



**CHEMISTRY INDUSTRY
ASSOCIATION OF CANADA**

RED TAPE CHALLENGE

Chemical Manufacturing Sector

August 2017



**SUBMISSION TO
the Ministry of Economic
Development and Growth**



CHEMISTRY INDUSTRY ASSOCIATION OF CANADA

The Chemistry Industry Association of Canada (CIAC) is the voice of Canada's \$53 billion chemistry industry and represents more than 50 members and partners across the country.

Members of CIAC are signatories to Responsible Care[®] – the association's U.N.-recognized sustainability initiative. Responsible Care[®] inspires its members to take actions that improve the sustainability of their operations and reduces harm throughout the entire life cycle of their products.



Executive Summary

The Chemistry Industry Association of Canada (CIAC) is pleased to provide comments to the **Ministry of Economic Development and Growth (MEDG) Red Tape Challenge** consultation of the chemical manufacturing sector. Below is a summary of the key regulatory burdens impacting the competitiveness of the chemical manufacturing sector and our recommendations.

BURDEN: Ministry of Environment and Climate Change (MOECC) O. Reg. 455/09: Toxic Reduction Act (TRA)

1. Strongly consider alternative compliance pathways to achieve the same policy objectives. CIAC's Responsible Care® initiative should be recognized by the Province as an equivalent oversight and public reporting measure in place of the Toxic Reduction Plans and Reports.
2. Adjust the Reporting Cycle to require triennial, rather than annual reporting and/or require updated reporting in year following any (operational) approval amendment.
3. Develop a provision for exceptions from the regulation where a company can show that a substance required to be included in the Toxic Reduction Plan is an integral part of their business or a commodity for sale, such as a feedstock for manufacturing an intermediate or end product.
4. Eliminate the TRA as firms already report the same information into the National Pollutant Release Inventory (NPRI) and develop an information-sharing protocol with the federal government for the NPRI information as noted in the Red Tape Challenge Auto Parts Manufacturing consultation.

BURDEN: Ministry of Environment and Climate Change O. Reg 63/95 and O. Reg 64/95 Effluent Monitoring (Organic and Inorganic Chemical Manufacturing Sectors) Municipal Industrial Strategy for Abatement

5. Eliminate the MISA regulations and transfer all relevant water discharge requirements into each facilities' Environmental Certificate of Approval to enable greater adaptability and Ministry engagement based on changes to operational or other factors.
6. Enable facilities to analyze water discharges using technology that meets current industry standards rather than force facilities to use outdated analyzer technology and processes.
7. Update MISA regulations to ensure all relevant and up-to-date requirements are in place for covered facilities and establish a protocol for managing amendments in a timely manner.

BURDEN: Ministry of Environment and Climate Change Environmental Protection Act Environmental Compliance Approvals

8. Reduce the 1-year service standard for complex approvals. Strive to set lower service standards as other jurisdictions in Canada and the United States process environmental permits much quicker.
9. Prioritize and expedite approvals for projects involving new capital investments, job creation and retention, and improved environmental performance ahead of other applications.

BURDEN: Ministry of Environment and Climate Change O. Reg 347 Waste Manifests

10. Automate and make online the manifest process to enable simple electronic data protocols which include pre-populated fields, drop-down boxes and electronic file tracking.

BURDEN: Ministry of Labour Occupational Health and Safety Act, R.S.O.1990

11. Repeal Section 34 regulation and establish an information sharing protocol with the federal Ministry of the Environment and Climate Change Canadian Environmental Protection Act New Substances Notification Regulations (Chemicals and Polymers).

BURDEN: Technical Standards and Safety Association (TSSA) – various aspects

12. Develop, publish and implement consistent standards and related requirements with TSSA.
13. Embark on a culture change initiative within TSSA, increasing awareness of their role in being solutions-oriented in their interactions with regulated entities.
14. Ensure new project proponents are given a central point of contact within government to rationalize conflicting requirements within and between government regulatory authorities such as the TSSA, the Electrical Safety Authority, the Ministry of Labour and MOECC.

