May 13, 2009

Presentation to the Standing Committee on Bill 167, Toxic Reduction Act, 2009

Mr. Chairman, Members of the Standing Committee on General Government, my name is Eric Bristow and I am the Director of Government & Stakeholder Relations in Ontario, for the Canadian Petroleum Products Institute (or CPPI). You are likely not surprised that Ontario's refining industry has taken a keen interest in this legislation. I also hope that you are not surprised that Ontario's refining industry for many years has taken a keen interest in improving our environmental performance and working to protect Ontarians from exposure to toxic substances.

(Ontario refines approximately two-thirds of fuel product demands, with the balance being imported, mostly from Quebec. With raw material crude oil being internationally priced and fuel product prices set competitively with North American rack prices, Ontario refiners must remain fully competitive in all aspects of their direct costs and operations for refining to continue to be viable in this province.)

CPPI supports the public policy imperative to regulate toxic substances and protect the health of all citizens, however CPPI does not support the approach contained in the proposed Bill 167. If it is absolutely necessary to have a provincial law, we have suggested amendments throughout this presentation. I would add though, that it is not clear what public policy benefit, is derived by duplicating a federal framework that covers all Canadian jurisdictions.

There are four key issues that I'd like to bring to your attention:

- The need for Federal / Provincial harmonization;
- The application to a large facility such as a petroleum refinery;
- The extensive requirements in the 'Contents of the Plan' and 'Toxic Substance Accounting'; and
- The requirements for public reporting and communication.

Turning to the first issue, is the need for Federal / Provincial harmonization in the management of toxic substances. This is well illustrated by the definition of what is a 'toxic substance'.

The Bill itself does define the basis for what a toxic substance is, which is fundamentally important. Rather, it leaves that to the regulatory stage. (Bill 167 states that a: "toxic substance means a substance prescribed by the regulations as a toxic substance for the purposes of this Act".)

Fortunately in Canada, through the Federal government's Chemicals Management Plan (CMP), we already have one of the most stringent processes in the world for assessing which substances should be considered as toxic. The CMP Process addresses not only the hazardous nature of a substance but also the level of public and environmental exposure to that substance. Duplicating this process at the provincial level is not necessary and works against Federal / Provincial harmonization. Ontario should leverage and stay aligned with the Federal government both in respect to the reporting of substances, as well as the assessment as to which substances are deemed toxic.

It's clear that the Ministry of the Environment is planning to label many more substances as toxic than those deemed so, by the Federal process. This is evident in the Ministry of Environment Backgrounder paper (entitled "The Proposed Toxics Reduction Act Planned Consultations and Next Steps"), which outlines "a list of toxic substances…proposed by scientific experts from the government, in consultation with the Minister of Environment's Toxic Reduction Scientific Expert Panel". In reviewing the Phase I and II lists, Ontario is proposing some toxic substances that have already been deemed 'not toxic' by the Federal CMP. (By example, toluene and xylene went through an extensive Federal Priority Substance List review in the early 1990s. After extensive study and a transparent public review of the data, they were found to be 'not toxic').

These additional proposed toxic substances on the Ontario list, has <u>not</u> been through a transparent or open process. Industry has <u>not</u> been able to assess the science and risk based process that was employed, as the detailed criteria used by the Panel has <u>not</u> been shared.

(We understand that the Panel considered some health based input and emissions data, however that indicates that the assessment was not a risk-based process, as emissions are not a proxy for exposures.)

CPPI's concern for the validity of the work of the Panel is based on reviewing the proposed additional Ontario toxics lists. By example, Petro-Canada Lubricants, located in Mississauga is the only Canadian producer of non-toxic White Mineral Oil, which is used in everyday items such as baby oils to gummy bears, as well as supports the development of innovative world-class products. There are other examples of substances that should not be on the lists.

To help address these concerns, CPPI is tabling in this submission a recommended change to Bill 167 to be more explicit about the basis and criteria for substances to be considered as toxic.

