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Monday 1 June 2009

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Lundi 1^{er} juin 2009

**Standing Committee on
General Government**

Toxics Reduction Act, 2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 sur la réduction
des toxiques

Chair: David Oraziotti
Clerk: Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 1 June 2009

Lundi 1^{er} juin 2009

The committee met at 1411 in committee room 1.

**TOXICS REDUCTION ACT, 2009
LOI DE 2009 SUR LA RÉDUCTION
DES TOXIQUES**

Consideration of Bill 167, An Act to promote reductions in the use and creation of toxic substances and to amend other Acts / *Projet de loi 167, Loi visant à promouvoir une réduction de l'utilisation et de la création de substances toxiques et à modifier d'autres lois.*

The Vice-Chair (Mr. Jim Brownell): Ladies and gentlemen, I would like to call this clause-by-clause consideration of Bill 167 to order.

As per the report of the subcommittee, section 12, each party has an opportunity to make opening remarks if they wish. Mr. Barrett.

Mr. Toby Barrett: As we commence discussion of amendments to Bill 167, the Toxics Reduction Act, I would hope that during the course of this afternoon we are successful in bringing forward amendments to this bill to perhaps take away from the duplicative nature of this legislation vis-à-vis the federal government and the paperwork-driven, process-driven nature of this legislation. It's very important to try to come up with some legislation that gets results, that is workable and that is a made-in-Ontario version, recognizing that we should not be duplicating what is already in place in Ottawa.

I am concerned. There hasn't been much time for deliberations on this legislation. I hope this isn't being rammed through, or being rammed through on the basis of emotion rather than science. It's very important to have legislation that recognizes the risk involved in the emissions of some of these substances.

Time and time again we heard from a wide variety of deputants, certainly from the manufacturing sector, the mining sector, the Canadian Cancer Society, public health, Environmental Defence and other groups, and I think we should be cognizant of the fact that since these ideas were first proposed during the last provincial election, Ontario is now in the midst of a recession.

In looking through some of the government amendments, I would assume that there would have been recognition of suggestions made by the cancer society, for example. I know they were calling for targets to reduce the release of toxic chemicals, and I don't think the gov-

ernment has listened to that particular call. The targets that are mentioned do not address the issue of release.

Environmental Defence contacted me—they would have contacted perhaps a number of people on this committee—about their request for inclusion of sewage treatment plants within the regulation. Now, if I recall, maybe the NDP are covering off on some of that, but it sounds like the government is not putting forward anything with respect to that. Ever bearing in mind that there's something like 12,000 industrial, commercial and institutional facilities that do dump a certain amount of toxics into our water supply and many municipalities do not have sewage bylaws—I just use that as an example. We did not address that one; I was assuming that would have been picked up by the government.

I do commend not only the deputants; we have something like 61 or 62 amendments here, many amendments from the NDP. I'm looking forward to discussion there with respect to the merits of the precautionary principle versus a risk-based approach. It will be interesting to see where the government lies on that.

There are my preliminary comments, Chair.

The Vice-Chair (Mr. Jim Brownell): Any further opening comments?

We will move to section 1: An NDP motion, page 1.

Mr. Peter Tabuns: I move that section 1 of the bill be amended by striking out “and” at the end of clause (a), adding “and” at the end of clause (b) and adding the following clause:

“(c) to apply the precautionary principle and promote sustainable development in carrying out the purposes set out in clauses (a) and (b).”

This endorse the principles of the Canadian Environmental Protection Act and it reflects the call of the expert panel for a precautionary approach.

The Vice-Chair (Mr. Jim Brownell): Any comments? Mr. Flynn.

Mr. Kevin Daniel Flynn: We agree with the intent of this, certainly. We think that it's already been covered off. This motion is unnecessary, as much as we agree with the sentiments. The bill itself was developed in accordance with the ministry's statement of environmental values, which dictated and required that the ministry take a precautionary approach in the development of the bill itself.

The Vice-Chair (Mr. Jim Brownell): Any further comments? Mr. Barrett.

Mr. Toby Barrett: Well, here's the phrase "precautionary principle" and also the other phrase, "sustainable development." We do know, as well, over the past several years, and this comes from Gord Miller, the Environmental Commissioner, that it's important to not only talk about sustainable development, it's important to also talk about developing sustainability.

I understand the jury's out on just what is meant by "precautionary principle." There's one widely accepted definition of "precautionary principle" coming from the June 1992 conference, the Rio Declaration on Environment and Development. I think there's a definition somewhere further in your amendments, but the one I go by is the one from Rio: "In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." That was principle 15 of the declaration of the Rio conference.

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The Vice-Chair (Mr. Jim Brownell): Mr. Tabuns?

Mr. Peter Tabuns: I have nothing further to say.

The Vice-Chair (Mr. Jim Brownell): Okay. You've heard the motion. All in favour? Opposed? The motion is lost.

That's the only amendment in there. Shall section 1 carry? All in favour? Opposed? Carried.

We move to section 2. We have an NDP motion, page 2.

Mr. Peter Tabuns: I move that the definition of "toxic substance" in section 2 of the bill be struck out and the following substituted:

"toxic substance" means,

"(a) any substance identified in the National Pollutant Release Inventory issued from time to time under the authority of the Canadian Environmental Protection Act, 1999,

"(b) any substance identified as a high hazard substance pursuant to the chemicals management plan under the authority of the Canadian Environmental Protection Act, 1999,

"(c) any substance capable of causing cancer to humans, or probably capable of causing cancer to humans, and identified as such in monographs issued from time to time by the International Agency for Research on Cancer,

"(d) any substance capable of causing cancer or reproductive toxicity and identified as such from time to time by the California Environmental Protection Agency under the authority of the Safe Drinking Water and Toxic Enforcement Act of 1986 (California), and

"(e) any substance known to be capable of causing cancer in humans and identified as such in the Report on Carcinogens issued from time to time by the national toxicology program, United States Department of Health and Human Services;"

Very simply, this act doesn't have a definition. It was to be left to regulations, and I believe, frankly, that both industry and the public deserve to know in legislation

what's toxic and what isn't. That came up regularly in the course of the presentations made to this committee. I think it gives certainty to those who are actually doing the work that has to be done. Frankly, the expert panel that was appointed by the government called for a list substantially the same as I have incorporated into this amendment.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Toby Barrett: I certainly agree with the latter comment. Very clearly, this legislation, as Mr. Tabuns has pointed out, does not define the basis for what a toxic substance is, and that is something that we feel is very important. We understand that it leaves the definition to the regulatory stage. A definition is important in the sense that the federal approach does define what a toxic substance is, and it just raises the issue of to what extent this legislation is going to work hand in glove with our national definition.

I know when Mr. Tabuns talks about a toxic substance, he refers to it as any substance identified in the NPRI, the National Pollutant Release Inventory. I'm concerned because that's kind of mixing the term "pollutant" with the term "toxic." You're mixing the concept of pollution with the concept of toxicity, and it's kind of one or the other.

If I could go on, in clauses (c), (d) and (e) with respect to causing cancer, again it's important to think of dosage, exposure or time of exposure. The federal approach does take a look at that kind of risk. It takes a look at the inherent hazards of a substance, including exposure rate. It's a little more specific than this.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: We won't be supporting this. The motion is going to have the effect of actually eliminating what we've just been out consulting on with the public and stakeholders, and that is the phased-in approach that tries to bring some balance to what we think is going to be a very, very progressive piece of legislation if it is adopted.

The substances and the timelines that aren't prescribed in the bill to date will be set out in the regulations. We've promised, as a result of this, to go into a period of consultation with the public, stakeholders and industry.

We used a science-based approach when we prepared the proposed list. That process evaluated the relative risk and the hazard and already is drawing on the expertise of the toxics reduction scientific expert panel as well as Cancer Care Ontario.

We believe that the legislation as it's written includes provisions for the collection of information on substances of concern so that the government will be able to determine if additional substances that aren't currently included in the NPRI need to be added to the list of toxic substances. The bill gives you the ability to amend the list.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

To this motion, page 2, all those in favour? Opposed? The motion is lost.

We have a PC motion on page 3R.

Mr. Toby Barrett: This is also section 2 of the bill.

The Vice-Chair (Mr. Jim Brownell): Section 2, yes.

Mr. Toby Barrett: I move that the definition of “toxic substance” in section 2 of the bill be struck out and the following substituted:

“‘toxic substance’ means, subject to subsection (2), a substance, other than a metal or alloy,

“(a) that is identified as a toxic substance in schedule 1 of the Canadian Environmental Protection Act, 1999 or that has been determined to be a toxic substance—”

Interjection.

Mr. Toby Barrett: Shall I start at the beginning?

The Vice-Chair (Mr. Jim Brownell): Yes, I would say start at the beginning.

Mr. Toby Barrett: I think a lawyer had taken a couple of words out.

I move that the definition of “toxic substance” in section 2 of the bill be struck out and the following substituted:

“‘toxic substance’ means a substance, other than a metal or alloy,

“(a) that is identified as a toxic substance in schedule 1 of the Canadian Environmental Protection Act, 1999 or that has been determined to be a toxic substance through the application of a process equivalent to the chemicals management plan under the authority of that act, and

“(b) prescribed by the regulations as a toxic substance;”

The Vice-Chair (Mr. Jim Brownell): Comments?

Mr. Toby Barrett: By way of comment, again, I will mention first of all the phrase “other than a metal or alloy.” Members will recall that was stressed, certainly by the Ontario Mining Association. Some of that work was also done—I think we received a research memo with respect to the Massachusetts approach.

I think that what’s important here is that through the federal government’s chemicals management plan, we already have one of the most stringent processes in the world for assessing which substances should be considered as toxic. Again, just to reiterate, we feel we should go with the federal definition.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you, Mr. Chair. We will not be supporting this, although we did certainly enjoy and listen to the presentation that was made by the mining industry last week. We think they made some very, very good points.

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Some metals are of concern to human health and the environment. That’s why they are included on the NPRI inventory, and they’re proposed to also be subject to the requirements of this bill. What we’re proposing to do is to define “toxic substance” in regulations, and that’s going to be done in a consultative method that involves the mining industry itself.

We used a science-based approach that evaluated, as I said, the relative risk and the hazard. We’ve drawn on the

expertise of the scientific expert panel and Cancer Care Ontario, and the priority toxics that we have already include the following: those that are designated as a high hazard in other jurisdictions, that have high exposure in Ontario, high human health impacts, high environmental health impacts and/or known or probable carcinogenicity.

So we think that the proposed route we’re taking that is going to include consultation with stakeholders, including those involved in the metals and the mining industry, is the right way to go.

