

Ontario proposes making “extended producer responsibility” the legal and financial basis for waste diversion

Everybody seems to like the general thrust of Ontario’s new blueprint for diverting more recyclable and reusable waste from disposal, at least in theory. The consensus begins to unravel when it gets down to the details. Some argue it doesn’t go far enough fast enough. Others complain that it is too costly, too bureaucratic and too intrusive. And still others are worried that it could disrupt the diversion gains made to date under the residential Blue Box recycling program.

According to proposals released by the Minister of the Environment (MOE), 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 from municipal taxpayers (who currently pay 50% of the costs of the Blue Box program) and businesses (which pay for the bulk of their own waste recycling costs) onto the producers of those designated products and packaging materials that end up in the waste stream.

The details of the proposed EPR program are set forth in the discussion paper, *From Waste to Worth: The Role of Waste Diversion in the Green Economy*. Notice was originally posted on October 28, 2009, for a 75-day comment period, which was subsequently extended until February 1, 2010 (under EBR # 010-8164).

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 wastes 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

(Continued on page 2)

Highlights

The MOE’s “extended producer responsibility” model will expand the number of material streams designated for diversion, while shifting full responsibility for this onto producers. While everybody agrees the system needs to be more efficient, cost effective and operationally flexible, there is a lot of disagreement on how to achieve these objectives without jeopardizing the gains made to date. We don’t know how the Ministry plans to reconcile the disparate comments it is receiving, but we do know the initiative is considered a “high priority”. A follow-up report or perhaps even revisions to the *Waste Diversion Act* itself are expected within “a month or so.”

EPR would see industry funding organizations replaced by a more flexible model that assigns responsibility for meeting diversion targets to individual producers 3

Current efforts are not meeting Ontario’s diversion targets, so additional wastes would be targeted over the short and long-term 4

While thermal processing of waste would be permitted, the energy recovered would not count as “diversion” and disposal levies could be charged on waste directed to EFW 5

The federal Competition Bureau cites potential problems if producers “collaborate” to manage wastes, restrict service providers or control the markets for recycled materials 6

While eager to shed their share of the Blue Box costs, municipalities are concerned about collection and recycling infrastructure — not to mention labour contracts — that could be “stranded” 9

The role of the Waste Diversion Office would evolve into a more “reactive” mode, approving, overseeing and policing individual diversion plans 10

Discussion paper reflects early concerns of stakeholders

In accordance with s.44(2)(b) of the *Waste Diversion Act, 2002*, the Ministry of the Environment launched a review of that legislation back in October 2008. In a series of meetings with more than 200 stakeholders and members of the public, the Ministry heard that a revised waste diversion framework must:

- ◆ Focus on outcomes rather than process
- ◆ Give businesses some flexibility in meeting the diversion targets
- ◆ Provide a long term plan in terms of what materials will be designated and when
- ◆ Remove overlap in the responsibilities and roles of the Ministry and Waste Diversion Ontario
- ◆ Provide assistance to businesses to help them understand and meet their obligations
- ◆ Make disposal more difficult and costly, while providing incentives for diversion

Many of these principles were incorporated into the Ministry's discussion paper, *From Waste to Worth: The Role of Waste Diversion in the Green Economy*, released for comment in October of 2009.

What are the stakeholders saying?

"[M]aking producers pay 100% of the Blue Box costs negates the responsibility of a key role player in waste management, namely the residential consumer, to participate in recycling programs, and properly separate materials at the curbside. That is, the incentive for the consumer to participate effectively in a recycling program will be diminished if they do not bear any of the financial responsibility (e.g., municipal tax dollars) to operate the program.

—Canadian Manufacturers and Exporters Ontario

EPR model. In addition, a number of treatment processes currently discouraged under the Act would be permitted in order to meet diversion targets.

Discussion paper triggers flurry of response

The posting triggered a lot of response, with 174 industry groups, associations, NGOs and individuals submitting briefs and comments of various lengths and level of detail. The Ministry is currently reviewing the comments and recommendations it has received and will be issuing a report on its findings at some point "in the next few months," according to the Minister's office. This initiative is considered a "high priority" for the Ministry and we expect that draft legislative reforms will be unveiled later this year. We are mindful that legislation introduced in the fall session could be derailed by the political positioning that typically precedes a forthcoming provincial election.

From Waste to Worth examines the economic and environmental challenges associated with waste diversion, and proposes a series of sweeping policy changes that are intended to:

- ◆ Make producers 100% responsible for the diversion of any wastes associated with their products and packaging, thereby promoting more environmentally friendly products, more investment in innovative technologies, and more waste diversion services.

