



Registered Nurses' Association of Ontario
L'Association des infirmières et infirmiers
autorisés de l'Ontario

May 18, 2010

Francesca Millescamps
Senior Policy Advisor
Ministry of the Environment
Integrated Environmental Policy Division
Strategic Policy Branch
Toxics Reduction Project
135 St. Clair Ave.
Floor 5
Toronto Ontario
M4V 1P5
Francesca.Millescamps@ontario.ca

Re: Proposed Ontario Regulation 455/09, Toxic Reduction Act and Policy Options for Enhanced Planning – EBR Registry Number 010-9349

Dear Ms. Millescamps:

The Registered Nurses' Association of Ontario (RNAO) is the professional organization for registered nurses who practise in all roles and sectors across Ontario. RNAO's mission is to speak out for health, health care, and nursing. Like all Ontarians, registered nurses have become increasingly concerned about the impact of environmental toxics on the health of their patients, their families and our communities. We appreciate the opportunity to comment on the recent proposed regulations and policy options for enhanced planning under the *Toxics Reduction Act, 2009* that have been posted on the Environmental Registry.

RNAO welcomed the *Toxics Reduction Act, 2009* as an important first step in protecting health by reducing toxics in our workplaces, consumer products and our everyday environment. We were extremely disappointed however, that the Act did not include targets or a toxics use reduction institute, both essential features of the Massachusetts legislation upon which the Act was based. For this reason, RNs have advocated strongly for the strongest possible regulation, with aggressive targets for toxics reduction, provision for a toxics use reduction institute, and recognition of Ontarians' right to know the identity and amounts of toxics that are used, created and released into their environment.

While this submission focuses on the roles and qualifications of toxics reduction planners and how best to engage employees in the development and monitoring of toxics reduction plans, the RNAO will continue to urge the McGuinty government of the imperative of strengthening the *Toxics Reduction Act, 2009* and ensuring its swift and effective implementation.

Toxic Substance Reduction Planners

Under the proposed amendments to O. Reg. 455/09, a toxic reduction plan must be certified by a planner with qualifications as prescribed by regulation. A planner would be licensed by the Ministry for a period of five years and the licence would be renewable upon completion of certain continuing education requirements.

The role of the planner is integral to the *Toxics Reduction Act*. It is crucial that they have superior work and educational qualifications, operate at arm's length from the facility and take advantage of continuing education opportunities to be current in the fast growing area of pollution prevention and toxics reduction.

Specifically, the RNAO recommends that O.Reg. 455/09 be amended so that the following criteria apply to toxic substance reduction planners:

- There must be explicit adoption of the precautionary principle at every stage of development of regulations under the Act. When an activity raises threats of harm to human health or the environment, the principle dictates that precautionary measures must be taken even if a precise cause and effect relationship is not established scientifically. In this context, the Ministry must bear the burden of proof of demonstrating that the toxic substance reduction planners will have the requisite qualifications and education and will operate independently from facility owners.
- Licences should be renewable every two years, not five years, as is the case in Massachusetts. Particularly in the early implementation of the Act and with the need for full public accountability, more frequent review and renewal of licences and additional oversight is appropriate. Alternatively, if the term of a licence is maintained at five years, then there must be a greater onus on planners to stay current by availing themselves of continuing education. RNAO suggests a minimum of 24 hours a year of continuing education between licence renewals.
- Toxic substance reduction planners must be required to demonstrate a combination of environmental management experience, operational experience in a manufacturing setting and educational qualifications in order to be granted a licence. In the proposed regulation, s.27.2(2), it appears that an applicant need not have a background in environmental management if he or she can show experience in specific operational activities. RNAO recommends that the Ministry of Environment collaborate with the Ministry of Training, Colleges and Universities to develop a certificate program that includes best practices in toxics reduction and pollution prevention. After an appropriate phase-in period, this certificate or degree in toxics reduction would be the minimum prerequisite for licensing as a toxic substance reduction planner in Ontario. An alternative, in the absence of an independent toxic use reduction institute (TURI) here in Ontario, is to arrange a reciprocal arrangement with TURI in Massachusetts to train and provide continuing education for Ontario planners, or to tap into European experience with REACH.
- To preserve the integrity of the toxics reduction legislation and process and avoid the perception that the 'fox is patrolling the hen-house', it is essential for toxic substance reduction planners to operate arm's length from facilities. Recognizing that many potential planners with operational expertise will have a background with the facilities that must develop the plans, at least initially, it is particularly important that the term of licences be abridged (such as two years) and that the necessary

technical expertise be developed as soon as possible in specially-trained certified planners.