The Vice-Chair (Mr. Jim Brownell): Thank you. Any further debate?

You’ve heard the motion. All in favour? Opposed? The motion is lost.

Okay, next we have section 2, page 4: a PC motion, Mr. Barrett.

Mr. Toby Barrett: Section 2: I hope this one is still there.

I move that the definition of “substance of concern” in section 2 of the bill be struck out.

The Vice-Chair (Mr. Jim Brownell): Any comments?

Mr. Toby Barrett: I recall that this advice came from at least one of our deputants, the Canadian Consumer Specialty Products Association, where they did suggest an amendment. They would wish to remove the term “substance of concern.” They feel that it’s very important that there be a very clear definition of what we’re talking about and a very clear definition of “toxic substance.” They go on to say that they’re suggesting that, rather than using a phrase like “substance of concern,” we stick with the Canadian Environmental Protection Act’s definition of toxic substances for the purposes of this bill. They also gave a precise definition in their submission.

So they very simply ask that this phrase, “substance of concern,” be removed.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: We won’t be supporting this either. The intent of the bill is to give the people of Ontario more information, not less. Substances of concern are not tracked, currently, through the NPRI system, so we don’t have that accessible information readily available regarding the extent of the use of these substances.

The substances of concern that are being talked about are proposed to include approximately 20 toxic chemicals of concern, identified by the MOE through the expert panel, that are not currently tracked for the people of Ontario through the NPRI. We think they should be.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You’ve heard the motion. All in favour? Opposed? The motion is lost.

Next we have section 2, page 5: an NDP motion.

Mr. Peter Tabuns: Withdrawn, Chair. Since the earlier amendment was defeated, the definition is redundant.

The Vice-Chair (Mr. Jim Brownell): Okay. Next we have section 2, page 6: an NDP motion.

Mr. Peter Tabuns: I move that section 2 of the bill be amended by adding the following definition:

“safer alternative’ means an option that includes input substitution as well as a change in chemical, material, product, process, function, system or action, whose adoption to replace a toxic substance currently in use would be the most effective in reducing overall potential harm to public health and safety, workplace health and safety or the environment;”

Very simply, if we’re going to be talking about putting in place safer alternatives in the course of toxic substitution or reduction, it is useful to have a definition in place.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: Again, I think Dr. Diamond, chair of the expert panel, was quite clear when she addressed the committee last week. What she said was that science is constantly moving: “There are some substances that cannot be substituted, and it’s industry that has to make those decisions, not government.” We agree with that. We think that the science behind what are called safer alternatives, at this point in time, is varied and inconsistent. What we don’t want to do is risk making companies replace one known toxic substance with an alternative that we simply don’t know enough about yet.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett?

Mr. Toby Barrett: In the meaning described for “safer alternative,” the phrase “potential harm” is used. I suppose virtually any substance, including water, for example, has potential harm, if you’re exposed to water in sufficient quantities. Again, that one is kind of open-ended, and I have a concern with including that phrase.

The Vice-Chair (Mr. Jim Brownell): Anything further? You’ve heard the motion. All in favour? Opposed? The motion is lost.

We go to section 2, page 7: an NDP motion.

Mr. Peter Tabuns: I move that section 2 of the bill be amended by adding the following definition:

“‘sustainable development’ means development that meets the needs of the present without compromising the ability of future generations to meet their own needs;”

Again, if we’re going to put in place an institute, which I hope in fact will be added to this legislation, it needs some principles to guide its development, and this is one of the principles that needs to be there.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Kevin Daniel Flynn: I think if Mr. Tabuns and I had a debate about sustainable development, we’d probably walk away agreeing with each other, but for the purposes of today’s discussion on Bill 167, the principle of sustainable development is simply beyond the scope of this bill. It’s not relevant for the operation of the

proposed act that’s before us today, although I’m sure we’d find a lot of areas we agreed on.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Tabuns.

Mr. Peter Tabuns: Increasingly, I am concluding that the words “sustainable development” are not needed for this act. I think it would be really good if it was needed for this act, but the way it’s written and the way it’s not being dealt with, I think you’re probably right, Mr. Parliamentary Assistant.

The Vice-Chair (Mr. Jim Brownell): You’ve heard the motion. All in favour? Opposed? The motion is lost.

Shall section 2 carry? All in favour? Opposed? Carried.

Moving to section 3, we have an NDP motion on page 8.

Mr. Peter Tabuns: I move that paragraph 1 of section 3 of the bill be struck out and the following substituted:

“1. The facility,
 “i. is a sewage treatment plant,
 “ii. is a facility for the production of energy, or
 “iii. belongs to a class of facilities prescribed by the regulations.”

Simply, the expert panel called for the act to apply to all sectors that meet the thresholds, including energy and waste management. Sewage treatment plants are major sources of mercury, arsenic and lead. If we’re actually going to deal with those problems, we need to put sewage treatment plants into this legislation, and if we don’t do that, the impetus for municipalities to put in place sewer use bylaws and enforce those sewer use bylaws won’t be there. This act will miss a major source of contamination.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Toby Barrett: As I mentioned earlier, I thought the government would have come forward with some more fulsome amendments. We all heard the presentation by Janelle Witzel from Environmental Defence. She indicated that currently only 260 of the 450 Ontario municipalities have sewage bylaws, and the discharge limits differ. Mr. Tabuns made mention of some of the toxics. She presented information from Pollution Watch indicating that sewage treatment plants are responsible for approximately 87% of mercury emissions, 37% of arsenic emissions and 71% of lead emissions. I think that is very serious. I guess I just assumed the government would pick up on that one.

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The Vice-Chair (Mr. Jim Brownell): Mr. Flynn.

Mr. Kevin Daniel Flynn: Indeed, we have picked up on it, and we think that the proposed route that we’re suggesting is one that actually gives us a lot more flexibility. I think you have to realize that the proposed sectors that we have before us just today cover about 75% of the emissions in Ontario today. When the coal plants close down, the vast majority of the remaining 25% will be covered off as well.

The whole point of this proposed bill that’s before us is to deal with the inputs, is to deal with the front end as opposed to dealing with the tail end of the pipe. Dealing

with the effluent plant emissions simply isn't the way to go in this regard. What will happen as a result of that is that a lot of the sewage and the solid waste that goes into the effluent treatment plants will be covered under this legislation. I think that's a more responsible approach, I think it's all-encompassing, and I think it's one that we should support today.

Mr. Peter Tabuns: Recorded vote.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Ayes

Bailey, Barrett, Tabuns.

Nays

Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Okay. We have section 3, page 9, an NDP motion.

Mr. Peter Tabuns: I move that paragraphs 2 and 3 of section 3 of the bill be struck out and the following substituted:

"2. The toxic substance is used or created at the facility and the amounts of the substance that are used or created are greater than,

"i. 100 kg per year, or

"ii. a quantity that is less than 100 kg per year, if such a quantity is prescribed."

Very simply, this would lower the threshold to the city of Toronto's standard. You will have many small sources of toxic chemicals in urban environments. The way the bill is written now, those smaller sources will not be addressed. I think that's a gap in the bill, and it would be remedied through adoption of this amendment.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: I think it's been the tone so far that there's some—I think an opinion that's been offered so far by the opposition is that a lot more should be included in the bill. Our approach is that, with the consultative approach we've taken to date, the real decision points should be taken in consultation with some of the environmental groups, with some of the industry that is affected by this, and we would much prefer to see that done by regulation.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Toby Barrett: I'm unclear. The 100 kilograms per year, I don't know whether that is a federal benchmark or not, or whether that is within the NPRI reporting levels. I just wasn't clear where that 100 kilograms came from.

The Vice-Chair (Mr. Jim Brownell): Mr. Tabuns.

Mr. Peter Tabuns: It comes from the city of Toronto's standard.

Just in response to Mr. Flynn, I thought we'd heard from the environmental groups; in fact, the amendments I bring forward reflect their concerns and interests.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Kevin Daniel Flynn: I'm just being reminded that as we sort of look ahead to the afternoon, when we get to our motion number 40, if we ever get to motion number 40 this afternoon, our approach to this will be seen and will be expanded upon. And our approach to date is consistent with the federal levels.

The Vice-Chair (Mr. Jim Brownell): Anything further? You've heard the motion. All in favour? Opposed? The motion is lost.

We move on to section 3, page 10, a government motion.

Mr. Kevin Daniel Flynn: I move that section 3 of the bill be amended by adding the following subsection:

"Use of single document

"(2) A single document may contain more than one toxic substance reduction plan."

The reason for this is the motion would allow facilities to prepare a single document containing a number of toxic substance reduction plans prepared for toxic substances used or created at the facility. This comes about as a result of the input that came from a lot of our partners in industry suggesting that this be clarified, and we believe that this amendment does clarify it.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Toby Barrett: I suppose this is heading in the right direction. We certainly heard from deputants about the fact that this is paper-driven and process-driven, rather than results-driven, and if there are so many forms to fill out and paperwork and the frequency of reporting, maybe this is a small way of heading in the right direction.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is carried.

Shall section 3, as amended, carry? All in favour? Opposed? Carried.

We move on to section 4, page 11: a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that paragraph 1 of subsection 4(1) of the bill be amended by striking out "that the owner or the operator of the facility intends" and substituting "that the owner or the operator of the facility intends, on a risk prioritized basis" at the end of the portion before subparagraph i.

Again, this issue of a risk-based criteria, using that as the priority—and I do recall the Canadian Petroleum Products Institute believed the most important test of any toxic reduction strategy is the minimization and, where science dictates, the elimination of human exposure, not how the substances are being used in the manufacturing process.

I think of an oil refinery, for example. It's so important to set priorities that eliminate risk of emission

rather than documenting what is flowing through the pipelines or what would be contained in some of the tanks of the other vessels.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We won't be supporting this either. Quite simply put, if this were passed what you would do is you would allow many of facilities intended to be covered under this act to circumvent the planning process. We simply don't want to see that.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Next we have section 4, page 12: a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that paragraph 1 of subsection 4(1) of the bill be amended by striking out "and" at the end of subparagraph i, adding "and" at the end of subparagraph ii and adding the following subparagraph:

"iii. to reduce the level of emissions of toxic substances for the total facility, on a risk prioritized basis."

Again, somewhat the same rationale for this particular amendment. The concern around exposure to the environment or to human beings is all about emissions or escapes of toxins. It's so important to marshal scarce resources, both on the part of government and industry, and to focus on the risks.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We won't be supporting this. Quite simply, it's contradictory to the intent of the bill, and that's not what we want to see. When you look at Ontario's environmental record to date regarding emissions, it simply isn't sufficient to continue to do what we've been doing in the past, and that was the end-of-the-pipe approach. There's broad public support for the initiative we have before us today, and certainly by supporting this we would be altering the intent of that. That's contrary to the intent of the bill.

