

March 18, 2019

Hon. Dave Smith, MPP Chair, Standing Committee on General Government Cc: William Short, Committee Clerk Queen's Park 99 Wellesley Street West Toronto, ON M7A 1A2 <u>comm-generalgov@ola.org</u>

Dear Mr. Smith,

Encouraging business to succeed in Ontario is important and history shows that is best achieved when operating in a sustainable fashion. Environmental Defence has a history as one of Canada's most effective environmental organizations as we work with government and industry to support a clean environment and a healthy economy.

We have deep concerns about many aspects of Bill 66, *Restoring Ontario's Competitiveness Act, 2018*. The proposed legislation would override critical provisions of several provincial laws and policies that are designed to protect safe drinking water, farmland, natural heritage, human health and support public participation.

Environmental Defence Canada respectfully requests that the Standing Committee on General Government make amendments to remove Schedule 5 and Schedule 10 from Bill 66. The reasons for our request are outlined below.

Schedule 10

This winter, in a short five week period, 53,000 Ontarians wrote to the province asking that Schedule 10 be removed from Bill 66. Citizens were outraged that after promising to protect the Greenbelt in the spring of 2018, the government repudiated that commitment by proposing legislation that would open the Greenbelt (and many other protected lands) to employment focused development. Thankfully on January 23, 2019 Minister Clark responded to this public concern and committed in writing to remove Schedule 10 from the Bill. We are here to explain our concerns about this schedule and support this promised amendment.

The proposed Schedule 10 changes to permit fast track development also propose to operationalize these actions at the municipal level through an "Open for Business



By-Law". This by-law can be passed at a Municipal Council Meeting that is convened without public notice, public consultation or review. Once passed by Council the By-Law would be forwarded to the Minister of Municipal Affairs, where after his/her approval it would not be appealable to the Local Planning Appeal Tribunal, the only process recourse available to citizens.

Despite assertions from government that such an approach is needed to allow business development, the facts tell a different story. First, over 16,000 hectares of land designated for employment uses sits vacant within our towns and cities in the GTHA as shown in Appendix 1. Secondly, the province already has powers under the Planning Act that permit the Minister of Municipal Affairs and Housing to rezone land outside of the normal municipal planning process. This is called a Minister's Zoning Order and it can, and has been, used to designate lands where there is an immediate and compelling need to create space for new development that is in the provincial public interest. Finally, municipalities have requested the ability to more easily convert existing excess employment lands to other uses. This request is reflected in the province's current Growth Plan consultation document which speaks to enabling these re-designations.

The government also stated that this schedule was drafted to meet stated need at the Municipal level. . However, many Municipalities have made clear that they oppose Schedule 10. These municipalities include Sudbury, Waterloo, Kitchener, Wilmot, Guelph, Aurora, Burlington, Bradford, Mulmur, Ajax, Wellesley, Puslinch, Georgina, Barrie, Halton, Hamilton, and Toronto. In their opposition to Schedule 10, a number of these municipalities have indicated the presence of employment land surpluses and a capacity to approve new businesses on employment lands faster that the proposed OfB by-law would provide for.

Schedule 10 would also override legislation that protects farm land that supports a prosperous agricultural and rural economy. In the Greenbelt alone, economic activity and employment in agriculture and agri-food, recreation and tourism, and other resource-based activities, supports 161,000 jobs and contributing over <u>\$9.1</u> <u>billion</u> to the economy annually. Exempting developments passed under an Open for Business by-law from conforming to the Greenbelt Act would put our food security, agricultural and agri-food, resource-based and tourism sectors at risk.

Schedule 10 also presents a direct threat to Ontario's source water protection framework under the Clean Water Act, 2006 by enabling development to proceed in areas currently deemed off limits under Source Water Protection plans. These plans and policies have taken years to develop and approve and have included extensive community consultation. We should recall that source water protection under the Clean Water Act was born out of tragedy, after seven people died and thousands



fell in in Walkerton, Ontario in 2000 when a municipal well was contaminated with E.coli. Ontarians' memories are not so short as to forget this preventable and tragic loss of life. Overwhelming public response to Schedule 10 proves that Ontarians value their safe drinking water as well as the laws that protect it.

