

New Waste Reduction and Resource Recovery Framework Legislation

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Association of
Municipalities
of Ontario

200 University Avenue, Suite 801
Toronto, ON M5H 3C6 Canada
Tel: 416-971-9856 Fax: 416-971-6191
email: amo@amo.on.ca
website: www.amo.on.ca

Municipal Discussion Paper -

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Introduction

Development of a new legislative framework to replace the *Waste Diversion Act* 2002 is underway. In the Fall 2014 mandate letter to the Minister of Environment and Climate Change, Premier Wynne has requested this be brought forward:

“Developing and implementing improved approaches to waste diversion. Your ministry will do so by building on the release of the Waste Reduction Strategy and working with industry, municipalities, and other stakeholders toward the objective of reintroducing waste reduction legislation. The goal for your ministry is to ensure the ongoing sustainability and appropriate governance of waste diversion programs. This is critical to protecting the environment, recovering economic value in the waste stream, and reaping greenhouse gas (GHG) reduction benefits by using resources more efficiently.”

This is an important initiative for Ontario and provides an opportunity to achieve many public goods, including improved resource utilization and reduction in greenhouse gas (GHG) emissions.

This paper outlines the critical needs and interests of municipal governments, which the new framework must address. Municipal governments also reflect the interests of Ontario taxpayers who use and pay for waste management services, including waste diversion.

Municipal governments are primarily responsible for Ontario’s existing residential integrated waste management system that manages annually over 4.9 million tonnes of material at a cost of over \$1 billion. Over 47% of this material is diverted from disposal and taxpayers have borne much of the cost of waste diversion over the last thirty plus years. Additionally, municipalities bear the primary burden when waste materials are not effectively collected and reused, because residual wastes end up in municipal disposal facilities¹, sewers or streets (as litter).

Since 2008, the province has called for shifting the financial burden from taxpayers to producers for end-of-life management of products and packaging. It is time to make this happen.

The new legislative framework must result in measurable reduction and diversion of waste from disposal while striking a balance that provides producers with the authority they require to manage these costs while also being fair to municipalities. It is essential that the framework recognize that these diversion and recovery programs are elements in an integrated waste management system for residents.

¹ Disposal refers to a treatment methodology for garbage that has not been reduced, reused, recycled or composted and includes, but not limited to, landfill, transfer station and energy-from-waste technologies.

Background

Municipalities are the primary providers of waste management services to residents in communities of all sizes across Ontario. The services provided have evolved over time to include:

- Collection and safe disposal of garbage to address public health and sanitation issues for over a century
- Adding collection and processing of printed paper and packaging over 30 years ago, initially on a voluntary basis, then as required by Regulation 101/94 to increase utilization of precious natural resources and energy
- Collection and composting of leaf and yard waste, and later food waste in many jurisdictions to keep these materials out of disposal and produce a valuable amendment to improve soil quality
- Establishment of depots and special collection days for hazardous materials, electronics, pharmaceuticals and sharps to keep harmful toxins out of disposal and water treatment systems and reduce impacts on natural environment and human health.

Today, we have been told that Ontario municipalities operate one of the most advanced integrated waste management systems in the world that includes:

- Delivery of an integrated waste management system to over 5 million households
- Collection, processing, marketing and disposal of almost 4.9 million tonnes of material at an estimated total annual cost of over \$1 billion to taxpayers
- Disposal infrastructure consisting of 24 landfills and one energy-from-waste facility with an estimated value of over \$1.6 billion
- Collection and processing of over 900,000 tonnes of printed paper and packaging at a cost of over \$325 million and conversion of this material into usable commodities with a market revenue value of over \$87 million
- Collection depots and special events for hazardous materials that manage almost 18,000 tonnes annually at an estimated cost of almost \$26 million
- Collection and processing of 900,000 tonnes of organics (leaf and yard waste, food waste) at a cost estimated in excess of \$225 million to produce soil amendment.

Municipal waste management services are primarily provided to residential customers however a small amount of waste from the Industrial, Commercial and Institutional (ICI) sector is collected from business improvement areas and small businesses for sake of efficiency and reducing impact of numerous collection vehicles on streets. As a result, our submission is focused on the residential stream.