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The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Section 4, page 13, a PC motion.

Mr. Toby Barrett: I move that paragraph 4 of subsection 4(1) of the bill be struck out and the following substituted:

"4. A description of the total facility that uses or creates the toxic substance, including,

"i. a description of how, when and where the substance is emitted from the total facility, and

"ii. quantifications that,

"A. were made under section 9 before the plan was prepared, and

"B. were used to prepare the plan."

Again, the focus on the word "emitted" is a concern with respect to doing something about emissions and preventing emissions, rather than just documenting chlorine in water, for example.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Kevin Daniel Flynn: Quite similar to the previous argument, the intent is to do more than just deal with emissions. The whole intent of this bill is to deal with the use and the creation of toxics.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Section 4, page 14, a PC motion.

Mr. Toby Barrett: I move that paragraph 5 of subsection 4(1) of the bill be struck out and the following substituted:

"5. A description and analysis of the options, determined based on consideration of the risk of exposure to emissions, for reducing the use and creation of the toxic substance at the facility."

I mentioned chlorine. We were told by one of the deputants that chlorine is an extremely hazardous substance, but the hazardous nature of this substance allows us to make our water safe to drink. We don't necessarily need legislation to reduce chlorine that is being intentionally put in water. What we want to do is reduce the risk associated with chlorine by reducing the probability of exposure, reducing the probability of emission, not reducing the use of chlorine.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We won't be supporting it again. Same argument as before; these are starting to sound quite similar.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Section 4, page 15, a PC motion.

Mr. Toby Barrett: I move that subsection 4(1) of the bill be amended by adding the following paragraph:

"7.1 In the case of a facility that uses the toxic substance in relation to the use and processing of raw material feedstocks from nature, such as crude oil, rocks and trees,

"i. a description and analysis of options, determined based on consideration of the risk of exposure to emissions, that were considered for reducing the emission of the toxic substance into air, water and land,

"ii. a statement identifying the options described in subparagraph i that will be implemented, or a statement that none of the options will be implemented, and

"iii. if an option described in subparagraph i will be implemented, the items set out in subparagraphs 7 i to v, with necessary modifications."

Again, the importance of the focus on emissions of toxic substances, based on scientific evaluation of the rate of risk. I mentioned before that substances that are contained within closed lines, say, at an oil refinery, do not themselves present a risk to humans or the environment. There are emergency preparedness processes that are in place and have to be maintained, again, to help

deal with the possibility of emissions and to deal with emergencies like that as rapidly as possible.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: As we move through on the consultative process that's envisioned, we would not be supportive of this motion. What we intend to do is work closely and consider the approaches that other jurisdictions have taken in order to address concerns that are associated with the application of requirements to some of the substances. An example of that may be the metal alloys, for example, that we were talking about before.

The intent is to work with stakeholders in a variety of industries to develop the right approach for each of the sectors and to come up with a made-in-Ontario toxic solution that the people of Ontario would be supportive of.

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett?

Mr. Toby Barrett: I'm quite heartened by the statement by the government to work with stakeholders, because so many stakeholders came before this committee and did their best to make clear not only the cost of compliance with some of this process, but the fact that, as they indicated, the level of detail is neither necessary nor useful in terms of reducing the kinds of toxics that present a real risk to people through exposure.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is defeated.

We have section 4, page 16, a PC motion.

Mr. Toby Barrett: I move that section 4 of the bill be amended by adding the following subsection:

"Exemption

"(1.1) A facility is not required to include the items described in paragraphs 4, 5, 6 and 7 of subsection (1) in a toxic substance reduction plan for a toxic substance if the use of the toxic substance relates to the use and processing of raw material feedstocks from nature, such as crude oil, rocks and trees."

Again, I think of the Ontario Mining Association, who testified before all of us here. They indicated that a risk-based decision-making process on toxics makes sense to them. Their president explained further that toxicity will vary according to the nature of exposures—inhalation, skin contact or ingestion—the form of substance to which exposure occurs, and the duration of exposure. So there are a number of variables there, as explained to this committee. As you said, this is why we are strongly urging the government to refrain from the inclusion of substances based solely on the consideration of their inherent toxicity without a disciplined consideration of exposure, which is a critical element of full risk evaluation and thoughtful management of chemical substances.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: Once again, we aren't supportive. If we adopted all the PC amendments, I don't think we'd have anything left. I think they've all been exemptions; there'd be nothing left to exempt.

We believe there's considerable value in undertaking a reductions planning exercise for natural feedstock materials. Developing toxic substance reduction plans for toxics and feedstocks would help facilities to identify and to better understand the overall use of toxics, including from natural sources, and provide incentives to consider alternate raw materials where that's feasible.

We think we're taking a balanced approach. There obviously are people who are trying to weaken this legislation; there are people who think it doesn't go far enough. What we're presenting today are some amendments to a bill that we think is being presented in a balanced sense, that understands that the people of Ontario want increased environmental protection but not necessarily at the expense of the economic health of this province. We believe that the bill, as stated and with the amendments, provides that balance.

The Vice-Chair (Mr. Jim Brownell): Further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Shall section 4 carry? All in favour? Opposed? Carried.

Now, since we have no proposed motions for sections 5, 6 and 7, shall those sections carry? All in favour? Opposed? Carried.

We move to section 8. We have a government motion, page 17. Ms. Mitchell.

1500

Mrs. Carol Mitchell: I move that clause 8(1)(b) of the bill be amended by striking out "available to the public" and substituting "available to the public on the Internet and by other means".

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: Quite simply, we're responding to the needs of the stakeholders. They have requested that this bill clearly articulate that the public will have access to certain information through the Internet. This clarifies that intent.

The Vice-Chair (Mr. Jim Brownell): Any further debate? All in favour of this motion? Opposed? The motion is carried.

We move on to section 8, page 18: a PC motion.

Mr. Robert Bailey: I move that section 8 of the bill be amended by adding the following subsection:

"Scope of public information

"(1.1) For the purposes of clause (1)(b), the owner and the operator of a facility is only required to make available to the public the portions of a summary that relate to the risk of exposure to emissions."

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Robert Bailey: The Sarnia-Lambton Environmental Association, which presented here as a deputant, felt that disclosure of information around the use of toxic substances may create unwarranted fears amongst the public and unattainable expectations within the community. The Sarnia-Lambton Environmental Association also supports the belief that the community has a right to know about toxic emissions and that industry has an obligation to limit emissions based on a scientific evalu-

ation of the risk for exposure and the potential for adverse effect on human health and the environment.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: If the intent was to only deal with emissions, then the bill would certainly only deal with emissions. The intent of this act is to go much further than that: to actually deal with the creation and the use of toxic substances and to inform Ontarians about those toxic substances. So we will not be supportive.

The Vice-Chair (Mr. Jim Brownell): Any further debate? All in favour of the motion? Opposed? The motion is lost.

Section 8, page 19: government motion, Ms. Mitchell.

Mrs. Carol Mitchell: I move that section 8 of the bill be amended by adding the following subsection:

“Use of single document

“(3) Summaries of more than one toxic substance reduction plan may be contained in a single document.”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: This motion, along with motions 10, 21 and 33, is an example, I think, where we’ve allowed flexibility in the case of toxic substance reduction plans and reports on the substances of concern, respectively. As we heard from industry, there was a lack of clarity, in their feeling that perhaps they would have to submit an individual report for each one of the toxic substances that are in their facility. All we are looking for, really, is for that one document that may include a number of toxic substances.

The Vice-Chair (Mr. Jim Brownell): Further debate? You’ve heard the motion. All in favour? Opposed? Carried.

Shall section 8, as amended, carry? All in favour? Opposed? Carried.

Section 9, page 20: We have a PC motion.

Mr. Toby Barrett: I move that section 9 of the bill be struck out and the following substituted:

“Toxic substance accounting

“9.(1) 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 in accordance with the regulations.

“Exemption

“(2) Subsection (1) does not apply if the facility’s use of the toxic substance relates to the use and processing of raw material feedstocks from nature such as crude oil, rock and trees.”

The Vice-Chair (Mr. Jim Brownell): Any comments?

Mr. Toby Barrett: Again, substances that are contained within tanks and vessels in closed lines do not present a risk to humans or to the environment except when there is an emergency situation where there’s an emission. Given this, the prime focus of the bill for manufacturing facilities should be on reducing those

kinds of releases or those kinds of emissions on a risk basis.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We would not be supportive of this. Simply, all this would do is maintain the status quo. The people of Ontario and we agree that stronger legislation needs to be brought to bear on this issue, and that’s what the intent of the bill is.

Changes to the bill, as proposed by this motion, would mean that the facility would not have to complete a process-by-process analysis of toxic use, creation, transformation or destruction, and the intent of the act simply is that they would.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is lost.

Shall section 9 carry? All in favour? Opposed? Carried.

We move on to section 10. We have page 21, a government motion. Ms. Mitchell.

Mrs. Carol Mitchell: I move that section 10 of the bill be amended by adding the following subsection:

“Use of single document

“(2.1) Reports prepared under this section with respect to more than one toxic substance may be contained in a single document.”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: The intent is similar to a previous motion. That is, businesses came forward and said that they didn’t want to get mired in paperwork on this. The intent of this is to allow for that flexibility that allows the information we’re seeking to be contained in one document or report.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is carried.

Section 10: page 22, a PC motion. Mr. Barrett.

Mr. Toby Barrett: I move that section 10 of the bill be amended by adding the following subsection:

“Same

“(3.1) Despite subsection (3), a facility is not required to disclose to the public the use or presence of a toxic substance at the facility if,

“(a) the disclosure would result in disclosure of the facility’s proprietary information or other information that could create competitive disadvantage for the facility in relation to competitors in Ontario and in other jurisdictions; or

“(b) the disclosure would cause increased security concerns for the facility.”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Toby Barrett: Again, some of this information came from the Canadian Petroleum Products Institute, and they stated that it’s “very important that the public is informed about the actual risks associated with toxic substances.” They indicated all member companies under the umbrella of the CPPI, the Canadian Petroleum Pro-

ducts Institute, “have environment, health and safety procedures to communicate with their local communities about their operation, their emissions, the potential risks, emergency preparedness and key improvement plans.” Broadly sharing simply “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 or environment of Ontarians.”

