide public access to summaries of facilities' Plans and to some or all of the information contained within the report in a manner consistent with the regulations.

The proposed legislation also includes regulation-making powers to prohibit or regulate the manufacturing, sale or distribution of toxic substances, substances of concern, other substances prescribed by regulation, and anything that contains a toxic substance, substance of concern or other substance prescribed by regulation, and to require the person manufacturing, selling or distributing the regulated substance or thing to give notice to the public. This regulation-making authority is detailed in the "Amendments" section of this compendium as it is proposed that the proclamation of these authorities, and any associated enforcement and compliance provisions necessary to appropriately govern any regulation made under this authority, be delayed until the government has consulted and developed such a regulation.

## GENERAL

### **Section 1 - Purposes**

This section explains that the purpose of the proposed *Toxics Reduction Act, 2009* is to prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances, and to inform Ontarians about toxic substances.

### **Section 2 - Definitions**

Substances designated under this Act would be defined in one of two ways, as toxic substances or as substances of concern. Both definitions would apply to substances prescribed by the regulations for the purposes of this Act, but the former would apply to those substances to which full Toxic Substance Reduction Plan, summary, toxic substances accounting and reporting provisions would apply. The latter would apply to the substance of concern report provisions. This section also includes other definitions necessary for the operation of the enforcement and compliance provisions of the proposed legislation.

### **Sections 3 to 7 – Toxic Substance Reduction Plans (includes requirements, contents, certification, amendment and review)**

These sections would require that the owner and operator of a facility prepare a Plan for each toxic substance designated under the Act, if the facility meets the following criteria:

- the facility belongs to a class of facilities as set out in regulation (e.g. sector);
- the facility employs a number of persons as set out in regulation;
- the toxic substance is used or created at the facility in amounts that equal or exceed the thresholds as set out in regulation; and,
- any other criteria as prescribed by the regulations.

For facilities that meet the criteria, the required contents of their Plans would include:

- a statement that the owner and operator intends to reduce the use and creation of a toxic substance at the facility; or, an explanation as to why the facility has no statement;
- the objectives of the Plan, including any targets for reducing use and creation of a toxic substance at the facility;
- a description of each process at the facility that uses or creates a toxic substance, including a description of how, when, where and why it is used or created in that process;
- quantifications made under section 9 that were used to prepare the Plan, and shows how the substance entered the process, whether it was created, destroyed or transformed during the process, how it left the process, and what happened to it after it left the process.

- a description and analysis, including feasibility (e.g. technical and economic) of options that were considered by the facility for reducing the use and creation of a toxic substance;
- a statement identifying which options will be implemented or that none of the options will be implemented. If an option will be implemented, then the owner or operator of the facility will provide the following information:
  - what steps will be taken to implement the option;
  - a timetable for implementation of the option; and,
  - an estimate of how much the use and creation of the toxic substance will be reduced through implementation of the option; and,
  - an estimate of the amount of discharges of the toxic substance to air, land or water that will be reduced through implementation of the option,
- any other content as defined by regulations.

The Plan would also be required to be signed and certified, in accordance with the regulations, by the highest ranking employee who has management responsibilities related to the facility. This requires that the highest ranking employee sign a statement that states that he or she has read the Plan, is familiar with its contents, that the Plan is accurate and that it complies with the Act and regulations.

The Plan would also be required to be signed and certified, in accordance with the regulations, by a person who has the qualifications prescribed by the regulations (e.g. licensed toxics reduction planner). This person cannot be the same person as the highest ranking employee referred to in the above paragraph.

Lastly, these sections would also provide that the Plan could be amended at any time, require that a facility must make a copy of the Plan available to the Director at the Ministry of the Environment upon request and require that the Plan be reviewed by the facility in accordance with the regulations.

### **Section 8 – Summary of Plan**

Owners and operators of facilities that are required to prepare a Plan would also be required, in accordance with the regulations, to develop a summary of the current version of the Plan and to submit the summary to the Director at the Ministry of the Environment, who will make it available to the public in accordance with the regulations. At a minimum, the summary would include:

- copy of the objectives of the Plan, including any targets for reducing the use or creation of the toxic substance at the facility;
- a projection of how effective the Plan will be in meeting the objectives and targets referred to in the above paragraph;
- copies of the certifications contained in the Plan; and,
- any other information as prescribed by regulations.