Schedule 10 proposes to override legislative protection for many values in Ontario. These include:

- Protection of sources of municipal drinking water from landfills, sewage systems, the storage and handling of fuels, fertilizers, manure, pesticides, road salt, organic solvents and other substances on lands, new wells or surface water intake pipes used by municipal drinking water systems;
- Protection of farmland, provincially significant wetlands, woodlands, valley lands;
- Two-million acres of natural areas and farmland across the Greenbelt;
- Freshwater and the ecological health of Lake Simcoe and the Lake Simcoe watershed;
- Vulnerable aquifers on the Oak Ridges Moraine that provide drinking water for 250,000 people;
- Areas protected in the Lake Simcoe watershed to protect it from pollution and maintain drinking and recreational water quality

Schedule 10 is in direct conflict with the interests and desires of Ontarians. This is apply illustrated by a 2016 Nanos poll found that 90 percent of Ontarians believe the government is responsible to ensure a healthy environment for all, and 97 per cent support the right to clean air and clean water.

It is also important to remember that many aspects of the modern land-use planning and land conservation framework now in place in Ontario were initiated by Progressive Conservative governments. For example, The Niagara Escarpment Plan was our first environment-focused land-use plan and was established by the Davis government. Early work to limit sprawl occurred under the Harris government's Smart Growth Program and the establishment and protection of the Oak Ridges Moraine was a signature PC government achievement that received all party support. Undermining that legacy makes no sense, flies in the face of evidence, and tarnishes the good work of generations.

Schedule 5

Schedule 5 of Bill 66 proposes to repeal Ontario's *Toxics Reduction Act 2009* (TRA), a law that requires certain manufacturing and mineral processing facilities to



publicly report toxic chemical use and releases and prepare voluntary toxics reduction plans.

Not only has the TRA positioned Ontario as a potential global leader in pollution prevention and clean production, it also provides the government with effective tools to reduce toxic exposures and the burden of chronic disease. Repealing the TRA removes these tools from the province's toolbox and in effect opens up the door for more pollution in Ontario's communities.

• Why Ontario needs the TRA and should continue to uphold it

The World Health Organization has listed toxic pollution and chronic diseases as two of the top ten global health threats in 2019. Up to 15,000 Canadians die prematurely every year because of air pollution alone and the annual economic burden of diseases associated with toxic chemical exposures is estimated to be in the tens of billions. Public Health Ontario estimates that 560 Ontarians develop cancer every year due to air pollution. Moreover, one in four children and over 2 million people in Ontario are affected by asthma.¹ Evidently, we need to do more to protect Ontarians from the harmful impacts of pollution and toxic chemicals.

The government of Ontario's new environment plan, "A Made-in-Ontario Environment Plan" promises to protect the province's air, lakes and rivers by taking actions that will improve air quality in our communities, especially in areas with poor air quality. The Environment Plan promises to address pollution and to work in partnership with industry to "address local air quality concerns and achieve clean air objectives." The plan also promises to improve understanding of different sources of air pollution by monitoring and gathering information on pollutant levels. The TRA provides an effective tool to achieve these objectives.

The main goals of the TRA are:

1) to prevent pollution and protect human health and the environment by reducing the use and creation of toxic substances; and,

2) to inform Ontarians about toxic substances.

In contrast to the federal pollution law, the Canadian Environmental Protection Act (CEPA), Ontario's TRA uniquely enables the provincial government to encourage industry to find ways to prevent pollution through the voluntary implementation of reduction plans - a practice that has been proven in other jurisdictions to effectively reduce toxics and spur innovation and greener technology at the same time.

¹The Ontario Asthma Surveillance Information System (OASIS). Available at http://lab.research.sickkids.ca/oasis/



• Federal pollution and toxics framework severely inadequate

The government's proposal for repealing the TRA wrongly assumes that the federal Chemicals Management Plan (CMP), a program mandated by CEPA, will address the harmful effects of the toxic substances covered by the TRA. This is a misinformed assumption. Since 2006, the federal CMP has been responsible for assessing the risks of chemical substances that were deemed to pose a health or environmental concern. Since then, the federal government has regulated a small group of harmful substances while giving the green light to industry to continue producing and using the vast majority of the thousands of substances that it has assessed, many of which are known harmful substances. Moreover, as mentioned previously, the federal reporting requirements do not mandate or encourage the reduction of toxic chemical release or use by industrial and manufacturing facilities. The deficiencies of the federal program were recently illustrated by a parliamentary committee study, which made 87 recommendations to improve CEPA, as well as numerous audits by the federal Commissioner for Environment and Sustainable Development.