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: I think there’s actually similarity in the intent. The mover of the motion is suggesting that it be included in the bill or the act, and we’re suggesting that the best place for this type of a discussion to take place—where our aim in this, I think, is the same as the intent that has just been espoused by Mr. Barrett. We think we can craft an effective regulation that balances the community’s right to know about toxic substances with industry’s concern about confidentiality of their products and safety. We think the best place to do that is in a consultative process as the regulations are being drafted.

1510

Mr. Toby Barrett: That’s encouraging, and I know this has been done before at the regulation stage. I would look forward to hearings once the regulations are published. I think it would be very important, in that case, for a standing committee—I know that was done with respect to the nutrient management regulation—to open that up again and see how that works out as far as the regulations once we see them.

The Vice-Chair (Mr. Jim Brownell): Further debate? You’ve heard the motion. All in favour? Opposed? The motion is lost.

Next we move to section 10, page 23, a government motion.

Mrs. Carol Mitchell: I move that section 10 of the bill be amended by,

(a) striking out “available to the public” in subsection (3) and substituting “available to the public on the Internet and by other means”; and

(b) striking out “available to the public” in subsection (4) and substituting “available to the public on the Internet and by other means”.

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Kevin Daniel Flynn: Just a clarification, as before, that this information will be available online for members of the public.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is carried.

Section 10, page 24, a PC motion.

Mr. Toby Barrett: I move that section 10 of the bill be amended by adding the following subsection:

“Same, limitation

“(5) Despite subsection (4), the director shall not make information available to the public linking a toxic substance to a consumer product unless the toxic substance

is identified as a toxic substance in schedule 1 to the Canadian Environmental Protection Act, 1999.”

As I recall, during the deputations, the plastics industry commented on public disclosure in section 10, where it permits the director to make information available to the public. They cautioned this committee to take extreme care so that any information released to the public is not misconstrued and causes collateral damage to another substance. I know they described an example with respect to the use of ethylene. It’s a gas that’s used to make polyethylene, a solid—a totally different substance. Oftentimes, people do get confused—I get confused—with some of these terms and may assume that ethylene and polyethylene are somewhat the same product, when they could be completely different, apparently.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We’ve heard from the stakeholders in the public hearings to date, and it’s our intention that information provided to Ontarians on toxics and consumer products has to be accurate. Important as well, it’s got to be balanced, and it always has to be provided within the appropriate context. The government is going to continue to consult with stakeholders on the development of regulations related to the disclosing of information. It’s our intent during those consultations to find the balance between public transparency, which is obviously a major intent of this bill, and also the protection of confidential business information.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is lost.

Shall section 10, as amended, carry? All in favour? Opposed? The section is carried.

Now we move on to a new section, 10.1, on page 25. This is an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Institute established

“10.1(1) The minister shall establish a body known as the Ontario Toxic Substance Use Reduction and Safer Alternatives Institute, which may be affiliated with one or more universities or colleges in Ontario.

“Purposes of Institute

“(2) The purposes of the institute established under subsection (1) include,

“(a) providing general information about and publicizing advantages of and developments in toxic substance use reduction and safer alternatives;

“(b) establishing courses, seminars, conferences and other events, reports, updates, guides and publications to provide technical information for facilities;

“(c) working in co-operation with the ministry, other ministries and other levels of government regarding promotion of toxic substance use reduction and safer alternatives;

“(d) developing and providing curriculum and training for higher education students and faculty on toxic substance use reduction and safer alternatives;

“(e) engaging in research, development and demonstrations of toxic substance use reduction and safer alternatives, including assessments of the impact of adopting such methods on the environment, public and workplace health, the economy and employment within affected facilities;

“(f) developing by a prescribed date and in conjunction with the ministry and any other prescribed ministries, a toxic substance use reduction and safer alternatives planning program for individuals who wish to be certified as toxic substance use reduction and safer alternatives planners;

“(g) sponsoring research or pilot projects to develop and demonstrate innovative technologies for toxic substance use reduction and safer alternatives;

“(h) assisting in the training of inspectors and others, if so requested by the ministry;

“(i) providing toxic substance use reduction training and assistance to individuals, community groups, workers, and municipal government representatives so as to allow them to understand and review reporting requirements, toxic substance reduction plan summaries, and other information available to the public under this act; and

“(j) conducting studies on potential restrictions on the use of toxic substances in Ontario, including,

“(i) existing provincial, national, and international experiences with restrictions,

“(ii) social, environmental, and economic costs and benefits of adopting restrictions, and

“(iii) specific toxic substances that should be considered for restrictions in the province and how such restrictions could be implemented.

“Planning program

“(3) The planning program referred to in clause (2)(f) shall provide training with respect to the following:

“1. Assisting facilities in the development and implementation of current toxic substance use reduction and safer alternatives.

“2. Preparing, reviewing and approving toxic substance reduction plans.

“Precautionary principle

“(4) The institute established under subsection (1) shall apply the precautionary principle and the principles of sustainable development in carrying out its duties and responsibilities under this act.”

Simply, this bill before us is silent on the establishment of a toxic reduction institute. If in fact you're going to develop the bill and deliver the goals that have been set forward, then you should be following a model that's effective. In Massachusetts their toxic reduction institute has been quite effective, in fact I would say integral to the success of their law. The expert panel set up to deal with toxics called for an institute as we've outlined here. Again, if the government is concerned with having a law that will actually deliver the reduction of toxics, it needs this mechanism.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Kevin Daniel Flynn: We're not planning to establish a separate institute in this regard, although the member is right: When the Massachusetts model was established, it did include an institute. Massachusetts was quite a few years ahead of its time at that point and was basically out there on its own. The institute model we think works in that regard. What we're proposing is a network approach where we continue to work much more with our partners in industry and academia and members of the public, members of NGOs that exist today that simply did not exist 20 years ago.

We're also going to work with our partners to provide training and scientific research and to promote safer alternatives. The institute method is not the preferred method at this point in time.

1520

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett.

Mr. Toby Barrett: The one concern here: We really don't know how much this would cost.

The Vice-Chair (Mr. Jim Brownell): Okay. Any further debate? Mr. Tabuns.

Mr. Peter Tabuns: Just that I've been working on toxic chemical issues for 20 years, and I have to say that 20 years ago there was a network of NGOs, individuals and academics who were working on these issues. That is not a new development in the world. Having an institute where you have a concentration of intellectual ability to carry forward a program would be very useful. I think you're missing out on an effective lever to make this bill actually deliver the goods.

I just call for a recorded vote.

Ayes

Tabuns.

Nays

Bailey, Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Now we move to a new section: 10.2, page 26, NDP, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Establishment of toxic substance reduction targets

“10.2 (1) The government of Ontario shall take measures to achieve the following targets through the use of toxic substance use reduction and safer alternatives:

“1. Within five years after the coming into force of this act, a 50% reduction in the use of toxic substances in Ontario from quantities released in the year the act came into force.

“2. Within five years after the coming into force of this act, a 20% reduction in the use of toxic substances in Ontario from quantities used in the year the act came into force.

“3. Within 10 years after the coming into force of this act, a 40% reduction in the use of toxic substances in Ontario from quantities used in the year the act came into force.”

Very simply, the expert panel which the government appointed recommended that the act include clear, viable and progressive goals. The Massachusetts Toxics Use Reduction Act required a state-wide 50% reduction of toxic by-products within 10 years. If we’re actually going to spur green chemistry as a new industrial sector in Ontario and we’re going to reduce the amount of toxics that are both produced and released in this province, you need to have targets. If you don’t have targets, five years from now we could be in a situation where exactly the same amount of toxic chemicals is being released into the environment and the government of the day could say, “Well, you know, we did our best. There were no targets set. We’re in compliance with the act.” I think, if you’re actually going to have an effective act and an ability for the public to hold the government of the day accountable, you need the targets.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Barrett.

Mr. Toby Barrett: With respect to targets, I know this committee received testimony from Kathleen Perchaluk of the Canadian Cancer Society. The Canadian Cancer Society “recommends that Bill 167 include targets to effectively reduce the release of toxic chemicals,” and I don’t think this focuses so much on release or emissions. As I recall, there is an amendment in here from the government with respect to targets, and I know that the concern from the Canadian Cancer Society is that this would be somewhat disingenuous if it adds in targets but does not address release.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Yes, the previous speaker is right. If you look ahead to motion 41, you’ll have a motion before you in the next little while that would establish the authority in the bill for the government to indeed set targets. This, I believe, signals the intent of the government to set targets. At this point in time, though, we’re not prepared to set arbitrary targets. What we’re proposing to do is give the affected facilities time to collect and submit baseline information on toxics use and position themselves. We’re proposing that after receiving the first cycle of reports from the facilities, we would examine the information received and consider what would constitute reasonable targets. Developing targets appropriate for Ontario needs to consider that while toxics remain a significant concern, we likely have made some progress in reducing them since 1989, when the Massachusetts program started. Industry has told us that some of the low-hanging fruit has been picked, and we certainly need to take this into account as we set those targets in the future.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett.

Mr. Toby Barrett: Well, there is concern here. A 50% reduction in the use of toxic substances would result

in shutting down a fair bit of manufacturing in the province of Ontario. Some of these substances—granted they are toxic and they are used to make other substances, but these substances are needed.

I know I received an e-mail with respect to the refining industry in Ontario. The only way to comply with a 50% reduction in the use of toxic substances—that’s what they use—to reduce that by 50% over five years, would be to reduce refining in Ontario or to do the refining outside of Ontario and essentially ship it into the province.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Tabuns.

Mr. Peter Tabuns: Yes, I don’t want to waste the committee’s time. I just want to note that the whole intent here is to substitute non-toxic products for ones that are toxic and currently in use.

Frankly, if you want to drive green industry and you want to drive green chemistry, that’s what you’ve got to do. The jurisdictions that are smart enough to actually engage in an aggressive program of substitution will get ahead of us. We will not be leading-edge on industrial innovation or chemistry; we will lose jobs. We’ve done that in other sectors. A clinging to the chemistry of the past is not going to help Ontario. It’s going to hurt us in terms of health. It’s also going to hurt us economically.

Anyway, I’ve made my arguments; everyone else has made theirs. I’d like a recorded vote.

Ayes

Tabuns.

Nays

Bailey, Barrett, Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is defeated.

Next, we move to section 10.3. This is a new section, page 27, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Establishment of fund

“10.3(1) Upon the coming into force of this act, the minister shall,

“(a) establish a fund to be known as the toxic substance use reduction and safer alternatives fund; and

“(b) appoint an administrator who shall be responsible to the minister for meeting the purpose of the fund.

“Purpose of fund

“(2) The purpose of the fund referred to in subsection (1) is to provide monies, which shall be dedicated and used to enable the minister, the ministry and other ministries to meet their obligations in implementing this act.