As mentioned further in the paper however, we urge the Province to take action on a waste diversion scheme that addresses the ICI sector where diversion rates are extremely low compared with the residential sector. In order to meet Provincial waste reduction and diversion targets it will be critical to ensure the legislative framework address the ICI sector. Products and packaging are resources that should be recovered no matter if they are generated in the residential or the ICI waste stream.

Complementary programs are required to increase diversion in ICI sector and remove confusion amongst consumers so they can recycle material whether at home or out in the community.

At first reading of the *Waste Diversion Act 2002 (WDA)*, the Minister of the Environment stated that “This legislation firmly establishes a partnership between industry and the municipalities and lays out the framework for a recycling system that will serve this province for years to come.”²

The Waste Diversion Act (2002) and the subsequent plans developed under it provide a mix of cost responsibility schemes depending on the material. It ranges from shared responsibility on the blue box program (50/50 cost split) to elements of full producer responsibility for other programs (Waste electrical and electronic equipment (WEEE), municipal hazardous and special waste (MHSW), and tires).

Programs under the Act have had some success but have not reached their full potential. A core issue for municipal governments and consumers is that the implementation of the programs has not considered the impact on the residential integrated waste management system. The result has been an increase in costs for municipal governments and a confusing array of collection options for consumers.

There has been growing discord between municipalities and producers on fair compensation for delivery of the blue box program. This resulted in formal dispute resolution through arbitration in 2014 and the shared responsibility model unfortunately perpetuates constant conflict between the funding parties.

The municipal hazardous and special waste program has been through several iterations with the designated materials being split into three phases or groupings. The original intent was to implement a comprehensive program; however this was never completed due to concerns over ‘eco fees’ in 2010. As a result, the program is now very complex and fragmented for consumers and municipal governments. Different items are accepted at different locations and this is confusing for consumers. Municipalities continue to collect the majority of these materials despite having a minimal portion of the collection channel and have had to bear high financial and environmental costs to properly manage these materials.³

The waste electronic and electrical equipment program has experienced extreme changes in incentive payments to collectors and processors. This has created a highly unstable market with little predictability.

Although not under the WDA, but via regulation under the *Environmental Protection Act*, the pharmaceutical and sharps program has resulted in an increase in quantities of these materials in the municipal collection channel despite industry devising a return-to-retail model that provides no funding for municipal management of these materials. Despite the lack of funding, municipalities

² Official Report of Debates (Hansard) June 26, 2001; first reading of Waste Diversion Act

³ In 2013, municipalities collected an estimated 57% of MHSW in Stewardship Ontario’s Orange Drop program while providing less than 2.5% of the collection sites offered

continue to collect these materials through their MHSW collection programs to provide adequate service to their residents and reduce environmental impacts from these products.

Despite these challenges, municipalities have, and will continue to be a trusted partner of the Province to deliver these services to Ontarians due to our shared objectives of environmental protection and striving to minimize impacts to water, soil and air in our communities

Ontario municipal governments are looking forward to working with the Province to address issues that have become apparent with the WDA and apply the knowledge gained over the last 30 years and beyond.

Provincial Goals/ Public Goods

Municipalities support the high level objectives the Province is aiming to address with this new legislative framework.

- Increasing the efficiency by which natural resources and energy are utilized
- Moving to a competitive circular economy vs. current consumption-based economy
- Reducing greenhouse gas emissions
- Moving focus further up the waste management hierarchy to drive reduction and reuse efforts in addition to recycling and recovery (e.g. food waste reduction strategy, textile reuse etc.)
- More design for the environment in products and packaging that see more durable or reusable products while using less packaging and fewer hazardous materials
- Expanding new legislative framework to encompass diversion in ICI sector
- Cost effective green procurement initiatives
- Strengthen competition in the marketplace.

Municipalities understand that these are provincial policy objectives on which the MOECC will take the lead.