BURDEN: Ministry of Municipal Affairs O. Reg 311/06: Transitional Matters – Growth Plans

15. Enact a buffer zone regulation which would explicitly enshrine public safety practices and Ontario's manufacturing heritage and thereby reduce uncertainty in land planning decision making, both within municipal governments and at the OMB.

➤ Introduction

The Chemistry Industry Association of Canada (CIAC) is pleased to provide comments to the **Ministry of Economic Development and Growth** (MEDG) **Red Tape Challenge** consultation of the chemical manufacturing sector. CIAC endorses the Ministry's commitment to modernize business regulations to be outcome-focused and evidence-based while continuing to protect the public interest.

This document acts an overview of key regulatory burdens impacting the competitiveness of the chemical manufacturing sector through unnecessary cost, complexity and time. Individual companies will submit comments through the online interface during the chemicals manufacturing sector's *Red Tape Challenge* consultation period.

➤ Methodology

The comments and recommendations contained within this submission are the result of a lengthy pre-consultation engagement with CIAC members and stakeholders within the broader chemical manufacturing sector in Ontario that began in the Fall 2016. The process included several in-person and teleconference meetings with industry stakeholders and officials from the *Ministry of Economic Development and Growth*, and an online survey.

The survey results were presented and combined with other input at an industry workshop. This led to a meeting with the *Ministry of Economic Development and Growth Open for Business* officials on May 18, 2017 to articulate the key issues and provide illustrative examples of the unnecessary impacts and burdens of the regulations.

Our efforts have been focused on the regulatory burdens most concerning to industry that best align to the *Red Tape Challenge* objectives and the government's regulatory modernization principles that include leveraging industry standards, moving to risk-based inspections and going digital.

➤ About Ontario's Chemistry Industry

CIAC represents companies that produce industrial chemicals (including petrochemicals, inorganic chemicals and resins) in Canada, as well as companies which provide services to the Canadian chemistry industry. Ontario's \$22-billion chemistry industry, the third largest manufacturing industry in the province, directly employs 44,000 Ontarians in well-paying jobs, supports another 220,000 Ontario jobs in other sectors, and provides important inputs to a range of key manufacturing sectors in the province including automotive, forest products, construction, and food and beverage. The industry is global and Ontario's chemical manufacturers must compete globally both for market share and investment.

➤ Responsible Care®

Responsible Care® is core to our industry's DNA. It's our commitment to sustainability – the betterment of society, the environment, and the economy. Its ethic and principles compel companies to innovate for safer and more environmentally friendly products and processes, and to work to eliminate harm throughout the entire life cycle of their products. Through Responsible Care®, CIAC member-companies strive to “do the right thing and be seen to do the right thing.” They innovate for safer and greener products and processes, and work to continuously improve their environmental, health and safety performance.

As part of Responsible Care®, companies must be transparent about their activities, and allow independent experts and members of the public to verify that they're living up to the standards set by Responsible Care®. Every three years, a team of industry experts, public advocates and representatives chosen by local communities, audit each CIAC member to evaluate their commitment to Responsible Care®.¹

Responsible Care® is comprised of 152 Operations, Stewardship and Accountability Codes. These codes influence the decisions that CIAC member-companies make every day – decisions that are key to creating more sustainable products and processes.

Through Responsible Care®, CIAC members have continuously improved their environmental record. Since 2004, our Ontario members have:

- Reduced emissions of toxics targeted by the *Canadian Environmental Protection Act* by **55%**.
- Reduced overall air emissions by **38%**.
- Reduced greenhouse gas emissions intensity by **38%**.
- Active community engagement **100%** verified.