"We contend that making producers individually responsible for determining how they will recycle and dispose of waste will be ineffective and inefficient – that it will create expensive chaos and set back efforts to achieve diversion targets. The most effective and efficient system for waste diversion is one that ... is publicly controlled and operated so that it is accountable and transparent to all of the "stakeholders" – all of the residents and businesses in Ontario."

—Canadian Union of Public Employees (CUPE)

- ◆ Achieve greater diversion rates, especially among those large segments of the waste stream not currently being addressed, while stimulating green economic opportunities.
- ◆ Provide the public with more opportunities to recycle more materials.
- ◆ Place the province among leading jurisdictions in waste diversion.

How would an EPR system work?

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.

The province proposes 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.

The EPR model offers individual producers (meaning a manufacturer, brand owner, or first importer of a product or packaging made with a designated material) a certain degree of flexibility. Each producer would be permitted to meet their waste diversion requirements either by joining a materials management scheme or by developing their own individual waste diversion plan.

However, individual producers would remain responsible for meeting their diversion obligations should a material management scheme fail to achieve compliance; the legal obligation rests with the individual producer, not the scheme. Individual producers would be required to annually report information on their sales of designated products and packaging into the Ontario marketplace.

Once a material is designated for diversion under the *WDA*, each producer would be required to register with Waste Diversion Ontario (WDO), then submit a waste diversion plan at least 12 months before the date on which it must begin actively diverting that material.

The first annual data report would be due 12 months following the date the diversion obligations come into effect. Producers and/or materials management schemes would also be required to submit a bond as security against performance when submitting their waste diversion plans.

A materials management scheme could be jointly operated by any number of producers or by a single service provider offering waste diversion services to more than one producer. There is no limit on the number of management schemes that could be set up to handle a designated material stream.

A producer could also opt to go it alone. The individual waste diversion plan would have to meet “outcome-based requirements”, which would be material-

What are the stakeholders saying?

“If industry is required to fund more than the current formula, then the industry must have full control of the operations for which it is paying, so that it can find efficiencies in the operations. In that case, the Blue Box Program Plan must be managed by an independent, non-profit organization, with confirmed appointments of majority industry representation on its board of directors. This organization would report directly to the Ontario Ministry of the Environment. “

—**Canadian Bottled Water Association (CBWA)**

“CAMA does not support the introduction of a legal requirement for plan operators to post a financial bond with the [Waste Diversion Office] or that the WDO be granted the power to apply monetary penalties ... In our view the establishment of formal targets and the requirement for plan operators to report publicly on performance against those targets are more than sufficient motivators of plan performance.”

—**Canadian Appliance Manufacturers Association (CAMA)**

specific waste diversion targets set out in regulation under the *WDA*. Diverted materials would have to be tracked from their collection to final end-use markets, and producers would have to meet “minimum service standards” designed to make diversion/recycling programs accessible and convenient for Ontario consumers. If a plan fails to meet its regulated targets, producers would have to comply with the “default” prescriptive requirements for the designated material class or face penalties for non-compliance.

Current efforts not enough to hit overall diversion targets

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 package 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 only represent a relatively 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. The table below lists those materials proposed to be designated over the short, medium and long terms.

(Continued on page 7)

Designated Material Stream	Phase-in Timelines
IC&I packaging and paper	Short term – two years
Waste electronic & electrical equipment, Phase III	Short term – two years
Construction & demolition material (e.g., wood, rubble, masonry and concrete, shingles, drywall, metal, fixtures, flooring)	Short term – two years
Bulky items (e.g., furniture and mattresses)	Medium term – three/four years
Vehicles	Long term – five years
Branded organics	Long term – five years
Small household items (e.g., toys)	Long term – five years

Current recycling efforts are falling short ...

Ontario residents currently divert approximately 39% of their household wastes, while IC&I generators only divert about 12% of theirs. Overall, Ontarians divert 22% of their waste from disposal. Almost 80% of the 12 million tonnes of solid waste generated in Ontario each year is sent to landfill: about 4 million tonnes trucked outside the province and the remaining 6 million tonnes in Ontario. Less than two percent is managed in an energy-from-waste facility.

What are the stakeholders saying?

“Plastics have a high calorific content and should not be land filled but recovered for recycling where it makes economic sense and any residual plastics should be used for their energy value ... Ontario should also consider as a future policy option banning from landfill materials, which contain more than 20% carbon as currently done in the European Union. This policy option helps to drive the recovery of the inherent energy value in resources over landfilling.”