### **Section 9 – Toxic Substance Accounting**

This section would provide that owners and operators of facilities that are required to prepare a Plan would be required to track and quantify for each process, in accordance with the regulations:

- how each toxic substance enters the process;
- whether it is created, transformed or destroyed during the process;
- how the substance leaves the process; and,
- what happens to it after it leaves the process.

### **Section 10 – Reports on Toxic Substance Reduction Plan**

Owners and operators of facilities that are required to prepare a Plan would also be required, in accordance with the regulations, to ensure that reports are prepared, and submitted to the Director of the Ministry of the Environment in accordance with the regulations.

The report would include:

- a summary of the results of the tracking and quantification during the reporting period and a comparison of those results to results of previous reporting periods;
- an indication of whether a Plan for the toxic substance was prepared before or during the reporting period and if so:
  - a description of the steps taken towards achieving the objectives set out in the Plan;
  - an assessment of the effectiveness of the steps taken, particularly with respect to any targets that were set out under the Plan;
  - a description of any amendments that have been made to the Plan; and,
  - any other information as prescribed by regulation.

Additionally, if required by the regulations, the owner and operator of a facility and the Director would make all or part of the information contained in the report available to the public in accordance with the regulations.

## **SUBSTANCES OF CONCERN**

### **Section 11 – Substance of Concern Report**

This section would set out requirements for owners and operators of facilities to provide information to the Ministry of the Environment on substances of concern to assist the Ministry in considering whether or not a substance of concern should be prescribed by the regulations as a toxic substance. This section would require that owners and operators ensure that a report is prepared and submitted to the Director of the Ministry of the Environment, in accordance with the regulations, based on the following criteria:

- the facility belongs to a class of facilities as set out in regulation (e.g. sector);
- the substance of concern is used or created at the facility in amounts equal to or in excess of its threshold as prescribed in regulations; and,
- any other criteria as prescribed by the regulations.

## **COMPLIANCE AND ENFORCEMENT**

If the proposed *Toxics Reduction Act, 2009* is enacted, the following enforcement provisions would be made. Please note that unless otherwise mentioned, any reference to “the Act” or “this Act” means “the proposed Act.”

### **Section 12 - Directors**

The Minister would have the power to appoint (and limit the authority) of Directors necessary to administer the proposed Act. The Minister could only appoint certain employees of the Ministry or another individual as approved by the Lieutenant Governor in Council.

### **Section 13 – Provincial Officers**

The Minister would have the power to designate (and limit the authority) of provincial officers that he or she considers necessary to implement provisions under the Act (e.g. enforcement, inspections). The provincial officer would be a peace officer for the purposes of administering the proposed Act.

A provincial officer may investigate offences under this proposed Act and may prosecute any person whom the provincial officer reasonably believes is guilty of an offence under this Act.

A provincial officer would keep all matters that come to his or her knowledge during any survey, examination, test or inquiry conducted under the proposed Act or the regulations confidential except to prescribed persons such as the provincial officer’s counsel. Except in a proceeding under this proposed Act or the regulations, no provincial officer would be required to testify in a civil suit.

### **Section 14 - Inspection by Provincial Officer**

A provincial officer may, at any reasonable time:

- enter a facility and conduct an inspection for the purposes of determining compliance of any person with this Act or the regulations, if the provincial officer reasonably believes that a toxic substance or substance of concern is used or created at the facility; and,
- enter any place and conduct an inspection for the purposes of determining compliance of any person with this Act or the regulations, if the provincial officer reasonably believes is, or is required to be, subject to or referred to in a licence, order or agreement under this Act.

During an inspection, a provincial officer may:

- take samples for testing;
- conduct tests, take measurements, and take samples away for testing;
- require any thing to be operated, used or set in motion and set conditions;
- examine, record or copy any document or data;
- take photos, video recordings;
- remove documents or data in any form or require production of them; and,
- make any inquiries of any person, orally or in writing.

During an inspection the officer may exclude from the questioning any person except counsel for the person being questioned. Photographic and video recordings must be conducted in a manner that does not intercept private communication and that accords with reasonable expectations of privacy. Additionally, no documents or data may be removed without providing a receipt, and must be returned by the provincial officer to the person who produced them.

Entry to a dwelling would not be permitted unless a court order has been issued authorizing the entry, or the owner consented.

### **Section 15 – Power to Administer other Acts**

During an inspection, a provincial officer may exercise, if designated to do so, certain sections of the *Environmental Protection Act*, the *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act* or the *Safe Drinking Water Act, 2002*.

### **Section 16 – Identification**

On request, a provincial officer would have to identify himself or herself as a provincial officer and explain the purpose of the exercise of his or her powers.