➤ Regulatory Burdens

A. **Ministry of Environment and Climate Change O. Reg. 455/09: Toxic Reduction Act**

CIAC and its members fully support in principle the objective of the *Toxic Reduction Act* (TRA), namely to encourage industry to reduce, eliminate, or replace toxic substances with less toxic alternatives. However, we have significant concerns with the requirements the act imposes on industry. We strongly contend that reductions in toxic substances is realized in efficiency improvement projects, not toxic accounting. Our concerns are noted below:

¹ These reports which include recommended actions for improvement are publicly available [here](#).

- The TRA specifies the federal *Ministry of Environment and Climate Change's National Pollutant Release Inventory* (NPRI) as the basis for tracking and reporting substances. This list is comprised of over 340 substances (pollutants). As a result, the TRA obligates facilities to account and report a broader list of substances than those that have been deemed to be toxic.
- Related to the point above, as facilities are required to report annually on the same substances to the NPRI, there is significant overlap in reporting requirements and efforts between TRA and NPRI.
- Where a toxic substance is a feedstock or a product, there is no option to reduce or eliminate the substance without affecting production. Chemicals are created and destroyed during closed loop chemical reactions but cannot be reduced or eliminated. It is a struggle to account for substances produced as small quantity byproducts in intermediate chemical reaction streams. Not every stream can be sampled and quantified.
- TRA leverages the federal *Ministry of Environment and Climate Change's Single Window Information Manager (SWIM)*. The SWIM system does not offer a user-friendly interface and as a result entering TRA data becomes an arduous and time-consuming process.

Recommendations:

1. **Strongly consider alternative compliance pathways to achieve the same policy objectives. CIAC's Responsible Care® initiative should be recognized by the Province as an equivalent oversight and public reporting measure in place of the *Toxic Reduction Plans and Reports*.**
2. **Adjust the Reporting Cycle to require triennial, rather than annual reporting and/or require updated reporting in year following any (operational) approval amendment.**
3. **Develop a provision for exceptions from the regulation where a company can show that a substance required to be included in the *Toxic Reduction Plan* is an integral part of their business or a commodity for sale, such as a feedstock for manufacturing an intermediate or end product.**
4. **Eliminate the TRA as firms already report the same information into the *National Pollutant Release Inventory (NPRI)* and develop an information-sharing protocol with the federal government for the NPRI information as noted in the Red Tape Challenge Auto Parts Manufacturing consultation.**

B. Ministry of Environment and Climate Change O. Reg 63/95 and O. Reg 64/95 Effluent Monitoring (Organic and Inorganic Chemical Manufacturing Sectors) Municipal Industrial Strategy for Abatement

Municipal Industrial Strategy for Abatement (MISA) specifies sampling, analysis and reporting requirements for specific facilities that discharge treated industrial wastewater. The current regulation is extremely rigid. Contained within the legislation is a listing of the companies and the specific effluent limits for each facility at the time the legislation was originally enacted. Without changing the legislation, there is no way for a listed facility to have its effluent limits modified for operational changes impacting the effluent quality or add new companies to ensure equal regulatory treatment. This creates an unlevel playing field between companies which are named in the regulation and those which are not. In cases where facilities have increased production and/or switched incoming water supply to municipally-supplied water, the new incoming water quality can already be above the prescribed effluent levels in the legislation which forces unnecessary treatment costs.

The *Municipal and Industrial Strategy for Abatement* (MISA) sampling and analysis protocol for industrial/municipal wastewater specifies analyzer temperature for DOC (Dissolved Organic Carbon - DOC-ATG 5a). Current analyzer technology has advanced since the protocol was put in place and does not require a temperature as high as the MISA program specifies. Furthermore, since technology has advanced, only one vendor continues to manufacture an analyzer that meets the MISA temperature requirements. The vendor does not sell any on-line analyzers using this old technology and so all testing must be done using off-line analytics which is time consuming process. Facilities have on-line instruments for process control but are not allowed to use those instruments for MISA reporting due to the temperature regulation.

