



**ONTARIO
BAR ASSOCIATION**
A Branch of the CANADIAN BAR ASSOCIATION

Proposal for an Environmental Reporting and Disclosure Bylaw

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Introduction

The Ontario Bar Association (OBA) welcomes the opportunity to comment on your proposal for an environmental reporting and disclosure bylaw.

Background

The OBA consists of 17,000 lawyers from a broad range of sectors, including those working in private practice, government, non-governmental organizations and in-house counsel. Our members have, over the years, analyzed and provided comments on numerous legislative and policy initiatives. More than 500 of these lawyers belong to our very active Environmental Law Section. Our members have considerable expertise and experience in how environmental laws and policy are interpreted and applied, as well as the effect of such laws and policy in practice. Our members represent many points of view and a broad range of clients.¹

Overview

We appreciate the importance of having accurate data on local sources of ambient air contamination that may affect human health. We agree that such data may spur pollution prevention, and may assist residents to protect themselves. We commend the City for its leadership, but we believe that the bylaw should not demand more data than is required and useful to achieve its purpose. We also urge you to do more to integrate the new bylaw with existing federal, provincial and municipal requirements, and to ensure that the resulting data will be genuinely useful.

Scope should be tied to rationale

While the proposal does not describe the City's constitutional basis for this bylaw, the City should not assume that it is entitled to collect whatever data other governments² do. We suggest that the City collect only such data that are directly required and useful to protect the health of City residents. This principle raises the following points:

1. The consultation materials do not clearly show that local businesses which will be governed by the bylaw are the major sources of local ambient concentrations of the 25 priority substances:
 - a. The City needs to deal explicitly with the fact that many sources of local ambient air pollution are located outside the City and, therefore, will not be governed by the bylaw. Are the major sources of each proposed pollutant located within the City? If not, would reducing local emissions have material effects on ambient air quality? If not, what is the health value of reporting them? If they are not a health concern, what is the City's constitutional justification for requiring businesses to report them?

¹ Please note that the Canadian Environmental Law Association will be filing its own submission on the proposed bylaw.

² Such as senior levels of government in Canada, or municipalities in the U.S.

- b. The proposed exemptions mean that you will not be obtaining data on the major local sources of some contaminants. For example, if road dust and vehicles (which are exempt) are the principal local source of PM 2.5, why require businesses in the City to report their comparatively minor emissions? Would reducing emissions of PM 2.5 from local businesses have material effects on ambient concentrations of PM 2.5? If not, are such emissions truly a health concern?
2. We understand the health basis for collecting information on releases to outdoor air, but the health basis for collecting information on releases to land and water is not clear to us. Does the City have evidence that such releases pose threats to the health of City residents?
3. The proposal does not clearly distinguish between information that is to be reported to the public (Community Right to Know) and information that the City wishes to collect but keep private, for emergency response purposes. From a Community Right to Know perspective, we do not understand the City's constitutional basis for requiring reporting of substances that are "used in" but not "released from" a facility, and it muddies the focus of the initiative as a whole. Is the City attempting to collect information on indoor air in workplaces? If so, what is the regulatory gap it is attempting to fill, and why? Doesn't Ontario's *Occupational Health and Safety Act* already provide adequate protection in workplaces? If there is a gap, why do you propose to collect information on chemical "use" rather than "exposure"?³ There are also major security issues associated with distributing such information to the public.
4. We do not understand the proposed distinction between emissions that are "spills" and those that are "leaks", nor why you wish to make it.
5. What balance will you strike between cost and accuracy? Will inexpensive rough estimates of emissions be sufficiently useful? Or will small businesses need to retain air emission experts to measure and calculate their emissions? If so, has the City evaluated the cost and availability of such consultants?
6. It may be excessive to require every emitter to report every year. Perhaps smaller emitters could report less frequently, every two or three years.
7. The proposal to collect information on byproducts (not just direct releases) seems cumbersome, complex, costly and confusing, especially since other combustion sources (vehicles, space heating) will be exempt. Would simpler information on combustion and fuels provide the City with adequate information?

³ For example, although two facilities may "use" 1000 kg of tetrachloroethylene per year, one facility may expose its workers to the tetrachloroethylene and the other facility may have a completely closed system that results in essentially no exposure of the workers.