Critical Municipal Requirements

The new legislative framework must:

- Continue to provide an integrated waste management system Ontario residents,
- Recognize that municipal governments have borne much of the cost of waste diversion to date, and
- Recognize that municipal governments bear the primary burden when waste materials are not effectively collected and reused, because residual wastes end up in municipal disposal sites, sewers or streets as litter.

To build on this further, listed below are several requirements the new legislative framework must address.

Maximize diversion of material from disposal

Disposal capacity is limited in Ontario and new facilities are difficult to site with approval processes that span years. These sites can lead to environmental impacts such as leachate that can pose risk to precious groundwater resources and greenhouse gas production. Additionally, disposal sites have large land requirements that can displace higher level land use activities such as agriculture, employment lands and housing. Disposal sites will continue to be required for safe management of materials that are not captured in diversion programs, however it's critical to maximize the capacity that is available by diverting as much valuable resources as possible and increase the efficiency by which we utilize natural resources and energy.

Minimize cost to municipal taxpayers to manage products and packaging

The full cost of end-of-life management for products and packaging must be shifted to producers to internalize these costs in the sale of their products.

This would include the costs to divert the products and convert them back into usable commodities and resources as well as the costs to manage designated products and packaging in the collection and disposal stream. The disposal stream would include landfill, energy-from-waste facilities, transfer stations and additionally litter and sewer systems.

If branded products and packaging enter any municipal waste stream, municipalities should be fully compensated for the real cost of managing those wastes. While producers are free to manage their wastes outside the municipal waste stream, the municipal waste streams receive a substantial portion of all such wastes.

Municipal waste management services are primarily provided to residential customers however and as noted earlier, a small amount of waste from ICI sector is collected from business improvement areas and small businesses for sake of efficiency and reducing impact of numerous collection vehicles on streets. Municipalities would expect to be fairly compensated for services provided to collect and manage this limited amount of ICI material as well.

The new legislative framework should consider the entire integrated waste stream and contemplate designation of all potential useful resources in the waste stream including but not limited to: printed paper and packaging, hazardous waste, old electronics, pharmaceuticals and sharps, tires, and organics. Recovering resources should move beyond the designations currently identified in the Waste Diversion Act (2002).

Equitable access for residents

Ontario residents must have convenient access to programs. This helps encourage participation and maximizing separation of designated products and packaging for recovery. It will be critical to ensure that residents have access to some type of program no matter where they live in the Province. The

scope, frequency and form of program may be different in various regions of the Province to recognize cost realities, but equitable access is critical.

The new legislative framework must include mandatory geographic coverage that is at least equal to, and optimally, expands upon the level of service provided under the current system.

It will also be important to ensure that residents living in multi-residential buildings (i.e. apartments and condominiums) are adequately serviced and afforded convenient access to programs. Diversion rates in multi-residential buildings lag those attained in single family households for a multitude of reasons including: lack of convenient access to separate bins for designated materials, lack of space for sufficient recycling containers, anonymity etc. With intensification occurring in many jurisdictions the percentage of residents residing in multi-residential building will continue to grow. It's critical that plans to specifically address challenges in multi-residential buildings are developed.

Corresponding changes to existing legislation and instruments

A new legislative framework will establish different roles and responsibilities within the integrated waste management system. It will be important to ensure that these changes are reflected in other pieces of legislation, regulations and statutory instruments.

In addition to repealing regulation 101/94, many other regulatory changes may be required, including amendments to the Municipal Act, to the EPA, and to Environmental Compliance Approvals for many existing municipal waste facilities.

Municipalities cannot be held liable to drive outcomes that they are no longer responsible for and the entire legislative regime pertaining to waste must be updated to reflect this.

Fair treatment of existing municipal resources and assets and adequate transition period

Municipalities must be fairly compensated for any stranded assets, investments and other obligations that do not form part of the system under a new legislative framework.

In order to comply with O. Reg. 101/94, and with repeated encouragements from Ministers of the Environment to increase waste diversion, municipalities have invested hundreds of millions of dollars in waste processing infrastructure, entered into long term contracts with each other and with the private sector, and have incurred long-term obligations to employees. Municipalities cannot simply break these contracts, terminate these employees and write off these investments, especially without fair compensation.

