



**Proposed Changes to Ontario Regulation 490/09 under  
the *Occupational Health and Safety Act*: Designated  
Substances and the Requirements for Medical  
Surveillance, Respiratory Protection and Measuring  
(Proposal Number 15-MOL002)**

Submission to the Ministry of Labour  
July 6, 2015



The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RNs), nurse practitioners (NPs) and nursing students in all settings and roles across Ontario. RNAO's mandate is to speak out on nursing and health issues, including occupational health and we welcome an opportunity to respond to the proposals to amend Ontario Regulation 490/09. This is important to all nurses, especially the many RNs and NPs who practice as occupational health nurses. This invaluable nursing role, often within the context of interdisciplinary teams, is essential for supporting the health and safety of Ontario workers.

### **A Duty to Protect**

Toxics and other hazardous materials present a risk to all Ontarians, but workers are often among the most vulnerable to a range of exposures while on the job, due to their prolonged proximity to toxics and hazardous materials at the point of use and/or release. It is essential that special attention be paid to minimizing workers' exposure to toxics and hazardous materials. As with environmental toxics, the best way to address this issue is to prevent the release of toxics and hazardous materials rather than seek to mitigate the effects post-release. In practice, Ontario's *Occupational Health and Safety Act* (OHSA) is the major vehicle to reduce risks to workers from workplace hazards. It is predicated on joint responsibility between employers, workers and government. The OHSA imposes multiple obligations on employers, including a duty to "take every precaution reasonable in the circumstances for the protection of a worker." The Act and associated regulations also specify a range of standards employers must meet, and the current proposal addresses those standards. However, these standards must deliver the strongest level of protection possible.

### **Ministry of Labour proposed changes to Ontario Regulation 490/09**

The Ministry proposes to update Ontario Regulation 490/09, which governs 11 designated substances: "O. Reg. 490/09 under the OHSA sets out health and safety requirements respecting the control of worker exposure to designated substances. Eleven substances have been designated under the OHSA: acrylonitrile, arsenic, asbestos, benzene, coke oven emissions, ethylene oxide, isocyanates, lead, mercury, silica and vinyl chloride."<sup>1</sup>

### **Proposal to extend third-party protection to workers doing construction (Section 15)**

Section 15 of Reg. 490/09 currently excludes construction workers from the protections provided to third-party workers, and this proposal would extend coverage to them. That is a welcome step. However, under Section 14, the Regulation does not protect workers whose employers engage in construction. RNAO recommends removal of section 14, which reads: "14. Despite sections 3 to 13, this Regulation does not apply, at a project,

(a) to an employer who engages in construction; or

(b) to the workers of an employer described in clause (a) who are engaged in construction.

O. Reg. 490/09, s. 14."

RNAO would also like assurance that other regulations and/or legislation will provide adequate protection to all construction workers, and that such protection be, at minimum, equal to that detailed under Reg. 490/09.

### **Proposed changes to medical surveillance code**

The Ministry identifies the purpose of the proposed medical surveillance code as to "assist in the detection of exposure-related adverse health effects for appropriate medical follow-up, including removal from exposure, and direct the need for immediate evaluation of primary exposure control measures."<sup>2</sup> While this is an essential purpose, we would add another important use: collection and centralization of data would greatly assist epidemiological research on the links between workplace exposures to toxics and health outcomes. The more comprehensive the collection of the data, the more useful it would be for this purpose and this knowledge would help protect workers across Ontario and beyond.

The Code sets expectations on worker education about hazards, on notification of results of medical exams, on record keeping, and on the medical surveillance program requirements themselves (frequency and timing of medical exams, content of exams, clinical tests for specified toxics, thresholds for protective action, and thresholds for return to work). A key issue is whether these thresholds provide sufficient protection for all workers. We refer the Ministry to the submission of the Occupational Health Clinics for Ontario Workers (OHCOW)<sup>3</sup> for specific comments on the medical surveillance code. We note in particular that while OHCOW applauded a number of improvements in the standards, it cited evidence that proposed thresholds in blood samples for lead and mercury were still above levels associated with adverse human health effects. Thresholds ought to be low enough to provide for a margin of safety, and not approach the range known to cause negative health effects.

### **Proposed changes to respiratory protection codes**

As OHCOW notes, this regulatory proposal is a sensible way to consolidate the respiratory protection codes into one standard that follows the CSA standard on selection, use and care of respirators. It suggests extending that practice to the many toxic substances listed in O. Reg. 833.<sup>4</sup> Finally, it recommends adding skin protection to this proposal as dermal exposure can be a significant risk in certain workplaces. RNAO echoes these recommendations.