Furthermore, the federal CMP is set to expire at the end of March 2021 and there is no certainty that the program will be renewed or improved. Therefore, it is prudent for the province to uphold the TRA and continue to enforce its regulations to ensure it has the regulatory tools necessary to reduce and prevent pollution, especially where the federal regime falls short.

• Ontario's TRA does not duplicate reporting or compliance

Schedule 5 of Bill 66 wrongly assumes that the TRA reporting requirements duplicates the reporting that facilities have to do due to reporting requirements mandated by CEPA. Under the federal regime, affected facilities only have to report amounts of toxics released, disposed or recycled at the facility, whereas under the TRA, reporting must also include the amounts of toxics used, created or contained in products.

By repealing the TRA, the government and the public will no longer be able to know or track how much toxics are being used, created or contained in products information that is crucially needed to better understand and address pollution and exposure (including occupational exposure) in Ontario.

Furthermore, an important distinction between the TRA and federal reporting requirements is the voluntary implementation of reduction plans required by the provincial framework. In 2016, 1,046 facilities (40% of all facilities covered by the TRA) prepared and publicly committed to reduction plans on one or more toxic substance covered by the Act.



According to the 2017 Minister's Report on Toxics Reduction, facilities that published reduction plans, in fact, reduced the use of toxics by 7% or 69,642 tonnes; the creation of toxics by 5% or 51,086 tonnes; and the amount of toxics contained in products by 9% or 55,172 tonnes in a one year period. Reductions were also reported for substances released to air and water during the same year. Notably, facilities that implemented reduction plans reduced the creation of toxic substances more significantly than those who did not.² The implementation of the Ontario TRA has also been associated with some notable reductions in the industrial use of 16 carcinogens according to an academic analysis.³

The government's 2017 report highlights that some of the facilities attributed these reductions to the implementation of reduction plans under the TRA. This is consistent with the outcomes of Massachusetts' Toxics Use Reduction Act, law that served as a model for Ontario's TRA.

The Massachusetts Toxics Use Reduction Act is a three-decade old legislation that has demonstrated a strong track record of reducing pollution and promoting innovation. The law has enjoyed wide support from various industrial sectors, businesses and the public, and has helped industrial facilities significantly cut down their use and emissions of toxic chemicals such as cancer-causing substances. For example, toxic chemical use by some facilities in the state of Massachusetts decreased 41% between 1990 and 2004. Facilities also achieved a 65% reduction in toxic waste during the same period.⁴ More recently, between 2000 and 2008, industrial facilities that became required to report toxics use and reduction plans decreased their on-site releases of toxics by 52%.⁵

While the implementation of reduction plans prepared by companies in Massachusetts is voluntary (as is the case in Ontario), evaluation of the law and its programs show that many companies consistently implement the steps they outline in their plans and find ways to reduce pollution while achieving economic benefits and occupational health benefits. According to a 2009 assessment completed by the Toxics Use Reduction Institute, one of the authorities responsible for the implementation of programs associated with the law, more than half of the 196 facilities surveyed indicated that the health of their workers and safety conditions improved as a result of implementing activities related to toxics use reduction. Over 40% said that their facilities saved money and reduced costs; 33% achieved better

² https://www.ontario.ca/page/2017-ministers-report-toxics-reduction

 ³ Slavik, C. E., Kalenge, S., & Demers, P. A. (2018). Recent trends in the industrial use and emission of known and suspected carcinogens in Ontario, Canada. *Reviews on environmental health*, 33(1), 99-107.
 ⁴ http://www.cela.ca/sites/cela.ca/files/uploads/609bToxic FF Model Bill.pdf

⁵ Massey, R. I. (2011). Program assessment at the 20 year mark: experiences of Massachusetts companies and communities with the Toxics Use Reduction Act (TURA) program. Journal of Cleaner Production, 19(5), 505-516.



compliance with regulations mandated by other jurisdictions; and 29% achieved efficiencies in production processes as a result.⁶

Other major benefits of Massachusetts' toxics reduction law include fostering a regulatory environment that has promoted innovation in green chemistry and clean production. Notable examples include the promotion of professional wet cleaning practices to replace the use of a cancer-causing chemical known as perchloroethylene (or PERC) that is strictly regulated in Canada and the development of a safer alternative to methylene chloride, a toxic solvent used in paint stripping products and linked to 60 deaths in the United States.⁷

Repealing the TRA and removing its requirements for reporting and reduction plans is likely to result in reversing the pollution reduction trends achieved by facilities in Ontario and give the wrong signal to industry to no longer invest in pollution prevention and cleaner production technology.

