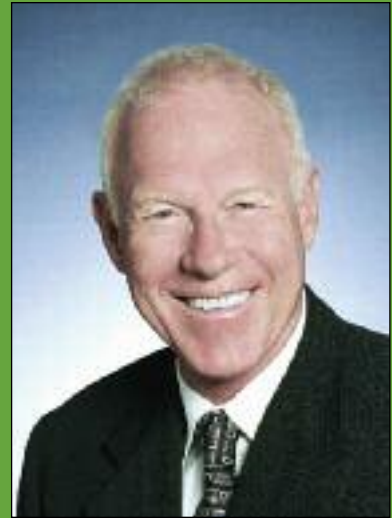


The elephant in the Dumpster



by John Willms

Although the success of residential recycling programs continues, communities must pay additional attention to the growing industrial, commercial and institutional waste streams being generated to reach municipal diversion targets.

While continued progress has been made in the diversion of residential wastes from landfill, few stakeholders are talking about the elephant in the Dumpster: The mammoth pile of industrial, commercial and institutional (IC&I) wastes being generated in Ontario.

Every year, the task of managing Ontario's IC&I waste gets more difficult. Municipal landfill capacity is primarily devoted to residential waste; a number of promising waste diversion initiatives are stuck in the approvals pipeline; and no matter who wins the U.S. presidential nomination, both the Republicans and the Democrats appear more amenable than ever to shutting the U.S. border to Canadian waste.

Of the 8.4 million tons of IC&I waste gen-

erated in 2004 (the last year for which reliable statistics are available), more than 81 percent went to landfill. About 2.2 million tons of IC&I and construction and demolition (C&D) debris were sent to landfills in Michigan and New York, while over 3.3 million tons were dumped in 11 large, private sector landfills in Southwestern and Eastern Ontario. The remainder was sent to municipally-owned landfills.

In 2004, Ontario announced that 60 percent of municipal solid wastes, which includes IC&I waste, would be redirected from landfill through various recovery initiatives by the

end of 2008. Considerable progress has been made in diverting residential wastes through various curbside recycling and take-back or deposit programs; however, Ontario's diversion target will remain unattainable – by the end of 2008, or any other year – without tackling the IC&I component. That is why, with little public notice, the Ontario Ministry of Environment (Toronto) has dusted off a couple of long-neglected IC&I waste regulations.

Waste regulations revived

There has been a recent flurry of interest in the Waste Audits and Waste Reduction Work Plans regulation and the Industrial, Commercial and Institutional Source Separation Programs regulation. Enforcement was, and remains, minimal.

These regulations were promulgated under Ontario's Environmental Protection Act way back in 1994. The regulations required large IC&I waste generators to undertake waste audits, prepare work plans and source separate their wastes. In anticipation of a guaranteed

John Willms is a partner at Willms & Shier Environmental Lawyers LLP (Toronto). John is an environmental law specialist, certified by the Law Society of Upper Canada (Toronto). He can be contacted at jwillms@willmsshier.com.

supply of recyclables, a host of recycling operations opened their doors.

However, successive provincial governments killed the impetus by gutting the Ministry of the Environment. Legal branch staff and branch inspectors were cut back, while enforcement attention was directed elsewhere. During the 1990s, these kinds of command and control regulations fell out of favor, while IC&I recycling markets fluctuated and, eventually, floundered in the face of official disinterest in IC&I diversion.

Threats of the U.S. border being closed to Canadian wastes, though, has officials refocusing their attention on IC&I wastes. In 2005, the MOE's Sector Compliance Branch (SCB) carried out a number of cursory surveys of compliance with the diversion regulations. A province-wide inspection blitz of the regulated sectors' 260 businesses followed in 2006.

The results were not encouraging. In some sectors, the inspectors could not find a single company in compliance. Some were unfamiliar with the two IC&I diversion regulations; others simply chose not to comply. About 40 percent of the companies inspected were source separating many, or even all, of the materials prescribed in the regulations, but very few had completed the formal audits, work plans and other paperwork required.

In July 2007, the MOE announced that it was hiring 10 additional IC&I inspectors "to focus on increasing waste diversion in business and industry across Ontario." Those officers have been out in the field since last fall, focusing, initially, on the C&D sector before rolling out the program through 2008 to cover additional sectors. "While a few firms are doing more than required, overall, compliance rates remain low," said Andy Dominski, director of the SCB. Only five of the roughly 235 C&D companies inspected, to date, are in full compliance.

While the SCB has adopted a soft compliance approach for the time being, companies are being told that the MOE is taking the regulations seriously. Where attention is needed, IC&I inspectors are issuing letters requesting that a company take appropriate action within a specified compliance timeframe. "The primary focus is on diverting IC&I wastes from landfill, and less on tickets and fines," said Diminski, "but, we will take those steps if necessary."