### **Section 17 – Entry or Inspection Order**

A justice may issue an order authorizing a provincial officer to do anything set out in the inspection provisions if the justice is satisfied that the provincial officer may not effectively carry out his or her duties without a court order because:

- No occupier is present to grant access or the place is locked or otherwise inaccessible;
- The provincial officer is prevented by a person from doing certain things;
- There are reasonable grounds to believe that a person may prevent the officer from doing certain things;
- It is impractical, because of the remoteness of the place to be inspected or for any other reason, for an officer to obtain an order without delay if access is denied;
- There are reasonable grounds to believe that an attempt by a provincial officer to do certain things without an order might not achieve its purpose.

There are provisions regarding expiry, renewal, time of execution and issuance without notice of a court order. Requirements for an application for a dwelling

limitation, regarding photographs, removal of documents, excluding of persons and entry to dwellings are set out in the proposed Act.

### **Section 18 – Samples and Copies**

As part of their inspection powers, provincial officers may take samples and copies obtained under section 14 or 17 for any period or purpose of the Act or the regulations.

### **Section 19 – Seizure During Inspection**

A provincial officer may also seize, without a warrant or court order, any thing that is produced or is in plain view if the provincial officer reasonably believes that it will afford evidence of an offence under this Act that prohibited activities are taking place and seizure is necessary to prevent continuation or repetition of the offence.

### **Section 20 to 21 – Detention or Removal, things seized and Report to Justice, things seized**

The provincial officer may remove the thing seized or detain it in the place where it is seized and must either bring the thing before a justice or report to the justice. If possible, the provincial officer who seizes something must give the person from whom it is seized a reason for seizure and a receipt. Sections 159 and 160 of the Provincial Offences Act apply with necessary modifications.

### **Section 22 – Disposition of Things Seized**

If the Director believes that the thing seized poses a risk to human health or safety or to property, he may direct the person having custody of it to dispose of it. The person having custody of the thing may dispose of it if he believes that the thing will rot, spoil or otherwise perish. Something seized in accordance with this section is forfeited to the Crown. The provincial officer would not have to go before a justice with the thing seized.

### **Section 23 - Notice of Disposal of Things Seized**

If a thing has been disposed of as per section 22, the Director shall ensure that a provincial officer provides a written notice of the seizure and disposal within 15 days of the disposal to specified persons. Basic elements of the notice are also set out.

### **Section 24 – Forfeiture May Be Ordered**

The Superior Court of Justice may order that a thing seized under this Act or under a warrant issued under the Provincial Offences Act in connection with an offence under this Act be forfeited to the Crown upon application of the Director.

This section also outlines where an order would not be made, provides authority for something seized to be disposed of and outlines the contents of a notice.

Additionally this section also allows a person who has had an interest in a thing that has been forfeited under section 22 or this section to apply to the Superior Court of Justice for relief. The Court may make an order providing any relief that it considers appropriate, including:

- Return of the thing or any part of the thing;
- Interest in the thing be vested in the person applying for relief; and,
- Directing an amount be paid by the Crown to the person by way of compensation for the forfeiture.

Lastly, the section outlines the areas where the Court could not make an order for relief, which includes:

- If the person applying for relief has been served with an order to pay a penalty under section 29 in connection with a matter that was associated with the seizure of a thing; or,
- If the person has been charged with an offence that was associated with the seizure of the thing, unless the charge has been withdrawn or dismissed.

### **Section 25 - Use of Force**

A provincial officer may use force as is reasonably necessary to carry out an order issued, to execute a warrant issued under the Provincial Offences Act or to prevent the destruction of any evidence.

### **Sections 26 to 28 - Orders (includes amendment or revocation of orders under section 26 and request for review)**

A provincial officer may issue an order to any person that the provincial officer reasonably believes is contravening or has contravened a provision of the Act or the regulations, a provision of an order under section 26 or a provision of a licence issued under this Act.

The order would specify the provision the provincial officer believes is being or has been contravened, briefly describe the nature and, if applicable, the location of the contravention, and state that a review of the order may be requested in accordance with section 28.

An order issued under section 26 may, by order, be amended or revoked by the provincial officer who issued it or by the Director. The person to whom the order is directed would receive written notice of the amendment or revocation from the issuing provincial officer or the Director.