—Canadian Plastics Industry Association (CPIA)

Is Ontario backing away from EFW?

Back in March 2007, Ontario Premier Dalton McGuinty was touting energy-from-waste (EFW), declaring the province should be “ahead of the pack in developing incineration technology.” The Premier’s press interview came a week after the introduction of regulatory amendments designed to streamline the environmental assessment of pilot EFW and gasification projects. “There are fewer greenhouse gases, fewer toxic emissions, so I think that’s something we should be exploring,” McGuinty said. “We need to develop these kinds of technologies here.”

However, the province may be backing away from its short-lived fascination with EFW. The Environment Minister’s plans for revamping the *Waste Diversion Act*, while allowing EFW, would treat it no differently from landfilling. The proposed disposal levies designed to encourage diversion would apply to both landfilling and EFW.

Currently, the *WDA* promotes the 3Rs and prohibits programs from promoting the burning, landfilling or land application of designated materials. Under the proposed revisions to the Act, the concept of diversion would be “clarified” to support investment in a wider range of green processes and innovative technologies. It is likely that composting, anaerobic digestion, pyrolysis and certain thermal treatments – so long as physical “constituents or elements” are recovered for subsequent reuse – would be permitted. However, only those materials recovered (and not the energy produced) would “count” towards meeting a producer’s diversion obligations. Burning waste, without recovering material for reuse, would not be counted.

Algonquin Power, in partnership with the Regional Municipality of Peel, owns and operates a major EFW facility in Brampton, Ontario. While supportive of the general direction and approach of the *Waste to Worth* report, Algonquin says the importance and worth of EFW “is not well recognized or understood in the Ministry’s plans.” The company says EFW should be part of a fully integrated waste

management scheme and is integral to increasing diversion.

Algonquin’s partner, Peel Region, has recommended to the Minister that energy recovery be recognized as “diversion” in the *WDA*. It urges the adoption of a new “waste management hierarchy” ranking EFW – including incineration, gasification, the production and use of refuse-derived fuel, anaerobic digestion, and so on – below the traditional 3Rs and composting, but above landfilling.

Peel Region also urges that disposal levies not be applied to EFW facilities. “The cost of EFW is already sufficiently high that it does not represent a financially attractive alternative to diversion,” the Region writes to the Minister. “Furthermore, adding to the already high cost of EFW will push more disposal tonnage to landfill.”

“The Ministry must recognize the overwhelming environmental benefits of EFW over landfill,” Algonquin Power states in its brief to the Minister. “To treat EFW as equal to ‘bury and forget’ would be a major policy error. To apply discouragement levies to EFW would direct Ontario municipalities to bypass the recoverable energy and metal opportunity which will always be present in post-3R waste.”

The Canadian EFW Coalition (CEFWC) says it is “unclear (and unexplained) why material recovery should be the sole measure for measuring EFW processes when these highly sophisticated systems offer so many positive environmental attributes that support the objectives laid out in the Minister’s report.”

CEFWC says a number of the jurisdictions cited as recycling success stories in the Minister’s report also exhibit some of the highest rates of EFW utilization. With material separation undertaken at the front end and ferrous/non-ferrous metals recovered at the back end, “studies in the U.S. and Europe demonstrate that recycling rates increase between 5 to 13% in jurisdictions operating EFW plants.”

Producer collaboration raises competition concerns

The Competition Bureau of Canada has cautioned the Ministry of the Environment that cooperative EPR initiatives, in particular “collaborations between competitors, have the potential to raise issues under the [federal] *Competition Act*.” The concerns are contained in a letter from the Bureau’s Director of Advocacy Coordination, Chris Busuttill, to the MOE’s Waste Management Policy Branch, dated February 1, 2010.

While encouraged that the Minister’s proposals embrace a “market-based initiative” that should promote competition, the Bureau notes that individual producers can opt to meet their waste diversion requirements “by working with others to achieve the same objective.” Section 45, the cornerstone cartel provision of the Act, prescribes criminal sanctions when two or more persons agree or arrange to prevent or lessen competition unduly or to unreasonably enhance the price of a good or service, an offence known as “conspiracy”.

Amendments to the Act, which came into force March 12, 2010, narrowed the scope of criminal prohibitions under section 45 to cover agreements between competitors to fix prices, allocate markets or restrict output that constitute “naked restraints” on competition. At the same time, penalties were raised to permit fines of up to \$25 million and/or a prison term of up to 14 years.