Problems with regulations

"The province provides great direction for residential waste diversion and MOE regulations cover the larger IC&I companies," said Rob Rivers, president of the Municipal Waste Integration Network (Ayr, Ontario). "There is no framework in place for the small- and medium-sized IC&I firms that generate the majority of that sector's waste."

"We want the province to put a legislative framework in place to address waste diversion

by smaller generators," says Rivers. "The waste management industry says it will provide the necessary infrastructure, but Ontario must make diversion a regulatory requisite first."

Robert Cook, executive director of the Ontario Waste Management Association (Brampton), agrees there are some problems with the regulations as they are currently worded. "The waste management landscape has changed over the last 12 to 14 years," says Cook. He calls for a sector-by-sector review to look at the threshold triggers, update the source-separation lists (to, at least, include organics) and incorporate a verification process. While a full manifest system would be overkill, there could be some form of annual written documentation to confirm where wastes are being trucked by contractors.

Fast tracking new facilities

Traditionally, municipalities have taken a hands-off approach to IC&I wastes, letting market forces rule. In effect, the low cost of landfilling in Michigan and New York, together with the transport costs of shipping wastes to the U.S., sets the free market price for waste management in Ontario.

Over the last three or four years, huge pressure has been put on diverting more waste, no matter who generates it, claims MWIN's Rob Rivers. Municipal politicians are receiving calls from small- and medium-sized companies asking for recovery service, but the municipal diversion infrastructure – collection vehicles, materials recovery facilities (MRFs) and composting facilities – cannot handle the extra burden of IC&I waste from thousands of generators.

The private waste management sector has repeatedly stated that it is more than willing to build and operate the necessary facilities, but it must have some confidence that MOE will enforce the IC&I regulations. An efficient approvals process also must be in place for turning around applications in an expeditious manner. "The approvals system is just way out of step with the province's waste diversion policy," said OWMA's Cook.

To address the backlog of some 1,200 applications stuck in the approvals pipeline and expedite the establishment of needed waste management facilities, the MOE is looking at a two-track approach. In the short term, more staff will be hired; over the long term, the ministry will reassess how the approvals process accommodates risk. This could mean that a permit-by-rule approach is adopted for low-risk facilities or that minor amendments are fast tracked through the system.

The province has been moving forward in expediting the approval of some recovery facilities, said MWIN's Rob Rivers. Together, with last year's environmental assessment reforms, the ministry should be able to fast-

track composting plants, MRFs, drop-off centers and other needed infrastructure. Government appears to understand the need, says Rivers, "now, it is time to see a couple of examples come through [the approval] pipeline."

Promoting flow control

Banning certain materials from landfill or raising tipping fees to encourage recycling will more effectively influence waste diversion if municipalities are able to prohibit or regulate IC&I waste transfers out of the region. A number of municipalities are considering so-called flow control mechanisms that would prohibit generators from trucking wastes outside municipal or regional boundaries. While critics claim flow control is a blatant attempt to monopolize tipping fee revenues, a recent decision by the Nova Scotia Court of Appeal (Halifax) has endorsed the practice.

In June 2002, Halifax Regional Municipality amended its by-laws to require that waste generated and collected in the municipality – including IC&I solid waste, but not recyclables – be trucked to several local facilities. In response, a solid waste hauler challenged the by-law in court on the basis that it created a waste disposal monopoly. In 2006, the Supreme Court of Nova Scotia (Halifax) agreed and quashed the by-law.

The municipality appealed and, in 2007, the by-law was upheld by the Nova Scotia Court of Appeal. According to the Appeal Court, statutory municipal powers should be interpreted broadly, based on their purpose. The court concluded that the by-law provided "a predictable flow of revenue to help fund the waste resource management system and, particularly in the case of IC&I waste, to support municipal efforts to maximize source separation and diversion of waste."

"Municipalities only have so many tools in the tool box to encourage diversion," said MWIN's Rob Rivers. "It looks punitive if we raise tipping fees or ban certain materials from landfill." Municipalities would like to see the province step in and implement an overall flow control policy or plan to support local diversion efforts.

If the province ever hopes to meet its waste diversion targets, then it is going to require more than a couple of dozen inspectors checking the waste audit paperwork of the larger IC&I waste generators. It would take just 48 hours to completely overwhelm and clog the entire IC&I waste collection, transfer and transportation system if we were ever denied access to cheap landfills in U.S. border states. And then it would be impossible to ignore the elephant in the Dumpster any longer. **RR**

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