If the provincial officer believes that prohibited activities are taking place, he/she may issue an order requiring:

- compliance;
- the person implement certain directions preventing the continuation or repetition of the contravention;

- submission of a plan including engaging of contractors or consultants satisfactory to a provincial officer;
- monitoring and recording and reporting on the monitoring and recording;
- securing of any land, place or thing; and,
- posting notice of the order.

Section 28 would also allow a person served with an order under section 26 or 27 to make a request to the Director to review the order within seven days after being served with a copy of the order. The request may be made orally with written confirmation served on the Director within the seven day time frame, or in writing.

Minimum contents of the written request for review are set out in subsection 28 (3). The request for review does not stay the order unless the Director orders otherwise in writing within the seven day period, requesting additional time to make a decision. Upon receiving a request to review, the Director may either revoke the provincial officer order or confirm or amend the order and shall serve the person requesting the review with notice of his or her decision. The Director may substitute his or her own opinion for that of the provincial officer. If the Director does not amend, revoke or confirm the order in the time period, it shall be deemed to be confirmed by the Director. It shall also be deemed to have been made to each orderee named in the provincial officer order and properly served at the expiry of the time period.

### **Section 29 - Administrative Penalties**

A Director may issue an order requiring a person to pay a penalty if the person is required to ensure that a Plan is prepared under section 3, or a substance of concern report under section 11, and contravenes a provision of the Act or regulations, orders under section 26, or an agreement requiring the orderee to take steps specified in the agreement. An administrative penalty cannot be issued where a person obstructs any provincial officer or any employee or agent of the Ministry in performance of his or her duties.

Minimum contents of the order to the penalty are set out and would include a description of the contravention, the amount of the penalty, any particulars respecting payment and information relating to the appeal of the order. The amount of the penalty would be determined by the regulations, but shall not exceed \$60,000 for each contravention.

A requirement that a person pay a penalty would apply even if the person took all reasonable steps to prevent the contravention or the person had an honest and reasonable belief in a mistaken set of facts which if true, would have made the contravention innocent. Nothing in this respect affects the prosecution of an offence.

An order requiring payment of a penalty shall be served not later than the first anniversary of the later of the date the contravention occurred, and the date on which the evidence of the contravention first came to the attention of the Director or a provincial officer.

The Director and a person against whom an order is made may enter into an agreement that identifies the contravention, requires the person to take certain steps specified in the agreement, within the time specified, and may cancel or reduce the obligation to pay a penalty. The Ministry would have to publish any agreement on the Environmental Bill of Rights, 1993. A person who pays a penalty in respect of a contravention, or who has the obligation to pay a penalty that is cancelled, shall not be convicted of an offence for the same conviction. Entering into an agreement in respect of a contravention is not an admission that the person committed the contravention.

If a person fails to comply with a requirement to pay a penalty, the order or decision that requires payment may be filed with the Superior Court of Justice and enforced as if it were an order of the court. The Director may refuse to issue or by order, suspend until the penalty is paid, any certificate of approval, provisional certificate of approval, licence or permit issued under the Environmental Protection Act, Ontario Water Resources Act or the Pesticides Act.

The date on which the order or decision is filed is deemed to be the date of the order that is referred to in section 129 of the Courts of Justice Act.

### **Section 30 – Orders, Consequential Authority**

The authority to issue an order under this Act includes the authority to require intermediate actions and procedural steps related to the order.

A person who has authority under the Act to make an order has authority to permit access to the place for the purpose of doing the thing.

### **Sections 31 to 39 – Appeal of Order (includes Powers of Tribunal and amount of administrative penalties)**

If an order is issued by the Director under section 28 or 29, the holder or applicant may notify the Tribunal in writing within 15 days after service of a copy of the order to request a hearing. No failure or refusal by the Tribunal to issue, amend, vary or revoke an order is an order.

The Tribunal would extend the time in which a person may give notice requiring a hearing in certain circumstances if it is just to do so. An applicant for a hearing must state in the notice the portions of the order which would be subject to a hearing and the grounds upon which the applicant intends to rely. Except with leave of the Tribunal in proper circumstances, an applicant could not appeal a

portion of the order, or rely on a ground that is not stated in the applicant's notice requiring the hearing.

The commencement of a proceeding before the Tribunal automatically stays the order.

The person requiring the hearing, the Director and any other person specified by the Tribunal would be parties to the hearing.

Except with respect to an appeal regarding the amount of an administrative penalty, a hearing by the Tribunal would be a new hearing and the Tribunal may confirm, alter or revoke the order and may direct the Director to take such actions as are appropriate under the Act and regulations and may substitute its opinion for that of the Director. Any regulations governing the determination of the amounts of administrative penalties apply to the Tribunal. On appeal, the Tribunal would not substitute its opinion with respect to the amount of the penalty unless the Tribunal considers the amount to be unreasonable.