Change the definition of toxic substance under Bill 167 Section 2 to read:

- ***"toxic substance" means a substance prescribed by the regulations and is consistent with Federal Canadian Environmental Protection Act Schedule 1 list of toxic substances, or has been determined as toxic through applying an equivalent process and criteria as contained under the Federal Chemical Management Plan, for the purposes of this Act.***

Our second issue concerns the application to a large facility such as a petroleum refinery.

Certain levels of toxic materials are naturally present in crude oils. Since crude oil is drawn from nature, a petroleum refinery could not sign a statement that they intend to reduce the use of toxic substances, unless they reduced refining in Ontario.

Through the many refinery-processing steps, various substances, including toxics, are created, destroyed and changed, all within contained lines and vessels, and therefore a refinery could not commit to reducing the creation of toxic substances and continue to provide the petroleum products that Ontario society needs.

In addition, certain toxic substances may be produced by a refinery as a feedstock to a chemical operation or be present as part of required product formulations. Some chemicals found on the proposed toxics list are building blocks for making useful non-hazardous products and cannot easily be replaced. Chemicals such as benzene, xylene and toluene are important raw ingredients of many over-the-counter pharmaceuticals such as aspirin and valuable consumer products such as medical tubing.

(Further, certain toxic substances may be used in a process as part of a how a facility is designed in order to meet a specific proprietary technology and in cases the use of toxics cannot be reduced unless that facility is shut down and replaced.)

However, a manufacturing facility can develop risk-based plans at an overall refinery facility level, to reduce over time the level of toxic substances that it emits. (It would be of no value add and very resource intensive to attempt to develop such plans at a sub facility or individual process level.)

To help address these concerns, CPPI is tabling in this submission, recommended changes to Bill 167.

- ***Add a new Section 4.9 to read as follows: "Facilities are exempt from complying with Sections 4.4, 4.5 and 4.6 as it relates to the use and processing of raw material feedstocks from nature, such as crude oil, rock, trees. Plans to reduce toxic substances from facilities using raw material feedstocks from nature will be based on reducing the level of toxic substances that are emitted to the air, water and land."***
- ***Add a new sentence under Section 9 to read as follows: "Facilities are exempt from complying with Section 9 as it relates to the use and processing of raw material feedstocks from nature, such as crude oil, rock, trees. Plans to reduce toxic substances from facilities using raw material feedstocks from nature will be based on reducing the level of toxic substances that are emitted to the air, water and land."***

Our third area of concern is the requirements in the 'Contents of the Plan' and 'Toxic Substance Accounting'.
Bill 167 states that the purpose of the legislation is "to prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances". We believe that the most important test of any toxic reduction strategy is the minimization and, where science dictates, the elimination of human exposure, not how substances are used in the manufacturing process.

Substances that are contained within closed lines and vessels do not present a risk to humans or the environment, (except in the case of an emergency situation). Given this, the prime focus of the Bill for manufacturing facilities should be on reducing emissions and releases, on a risk-basis. (A large reduction of a mildly hazardous chemical on the list while emissions of a highly toxic chemical are unchanged or increase, may achieve the goals of Bill 167, but will do little to protect Ontarians from the real risks to their health.)

We view that it would be very expensive for a large complex operation such as refinery to meet the requirements in Bill 167 "that, for each process at the facility that uses or creates the substance, the substance is tracked and quantified…to show how the substance enters the process, whether it is created, destroyed or transformed during the process, how it leaves the process…".
The costs of compliance will hurt the competitiveness of Ontario refining, and that level of detail is neither necessary, nor useful in terms of reducing toxics that present real risks to people through exposure.

To address these concerns, CPPI is tabling in this submission further recommended changes to Bill 167.