- Fees should be set at a level that is affordable, even if this requires a government expenditure in order to cover costs. We do not want to deter qualified applicants for this important field.

Enhanced Planning

Under O.Reg. 455/09, facilities are required to inform their employees of the release of a toxic substance reduction plan. In consulting the public on an enhanced toxics reduction planning process, the Ministry has suggested three options that engage employees to varying degrees:

Option 1: Employees would be notified of the planning process and be able to suggest potential toxic reduction opportunities;

Option 2: Employees would be consulted by the facility owner and operator during development and review of toxic reduction plans; and,

Option 3: A Joint Workplace Toxics Reduction Committee would be established at each facility with a full advisory role in developing and reviewing the plan.

RNAO agrees that a facility's workers have a crucial role to play in successful implementation of the *Toxics Reduction Act* and in ensuring that their workplace environment is safe from toxic substances. Employees must be active partners in the process, not passive or playing a backseat role. As the individuals whose health is most directly affected by exposure to toxics, employees are both knowledgeable and have the most at stake in ensuring effective oversight. Ministry options one and two would only grant employees the right to be notified or consulted – a passive role that misses the opportunity to fully engage workers in the toxic reduction process. For this reason, options one and two are totally unacceptable.

Option three would fully engage employees through joint workplace toxics reduction committees, but it misses that fact that there is an existing mechanism found in most workplaces where employers and workers are already jointly confronting issues of workplace health. The *Occupational Health and Safety Act*¹ requires establishment of a joint health and safety committee at any workplace with 20 or more employees.² Where there are less than 20 employees but more than five, the workers are required to select one health and safety representative.³ Sections 33 to 42 of the OHS Act contemplate the processes around handling of toxics. RNAO strongly urges the Ministry of the Environment to collaborate with the Ministry of Labour to utilize existing joint health and safety committees and, in smaller workplaces, health and safety representatives as the preferred method for engaging employees in toxics reduction in the workplace.

Further, the RNAO is completely convinced that working with health and safety committees and health and safety representatives in the development of toxic substance reduction plans must be made mandatory by regulation. If proceeding through the health and safety committee structure isn't mandatory, some employers will fail to thoroughly engage their workers and application of the Act will be uneven.

To support worker engagement, the regulation must stipulate that certification statements include certification of adequate worker participation in developing the pollution prevention plan.

Proceed Promptly with Substances of Concern and Penalties

RNAO is very concerned about the Ministry's intention to defer proclamation of sections 7 (Substances of Concern) and 30 (administrative penalties) of the Act. While we understand the importance of prioritizing the certification of toxics reduction planners and agree it is crucial to clarify how employees will be engaged in the process, we strongly urge the Ministry to proclaim the substances of concern and penalty provisions of the Act at the earliest opportunity.

Proclaim Section 50 (1) (o.1) of the Act as Soon as Possible for a Living List

RNAO urges prompt proclamation of Section o.1 of the Act, so that Ontario can maintain and update a living list of toxic substances, and so that it can ban or restrict the manufacture, distribution and sale of designated toxics substances and products known to contain those substances.

Proclaim Section 50 (1) (o.2) of the Act as Soon as Possible for Consumer Protection

Ontarians and RNs expect prompt action to ensure right to know about toxics in consumer products through aggressive implementation of Section o.2 of the Act. In particular, we expect labelling or other public reporting on toxic contents of consumer products.

Create a Toxics Use Reduction Institute as Soon as Possible

A Toxics Use Reduction Institute was essential to the success of the Massachusetts toxics reduction program. Ontario must establish an equivalent organization. Until that happens, Ontario must start with a best practices repository, which would be a step beyond the proposed government toxics guidance documents. As noted above, Ontario should also seek to collaborate where possible with Massachusetts' own Toxics Use Reduction Institute.

Thank you again for the opportunity to comment on the proposed regulation and policy options for enhanced planning. RNs look forward to continuing to work with the Ministry to reduce toxics and achieve a healthier environment for all Ontarians.

With kindest regards,



Doris Grinspun, RN, MSN, PhD (c), O.ONT.
Executive Director, RNAO

¹ R.S.O. 1990, c.O.1

² Section 9(2)(a)

³ Section 8(1).