• Fully proclaiming the TRA into force would have great public health benefits

In addition to the relatively short period of time during which the TRA has been implemented, the fact that key provisions in the Act remain unproclaimed into force has prevented Ontario from benefiting from the full potential of the TRA. These provisions include: 1) mandating reports on the use and release of chemicals of concern (a proposed list of cancer-causing and other harmful chemicals in 2008 that is yet to be adopted by regulation); 2) authorizing and implementing administrative penalties; and 3) addressing toxic chemicals in consumer products, an issue largely missed by the federal regime.⁸

We strongly believe that that TRA, when fully implemented, will offer Ontario a strong legislative framework to address pollution in our air, water and communities and substantially reduce Ontarians' exposures to toxic chemicals. The Ontario government has promised to hold polluters accountable and tackle air pollution, and the TRA is a promising and effective mechanism that can help achieve those commitments. The TRA fills crucial gaps in Canada's federal toxics legislation, providing an information-based and business-friendly pollution prevention model that can protect Ontarians and their communities and spur innovation and cleaner production.

⁶https://www.turi.org/Our_Work/Policy/Toxics_Use_Reduction_Act/Program_Assessments/Toxics_Use_R eduction_Act_Program_Assessment_Executive_Summary._2009

⁷ https://www.turi.org/Our_Work/Cleaning_Laboratory/Laboratory_Testing/CleanerSolutions_Database

⁸ http://www.cela.ca/blog/2018-06-27/ontario-red-tape-reduction-trumps-toxics-reduction



We recommend that the government uphold the Toxics Reduction Act and its regulations and reporting requirements, and ensure that all of the law's provisions are proclaimed into force to achieve the environmental and health protections from toxics that Ontarians need and deserve.

Recommendation:

Environmental Defence strongly recommends that the committee amend Bill 66 to remove Schedule 10 and 5.

Sincerely,

Tim Gray Executive Director Environmental Defence Canada

Region	Total Vacant Emp. Lands (hectares)	Total # Emp. Lands	% Total Emp. Lands
York ⁹	2588	7759	33%
Halton ¹⁰	2800	6099	46%
Peel ^{11 12} (exl. Caledon)	2070	10772*	19%
Durham ¹³	3147	5611	56%
City of Hamilton ¹⁴	918	4554	20%
Simcoe ¹⁵	2919	6527	45%
Niagara ¹⁶	2300	6895*	33%
Total hectares	16742	48217	35%

Appendix 1- Excess of Employment land in the GTHA

⁹ <u>https://www.york.ca/wps/wcm/connect/yorkpublic/faa33468-b3c9-464a-9676-</u> 10be05613f20/mar+22+vacant+ex.pdf?MOD=AJPERES

¹⁰ <u>http://beta.halton.ca/repository/Halton-Competitiveness-Study-2016</u>

¹¹ <u>http://www5.mississauga.ca/research_catalogue/N_12_2016_VacantLands_Profile.pdf</u>
¹² <u>http://www.brampton.ca/EN/City-Hall/meetings-agendas/PDD%20Committee%202010/20151207pis_Full%20Agenda.pdf</u>

¹³ https://www.durham.ca/en/living-here/resources/Documents/EnvironmentalStability/EAServicing_Durham.pdf

¹⁴ https://www.hamilton.ca/mapping-business-reporting/activity-reports/employment-area-inventory 15

https://www.simcoe.ca/Planning/Documents/SimcoeCountyLandBudget_DataCollectionandAnalysis Pha seEmployment_HemsonConsulting_June17.pdf

¹⁶ https://niagararegion.ca/council/Council%20Documents/ICP%208-2014.pdf