### **Proposed changes to measuring requirements**

Section 24 of Reg. 490/09 sets requirements for monitoring, sampling and determining airborne concentrations of the substances designated under the regulation. The proposed change requires that those actions comply with methods published by any of four listed occupational health standards organizations. This should be done with caution, as further guidance may be required for some toxics, such as isocyanates (a point made by OHCOW). Given concerns about the volume and reliability of existing data, the Ministry must take whatever actions are necessary to deliver accurate and reliable data. These data are not only important for the protection of workers' health in a monitored facility (reliable exposure data ought to be included in workers' medical

files) they should be centralized and used in combination with medical surveillance data to study correlations between exposure and health outcomes. As with the proposal on respiratory protection codes, it would be helpful if changes to measuring requirements were extended to the many toxics covered under O. Reg. 833.

## **Discussion**

O. Reg 490/09 under the OHSA obliges employers to assess exposure risk and may require control programs. These programs could entail re-engineering processes, changing work practices, exposure controls, measurement and training. Ideally, the solution would be found as far upstream as possible, through processes that avoid the release of toxics/hazardous materials and use the least toxic substances. Incentives and rules should encourage employers to move in that direction. Yet we are concerned the province has taken the wrong path over the past several decades. As OHCOW points out in its submission, the end of mandatory participation in medical surveillance reduced participation rates. OHCOW reports that since that time, medical surveillance programs and the quality of exposure records have deteriorated. This is a general problem that applies to all substances covered under the OHSA, and not just the 11 covered under O. Reg. 490/09. The loss of oversight and deterioration of information is very worrisome. The proposals for O. Reg. 490/09 will update and consolidate existing codes, and this is a step in the right direction, but updating and consolidation should apply to other toxics under the OHSA. More will be required to deliver the robust system needed to ensure healthy and safe workplaces.

The current regulatory proposal also provides an excellent opportunity to highlight the essential role of occupational health RNs/NPs who enable the development and maintenance of safe work environments. However, more must be done to increase workers' and workplaces' access to these nurses and ensure that they are fully utilized within the system.

## **RNAO recommendations on the proposals**

- 1. Ensure all thresholds under the regulation and the OHSA provide safety for all workers, including those more vulnerable to given exposures.**
- 2. Ensure that workers in all sectors (including construction) have strong and equal protection under the Act. Proceed with the proposal to cover third party construction workers under O. Reg. 490/09, and protect other construction workers either under the same regulation or through equivalent protection under another regulation.**
- 3. Proceed with the proposed CSA standard on selection, use and care of respirators, and apply it to toxics covered under O. Reg. 490/09. Add standards for skin protection.**
- 4. Proceed with proposed changes to standardized measuring requirements, subject to any additional prescribed measurement guidance necessary.**
- 5. Consolidate air concentration measurements and medical surveillance data into a central database accessible to health policy researchers.**

**6. Take all necessary measures to ensure the quality and completeness of air quality concentration measurements and medical surveillance data, including restoring audits and securing higher participation in medical surveillance.**

**7. Take measures to expand access to occupational health RNs/NPs and ensure that their role is being fully utilized in work environments to protect the health and safety of Ontario's workers.**

**References:**

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<sup>1</sup> Ontario Ministry of Labour. (2015). *Consultation on Proposed Changes to Ontario Regulation 490/09 – Designated Substances and the Requirements for Medical Surveillance, Respiratory Protection and Measuring*. Retrieved July 4, 2015 at

<http://www.ontariocanada.com/registry/showAttachment.do?postingId=18242&attachmentId=27935>.

<sup>2</sup> Ontario Ministry of Labour. (2015).

*Proposed New Code for Medical Surveillance for Designated Substances in Ontario Regulation 490/09 under the Occupational Health and Safety Act*. Retrieved July 5, 2015 at

<http://www.ontariocanada.com/registry/showAttachment.do?postingId=18242&attachmentId=28411>.

<sup>3</sup> Occupational Health Clinics for Ontario Workers (2015). *Provincial Occupational Disease through the Designated Substance Codes for Exposure Management, Respiratory Protection and Medical Surveillance. A submission regarding the Ontario Ministry of Labour's Consultation on Proposed Changes to Ontario Regulation 490/09 – Designated Substances and the Requirements for Medical Surveillance, Respiratory Protection and Measuring*.

<sup>4</sup> Ontario. (2015). R.R.O. 1990, Reg. 833: Control of Exposure to Biological or Chemical Agents under *Occupational Health and Safety Act*. Retrieved July 5, 2015 at

<http://www.ontario.ca/laws/regulation/900833>.