“While it is difficult to determine whether competition issues are likely to arise from the approach ... articulated in the Waste Diversion Document,” the Bureau’s Busuttill writes, “we strongly recommend that any reforms to the *WDA* explicitly recognize that any conduct of the various parties involved in managing waste remains subject to the [Competition] Act.”

The Ontario Waste Management Association (OWMA) has also raised concerns about anti-competitive practices in its brief to the Minister. “When recycling collectives with significant power and scale are permitted to use that power to limit access to markets, either through restrictive contracting practices or quota systems which allocate defined quantities of materials to different processors, then open and competitive recycling markets are undermined, business certainty is eroded, and investment and innovation in the recycling industry is compromised.” The OWMA recommends that the *WDA* be amended to ensure that no action or program developed under the Act limits the application of the federal *Competition Act*.

Compliance is also the responsibility of the individual producer. According to the *Competitor Collaboration Guidelines*, released by the Bureau in December 2009 and available on its website, firms contemplating collaborations with competitors are encouraged to seek legal advice regarding specific issues that may arise. Firms can also request a binding written opinion from the Competition Bureau under s.124.1 of the Act.

What are the stakeholders saying?

“[I]f stewards choose to coalesce into collectives, they should be required to demonstrate that collective action is consistent with the Ontario Government’s waste diversion objectives, Canadian competition laws and the overall public interest. Specifically, producers must engage and provide financial incentives to recycling service providers in a manner which preserves competition in end-of-life product and material processing markets.”

—Ontario Waste Management Association (OWMA)

“EFW technologies reduce the amount of waste going to final disposal by up to 90%. ... With waste generation numbers increasing and a recovery rate in Canada stabilized (or stagnated) at approximately 24%, it is clear that a zero waste society is many years away. In the meantime, EFW can play an important role by severely reducing the amount of garbage going to final disposal.”

—Canadian EFW Coalition

(Continued from page 4)

While the costs of the Blue Box are now shared by industry and municipalities, the MSHW, WEEE and used tire programs introduced over the last two years are based on a stewardship model that employs Industry Funding Organizations (IFOs) 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 discussion paper at some, as yet unspecified, time in the future. The Ministry says that transition plans will be developed in consultation with all stakeholders in each of the existing programs.

Proposal would set levies to discourage disposal

To support and facilitate producer responsibility, the Ministry could outright ban designated materials from disposal. More likely, 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).

Pushback on the costs of the plan

It is no surprise, especially in the current economic climate, that 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*.

In its brief to the Minister of the Environment, PAC says that “increasing the cost burden to producers for the blue box program from 50 to 100% exacerbates the [severe economic] situation. For many Canadian firms this will add another two per cent to their costs of doing business.” The Association predicts that the consumer goods manufacturing industry in Ontario will shrink by at least 15 to 20% over the next few years unless industry here can become cost competitive again.

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 and effective means of reducing the amount of waste we create as a society,” said Peter Hume, president of the Association of Municipalities of Ontario (AMO). AMO has recommended the 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, the AMO, the Regional Public Works Commissioners of Ontario (RPWCO) and the Municipal Waste Association (MWA, formerly the AMRC) said the plan should go even further. “We support the designation of all packaging and printed paper sold in the

What are the stakeholders saying?

“Large industrial facilities (under the IC&I sector) are presently covered under existing waste management regulations and should not be subject to additional requirements under the *WDA* if no additional benefits may be realized since this unnecessarily increases the cost of doing business in Ontario ... We are concerned that the proposal may actually have a detrimental effect on existing results and efforts by conflicting with the requirements of the 3Rs regulations.”

—Chemistry Industry Association of Canada

“CUPE is concerned that making individual producers responsible for the end of life of materials they introduce into the market will replicate the [LCBO] situation a dozen times – for the newspapers, the advertising, the used tires, the used oil, the paint cans, the broken electronic and electrical devices, the plastic wrap, the tetra-pacs, the phone books, the tin cans, plastic beverage bottles and so on.”

—Canadian Union of Public Employees (CUPE)

Ontario is not the only jurisdiction embracing EPR. On October 29, 2009, the Canadian Council of Ministers of the Environment (CCME) approved in principle a Canada-wide Action Plan for Extended Producer Responsibility and a Canada-wide Strategy for Sustainable Packaging. In Phase 1 of the Action Plan, the provinces have committed to implementing EPR programs for the following product classes within the next six years:

- ◆ Packaging
- ◆ Printed materials
- ◆ Mercury containing lamps
- ◆ Other mercury-containing products
- ◆ Electronics and electrical products
- ◆ Household hazardous and special wastes
- ◆ Automotive products

Phase 2 will address construction materials, demolition materials, furniture, textiles and carpet, and appliances, including ozone-depleting substances.