- ***Under Contents of Plan 4.1 and 4.2, add the words, "on a risk prioritized basis" to the end of 1. To read "Subject to paragraph 2, a statement that the owner or the operator of the facility intends, on a risk prioritized basis"***
- ***In Content of Plan 1 Iii, add a new requirement to state: "to reduce the level of emissions of toxic substances for the total facility, on a risk prioritized basis".***
- ***In Section 4. (1) 4, remove the breakdown by 'each process' to state: " a description of the total facility…".***
- ***In Section 4. (1) 4 I, remove the breakdown by 'each process' by stating: "a description of how, when and where the substance is emitted from the total facility".***
- ***In Section 4. (1) 5, change the focus to a risk based plan, by stating: " a description and analysis of the options that were considered from an emission risk exposure basis, as warranting reducing the use and creation of the toxic substances at the facility".***
- ***Under Section 9 Toxic substance accounting, change the requirement from an individual process level at the facility to a total facility level and change the focus to the use and emissions of toxics. Re-write Section 9 to read "The owner and the operator of a facility who are required under section 3 to ensure that a toxic substance reduction plan is prepared for a toxic substance shall ensure that, for the total facility, the net use and the total emissions of the substance from the total facility are quantified".***

Lastly, I would like to turn to the requirements for public reporting and communication.

It is important that the public is informed about the actual risks associated with toxic substances. All CPPI member companies have Environment, Health and Safety procedures to communicate with their local communities about their operation, emissions, potential risks, emergency preparedness and key improvement plans. Broadly sharing the 'use' of toxic substances that are being properly handled, or sharing the presence of 'toxic substances' in products that meet regulatory requirements, does not in and of itself, provide inherent benefit to the health and environment of Ontarians.

This would create competitive inequities, relative to product imported into Ontario. By example, for vehicle fuels there are common regulated Ontario and Federal standards that all fuels must meet, whether refined in Ontario or imported from elsewhere. If an Ontario refiner is required to conduct additional testing and reporting of chemicals in fuels, while fuels imported into Ontario do not, this adds a cost burden and puts Ontario refiners at a competitive disadvantage.
(In some cases, reporting the use of certain substances may be disclosing proprietary business information with respect to operational or product formulations).

To help address these concerns, CPPI is tabling in this submission, recommended changes to Bill 167.

- ***Add the following sentence to end of Section 10 (3):***
- ***"A facility is not required to disclose the use or presence of certain toxic substances, if providing that information publicly is disclosing company proprietary information that could advantage competitors in other jurisdictions, or for cases that would cause increased security concerns."***
- ***"A facility is not required to report the level of toxic substances in products manufactured in Ontario, where that requirement is not applied to products manufactured outside of Ontario and imported for resale in Ontario.***

A final comment on a document entitled **"Bill 167, (the proposed Toxic Reduction Act, 2009) Compendium"**, on page one it states, "the proposed legislation also includes regulation-making powers to prohibit or regulate the manufacturing, sale or distribution of toxic substances…"
Ontario is not an economic island and the authority to ban or restrict manufacture; distribution or sale of a product known to contain a toxic substance, should be by the Federal government to avoid different requirements related to commerce by province, and the balkanization of the Canadian marketplace.

Conclusion

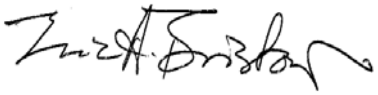
In conclusion, CPPI reinforces:

- The importance of harmonizing regulations with the Federal government CMP;
- Recognize that a facility such as a refinery, does not have a practical basis to reduce the toxics in its feedstock.
- Reduce the proposed requirements associated with Toxic Accounting, and change the Toxic Reduction Plan to be risk-based and focused on reducing total facility emissions; and
- Avoid public reporting and communication requirements that put Ontario industry at a competitive disadvantage versus imported product.

(These changes will also support Bill 167 being more consistent with the province's *Open for Business* strategy and avoid placing an added unnecessary burden on Ontario petroleum refineries that other competing jurisdictions do not bear.)

Thank you for your attention and I welcome your questions, and I also welcome your support to address these issues.

Sincerely,



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