“Fund sources

(3) The fund shall have credited and transferred to it on an annual basis monies from the following sources:

“1. All fees imposed on facilities pursuant to section 10.4.

“2. All fees collected in connection with licences under the authority of clause 49(1)(e).

“3. All fees collected as penalties for contraventions of offences under this act.

“4. Any grant, gift or other contribution explicitly made to the fund.

“5. Any interest earned on monies in the fund.

“6. Any other monies that may be available or may be appropriated from the consolidated revenue fund for the implementation of this act.”

The Vice-Chair (Mr. Jim Brownell): I would like to say that this motion is out of order according to standing order 57. It's a money motion, and it's out of order.

Mr. Peter Tabuns: Okay.

The Vice-Chair (Mr. Jim Brownell): All right. We'll move on to 10.4, page 28. This is an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: Given that the previous one was ruled out of order, this is withdrawn.

The Vice-Chair (Mr. Jim Brownell): Thank you. Next we have a new section 10.5: page 29, an NDP motion, Mr. Tabuns.

1530

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Technical assistance programs for businesses

“10.5(1) The minister shall, in consultation with other ministries, colleges, universities and private consortia, facilitate business transition to toxic substance use reduction and safer alternatives in Ontario by establishing a technical assistance program for businesses.

“Program content

“(2) The technical assistance program for businesses shall include the following:

“1. Programs to evaluate technologies, encourage university research and industrial collaboration, attract funding and additional support through federal and private sector grants and financial assistance.

“2. Direct grants and loans to businesses for costs required to implement toxic substance use reduction and safer alternatives.

“3. Technical support for individual companies or sectors.

“4. Technical assistance in assessing toxic substance use reduction and safer alternatives and assistance in forming groups to assess and develop safer alternatives.

“5. Research and development of safer alternatives, including demonstration projects.

“6. Market development programs to create demand for safer alternatives.

“7. Conferences, seminars and workshops focused on solving problems and evaluating technology development opportunities for particular sectors.

“8. Publications to assist particular sectors develop and implement toxic substance use reduction and safer alternatives.

“9. Such other measures as may be prescribed.”

Very simply, if we want companies to make the transition from using, creating and relying on toxic substances, we're going to have to assist them, and this would be the methodology for providing that assistance.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We understand the intent here. We believe that by not prescribing the components of the assistance program, the ministry would have more flexibility in how and where that assistance should be provided.

We've already announced that if the bill is passed, the government plans to invest \$24 million to help industries transform their processes, find green chemistry alternatives and reduce the use of toxics in their operations.

It's likely that the ministry would also prepare some guidance documents to assist facilities in meeting their requirements and its associated regulations, if the bill is passed.

Also, the ministry is proposing to promote safer alternatives through support for industry and academic work on green chemistry and engineering.

We don't require any sort of legal authority to provide assistance to business, and it's our intent to provide that assistance.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. All in favour? Opposed? The motion is lost.

We have a new section, 10.6: page 30: an NDP motion, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Technical assistance programs for employees

“10.6(1) The minister shall, in consultation with the Minister of Labour, colleges and universities, cooperate in facilitating employee transition to toxic substance use reduction and safer alternatives in Ontario by establishing a technical assistance program for employees.

“Program content

“(2) The ministers mentioned in subsection (1) shall jointly develop a plan to ensure just and fair transition to re-employment assistance, vocational retraining or other support or arrangements to enable any employee displaced in the province as a result of the implementation of toxic substance use reduction or safer alternatives measures to be,

“(a) eligible for an available job with at least equivalent wages, benefits, and working conditions;

“(b) eligible for vocational retraining and job placement;

“(c) entitled to receive re-employment assistance and health benefits; and

“(d) entitled to receive any additional benefits pursuant to the provisions of a collective bargaining agreement.”

Very simply, in the unlikely event that this bill results in a need for workers to move from one form of production to another, this would provide them with that assistance. The reality is that we've had people in the past, in this province, working with very toxic substances. Actually, they continue to, when you talk about asbestos. Where those hazards are eliminated, then there should be a program to help the workers who are involved move on to other employment.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett.

Mr. Toby Barrett: There certainly would be a need for this kind of employment or lack-of-employment assistance if much of this legislation went forward; in particular, some of the targets that were described earlier.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: I think it's a matter of whether you consider the glass half full or half empty. We on this side consider that it's half full. We don't expect the impact of this legislation to be overly onerous on business. In fact, we believe the implementation of this bill will actually see the generation of economic opportunities for business.

Some of the speakers that came forward during the public hearings gave us, I think, some excellent examples of where profitability had been increased. Very small investments had been made; increased profitability, as I said; and very short payback periods, which can offset the costs of any implementation.

It's also our intent to include some grants for small business to assist in meeting proposed new requirements, as well as grants to any size facility that takes early action to implement toxics reduction actions.

We believe that it's covered off. We believe that instead of creating unemployment, we're going to see increased employment opportunities as a result of the passage of this bill.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Next, we have a new section 10.7, on page 31, an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: Can I just ask that this be considered—no.

Interjection.

Mr. Peter Tabuns: I know. I think I have support from some on the committee, but I understand it's ne-

cessary. The movement of the head of the clerk indicates his response to my suggestion.

I move that the bill be amended by adding the following section:

“Identification of potential priority toxic substances

“10.7 (1) Not later than one year following the coming into force of this act, and every two years after, the minister shall identify and publish a list under subsections (4) and (5) of not more than 10 potential priority toxic substances of concern commonly used in Ontario industry or used in products sold in Ontario.

“Same

“(2) The first list published under subsection (1) shall be known as list 1 and the subsequent lists shall be numbered sequentially and shall each contain, subject to subsection (6), not more than 10 toxic substances.

“Criteria for identification

“(3) In determining whether a toxic substance should be identified as potential priority toxic substance under subsection (1), the minister shall consider,

“(a) whether the substance is a carcinogen, mutagen or reproductive toxin;

“(b) whether the substance is persistent or bio-accumulative;

“(c) whether the substance is an endocrine disruptor;

“(d) whether the substance is inherently toxic;

“(e) the extent to which the substance is used in Ontario industry or in products sold in Ontario;

“(f) the extent to which sensitive populations are exposed to the substance; and

“(g) such other characteristics as may be prescribed.

“Consultation on potential priority toxic substances

“(4) The minister shall ensure that notice of a list referred to in subsection (1) is made available to the public and shall seek comment from the public regarding,

“(a) prioritization of assessment of substances on the list,

“(b) whether substances should be added to the list, and

“(c) whether substances should be deleted from the list.

“Final version of list to be published

“(5) Following the consultation referred to in subsection (4), the minister shall make available to the public the final version of the list containing the order in which priority toxic substances on the list shall be the subject of safer alternative assessment reports under subsection (7).

“Ministerial authority to add to list

“(6) Despite subsection (1), the minister may at any time add a substance to a list, in which case subsections (4) and (5) shall apply at that time and the list may contain more than 10 priority toxic substances.

“Safer alternatives assessment reports

“(7) Within 180 days after the publication of a final version of a list referred to in subsection (5) and every year after, the minister shall select priority toxic substances from the list in the order in which they appear on the list and ensure that a safer alternatives assessment

report that evaluates the availability of safer alternatives to these substances is conducted and published.

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“Content of report

“(8) The content of a safer alternatives assessment report for a priority toxic substance shall include the following:

“1. The uses and functions of the priority toxic substance.

“2. The uses that result in the greatest volume or dispersion of, or highest exposure to, the priority toxic substance in the indoor, workplace, and natural environment.

“3. Consideration of the potential impacts to human health and the environment of the continued use of the priority toxic substance.

“4. Whether any of the existing uses of the priority toxic substance are trivial or clearly unnecessary.

“5. The public policy implications of a reduction in the use of the priority toxic substance where its current use is non-trivial or clearly necessary.

“6. Whether alternatives are available for the uses and functions of the priority toxic substance.

“7. Whether the alternatives identified in paragraph 6 are unacceptable, require further study, or are safer than the priority toxic substance.

“8. A qualitative discussion of the economic feasibility, opportunities or costs associated with adopting and implementing any safer alternatives to the priority toxic substance including a qualitative characterization of,

“i. the economic impacts of adopting and implementing a safer alternative on the Ontario economy,

“ii. any impacts on the workforce or quality of work life,

“iii. potential costs or benefits to existing business,

“iv. potential impact on the cost of providing health care if the product is a medical product, and

“v. the extent of human exposure to the priority toxic substance that could be eliminated and health care costs saved by adopting and implementing a safer alternative.

“9. Recommendations on a course of action that should be employed with respect to the priority toxic substance, including whether all uses of the substance should be prohibited.

“10. Such other matters as may be prescribed.

“Consultation on report

“(9) The minister shall ensure that notice of a draft of a safer alternative assessment report is made available to the public and shall seek comment from the public on the contents of the draft report before the report is finalized.

“Final version of report to be published

“(10) Following the consultation referred to in subsection (9), the minister shall make available to the public the final version of a safer assessment report.

“Timing for completion of reports

“(11) The minister shall ensure that not later than three years after the publication of a final version of a list under subsection (5), an assessment report has been drafted and finalized for each priority toxic substance on the list.

“Alternatives action plans

“(12) Not more than one year after the publication of a final version of a safer alternative assessment report for a priority toxic substance under subsection (10), the minister shall use the report to establish an alternatives action plan for that substance.

“Goal of plans

“(13) The goal of an alternatives action plan shall be to coordinate the activities of the government of Ontario and to require users of priority toxic substances to,

“(a) act as expeditiously as possible to ensure substitution of a priority toxic substance with a safer alternative while,

“(i) minimizing job loss, and

“(ii) mitigating any other potential unintended negative impacts; and

“(b) achieve such other goals as may be prescribed.

“Content of plans

“(14) Each alternatives action plan shall contain the following:

“1. Timetables, schedules and deadlines for achieving substitution of a priority toxic substance with safer alternatives for specified uses.

“2. Requirements for all facilities that manufacture, process, or otherwise use a priority toxic substance to demonstrate how they will substitute all specified uses of the substance with a safer alternative, including with respect to consumer products containing the priority toxic substance.

“3. Where the safer alternatives assessment report indicated that safer alternatives are feasible and of comparable cost and that all uses of the substance should be prohibited, a specific timetable for substituting a safer alternative for the priority toxic substance.

“4. Where the minister determines that implementation of the alternatives action plan for the substitution of a substance, or specified uses of a substance, will take longer than five years, a requirement for plain language labelling of products containing the substance identifying that the substance is present in the product and the impact of the substance on human health and the environment.

