

Bankrolling Waste Diversion

EPR Should Shift Costs Away from IC&I Sector in Ontario

By John Willms

ONTARIO IS POISED to make extended producer responsibility (EPR) the foundation for the province's future waste diversion framework. The full cost of waste diversion would be shifted away from municipal taxpayers, who currently pay 50% of the cost of the Blue Box program, and businesses, which pay for the bulk of their own waste recycling costs, and onto the producers of designated products and packaging materials that end up in the waste stream.

Among the product categories to be targeted within the first two years of the program are industrial, commercial and institutional (IC&I) paper and packaging, construction and demolition materials and certain electronic equipment. Those waste streams currently designated under the *Waste Diversion Act, 2002* (WDA), including Blue Box materials, waste electronics, used tires and special wastes, would also be shifted under the EPR model. In addition, a number of treatment processes currently discouraged under the Act would be permitted in order to meet diversion targets.

EPR shifts the primary responsibility for waste diversion from consumers to those who introduce products and packaging into the marketplace. The theory is that producers are best positioned to make critical waste control decisions during the design, production and distribution processes that will reverberate throughout the lifecycle of a product or package.

In a discussion paper released in the fall of 2009, Ontario's Ministry of the Environment (MOE) proposed making individual producers fully and legally responsible for meeting diversion requirements for waste discarded in both the residential and IC&I sectors. It is anticipated that the true costs of waste disposal would then be incorporated into the purchase price of a product and its packaging.

Producers would be permitted to meet waste diversion requirements either by joining a materials management scheme or by developing their own individual waste diversion plans. However, individual producers would remain responsible for meeting the waste diversion target should a material management scheme fail to achieve compliance. The legal obligation rests with the producer, not the scheme. Individual producers would also be required to annually report information on their sales of designated products into the Ontario marketplace.

BROADER SCOPE ALLOWS FOR COMPETITIVE SERVICES

Since the establishment of the Blue Box program plan – the initial program plan under the WDA – the Province has approved a series of EPR-styled programs where those industries with commercial connections to a designated product or packages must bear direct responsibility for the appropriate diversion of that product or package. These include: three phases of the Municipal Hazardous or Special Waste (MHSW) program; two phases of the Waste Electronic and Electrical Equipment (WEEE) program; and a program to manage used tires.

While the Province acknowledges that the current programs under the WDA are significant from a pollution prevention perspective, they represent only a small portion – less than 15%, according to Ministry figures – of the total solid wastes generated in the province. If Ontario is to meet its overall waste diversion targets, it must widen the scope of its efforts and address additional wastes from the IC&I sector, as well as bulky consumer products and other packaging materials.

A material would be designated for diversion if it: 1) constitutes a significant portion of the waste stream and 2) its diversion contributes to the protection of the environment and human health. Producers of IC&I packaging and paper, waste electronic and electrical equipment, and construction and demolition material such as wood, rubble, masonry and concrete, shingles, drywall, metal, fixtures and flooring would have to comply within two years.

While the costs of the Blue Box are now shared by industry and municipalities, the MHSW, WEEE and used tire programs introduced over the last two years are based on a stewardship model that employs industry funding organizations (IFO) to develop, implement, finance and operate diversion efforts. It is expected that each of these monopoly-based programs will be shifted to the competitive individual responsibility model envisioned in the MOE's discussion paper at some as yet unspecified time in the future. The Ministry states that transition plans will be developed in consultation with all stakeholders in each of the existing programs.

To support and facilitate producer responsibility, the Ministry could outright ban designated materials from disposal. More likely, though, MOE will implement a disposal levy to "narrow the gap between the cost of diversion and disposal". The disposal levy would apply to all wastes discarded in both the IC&I and residential sectors.

The revenues collected would be used to support the waste diversion efforts of businesses, consumers and municipalities – such as "design for the environment" measures and consumer education programs.

VARIED RESPONSE TO MINISTRY PROPOSALS

Many industry associations are unhappy

with the prospect of shouldering the entire financial burden for waste diversion. The Packaging Association of Canada (PAC) has urged the government to conduct an economic impact analysis of the costs of fully extending producer responsibility under the WDA.

On the other hand, municipalities are eager to shed their share of the Blue Box costs. "Holding industries accountable for the waste management costs related to their products and packaging is the most practical means of reducing the amount of waste we create as a society," says Peter Hume, President of the Association of Municipalities of Ontario (AMO).

AMO has recommended a full and immediate development of a transition plan for the Blue Box Program Plan to full extended producer responsibility. In a joint submission on the EPR proposals, AMO, the Regional Public Works Commissioners of Ontario and the Municipal Waste Association argue that the plan should go even further. "We support the designation of all packaging and printed paper sold in the Ontario marketplace for inclusion in the program," it states.

The Ontario Environmental Industry Association (ONEIA) wears two hats: it represents both the producers of various products and services sold in Canada, as well as the businesses that recover and reuse the resources related to those products and their packaging. With an environment industry worth approximately \$8 billion to the economy each year and employing approximately 65,000 people, the members of ONEIA are the very foundation of the economic activity the Ministry hopes to foster.

The association strongly supports the move away from what it calls the "inflexible and overly complicated" IFO model towards a more competitive approach. "This mandated IFO approach has proven to have negative effects on producer, consumer and end-of-life processor markets," ONEIA's brief to the Minister maintains. The current system "affords IFOs with market power as monopoly buyers of environmental services that in some cases has resulted in end-of-life material processors being unable to thrive, invest and proactively increase diversion."