Ontario marketplace for inclusion in the program.” The municipal representatives also say that “this responsibility should extend to all materials produced even if they end up in residential waste or source separated organics stream.”

The Ontario Environmental Industry Association (ONEIA) wears two hats: they represent both the producers of various products and services sold in Canada, as well as the businesses that recover and reutilize the resources related to those products and their packaging. With the environment industry worth approximately \$8 billion to the economy each year and employing some 65,000 people, the members of ONEIA are the very foundation of the economic activity the *Waste to Worth* report 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,” the association writes in its brief to the Minister. The current system “affords IFOs with market power as monopoly buyers of environmental services that in some notable cases has resulted in end-of-life material processors being unable to thrive, invest and proactively increase diversion.”

Calling the core proposals in the Minister’s report “sound”, ONEIA supports the use of disposal levies to increase waste diversion. However, they recommend that such incentives be applied “as part of a package of policies that clearly define diversion as the recovery of the material value of end-of-life products and packaging.” ONEIA also notes that such an approach would be “inconsistent” with recent provincial policy statements encouraging the development of environmentally sound energy from waste (EFW) technologies.

What are the stakeholders saying?

“If program delivery was to be assumed by industry stewards, municipalities would have to be appropriately compensated for existing long term investments in existing infrastructure along with assurance that the level of customer service and environmentally responsible decision making is not compromised.”

—York Region

“We recommend flexibility for municipalities to have an opportunity to participate in the planning and operation of the new system, if they so choose. The City of Toronto currently operates a fully integrated waste management system and should have the option of continuing to provide collection, transfer, processing, disposal, promotion/ education and customer service at a fair price.

The Blue Box program’s success is based on the collected basket of goods approach, which makes the program cost-effective. Too much fragmentation (e.g., separate collection schemes for newspapers, old corrugated containers and aluminum cans) would likely result in the collapse of the Blue Box program.”

—City of Toronto

Who will pay for “stranded” municipal assets?

If producers take over responsibility for waste diversion, what becomes of the millions of dollars worth of existing infrastructure? Who assumes responsibility for the stranded assets and existing contracts? According to the brief submitted by the Region of Peel, “municipalities have developed highly integrated waste management systems to efficiently manage the entire waste stream. Any change that reduces overall efficiency should be discouraged, or at least compensated for.”

“There are still a number of questions about the transition that will need to be addressed,” says Vivian De Giovanni, executive director of the Municipal Waste Association. “What will happen to the municipal material recycling facilities that are operating? How will municipalities recoup their investment in diversion? How will accountability and transparency be maintained? Still, we are very excited that the Minister is moving forward with the extended producer responsibility program.”

AMO says municipal assets, as well as collection, processing and disposal contracts, that are stranded or shortened as a result of the Minister’s plan “should be assessed and appropriately compensated for based on a number of factors,” including the value of the Certificate of Approval, infrastructure and operational equipment, land value (which includes appropriate Official Plan designation and zoning), the value of any existing contracts, and the fines and penalties that may arise as a result of shortened contracts.

In its brief, the Regional Municipality of Durham called on the Minister to insert guarantees that municipalities would retain “the sole discretionary decision to decide whether municipal infrastructure is transferred to the private sector” and that municipalities will also receive full EPR funding to offset 100 per cent of the net diversion program costs during the transition period.

AMO says the current discussions over the future of the *Waste Diversion Act* are causing a lot of uncertainty among its members. Some municipalities are delaying the implementation of needed capital and operational improvements. As a result, the Association recommends that “transition planning begin as soon as possible and not be delayed until the introduction of the revised Act.”

The AMO/RPWCO/MWA brief to the Minister recommends that separate diversion targets be set for each of the Blue Box material streams: for example, a newspaper target, an aluminum target, a PET target, a high density polyethylene target, and so on. “Stewards should be financially responsible for all printed paper and packaging sold in the Ontario marketplace including those materials collected as litter, organics or residual waste ... Stewards should pay the disposal levy on the portion of designated waste that goes to disposal.”

To ensure resident convenience, accessibility and continued program success, the municipal representatives also recommend a single steward organization be responsible for residential printed paper and packaging, at least during the transition period. “No other individual steward schemes should come into effect until the transition period is complete.”

What are the stakeholders saying?