8. The City proposes to collect information on the annual mass of emissions, rather than their concentration or seasonality. We do not challenge the practicality of this choice, but caution that you should have a health-based rationale for it.

Integration

Your stakeholders rightly emphasized the importance of avoiding regulatory duplication. We therefore applaud your proposal to collect data through OWNERS rather than developing your own front end, thus coordinating to some extent with NPRI and O.Reg. 127/01. Please confirm that organizations already reporting through OWNERS will not have to separately report the same information to you.

We were surprised to note the absence of references to s. 9 of Ontario's *Environmental Protection Act* and the air approvals requirements of the Ministry of the Environment. Stationary emitters of toxics to the outdoor air (at material levels) will generally be required to have a s. 9 approval⁴; this should include most of the organizations that will be required to report under the proposed bylaw.

Please clarify how you and the MOE will coordinate these overlapping requirements. Have you satisfied yourselves that the information you require is not already available from MOE approval documents, such as the Emission Summary and Dispersion Modelling report that emitters must file? Will there be joint enforcement? Will you be collecting information about s.9 approvals from reporting entities? Will you be passing this on to the MOE? Is the MOE prepared to cope with the surge of approval requests that might follow? Is the MOE willing to add municipal reporting requirements to its s. 9 approvals? Some emitters might be reluctant to report to you lest this trigger prosecution by the MOE; have you explored whether the MOE would offer a temporary amnesty to encourage reporting and applications for any necessary approvals?

Please also clarify whether you intend to proceed with the bylaw if the MOE's proposed Toxics Reduction Law covers the same ground.

Other comments

1. We commend you for seeking public input on this proposal at the conceptual stage and we appreciate this opportunity to comment. However, the proposal does not provide many of the details necessary to understand its implications for particular clients. We therefore request a further round of public consultation once the draft bylaw is prepared, so that we can provide feedback on its specific details.
2. A system whereby residents could request information about releases within each neighbourhood might help them understand what is going on in their particular area. However, many residents find NPRI data very difficult to use and understand. We therefore suggest that you conduct consultation on detailed options for the City's website, to ensure that it is user friendly and easy to understand.

⁴ Note that MOE approvals speak primarily in terms of concentrations of contaminants emitted, not of total annual mass.

3. There is a substantial disconnect between the information now available on websites and what that information actually means in terms of human health. Will you be providing educational material on likely health issues associated with pollutants (including unknowns), known hazards of specific substances, how to report emissions/discharges, and how to access and interpret the reports? Does the City intend to relate the emissions information it will collect to changes in ambient concentrations of air pollutants, which may be more directly related to health? See e.g., <http://www.fraserhealth.ca/Services/PublicHealth/Pages/AirQuality.aspx>. How do you intend to deal with the gaps in knowledge about the health effects of chronic exposure to pollutants, and to a chemical soup of multiple substances? How will you keep all this material up-to-date?
4. How will you help the public understand the risk posed by emissions from reporting sources in comparison to the risks posed by exempt sources and those outside the City?
5. Reporting is to be completed electronically; if small businesses do not have access to a computer, will they be able to report in some other way?
6. The proposed bylaw should make careful provision for protecting trade secrets and other proprietary information.
7. Will the by-law have teeth? No details have been given on how it will actually be enforced, or the quantum of fines for non-compliance.
8. The City should disclose (1) how much this initiative will cost the City to implement and maintain, and (2) how much it is anticipated to cost each affected business. Does the City have the necessary resources to comply at its own facilities, and to provide compliance assistance and enforcement for other organizations?
9. It would be helpful to provide more details of the financial, technical and educational resources the City will provide to businesses to encourage pollution prevention. Will the City also honour those who do implement pollution prevention?
10. Has the City considered whether this initiative will affect property values in more polluted areas? Do communities in such areas understand and support the initiative?
11. To facilitate compliance, we urge you to provide guidance documents and the website in multiple languages, not just French and English.

Conclusion

Thank you for giving us the opportunity to provide our comments on this initiative. We look forward to an opportunity to comment on the draft bylaw and on the proposed website.