Recommendations:

- 5. Eliminate the MISA regulations and transfer all relevant water discharge requirements into each facilities' *Environmental Certificate of Approval* to enable greater adaptability and Ministry engagement based on changes to operational or other factors.**
- 6. Enable facilities to analyze water discharges using technology that meets current industry standards rather than force facilities to use outdated analyzer technology and processes.**
- 7. Update MISA regulations to ensure all relevant and up-to-date requirements are in place for covered facilities and establish a protocol for managing amendments in a timely manner.**

C. **Ministry of Environment and Climate Change Environmental Protection Act Environmental Compliance Approvals**

We recognize the efforts taken to date to streamline the process for lower risk projects (*Environmental Activity and Sector Registry*) and setting a 1-year service standard for complex *Environmental Compliance Approvals* (ECA) to speed up the approvals process in Ontario. However, the time taken for the issuance of ECAs continues to be a major issue for industry. Long delays in receiving an ECA acts as a deterrent for companies to invest in Ontario, and ironically most of these new investments will yield environmental improvements over existing operations.

Furthermore, while the *Ministry of Environment and Climate Change* (MOECC) has been accommodating in accelerating approvals on a one-off basis, the system needs additional changes so that can it deliver timely approvals consistently. As such, more structural change is necessary to see a step-change reduction in turnaround times to match other jurisdictions.

Recommendations:

8. **Reduce the 1-year service standard for complex approvals. Strive to set lower service standards as other jurisdictions in Canada and the United States process environmental permits much quicker.**
9. **Prioritize and expedite approvals for projects involving new capital investments, job creation and retention, and improved environmental performance ahead of other applications.**

D. **Ministry of Environment and Climate Change O. Reg 347 Waste Manifests**

CIAC is supportive of proper handling, storage and management of waste. CIAC's Responsible Care® ethic, principles and commitment to continuous improvement and sustainability drive our members to strive to reduce waste.

All hazardous and liquid industrial waste must be disposed of with a proper receiver and transported with a MOECC approved carrier. Waste manifests are paper-based forms that consists of 6 numbered and colored copies, require different parties to complete parts of the manifest and require burdensome filing and distribution procedures between the generator, the carrier and the receiver. These procedures are noted below:

- The Carrier shall complete section B of the manifest and the generator shall complete section A.

- The Generator removes copy 1 (white) and returns it to the MOECC within 3 working days.
- The Generator removes copy 2 (green) and retains it in a designated file for 2 years.
- The remaining 4 copies are given to the carrier, who will pass these 4 copies on to the receiver.
- The receiver will complete section C of the waste manifest.
- The receiver will send Copy 3 (yellow) to the MOECC within 3 working days after the transfer.
- The receiver will give Copy 4 (pink) to the carrier, where it will be retained for 2 years.
- The receiver will retain Copy 5 (blue) for 2 years.
- The receiver will return Copy 6 (brown) back to the Generator within 3 working days of the transfer.
- When Copy 6 (brown) is received by the Generator it should be matched in the file with Copy 2.

While it is obvious that this paper-based process is cumbersome and time-consuming when everything goes right, it can get more complicated should simple typos be found after the fact. In these cases, three groups are required to update their records and send corrected versions (generator and receiver) back to MOECC.

Recommendation:

10. **Automate and make online the manifest process to enable simple electronic data protocols which include pre-populated fields, drop-down boxes and electronic file tracking.**

E. **Ministry of Labour Occupational Health and Safety Act, R.S.O.1990**

Section 34 requires the *Ministry of Labour* be notified of the intention to manufacture, distribute or supply a new biological or chemical agent. The process requires companies provide information including ingredients, common or generic name and the composition and properties thereof. The inventory list for which Section 34 reporting is required is not posted publicly by the Ministry and is based on *United States Toxic Control Act (TSCA) 1979-1980* inventory.

