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August 28, 2013

Hon. James Bradley
Minister of the Environment
Ferguson Block – 11th Floor
77 Wellesley Street West
Toronto, ON M7A 2T5

Dear Minister Bradley:

The Association of Municipalities of Ontario (AMO) would like to provide you with our initial comments on the proposed *Waste Reduction Act* and Waste Reduction Strategy which you introduced on June 6th. We recognize that this legislation represents a substantial step towards increasing producer responsibility at the same time being respectful that there needs to be a great amount of discussion, cooperation and mutual work amongst all involved parties to implement this strategic vision with the collective objective of increasing the provincial diversion rates.

AMO is supportive of the proposed *Waste Reduction Act* and Waste Reduction Strategy and the environmental principles embedded throughout the documents. We do recognize that not everyone is supportive of Bill 91 at this time. However, it is our understanding that all informed waste diversion parties have stated that the status quo is not acceptable, especially with respect to the hallmark Blue Box program. We continue to say that the municipal sector remains committed to working with the government and the waste diversion parties to improve Ontario's waste diversion system.

We thank the government for recognizing the fundamental and critical role municipal governments have in residential waste diversion in the draft legislation, especially with respect to the Blue Box. It is quite challenging and frustrating under the current *Waste Diversion Act* that, although municipalities are legally responsible for more than 50% of the net costs of the Blue Box program and all the infrastructure investments we have made, we have no official voice in the actual design or implementation of the Blue Box Program Plan nor do we have any influence over producers' packaging decisions.

Municipal governments are responsible for residential waste management. This, in effect, means that if any provincial waste diversion program fails or does not meet its targets, we are the agents of last resort in managing the non-diverted products and materials through our collection, litter management and landfill operations. As you well know, Ontario is running out of licensed landfill capacity. Since 1989, 649 of Ontario's 730 landfills have

closed and it is very unlikely that any new public landfills will be opened in the foreseeable future.

On behalf of all our residents, waste diversion must be increased significantly which means that all the involved parties must work together more collaboratively and productively. In a system that relies upon municipalities, stewards and the private sector to work together well, a refreshed, reasonable and balanced approach is required — particularly for the Blue Box program. For, if we are not able to do this better collectively, it will be the people of Ontario who will be impacted negatively from both an environmental and property taxpayer perspective.

Over several decades, Ontario's municipalities have developed, operated and delivered successful and efficient waste diversion programs to residents in a cost effective manner. Legislatively and practically, we do not see ourselves leaving the field of integrated waste management, especially in terms of collection services. This is especially true with the Blue Box Program where as cost-sharing partners, municipalities in an Independent Producer Responsibility (IPR) system should continue to remain responsible for the delivery of residential Blue Box collection to ensure that customer service standards are maintained and to optimize the efficiency of collecting materials. Further, municipalities have made significant investments in waste management and diversion infrastructure to improve waste diversion in response to packaging design choices that municipalities have no voice in.

That said we understand that under the proposed legislation (Part VII) we will need to work with and negotiate a payment scheme with the Industry Funding Organization (IFO) productively. We are also pleased that future Blue Box funding may involve the current funding cap of 50% net costs being increased. Although such negotiations may be challenging for all, it is our considered view that reasonable people can find a way to affect reasonable change in a way that successfully addresses the parties' key interests and ensures that best practices by all can continuously improve.

We need to note here that it is not our intent to provide specific and technical comments on all the elements of the proposed legislation and accompanying strategy now. However, there are a number of items below we do want to identify for further discussion through this submission. On the more technical issues, please be advised that AMO will be a joint signatory to a more detailed EBR response along with the Regional Public Works Commissioners of Ontario (RPWCO) and the Municipal Waste Association (MWA).

We understand that our current diversion programs will be managed initially by the Part VII provisions, if passed. However, we are concerned about potential fragmentation in two ways under Part III for new diversion programs (such as carpets, mattresses, furniture). First, our residents will only divert new materials designated in an IPR system if the collection services are easily accessible, convenient and reliable. An IPR system should not result in fragmentation that confuses residents. If residents do not know

where to dispose a designated waste or if the IPR system is too restrictive, we all know that they will end up in municipal waste streams and landfill.