Any party to a hearing may appeal the Tribunal's decision or order on a question of law to the Divisional Court according to the rules of the court.

Parties to a hearing before the Tribunal may appeal the Tribunal's decision to the Minister within 30 days after receipt of the Tribunal's decision or within 30 days after final disposition of an appeal to Divisional Court. The Minister can make a decision on any matter but a matter of law and will make a decision to confirm, alter or revoke the decision of the Tribunal as to the matter under appeal as the Minister considers in the public interest. During this appeal, the Tribunal's decision is not automatically stayed unless the Tribunal orders otherwise. If a decision of the Tribunal is appealed to the Divisional Court or the Minister under section 38, the Divisional Court or the Minister may stay the operation of the decision or set aside a stay ordered by the Tribunal.

Where an order is issued by a court, the Director or a provincial officer, under this Act, it would bind the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the orderer and any successor or assignee of the orderer. The obligation of these persons to incur costs is limited to the value of the assets they hold or administer, less reasonable costs of holding and administration. An order of the Court, the Director or provincial officer that relates to property is binding on a receiver or trustee that holds or administers property. If an order is binding on a Trustee, other than a trustee in bankruptcy, the obligation to incur costs is limited to the value of the assets administered, less reasonable costs of holding or administering the assets.

An order of the court, the Minister, the Director or a provincial officer relating to property is not binding on a receiver or trustee in bankruptcy if within 10 days of taking or being appointed to take possession or control of the property or within

10 days of issuance of the order, the receiver or trustee in bankruptcy notifies the Director that they have abandoned, disposed of or otherwise released their interest in the property or the order was stayed under Part 1 of the Bankruptcy and Insolvency Act (Canada) and the receiver or trustee in bankruptcy advised the Director before the stay expired that they have abandoned, disposed of or otherwise released their interest in the property.

The Director may extend the 10-day period referred to above before or after it expires on terms and conditions he or she considers appropriate and any notice must be given in accordance with the regulations.

#### **Section 40 - Records**

Every person required by this Act or the regulations to retain a record, would be required to make it available to a provincial officer for inspection on request. The provincial officer may on giving a receipt remove any such record for the purpose of making copies or extracts and shall promptly return the record. If a record is retained in electronic form, the provincial officer may require that a copy of it be given to him or her on paper or in machine-readable form or both.

#### **Section 41 - Calling for Assistance of member of police force**

A provincial officer may take such steps and employ such assistance as is necessary to accomplish what is required to administer the proposed Act or the regulations including calling for the assistance of any member of the Ontario Provincial Police Force or other police force in the area. It is the duty of every member of a police force to render the assistance.

#### **Section 42 – Compliance with inspections, etc. (Obstruction and False Information)**

No person shall hinder or obstruct any provincial officer or any employee or agent of the Ministry in the performance of his or her duties under the Act or the regulations. No person shall orally, in writing or electronically provide false information in any statement, document or data to any provincial officer, the Minister, the Ministry, any employee or agent of the Ministry or any person involved in carrying out a program of the Ministry in respect of any matter related to the proposed Act or the regulations.

No person shall include false or misleading information in any document or data required to be created, stored or submitted under the proposed Act. Additionally, no person shall refuse to furnish any information to certain persons required for the purpose of the proposed Act or its regulations.

#### **Section 43 - Offences**

Every person who contravenes any provision of the proposed Act or the regulations is guilty of an offence. Every person who fails to comply with an order made under this Act, other than an order under section 29 in respect of administrative penalties is guilty of an offence. Every person who fails to comply

with a term or condition of a licence under this Act is guilty of an offence. An individual who is guilty of an offence under this section is liable in the case of a first conviction to a fine of not more than \$25,000 for each day or part of a day on which the offence occurs or continues and in the case of a subsequent conviction, to a fine of not more than \$50,000 for each day or a part of the day on which the offence occurs or continues. A corporation that is guilty of an offence under this section is liable in the case of a first conviction to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues and in the case of a subsequent conviction, to a fine of not more than \$100,000 for each day or a part of the day on which the offence occurs or continues.