“Peel does not support the concept of a disposal levy on residential waste if the levy is paid by municipalities and used to offset producers’ costs ... In order for a disposal levy to be equitable and effective, Peel recommends that: stewards pay the disposal levy on the portion of designated waste that goes to disposal; [and] municipalities have access to the levy funds in an amount proportionate to the amount they have contributed to the disposal levy.”

—Region of Peel

“Regardless of how the [disposal] levies are calculated, the newspaper industry strongly recommends that no levy be applied to any material for which a producer (or group of producers) has achieved the diversion target. This “exemption” should also extend to the recyclers of these materials for any process residues produced.”

—Canadian Newspaper Association

Delegating appropriate authority and oversight

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 WDO the authority to charge fees for registration, compliance checks and data submissions on a cost-recovery basis.

While the basic objectives of the “full EPR” model being proposed are similar to those of the WEEE and MHSW programs currently being managed by WDO, the operational mechanics and administrative oversight details would change. Instead of establishing an IFO and submitting a detailed program to the Minister for approval, the WDO would operate in a more reactive mode, waiting for individual diversion plans and material management schemes to be submitted for review.

As might be expected, the proposal has garnered strong support from environmental groups. A brief submitted by a coalition of NGOs, including the Canadian Environmental Law Association (CELA) and the Canadian Institute for Environmental Law and Policy (CIELAP), 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.”

What are the stakeholders saying?

“Stewardship initiatives need to move toward the stated goal of zero waste. We feel this is best achieved by a landfill ban and penalties. [Rather than theoretical targets based on sales] we recommend using measurable, verifiable and achievable metrics. One example of such a metric would be consumer awareness of recycling programs, another to use kg/capita as the basis of diversion targets. “

—**Electronics Product Stewardship Canada (EPSC)**

“The discussion paper states that a policy objective of this government is to take a hands-off approach and allow stewards to determine the best methods for achieving the stated policy objectives. We wholeheartedly agree, however, in order for this to become a reality, WDO must either cease to exist or provide guidance rather than prescribing and rewriting stewardship plans... WDO has already shown itself to be too prescriptive which has resulted in real challenges with fee setting and stewardship remitter processes.”

—**Electronics Product Stewardship Canada (EPSC)**

Some final comments from the stakeholders ...

“Addressing climate change across all sectors in Ontario is a government priority, and refocusing waste diversion to accrue additional greenhouse gas reducing measures should be a key step in Ontario’s comprehensive plan. New technologies designed to draw embodied energy from post-recycling materials show the most promise in bridging the policy divide between developing green energy sources and diverting waste from disposal.”

—Turtle Island Recycling

“[T]he province-wide Blue Box collection system is an essential public service that should be maintained. ... It should not be sacrificed on the ideological altar of competition in the marketplace. The Government of Ontario has an obligation to balance the interests of the many against those few voices that have been heard to argue for opting out of the BBPP or for establishing new schemes which would compete against Stewardship Ontario as the designated Industry Funding Organization for Blue Box waste and potentially lower the efficiency of the Blue Box program.”

—Tetra Pak Canada Inc.

“Any revenue accrued from the collection of levy funds should be managed in a publicly accountable way by an arms length decision making body. This body should not necessarily be Waste Diversion Ontario and TEA would like the Ministry to explore alternatives such as a governed Trust. These funds should not be funnelled into general revenues for the government, nor should it go back into the pockets of industries affected by the disposal levy. These funds should explicitly be used for the promotion of waste diversion initiatives in Ontario.”

—Toronto Environmental Alliance (TEA)

“The basis of all waste diversion programs should be the assignment of responsibilities and liabilities, associated with designated waste, to individual stewards. This is the most flexible approach and the one most consistent with the workings of free markets. The mandatory creation of steward collectives – i.e. forced monopolies – is unnecessary and fraught with competition policy and law issues, and potential unintended economic and environmental effects. That said, there should be no restrictions on collective action taken by individual producers, as long as those actions are consistent with Canada’s competition laws.”

—Safety-Kleen Canada Inc.

“Currently IFO’s act as the ‘gate keeper’ ensuring that all obligated producers are identified and participate. Under an IPR framework, the IFO will not likely invest resources to support this function, and many companies, particularly small-to-medium sized business where there is no brand owner involved, may be ‘missed’. RCO recommends that the MOE and/or the WDO become the lead agency to identify and track producer participation.”

—Recycling Council of Ontario (RCO)

ENVIRONMENTAL LAW MOOT COURT COMPETITION

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