Municipal experience has shown that convenience and accessibility drives increased resident participation in diversion programs. This has been primarily accomplished by municipalities that provide residents with multi-material curbside collection programs and “one-stop” drop-off depots, often at municipal landfills or transfer stations. We are looking for any new programs to incorporate these learnings through new accessibility and convenience standards that increase diversion throughout the province. Although we have concerns about the lack of public education requirements in the 2012 pharmaceuticals and sharps regulation, we do find its accessibility and convenience elements an example to build on so that increased diversion rates are a priority across the province. As well, it may be tempting for some to suggest meeting diversion rates when established by future regulations, solely using the more densely-populated southern urban Ontario communities. However, it is our view that would be contrary to the environmental principles of waste diversion.

The other concern with fragmentation relates to the potential municipal operational challenges and administrative burden if under Part III, Section 44, individual producers seek individual contracts with individual municipalities on new designated materials. This is neither practical nor manageable from a municipal sector perspective. We expect that AMO and the City of Toronto would continue to be the lead representatives on any future contracts or agreements with respective producers or their intermediaries under Part III. Further, we will investigate the establishment of a municipal waste material clearinghouse that could centralize this activity efficiently on behalf of the sector at the same time as the implementation of new waste reduction legislation.

We see that the proposed legislation and strategy sets out a more compliance and enforcement focus for a new Waste Reduction Authority which would arise from a transformed Waste Diversion Ontario. In our view, a strong oversight body that has enforceable standards and has clear and defined authority to hold all waste diversion parties to account is preferred to the current, more contentious situation. However, to be able to perform such enhanced functions means that the Authority will need to have the appropriate skills, capacity and resources to undertake its new role while also managing the current operation and transition of the Part VII diversion programs.

We would also suggest that although the Authority will need to be able to manage dispute resolution processes, it does not have to bring such expertise in-house. Rather it would be more practical for the Authority to conduct a Request for Proposal process so that it has available and can maintain a roster of alternative dispute resolution professionals to assist the parties in managing negotiations and complex disagreements.

We also understand that there has been some discussion since the introduction of the Bill about the ownership of designated waste materials, particularly amongst the steward

community. In our minds there is clear common and case law on this matter. If a consumer buys a product that may or may not have packaging, the ownership of the material transfers to them. When the product and/or packaging is used or no longer wanted, the consumer then disposes of it – usually into their municipal waste management system. Once it is disposed of – at the curb or at the municipal depot – and the municipality collects it, the ownership is then transferred to the municipality who then manages it appropriately. If this chain of ownership did not occur in this manner, the current municipal waste collection system would be fraught with lawsuits and legal challenges. As these do not occur presently, that indicates to us that everyone understands the common law premises of waste disposal and acts accordingly.

The municipal sector is also supportive of moving to including Industrial, Commercial and Institutional (ICI) diversion for paper and packaging given that sector's low diversion rates. However, we are mindful that there is a complexity of current arrangements that would need to be addressed to make this happen. We would also suggest that construction (including renovation wastes) and demolition materials would also be good potential candidates for new designation under the Act.

With respect to organics waste, we would suggest that it be addressed sooner rather than the proposed four plus years in the Waste Reduction Strategy. Again, it is complicated. However, as over 40% of the waste stream is organic, it is worth considering how best to design, implement and fund organic diversion programs. This would include discussions with the various producers and stakeholders as well as a matching of potential action in this area to the current and future processing capabilities and facilitating regulatory approvals.

Returning to the jointly funded Blue Box program and its potential transition, we would suggest that the parties should continue to work together to develop an agreed-upon transition plan including identification of those items that can assist successful transition in the short to medium term (e.g. a harmonized Blue Box and the need for a mechanism to determine the cost implications of constant packaging changes on to the system). Also, we would be remiss if we did not continue to advocate for the government to resolve the long-standing and imbalanced in-kind funding regime under the current legislation and ensure that it cannot occur in the proposed legislation. Please be assured that AMO strongly supports efforts to hold industries that produce and manufacture products responsible for the cost of waste diversion and end-of-life management as well as encourage them to make greener products and packaging. Successful waste diversion is also consistent with the development of a stronger economic environment in Ontario. We trust that these early comments will be of assistance as the Ministry of the Environment reviews and analyzes the wide range of responses from all those parties and sectors that are involved in waste reduction and waste diversion programs across the province. The devil will indeed be in the details of the proposed legislation, strategy and future regulations. However, we know that collectively we can find an agreed-upon approach that will balance multiple interests effectively.

We look forward to further discussions that will come from this proposed legislation and strategy as we all participate in improving and enhancing waste diversion programs in Ontario.

Yours truly,

A handwritten signature in blue ink, appearing to read 'R.F. Powers', with a long horizontal flourish extending to the right.

R.F. (Russ) Powers
President