The proposal has garnered strong support from environmental groups. A

brief submitted by a coalition of non-government organizations, including the Canadian Environmental Law Association and the Canadian Institute for Environmental Law and Policy says: "it will be essential that the program entail vigorous immediate enforcement" and calls on the Ministry to "maintain and significantly increase its enforcement capacity" to uphold the proposed revisions to the

WDA. "In order to ensure that all waste management parties (collectors, haulers and processors) and their downstream sub-vendors adhere to the highest standards, a licensing system should be considered. This is in addition to developing a registry for the tracking, reporting and auditing data that stewards will submit as part of their waste diversion program requirements."



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TRANSITION POLICIES REQUIRED

Questions arise. If producers take over responsibility for waste diversion, what will become of the millions of dollars worth of existing infrastructure? Who assumes responsibility for the stranded assets and existing contracts?

The Ministry discussion paper attempts to clarify the governance and oversight

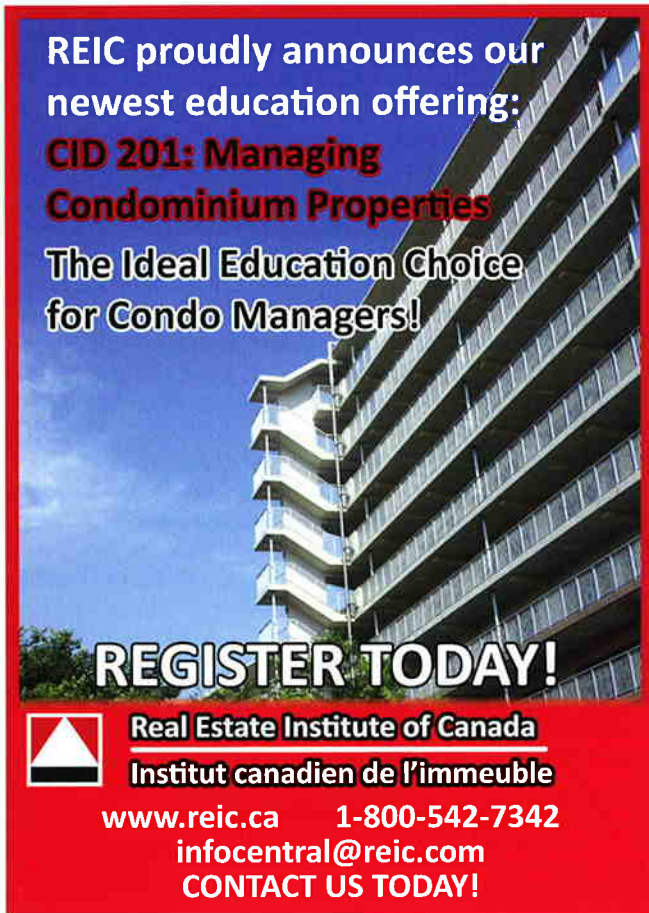
structure of the new diversion regime. The Ministry of the Environment would set the long-term policy framework, designating materials, setting five-year collection and diversion targets, establishing timelines, setting penalties for non-compliance and promulgating environmental standards as appropriate.

Over the short term, the Ministry would develop transition plans and set

phased end dates for each existing program, with corresponding milestones to move existing programs to the proposed new framework. The current diversion framework would be kept intact until transition is complete.

For its part, Waste Diversion Ontario (WDO) would handle oversight and compliance duties, conducting compliance checks on registrants, reviewing waste diversion plans, collecting annual data submissions and levying administrative penalties for non-compliance. The Province has suggested giving the WDO authority to charge fees for registration, compliance checks and data submissions on a cost-recovery basis. ■■

John Willms is a Partner with Willms & Shier Environmental Lawyers LLP. The preceding article is excerpted from the Willms & Shier Environmental Lawyers Special Report, May 2010. For more information, see the web site at www.willmsshier.com.

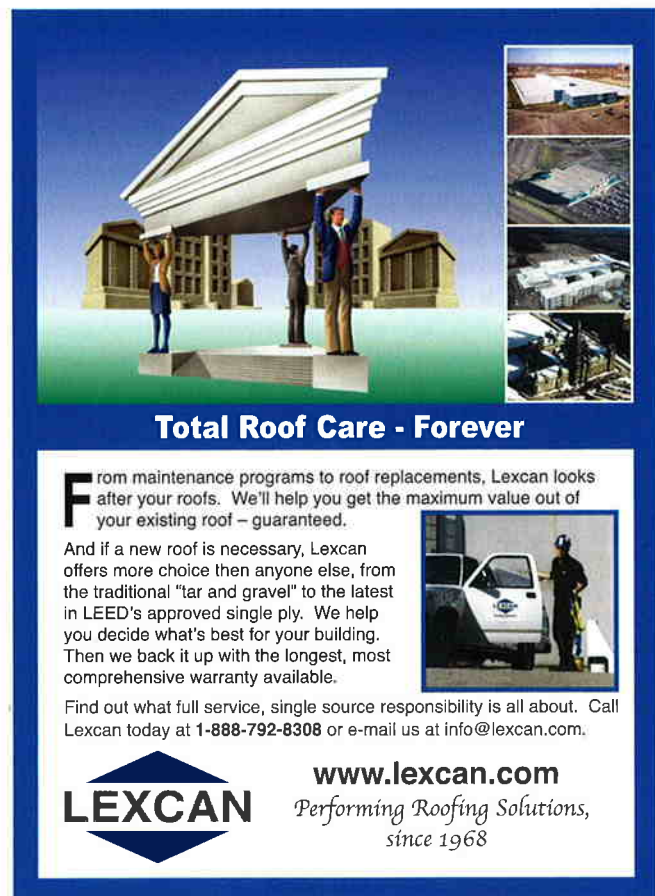


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