There will need to be an adequate transition period from the current system design and responsibilities to that envisioned in the new framework. It will be critical to provide sufficient time for wind down of existing contractual arrangements between municipalities and service providers and to determine fair compensation for stranded assets and other obligations for municipalities who will not be providing services under a new legislative framework. Additionally, municipal Councils will need sufficient time to consider and approve any new arrangements and changes in responsibility for delivery of services.

Clear rules and roles with balanced, accountable governance

The new legislative framework must have clearly defined roles and responsibilities for all key players including municipal governments, producers and service providers.

There must also be clear rules and targets that are open and transparent with appropriate penalties and incentives to ensure compliance. Key performance indicators and metrics are required to measure results and track progress towards intended outcomes. Currently, waste diversion is measured on a weight-basis, however with rapid changes in products and packaging and movement towards lighter weight materials, this needs to be re-examined. Metrics that track volume and/or units sold and recovered may be more applicable.

Effective oversight is critical to ensure a level playing field for all stakeholders and that diversion objectives are achieved. The oversight agency needs an adequate level of authority to enable decision making and dispute resolution and to effectively enforce the rules set out in the legislative framework.

The oversight agency requires a non-interest based board that operates in a highly transparent manner and provides opportunities for affected parties and stakeholders to have input. The board needs to be accountable for decisions and actions. Board members should have knowledge and skills applicable to the program area and should be compensated to ensure appropriate competencies given the magnitude of the programs and associated costs. The process for appointing board members needs to be carefully considered and must not indirectly create a board predisposed toward any of the affected parties or stakeholders.

The oversight agency also requires sufficient competency-based staff and financial resources to ensure required duties are professionally fulfilled.

Municipalities, as a sector, need to be formally recognized in the new framework

Both the WDA and Bill 91 provided for producers to act as a group, but not municipalities. It is unreasonable and unfair to expect every individual municipal government to deal individually with a large numbers of producers and their agents. Municipalities as a sector require the ability to act collectively, especially in matters of governance, in data collection and management, master contract negotiations, in dispute resolution and in allocation of funds among municipalities.

Municipalities will propose a mechanism for funding and governing such collective action later in 2015.

Decisions and actions based on good facts

Decision making, compensation methodologies and all other decisions must be based on transparent, reliable, accessible data and methods. We understand the need to protect proprietary information; however a reasonable amount of data must be shared and accessible by all stakeholders to ensure transparency and enable informed decision making.

In the case of determining compensation methodologies and payment incentives, the rationale and methodology by which this is determined must be transparent to ensure it is based on good facts and is fair to all parties.

Important Municipal Objectives

Municipal role, as of right, in collecting Blue Box materials with fair compensation

Municipalities must have the right, if they choose, to maintain or reclaim the exclusive right to collect Blue Box material from their residents, and to be fairly compensated for this service.

Recycling collection forms a key component of the integrated waste management system municipalities provide for residents and to a lesser extent, businesses in their communities. In many cases, the same truck provides multiple functions on a single pass, and recycling collection is an integrated part of waste collection contracts. In depot systems, recycling is typically one component of an integrated drop-off centre that also provides collection of garbage, hazardous materials and electronics in many cases.

Municipalities must be able to continue to provide these services if they so choose, to avoid fragmenting the integrated nature of the waste management system and burdening consumers with increased costs and truck traffic. Municipally-managed collection is highly valued by municipal residents, and is an important point of contact between residents and their local government.

As stated earlier, some municipalities collect a small portion of ICI waste from business improvement areas and small businesses for sake of efficiency and reducing impact of numerous collection vehicles on streets. Municipalities should be fairly compensated for costs associated with managing these materials and the compensation should not be treated any differently than that for residential material.

Compensation cannot be left primarily to be negotiated between municipalities and producers. The parties do not have equal bargaining power, and critical questions must not be left to negotiations, either individually or in groups. Waste diversion is a regulated activity, precisely because ordinary free market activity produces results that are contrary to the public interest, and allows commercial actors to produce large externalities that are transferred to municipalities and taxpayers as well as the natural environment.