If a corporation commits an offence under this section, a director, officer, employee or agent of the corporation who directed, authorized, assented to, acquiesced in or failed to take all reasonable care to prevent the commission of the offence, or who participated in commission of the offence, is also guilty of an offence, whether or not the corporation is prosecuted for the offence. A fine levied by the court on any such individual convicted, may be increased by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the commission of the offence irrespective of the maximum fine provided for individuals and corporations described above.

The court on its own or on motion by the prosecutor may make an order requiring the person to do one or more of the following: (i) within specified time periods, to do or refrain from doing anything specified in the order, (ii) comply with any requirements the court considers appropriate to prevent similar unlawful conduct or to contribute to the person's rehabilitation; or (iii) comply with requirements to prohibit the continuation or repletion of the offence. These orders would be in addition to any other remedy or penalty provided by law.

A proceeding under this section would not be commenced more than two years after the later of the day on which the offence was committed and the day on which evidence of the offence first came to the attention of the Director or a provincial officer.

## **OTHER MATTERS**

### **Section 44 - Document Prepared for Another Purpose**

A document prepared for another purpose or another government may be used in the preparation of, or as part of, a document required under the proposed Act, as long as the document meets all of the requirements of the proposed Act and regulations and is revised to meet all such requirements.

### **Section 45 – Disclosure to Government of Canada**

This section would allow the Minister to disclose any information obtained by the Director or the Ministry under this Act to the Government of Canada or any of its

institutions under an agreement or arrangement if the purpose of the agreement or arrangement is the administration or enforcement of a law, the Minister discloses the information in confidence and the Government of Canada and the institution undertakes to keep the information confidential.

#### **Section 46 - Protection from Personal Liability**

Where members of the Tribunal, employees of the Ministry, provincial officers and certain public servants employed under part III of the Public Service Act are exercising or intending to exercise any duties or authorities under this proposed Act in good faith, they are protected from actions or other proceedings for any alleged neglect or default. This protection does not extend to an application for judicial review. This protection does not by operation of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by a Crown agent or servant to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if the protection under this proposed Act had not been enacted.

#### **Section 47 – Service generally**

This section sets out the requirements for giving or serving documents personally, by ordinary mail or in accordance with the regulations. If service is by ordinary mail, the service would be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made established that he, she or it did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the notice or order until a later date.

#### **Section 48 – Review of Substances**

At least once every five years, the Minister of the Ministry of the Environment would consult with experts and the public regarding possible changes (e.g. additions, subtractions) to the lists of toxic substances and substances of concern. Additionally, the Minister would also publish lists of substances that are not toxic substances or substances of concern but that the Minister proposes to consider during the next consultation referred to above.

#### **Section 49 – Regulations**

This section would provide regulation making authority for the Lieutenant Governor in Council, who may make regulations, including:

- prescribing toxic substances or substances of concern for the purposes of this proposed Act, and how amounts of those substances are to be determined, including authorizing or requiring certain amounts to be included or excluded;
- considering two or more facilities as a single facility;
- prescribing the qualifications that a person must have to sign a certification, including requiring the person to hold a licence issued by the Director, governing the issuance, renewal, suspension and revocation of those licences, and providing for and governing appeals related to the

- issuance, renewal, suspension and revocation of those and requiring the payment of fees established by the Minister or a person specified by the regulations in connection with those licences;
- the timing, preparation, review and contents of Plans and governing giving copies to the Director;
  - the timing and contents of summaries of toxic substance reduction plans that are required to be prepared and governing the giving of those summaries to the Director and making them available to the public;
  - the tracking and quantification of toxic substances;
  - the timing, preparation and contents of reports of the Plans, the giving of them to the Director of the Ministry of the Environment and authorizing the Director to make all or part of the information contained within the reports publicly available;
  - the timing, preparation and contents of reports regarding substances of concern, giving them to the Director of the Ministry of the Environment;
  - requiring the owners and the operators of facilities who are required to ensure that reports are prepared under section 10, and the Director receiving those reports, to make all or part of the reports, or some or all of the information contained in the reports, available to the public, and governing the making available to the public of that material;
  - creation, maintenance, retention, copying and availability of records to any person or class of person;
  - the form and content of administrative penalty orders;
  - types of contraventions or circumstances in respect of which an administrative penalty order may not be issued;
  - public consultation before an agreement is entered into and governing the contents of any agreements;
  - determining the amounts of administrative penalties including prescribing criteria, providing for different amounts depending on when a penalty is paid, governing the cancellation of the obligation to pay a penalty or the reduction of the amount of a penalty;
  - circumstances in which a person is not required to pay an administrative penalty;
  - procedures related to administrative penalties;
  - any other matter necessary for the administration of a system of penalties;
  - providing for methods of giving or serving any document under this proposed Act;
  - exempting any person or thing subject to any conditions or restrictions;
  - additional definitions of words not defined in the proposed Act;
  - prescribing any provision referred to in this proposed Act or otherwise dealt with by the regulations.