“5. Where the safer alternatives assessment report finds that safer alternatives are feasible but require extensive capital expenditure or training, the minister shall implement technical assistance programs for businesses and employees.

“6. Where the safer alternatives assessment report finds that safer alternatives are not feasible, the alternatives action plan shall designate research and development activities to be undertaken with a view to examining the future feasibility of finding safer alternatives for the substance.

“7. Such other items as may be prescribed.

“Consultation on plan

“(15) The minister shall ensure that notice of a draft of an alternatives action plan is made available to the public and shall seek comment from the public on the contents of the draft plan before the plan is finalized.

“Final version of plan to be published

“(16) Following the consultation referred to in subsection (15), the minister shall make available to the public the final version of an alternatives action plan for a substance.

“Action by other ministries

“(17) Following the publication of the final version of the plan referred to in subsection (16), all ministries shall take any required actions as set out in the plan.

“Precautionary principle

“(18) When exercising the duties and responsibilities set out in this section, the minister shall have regard to the precautionary principle and the principles of sustainable development.”

Currently, Bill 167 doesn't address the issue of substitution of less toxic substances, and we need a legislative framework within which to do that. This amendment does that. It gives comprehensive alternatives to industry. It encourages substitution that is consistent with the Massachusetts program.

The reality is that Ontario industry is already selling into the European Union, and the REACH program is going to be changing the rules of the game. We need to get a lot closer to what Europe is doing. This amendment will allow us to do that. I urge the government to support it.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We will not be supporting this. The government, as a previous speaker stated, is not proposing at this time to require safer alternatives.

Quite clearly, we heard from the chair of the expert panel, Dr. Diamond. I'll reiterate what I said earlier. She said that the science behind safer alternatives is varied and inconsistent. “Science is constantly moving.... There are some substances that cannot be substituted, and it's industry that has to make those decisions, not government.”

What we are doing, in order to avoid these issues, though, is supporting the development of green chemistry in the pursuit of alternatives. Our government is committed to promoting safer alternatives through programing, specifically through support for industry and academic work on green chemistry and engineering.

Additionally, the regulated facilities are also going to be encouraged to consider safer alternatives to toxics in the development of their toxics substance reduction plans.

We've tried to achieve a balance. Obviously, we've heard today that some people would like things to remain as they are, and some people would like them to go off much further than we're proposing. We're taking what we think is a balanced approach to this. We don't want to place additional unnecessary administrative burdens on facilities, but we do want to ensure that we've got strong legislation. We believe we've struck the right balance.

The Vice-Chair (Mr. Jim Brownell): Further debate? You've heard the motion—

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Barrett, Flynn, Jeffrey, Kular, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

We have a new section, 10.8, on page 32. It's an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: This refers back to my earlier 10.2. I'll go forward, Mr. Chair.

I move that the bill be amended by adding the following section:

“Right to know

“10.8(1) The public shall have access to the information set out in subsection (2) by the means identified in subsections (3), (4), (5), (6) and (7).

“Pollutant inventory

“(2) The minister shall establish, maintain and make public a pollutant inventory that contains at least the following information:

“1. The alphabetical index record referred to in subsection 19(9) of the Environmental Protection Act.

“2. All records that are filed in the environmental site registry established under section 168.3 of the Environmental Protection Act.

“3. All reports submitted under section 6 of Ontario Regulation 127/01 (Airborne Contaminant Monitoring and Reporting) made under the Environmental Protection Act, R.S.O. 1990, c. E. 19.

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“4. All reports supplied to the ministry under the following regulations made under the Environmental Protection Act:

“i. Ontario Regulation 560/94 Effluent Monitoring and Effluent Limits—Metal Mining Sector).

“ii. Ontario Regulation 215/95 (Effluent Monitoring and Effluent Limits—Electric Power Generation Sector).

“iii. Ontario Regulation 561/94 (Effluent Monitoring and Effluent Limits—Industrial Minerals Sector).

“iv. Ontario Regulation 64/95 (Effluent Monitoring and Effluent Limits—Inorganic Chemical Sector).

“v. Ontario Regulation 214/95 (Effluent Monitoring and Effluent Limits—Iron and Steel Manufacturing Sector).

“vi. Ontario Regulation 562/94 (Effluent Monitoring and Effluent Limits—Metal Casting Sector).

“vii. Ontario Regulation 63/95 (Effluent Monitoring and Effluent Limits—Organic Chemical Manufacturing Sector).

“viii. Ontario Regulation 537/93 (Effluent Monitoring and Effluent Limits—Petroleum Sector).

“iv. Ontario Regulation 760/93 (Effluent Monitoring and Effluent Limits—Pulp and Paper Sector).

“5. The alphabetical index record referred to in section 13.1 of the Ontario Water Resources Act.

“6. All reports required under sections 61 and 81 of the Clean Water Act, 2006.

“7. All notices provided to the ministry under section 29 of the Pesticides Act.

“8. The alphabetical index record referred to in subsection 31(8) of the Pesticides Act.

“9. All adverse drinking water test results reported under section 18 of the Safe Drinking Water Act, 2002.

“10. Prescribed information, including consumer product labelling information about the impacts of prescribed pollutants on the environment and human health.

“Publication requirements

“(3) The minister shall ensure that the inventory established under subsection (2) is kept current and includes instructions in plain English and French on how to use the inventory.

“Searchable information on inventory

“(4) The minister shall ensure that the information contained in the inventory established under subsection (2) is capable of being searched by the following criteria:

“1. The name of the pollutant.

“2 The name of the person responsible for the pollutant.

“3. The geographic region, including postal code.

“4. The number of the regulation under which the information was filed.

“5. The instrument to which the information relates.

“6. The type of impact on the environment.

“7. The type of impact on human health.

“Reports

“(5) The minister shall ensure that reports, organized by the criteria set out in subsection (4) and by other prescribed criteria, may be created by a user of the inventory established under subsection (2).

“Public access

“(6) The requirement set out in this section to publish and maintain the inventory established under subsection (2) applies,

“(a) in addition to any other requirements under this act or any other act respecting public access to the documents listed in subsection (2); and

“(b) despite any requirement in any other act or regulation that would limit the disclosure or use of the documents listed in subsection (2).

“Consumer product warnings

“(7) No prescribed supplier shall supply to a consumer products that expose the consumer to a toxic substance unless the supplier includes a warning of the exposure in the prescribed manner.

“Safety data sheets

“(8) Despite clause 38(1)(d) of the Occupational Health and Safety Act, upon the coming into force of this act an employer shall furnish forthwith to the fire department which serves the location in which the workplace is located, a copy of every unexpired material safety data sheet required by that act in respect of hazardous materials in the workplace as defined under that act.”

Members of the public have a right to know about toxics in their environment. They need full and ready

access to the information. This ensures that the toxics data that is out there is available in a readily searchable format, and that the citizenry will have at least the power of knowledge in their dealings with these kinds of problems.

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett?

Mr. Toby Barrett: With respect to the amendment that commences on page 32, right off the top, the subtitle talks about a pollutant inventory and then gives considerable detail about pollutants and effluent. This proposed legislation is about reducing toxics, and I don't know why we would have this confusion between a pollutant and a toxic. Again, we've been given government legislation that gives us no idea what a toxic substance is. There's no definition. We've received a number of excellent definitions from people who came before the witness table. I think we're hampered in going forward on this legislation when we see references to effluent, to pollutants, to toxics. I think there's going to be an awful lot of confusion out there in the public.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: I don't think there'll be any confusion at all. In fact, the government is proposing to set up a very-easy-to-understand, web-based information system that's going to provide timely and easily accessible information to all Ontarians on toxics. Quite frankly, we don't need legal authority to set that system up; it's something that we can do without passing a motion to do that.

We think that the new authorities in the bill that are related to consumer products that are talked about in the motion already position the ministry to take action to protect Ontarians, if that becomes necessary.

We take all these suggestions quite seriously. We consulted with the chief of emergency management in the Office of the Fire Marshal, and they confirmed that the provision of MSDS to the fire departments would create a huge administrative burden for departments and not have any significant benefit.

So while I understand some of the points that are being made, we think the approach we're taking is the right one and the balanced one.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. Shall section 10.8 carry?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Jeffrey, Kular, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Next, we move to section 11, page 33: a government motion, Ms. Mitchell.

Mrs. Carol Mitchell: I move that section 11 of the bill be amended by adding the following subsection:

“Use of single document

“(2) Reports prepared under this section with respect to more than one substance of concern may be contained in a single document.”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: It’s similar to our previous motions 10, 19 and 21. This adds to the flexibility for the other documents required under the bill. We listened to the stakeholders in this regard and agreed that a single document would suffice to meet the intent of the bill.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett.

Mr. Toby Barrett: I won’t be supporting this. I know we had a discussion a number of amendments ago about this term “substance of concern” and the definition of that, which is as unclear in this legislation as the definition of “toxic.” We feel that phrase should be deleted from this legislation.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You’ve heard the motion. All in favour? Opposed? Carried.

Next, we have section 11: page 34, a PC motion.

Mr. Toby Barrett: I move that section 11 of the bill be struck out.

The Vice-Chair (Mr. Jim Brownell): At this point, I have to rule that out of order. Parliamentary procedure indicates that you could vote against this section.

Mr. Toby Barrett: I see. The reason is because I just finished explaining what the last—

The Vice-Chair (Mr. Jim Brownell): I’ve ruled it out of order.

Any debate on section 11?

Mr. Toby Barrett: I certainly welcome the opportunity with respect to debate on section 11. As I’ve raised a number of times—and it was raised during the hearings, as well, by the Canadian Consumer Specialty Products Association—the puzzlement around this term “substance of concern.” I know at that time I made the mistake of drinking a very strong cup of coffee, and that was affecting me. I am working on a can of Sprite, and I have no idea what is in this. There’s a picture of a lemon and a lime on the outside, but I don’t think that’s in here. Some people, when you think of the various sugar substitutes, have concerns. At what point are some of these substances in cans toxic or substances of concern? We have no indication in this legislation what we’re talking about here. I appreciate the opportunity to contribute to the debate on that.

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The Vice-Chair (Mr. Jim Brownell): Okay. Any further debate on section 11, as amended? Mr. Flynn.

Mr. Kevin Daniel Flynn: I just want to take this opportunity to tell the members, our own members as well, what a substance of concern is. It’s proposed that it include 20 toxic chemicals of concern that have already

been identified by the Ministry of the Environment and the expert panel and that are not currently tracked on behalf of the citizens of Ontario through the NPRI system. Other jurisdictions around the continent have begun to examine and act on substances of concern as well, indicating that there’s a growing awareness of the potential risks of these substances. It’s very clear what a substance of concern is. We will be supporting section 11.