Additionally, Section 34 requirements for notification and maintenance of chemical inventory are very similar to the federal Canadian Environmental Protection Act New

Substances Notification Regulations (Chemicals and Polymers). The federal regulations are the culmination of an extensive multi-stakeholder consultative process designed to improve the effectiveness and efficiency of the new substances notification and assessment process, while maintaining high standards in the protection of the environment and human health.

Recommendation:

- 11. Repeal Section 34 regulation and establish an information sharing protocol with the federal *Ministry of the Environment and Climate Change Canadian Environmental Protection Act New Substances Notification Regulations (Chemicals and Polymers)*.**

F. Technical Standards and Safety Association (TSSA) – various aspects

In recent years, chemistry industry participants have faced a number of concerns with interactions with the TSSA. At the heart of the issue is an organization which has a very important regulatory role to play, but which operates in a manner contributing to negative experiences and economic outcomes.

These experiences relate to an organization which operates in stove pipes with little communication across internal divisions and with other regulatory agencies. For example, one company in Ontario spent more than three years in project preparation, construction and commissioning with respect to a major new investment. Regulations relating to the central equipment in this facility involved air emissions, fuel delivery and related systems, as well as pressure vessel systems. The project proponent noted repeatedly that the regulatory requirements of each of these groups were mutually-incompatible. There was no one single authority, within TSSA or elsewhere, where the project proponent could turn to in order to rationalize these conflicting regulatory requirements. The project experienced nearly a year's delay while these conflicting requirements were sorted out.

The key issue is that TSSA lacks documented standards and consistent decision-making. In the absence of clear and consistent standards in many aspects of its mandate, implementation and decision-making ultimately falls in the hands of regional TSSA authorities. Often, the outcomes experienced at the facility level will differ region to region and within regions between individual personnel. This is especially true with respect to training and operator requirements of regulated equipment. Companies have repeated experiences of regional TSSA authorities specifying dramatically different operator and training requirements for the same equipment within different jurisdictions. Likewise, companies have experiences of 'waiting out' difficult TSSA personnel, knowing that their replacements are likely to be more amenable to sanctioning operator and training requirements which have been authorized in other regions

Recommendations:

12. **Develop, publish and implement consistent standards and related requirements with TSSA.**
13. **Embark on a culture change initiative within TSSA, increasing awareness of their role in being solutions-oriented in their interactions with regulated entities.**
14. **Ensure new project proponents are given a central point of contact within government to rationalize conflicting requirements within and between government regulatory authorities such as the TSSA, the *Electrical Safety Authority*, the *Ministry of Labour* and MOECC.**

G. **Ministry of Municipal Affairs O. Reg 311/06: Transitional Matters – Growth Plans**

In many cases, the lack of an explicit policy framework to support the municipal government decision-making process has resulted in attempts to maintain buffer zones being rebuffed by developers and/or overturned by the *Ontario Municipal Board (OMB)*. Some municipalities have taken matters in their own hands and have successfully drafted local by-laws to address this oversight.

Ontario produced an important *Provincial Policy Statement* in 2014 which was a good signal that Ontario's manufacturing heritage remains a cornerstone of its future, and that public safety must be of paramount consideration in municipal planning decisions. However, we are not seeing the significance of this policy statement being reflected in the recently updated *Growth Plan for the Greater Golden Horseshoe, 2017*.

A buffer zone regulation would ensure that inappropriate, potentially unsafe land uses would not be approved for construction within close proximity of existing industrial facilities, simultaneously protecting public safety and the ongoing viability of major industrial manufacturing operations in the province. For new, greenfield industrial plants, an appropriate buffer zone, with distances to be defined in the regulation, would be established prior to construction of such facilities.

Recommendation:

15. **Enact a buffer zone regulation which would explicitly enshrine public safety practices and Ontario's manufacturing heritage and thereby reduce uncertainty in land planning decision making, both within municipal governments and at the OMB.**



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