This section would also includes a provision to incorporate, by reference, a document and all subsequent changes to the document into a regulation made under this proposed Act.

## AMENDMENTS TO THIS ACT

The following sections identify proposed amendments to previous sections of the legislation that would come into effect when and if a regulation relating to consumer products (clauses 49(1)(n.1) and 49(1)(n.2)) was made. These sections would not come into effect until proclaimed. Therefore these sections would not be enacted along with the rest of the proposed legislation until such a time that the abovementioned regulations are promulgated.

### **Section 50 - Amendment of section 14 – Inspection by Provincial Officer**

This amendment would expand the provincial officer's authority to allow the provincial officer to enter any place and conduct an inspection for the purposes of determining compliance of any person with the regulations made under clause 49 (1) (n.1) or (n.2), if the provincial officer reasonably believes that a substance or other thing governed by the regulations made under clause 49(1)(n.1) is being manufactured, sold or distributed in the place.

### **Section 51 – Enactment of section 14.1 - Inspection of vehicle or vessel, regulations under s. 49 (1) (n.1) or (n.2)**

If section 14.1 was proclaimed, a subsection to the provincial officer's inspection powers would be added stating, a provincial officer may stop a vehicle or vessel, make any reasonable inquiries of the operator of the vehicle or vessel, and conduct an inspection of the vehicle or vessel if the provincial officer reasonably believes that the vehicle or vessel is in contravention of clause 49(1)(n.1) and/or 49(1)(n.2).

This amendment would also state that on a provincial officer's signal, the operator must bring the vehicle to an immediate safe stop. A signal stop includes intermittent flashes of red light for a vehicle, intermittent flashes of blue light for a vessel, and a hand signal by a readily identifiable provincial officer.

The provincial officer may make reasonable inquiries of the operator of the vehicles or vessel stopped and the operator shall produce for inspection any documents that are required to be kept by the law of any jurisdiction or of any cargo or container. The provincial officer may inspect any means of containment if the officer reasonably believes, based on questioning and examining of the documents, that the container is being used to transport or handle something referred to in clauses 49(1)(n.1) and 49(1)(n.2). The provincial officer may also open or require the operator to open the means of containment, and can exercise the powers reasonably required for the administration of the regulations made under clauses 49(1)(n.1) and 49(1)(n.2).

### **Section 52 - Amendment of section 15**

This amendment would allow a provincial officer conducting an inspection of a vehicle or vessel to exercise, if designated to do so, anything authorized by certain sections of the *Environmental Protection Act*, the *Nutrient Management*

*Act, 2002, the Ontario Water Resources Act, the Pesticides Act or the Safe Drinking Water Act, 2002.*

**Sections 53 to 55 – Amendment of section 17 – Entry or Inspection Order, Amendment of section 18 – Samples and Copies and Amendment of section 19 – Seizure during inspection**

Amendment of section 17 amends four clauses of section 17. It would repeal and replace clause 17(1)(e) with a new one that expands a provincial officer's ability to obtain a court order to inspect where there are reasonable grounds to believe that an attempt by a provincial officer to do anything granted by the inspection powers without an order would not achieve its purpose or might endanger human health or safety, property or the environment.

Amendment of section 18 would allow provincial officers to take samples and copies obtained under section 14.1 for any period or purpose of the proposed Act or the regulations.

Amendment of section 19 would allow provincial officers to seize, without a warrant or court order, any thing obtained under section 14.1.

**Section 56 – Enactment of section 19.1 – Warrant less Search, exigent circumstances, regulations under s. 49 (1) (n.1) or (n.2)**

This amendment would add a new section 19.1 which would only be used to enforce regulations made under s.49 (1) (n.1) or (n.2) – Warrant less Search, exigent circumstances. If proclaimed, this section would provide a provincial officer with the authority to, without a search warrant, search and seize from any place other than a room actually used as a dwelling, if the provincial officer has reasonable ground to believe that an offence has been committed, there may be evidence within the place related to the offence and that there are circumstances that make it impractical to obtain a warrant.

If proclaimed, this amendment would allow the provincial officer to, without a warrant or court order, seize any thing if the officer reasonably believes it is evidence of an offence or it was used or is being used in the commission of an offence.