Mr. Toby Barrett: Would that be an amendment to the legislation to give us that definition you just read into the record?

Mr. Kevin Daniel Flynn: I think we’ve clearly defined what the substances of concern are. We’ve got the flexibility within the proposed legislation that allows that list. That is a flexible list. The expert panel I think was quite clear that concerns emerge on a daily, weekly, monthly or yearly basis and that the legislation needs to be flexible as well. Currently, there are 20 products.

Mr. Toby Barrett: I guess the concern, and I know certainly one of the deputants made it very clear, is the necessity for them to continue their book of business; they need a robust definition of what we’re talking about here so they can make decisions accordingly. They need criteria for these kinds of decisions. You say it’s flexible. That kind of uncertainty is bad for business, and it’s probably bad when you’re dealing with some of the products that may or may not be defined as toxic once we get the regulations.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: For the edification of the member, then, I would refer him to the Great Lakes Regional Toxic Air Emissions Inventory and Ontario’s regulation 127.1. He can see the review of the substances prioritized under the federal chemical management plan as well. I think that would give him a clear indication as to what the substances of concern are.

The Vice-Chair (Mr. Jim Brownell): Okay. We’ve had the debate. Shall section 11, as amended, carry? All in favour? Opposed? The section is carried.

All right, we got through that one. Next, we have a new section: section 11.1, on page 35, a government motion. Ms. Mitchell.

Mrs. Carol Mitchell: I move that the bill be amended by adding the following section:

“Progress reports

“11.1(1) The minister shall annually prepare a report describing progress relating to implementation of this act.

“Available to the public

“(2) The minister shall make the reports prepared under subsection (1) available to the public on the Internet and by other means in accordance with the regulations.”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Kevin Daniel Flynn: As before, it’s a clarification of the intent. Some people were asking how this would be made available. This is very, very clear that the report will be made available on an annual basis and will be made available to the public and by any other means

that may come out of the consultations within the regulations.

The Vice-Chair (Mr. Jim Brownell): Any further debate? If not, shall section 11.1 carry? All those in favour? Opposed? The section is carried.

Sections 12 and 13 have no proposed amendments. Shall sections 12 and 13 carry? All those in favour? Opposed? Carried.

Section 14: page 36, a PC motion. Mr. Barrett.

Mr. Toby Barrett: I move that clause 14(1)(a) of the bill be amended by striking out the words “or substance of concern”.

By way of debate, this is linked to the previous motion and discussion with respect to what we consider the unacceptability of this phrase “substance of concern.”

The Vice-Chair (Mr. Jim Brownell): Any further debate? No? Okay. Shall the motion carry? All those in favour? Opposed? The motion is lost.

Shall section 14 carry? All in favour? Opposed? Carried.

Sections 15 through and including 28 have no proposed amendments. Shall sections 15 through 28 carry? All in favour? Opposed? Those are carried.

We are on section 29, page 37. We have a PC motion.

Mr. Toby Barrett: I move that clause 29(1)(a) of the bill be amended by striking out “or a report on a substance of concern is prepared under section 11”. And for the same reasons given in previous debate.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is defeated.

Shall section 29 carry? All those in favour? Carried.

Sections 30 through and including 38 have no proposed amendments. Shall sections 30 through to 38 carry? All those in favour? Opposed? Carried.

Next, we have section 39: page 38, a government motion, Ms. Mitchell.

Mrs. Carol Mitchell: I move that subsection 39(3) of the bill be amended by striking out “the minister, the director or a provincial officer” and substituting “the director or a provincial officer”.

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Just to clarify, this is just a housekeeping change. There are no minister’s orders in Bill 167, therefore the reference should be removed.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? Carried.

Shall section 39, as amended, carry? All those in favour? Opposed? Carried.

Now we have sections 40 to 43 with no proposed amendments. Shall sections 40 to 43 carry? All those in favour? Carried.

Section 44: page 39, a PC motion.

Mr. Toby Barrett: I move that section 44 of the bill be amended by striking out “the document is revised to meet all of the requirements” and substituting “the docu-

ment was prepared in accordance with the purposes of this act”.

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Toby Barrett: As I recall, the Canadian Vehicle Manufacturers’ Association talked about this area in section 44. They use or have experience with the ISO 14001, and their experience is to incorporate NPRI and toxic substance reduction planning into business planning. The legislation would promote integration of toxics substance reduction planning into operations. They propose that the act include a provision that allows facilities that are certified and include objectives and targets to reduce pollutants or toxic reduction to be exempt from detailed reporting requirements.

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The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Industry stakeholders that came forward told us quite clearly that they didn’t want to get into duplication or they didn’t want to increase their burdens. Bill 167, they said, should recognize existing pollution prevention and toxics reduction work that the facilities have already undertaken, and we agree with that and we listen to that. However, if the PC motion were accepted, facilities would only be required to display how their existing work was consistent with the purposes of the act, i.e., protecting human health and the environment, not that it met the requirements of the act or the regulations. So we’re saying that by accepting this motion, you potentially could allow false claims from people who were trying to circumvent the act, that existing work need not take into account the requirements of the proposed legislation. We believe that the existing approach we have to section 44 ensures that facilities can limit that burden that they don’t want and any duplication as well.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is defeated.

Next we have section 44: page 39.1, a government motion, Mrs. Mitchell.

Mrs. Carol Mitchell: I move that section 44 of the bill be amended by striking out “as long as the document is revised to meet all of the requirements of this act and the regulations” at the end and substituting “as long as all of the requirements of this act and the regulations are met”.

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Hopefully we have some agreement on this. When industry came forward, they asked us if we would write section 44 to allow facilities that have already completed existing work that meets some of the requirements of the proposed legislation to be able to use that work toward developing their toxics substance reduction plans. However, we heard that section 44 as it was written may have caused some confusion, as the facilities may feel obligated to have their existing documents revised. That was not the intent. It

was the intent, and certainly is the intent to today that we're trying to clarify, that any work that has been performed in the past in this regard can be used toward the completion of that document.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is carried.

Shall section 44, as amended, carry? All those in favour? Opposed? The section is carried.

We have sections 45 through 47, with no proposed motions. Shall sections 45 to 47 carry? All those in favour? Opposed? Carried.

Next we have section 48: page 40, a government motion, Mrs. Mitchell.

Mrs. Carol Mitchell: I move that section 48 of the bill be struck out and the following substituted:

“Review

“48(1) The minister shall, at least once every five years, consult with experts and the public about,

“(a) possible changes to the lists of substances that are prescribed as toxic substances and as substances of concern; and

“(b) possible changes to the regulations prescribed for the purposes of paragraphs 2 and 3 of section 3 and paragraph 2 of section 11.

“Additional substances

“(2) The minister shall from time to time publish lists of substances that are not toxic substances or substances of concern but that the minister proposes to consider during the next consultation under clause (1)(a).”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Again, this is as a result of some of the representations that were made during the public hearings, and the intent of this is to expand the ministry's existing requirements. Both stakeholders and the expert panel themselves have requested that Bill 167 contain some sort of mechanism for the review of thresholds. This motion would meet that request. It would ensure that over time the ministry would review its own baseline thresholds for substance use and facility size based to consultation with the public and with experts in the field.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. All in favour? Opposed? The section is carried.

Shall section 48, as amended, carry? All those in favour? Opposed? The section is carried.

We move to section 49 on page 41, a government motion. Mrs. Mitchell.

Mrs. Carol Mitchell: I move that subsection 49(1) of the act be amended by adding the following clause:

“(c.1) setting targets relating to toxic substances;”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Kevin Daniel Flynn: I think we've had this debate in some other motions, a clear indication that the government agrees with the setting of targets and thinks

that the most prudent time to set those targets is at the end of the first phase.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Toby Barrett: Yes, we have had debate, and I just remind the committee that the Canadian Cancer Society testified before the committee and stated that “Bill 167 include targets to effectively reduce the release of toxic chemicals.... Other jurisdictions that have enacted toxics use reduction legislation in the US and in Europe have demonstrated that targets are a necessary component to reducing and regulating toxics use and release.”

They do make a point of setting targets for emissions or the release of products.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: Just to be clear, then, if I wasn't, I'm saying that we agree with the cancer society. If this motion is accepted and the vote is positive, Bill 167 therefore would be amended to include new regulation-making authority that does indeed set targets.

Mr. Toby Barrett: Again, I know in the quote I just gave you that on two occasions the Canadian Cancer Society is talking about targets with respect to the release of toxic chemicals.

The Vice-Chair (Mr. Jim Brownell): Any further debate? If not, we have heard the motion. All in favour? Opposed? Carried.

Next we have section 49: on page 42, a PC motion.

Mr. Toby Barrett: I move that section 49 of the bill be amended by adding the following subsection:

“Conflict

“(1.1) A regulation made under subsection (1) does not apply to the extent that it overlaps or conflicts with a provision of an act or regulation made by the government of Canada respecting toxic substances.”

I will comment on that. This was from the Canadian Petroleum Products Institute. Eric Bristow testified: “Fortunately in Canada, through the federal government's chemicals management plan, we already have one of the most stringent processes recognized in the world for assessing which substances should be considered as toxic. The CMP”—that's the chemicals management plan—“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.”

I know that quite recently the parliamentary assistant did recognize that when industry testified they were concerned about duplication between this level of government and the federal.

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The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: If we go back to the presentation by the Canadian Cancer Society, I think all

members will recall that what they said was that with a few changes, which they suggested as well, they were very much in support of this bill.

The reason I can't support the motion that's on the floor is because it would fundamentally and negatively alter the operation of Bill 167. If the committee were to accept this motion today, Ontario would not be able to develop and implement key regulations that are necessary for Bill 167 to meet the same purposes that the Canadian Cancer Society supported right in front of us all last week.

I'd suggest that we not support this motion.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Shall section 49, as amended, carry? All those in favour? Opposed? The section is carried.

Now we have sections 50 to 63. I know that they're motions very similar to the ones, Mr. Barrett, that were previously ruled out of order. I'm wondering, do you want to group those together and speak on them, or do you want to take them separately as individual—

Mr. Toby Barrett: I may have a brief comment on some of them, just given the testimony—rather than collapsing them. We could maybe collapse at some point, but—

The Vice-Chair (Mr. Jim Brownell): Okay. We'll go to section 50, then.

Mr. Toby Barrett: I move that section 50 of the bill be struck out.

The reason I did that was at least one—

The Vice-Chair (Mr. Jim Brownell): This motion is out of order, but you can speak to the section.