**Section 57 to 60 – Various amendments to reflect sections 54 to 56**

These sections would update the language throughout the proposed Act to ensure that the new section 19.1 is properly reflected where appropriate.

**Section 61 – Enactment of section 25.1 – Order for use of tracking devices, regulations under s. 49 (1) (n.1) or (n.2)**

This section, if proclaimed, would enable a justice to issue an order requiring the provincial officer to use a tracking device placed or installed in or on any land, place or thing, investigative technique or procedure, or do anything described in the order, but shall not use any of these things to intercept any private

communication. This section would apply to a contravention of a regulation made under clause 49(1)(n.1) and/or 49(1)(n.2).

The order would contain all the terms and conditions the justice considers advisable. The provincial officer may be authorized to place or remove a tracking device on any land, place or thing and monitor the device or information from the device. Additionally, experts may assist the provincial officer in the execution of the order. The order is valid for up to 60 days.

### **Section 62 – Amendment of section 29 – Administrative Penalties**

This amendment, if proclaimed, would clarify that an administrative penalty would also not apply to a contravention of a regulation made under clause 49(1)(n.1) and/or 49(1)(n.2), or to a contravention of an order under section 26 that relates to a contravention of those regulations.

### **Section 63 – Amendment of section 34 – Stay on Appeal**

This amendment would state that appealing an order made under section 28 (director's order) or an order made because of a contravention of a regulation or order made under clause 49(1)(n.1) or 49(1)(n.2), or any other contravention as prescribed in regulations, is not automatically stayed.

A party could apply to the Tribunal for a stay on the above-mentioned orders and the Tribunal would make a decision on whether or not to stay the order based on criteria established in the regulations. Where there are new circumstances or a new party, there can be an application to remove the stay. The Tribunal shall remove the stay if the circumstances that gave rise to it are different from those prescribed.

### **Section 64 – Amendment of section 49 - Regulations**

This amendment, if proclaimed would change the regulation-making authorities under section 49 to include new authorities:

- prohibiting or regulating the manufacturing, sale or distribution of a toxic substance, a substance of concern or anything that contains a toxic substance or substance of concern or any other substance prescribed by regulations (49(1)(n.1);
- prescribing circumstances in which a person who manufactures, sells or distributes a substance or thing described above is required to give notice to the public or to specified persons and governing the notice, the contents and manner of giving the notice (49(1)(n.2); and
- prescribing circumstances where an order may be stayed.

### **Section 65 - Green Energy and Green Economy Act, 2009 (Bill 150)**

If the *Green Energy and Green Economy Act, 2009* receives Royal Assent, then on the later of the day that this proposed Act comes into force and the *Green Energy and Green Economy Act, 2009* comes into force, an amendment to section 29 of this proposed Act would add a “renewable energy approval” to the

list of instruments that the Director could suspend or refuse to issue, if a violator failed to pay an administrative penalty for a contravention under this Act to which section 29 would apply.

## **AMENDMENTS TO OTHER ACTS**

### **Sections 66 to 71**

These sections make various amendments to the *Environmental Protection Act*, *Nutrient Management Act, 2002*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Safe Drinking Water Act, 2002* and the *Highway Traffic Act*. Some of these amendments are complementary to the provisions of the proposed *Toxics Reduction Act, 2009*. Other amendments make housekeeping changes to add relevant statutory references and to adjust French terminology.

These amendments include harmonization amendments to the *Environmental Protection Act*, *Ontario Water Resources Act*, *Nutrient Management Act, 2002* and *Safe Drinking Water Act, 2002* to refer to the proposed *Toxics Reduction Act, 2009* in certain sections that cross reference Ministry statutes. For example, these amendments would ensure that for these Acts, including the proposed *Toxics Reduction Act, 2009*:

- it is a condition of every permit, approval and license that provincial officers are permitted to conduct inspections upon request including:
  - when a court is determining the number of subsequent convictions, offences under all of these Acts (including the proposed *Toxics Reduction Act, 2009*, will be counted; and,
  - if a person convicted of an offence has not paid a fine under any of these Acts (including the proposed *Toxics Reduction Act, 2009*), a license, permit or approval issued under any of these Acts may be suspended or not issued.

## **COMMENCEMENT AND SHORT TITLE**

### **Section 72 – Commencement**

This section explains when the proposed Act and certain provisions within it would come into force.

### **Section 73 – Short Title**

The short title of this proposed Act is the *Toxics Reduction Act, 2009*.