Mr. Toby Barrett: Certainly. Speaking to that section—and I recognize it is out of order—for example, during committee hearings, the Canadian Chemical Producers' Association recommended "that sections 50 to 64 be deleted." They feel this is the job of the federal government.

The Vice-Chair (Mr. Jim Brownell): Okay. We'll just go through each one. Section 51.

Mr. Toby Barrett: I move that section 51 of the bill be struck out.

Further to the Canadian Chemical Producers' Association, the Sarnia-Lambton Environmental Association testified before this committee, "The SLEA is disappointed that this legislation has not recognized or been harmonized with the federal government's chemicals management plan, or CMP. The chemicals management plan is one of the most stringent processes in the world for the assessment of substances considered to be toxic."

That's my comment on that.

The Vice-Chair (Mr. Jim Brownell): Sections 50 and 51: Any further debate on those two sections? Mr. Flynn?

Mr. Kevin Daniel Flynn: I'm just asking for your guidance. I don't want to speak to each one of them, but I have some comments on them as a package. At some point, whenever it's appropriate, I would speak.

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett, would you like to just go through those—

Mr. Toby Barrett: Yes, very quickly.

If I turn to page 45, the Canadian Paint and Coatings Association basically said the same thing. During hearings, they indicated, "The proposed bill gives the authority to the Minister of the Environment to ban or restrict the manufacture and sale of products, including those that may be deemed safe through scientific review by the federal government. Expanding or mandating administrative activity to products, with no scientific basis or transparency and with no health, safety or scientific rationale, would seriously undermine the Canadian regulatory system."

We heard this time and time again, and I just wanted to reiterate that.

The Vice-Chair (Mr. Jim Brownell): Okay. I'll have you go through the sections, right to 63, and Mr. Flynn and Mr. Tabuns, if you want to do the same—talk about those sections as a unit. Is that acceptable?

Mr. Toby Barrett: I'd like to comment on 53.

The Vice-Chair (Mr. Jim Brownell): Okay, you go ahead.

Mr. Toby Barrett: Just continuing on, again we heard in testimony the concern that provincial efforts to categorize toxic substances may differ from the science-based, risk-based approach of the federal government.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Toby Barrett: Section 54—I just continue on.

The Vice-Chair (Mr. Jim Brownell): You continue on to 56.

Mr. Toby Barrett: The paint and coatings organization indicated that there's a great deal of existing legislation and regulation in Canada, and they referenced appendix A. Again, they're concerned with this duplication.

The Vice-Chair (Mr. Jim Brownell): Anything further?

Mr. Toby Barrett: I'm just turning the pages of some of the notes that I had.

The Canadian Paint and Coatings Association and member companies suggested that additional provincial legislation, as we see within these sections, "would put the national regulatory framework at risk. It creates confusion and duplication in the marketplace, adds costs to an already economically stressed manufacturing sector and hurts Canadian competitiveness."

The Vice-Chair (Mr. Jim Brownell): We'll take everything right up to page 56. Carry on.

Mr. Toby Barrett: We could probably collapse much of the rest.

The point that so many of these organizations made, and I've probably missed some of the organizations that are opposed to having this in here—very simply, what they're saying is that this is the job of the federal government. I ask, why is the provincial government duplicating work that's already being done by the federal government?

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Kevin Daniel Flynn: I think I can group all my comments into one, because I think I understand where the member is coming from.

Just so the committee knows, as a first course of action, Ontario is going to continue to work with the federal government to promote the use of the existing federal powers that deal with toxics in consumer products.

These proposed new authorities that we have before us today would position the province to take action to protect Ontarians, if necessary. Consultation with stakeholders and the public would take place prior to the development of any regulation under these new authorities, and a number of amendments that relate specifically to the regulation-making authorities are made to the bill's compliance and enforcement provisions and come into force when the powers come into force.

We understand and we recognize that the federal government is committed to protecting the public from toxics and products, and that product importation sales and labelling are issues that are traditionally addressed at the federal level, but we believe that these compliance and enforcement powers are needed in order to enforce any regulations that may be adopted or that are adopted to prohibit or otherwise regulate the manufacture, sale or distribution of toxic substances or toxics in products, should that occasion arise.

The Vice-Chair (Mr. Jim Brownell): Any further debate on sections 50 to 63? Those are the sections that we grouped together to debate.

Mr. Toby Barrett: We are collapsing these various sections for the vote—again, just as long as we understand that so many industry organizations asked us not to do this. They felt there's just no basis for Ontario to have their regulation-making powers to prohibit or regulate the manufacture, sale or distribution. They reiterated that we have the Canadian Environmental Protection Act and that this is the job of the federal government. They made reference to that legislation from 1999 as being up to date and that it was reviewed federally in 2008, with all-party agreement that it was fundamentally sound. I guess that would assume the involvement of Liberal, Conservative, NDP, Bloc—I'm not sure who else is there in Ottawa.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Shall sections 50 to 63 carry? All those in favour?

1630

Interjection.

The Vice-Chair (Mr. Jim Brownell): We're voting on sections 50 to 63.

Interjection.

The Vice-Chair (Mr. Jim Brownell): No, I ended debate.

Sections 50 to 63: All those in favour? Opposed? The sections carry.

So we move on to section 64, page 57. We have a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that subclause 49(1)(n.1) of the Toxics Reduction Act, 2009, as set out in section 64 of the bill be struck out and the following substituted:

“(n.1) prohibiting or regulating the manufacturing, sale or distribution of,

“(i) a toxic substance or any other substance prescribed by the regulations, or

“(ii) anything that contains a toxic substance or any other substance prescribed by the regulations;”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Toby Barrett: Again, the authority to ban or restrict the manufacture, distribution or sale of a product known to contain a toxic substance, as I explained earlier, should be vested in the federal government.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Just to reiterate, prior to any action on this to the development of any regulation under these new authorities, there will be a very extensive consultation period with all stakeholders.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Next, we move on to section 64: page 58, a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that clause 49(1)(n.1) of the Toxics Reduction Act, 2009, as set out in section 64 of the bill be struck out and the following substituted:

“(n.1) prohibiting or regulating the manufacturing, sale or distribution of a toxic substance, a substance of concern or any other substance prescribed by the regulations.”

Again, I'll leave that to some of the same arguments that I've made in the past.

The Vice-Chair (Mr. Jim Brownell): Any further debate? No? Those in favour of the motion? Opposed? The motion is lost.

Next, we have section 64: page 59, a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that section 64 of the bill be amended by adding the following subsection:

“(2) Section 49 of this act is amended by adding the following subsection:

“Regulations made under clause (1)(n.1) or (n.2)

“(3) A regulation made under clause (1)(n.1) or (n.2) may only be made if,

“(a) the substance or consumer product that is the subject of the regulation is not regulated under the Food and Drugs Act (Canada) or the Canadian Environmental Protection Act, 1999;

“(b) in the opinion of the Lieutenant Governor in Council, the inherent toxicity of the substance or consumer product that is the subject of the regulation and the environmental and human health exposure related to the substance or product indicate that the regulation is necessary; and

“(c) the facilities affected by the regulation have been consulted.”

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: I think during the hearings last week we had a terrific presentation from the Canadian Cosmetic, Toiletry and Fragrance Association, and I just want to be clear in our actions in this regard that as a first course of action, Ontario is going to continue to work with the federal government to promote the use of the existing federal powers to deal with toxics in consumer products. There may be cases in the future where the federal actions taken on a toxic substance under the Food and Drugs Act or CEPA will not be sufficient to address Ontario's specific concerns regarding a particular toxic substance. These proposed new authorities will position the province to take action to protect Ontarians if necessary, and I underline the words "if necessary."

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

We have section 64: page 60, a PC motion.

Mr. Toby Barrett: I move that section 64 of the bill be struck out.

It's ruled out of order.

The Vice-Chair (Mr. Jim Brownell): Out of order? Okay.

Shall section 64 carry? All those in favour? Opposed? It's carried.

Now we have sections 65 to 68 with no proposed motions. Shall sections 65 to 68 carry? All those in favour? Opposed? Carried.

We have a new section, 68.1: It's page 61R, NDP motion, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

"68.1 The Occupational Health and Safety Act is amended by adding the following section:

"Employer to make and maintain inventory

"36.(1) An employer shall make or cause to be made and shall maintain an inventory of all hazardous materials and all hazardous physical agents that are present in the workplace.

"Inventory

"(2) The inventory required by subsection (1),

"(a) shall contain such information as may be prescribed; and

"(b) shall be prepared in consultation with the committee or health and safety representatives, if any, for the workplace or with a worker selected by the workers to represent them, if there is no committee or health and safety representative.

"Amendment to inventory

"(3) Where an inventory required by subsection (1) is amended during a year, the employer, not later than the first day of February in the following year, shall prepare

a revised version of the inventory incorporating all changes made during the preceding year.

"Reasonable effort by employer

"(4) Where, under the regulations, an employer is required to identify or obtain the identity of the ingredients of a hazardous material, the employer is not in contravention of the regulations if the employer has made every effort reasonable in the circumstances to identify or obtain the identity of the ingredients.

"Same

"(5) An employer shall advise a director in writing if, after making reasonable efforts, the employer is unable to identify or obtain the identity of the ingredients of a hazardous material as required by the regulations.

"Exception

"(6) Except as may be prescribed, subsection (1) does not apply to an employer who undertakes to perform work or supply services on a project in respect of materials to be used on the project.

"Employer to keep floor plan

"(7) The employer shall keep readily accessible at the workplace a floor plan, as prescribed, showing the names of all hazardous materials and their locations and shall post a notice stating where the floor plan is kept in a place or places where they are most likely to come to the attention of workers."

The Vice-Chair (Mr. Jim Brownell): Thank you. I do have to rule that out of order because you cannot amend a bill that is not open in clause-by-clause, and the Occupational Health and Safety Act is not open in this, so I rule it out of order.

Mr. Peter Tabuns: Okay.

The Vice-Chair (Mr. Jim Brownell): Next we have a new section, 68.2, page 62R. This is an NDP motion, Mr. Tabuns.

Mr. Peter Tabuns: My expectation, Chair, is that you would rule me out of order if I were to read this—

The Vice-Chair (Mr. Jim Brownell): Yes.

Mr. Peter Tabuns: —and so on that basis, I will withdraw.

The Vice-Chair (Mr. Jim Brownell): Okay, thank you.

We have no proposed amendments from sections 69 to 73 inclusive. Since we don't have amendments here, shall sections 69 to 73, inclusive, carry? All those in favour? Opposed? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 167, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

I thank you for your deliberations and your work here this afternoon on this clause-by-clause for Bill 167, and now I adjourn.

The committee adjourned at 1637.

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