A demand that municipalities must negotiate and agree with stewards simply reinforces the market power of these commercial actors, and in the municipal sector's perspective has produced adverse results for municipalities since the adoption of the *Waste Diversion Act* in 2002.

Particularly in the case of Blue Box collection, stewards should be required to pay the verified costs actually incurred by municipalities, determined in an objective manner that does not require steward agreement. In the 2014 arbitration between AMO/City of Toronto and Stewardship Ontario the arbitrator's recommendation that stewards should pay costs reported through the Datacall, as verified by WDO, was deemed an acceptable option. The Québec model, which excludes both high and low outliers, offers another reasonable precedent. The British Columbia model of 'take it or leave it' incentives determined solely by producers does not.

The rules and methodology for determining fair compensation need to be regulated to avoid the increasingly unproductive negotiations between the parties.

Municipal right to compete fairly for Blue Box processing

Municipalities have been required to operate the processing and marketing of collected printed paper and packaging for over 30 years, and have developed substantial infrastructure and expertise for this purpose.

Municipalities must have the right, if they choose, to provide processing services for printed paper and packaging, on a level playing field with the private sector. For the few municipalities who are not successful in competing for these services but want to retain processing for the benefit of their community, arrangements should be made to afford the municipality the opportunity to continue to provide these services, be compensated at the competitive rate from producers and absorb the additional costs of these services.

It is critical that the processing system for the Province be regulated to ensure:

- Level playing field for all stakeholders who wish to compete to provide processing services
- That a diverse range of service providers be ultimately engaged to provide these services to ensure continued competition and avoid market monopolies.

Careful consideration must be put to developing a transition plan that would enable any transfer of processing responsibility from some municipalities to producers. This would include contractual obligations between municipalities and service providers and fair compensation for any municipal assets or investments that are stranded as a result of the new responsibilities.

Fair compensation for any major new costs

Municipal governments must be fairly compensated to manage or administer any major new costs that result from the new legislative framework.

For example:

- If disposal bans or levies are utilized and municipalities are expected to administer and enforce their application, there must be fair compensation for these activities
- If there is a desire to harmonize the list of materials accepted in any of the diversion programs, whether full-scale harmonization across the Province or partial harmonization depending on geographic considerations, municipalities must be fairly compensated for the additional costs to do so.

Compensation for Hazardous wastes, including current Municipal Hazardous and Special Waste materials, electronics, pharmaceuticals and sharps which enter the municipal waste management system

Given the toxic nature of these products and the significant environmental impact they can cause to our water, air and soil, municipalities must have the ability to provide collection services for these materials where producer systems are not adequately preventing them from entering the municipal system (disposal, sewers, etc.) and be entitled to fair compensation.

The Province should consider a compensation framework that looks at cost plus punitive charges as a stronger incentive to producers to keep toxics out of the environment

Additionally, municipalities must have the right, if they choose, to compete for providing collection services for Hazardous waste, electronics, pharmaceuticals and sharps and any other designated toxic material. A level playing field must be ensured for all stakeholders who wish to compete to provide these services.

Many municipalities currently offer depots and event days for toxic materials where many items can be brought to one location for safe collection, transportation, processing and disposal. These depots and events have been successful as evidenced in Stewardship Ontario's Orange Drop program where municipalities collected an estimated 57% of the total material in the program while providing less than 2.5% of the collection sites offered.

These numbers illustrate the efficacy of the municipal collection system for hazardous wastes. Many return-to-retail and other non-municipal programs were initiated under the Orange Drop program to purportedly drive higher diversion of these materials. What has ensued has been a fragmented program with many retailers no longer providing these services and if so, only taking a limited amount of materials. The municipal depot and special event programs have been a consistent producer of tonnage for this program despite a very small portion of the collection channel.

Extend producer responsibility to more branded goods

Shifting the financial burden for end of life management of products and packaging should go beyond the current programs developed under the WDA and EPA (pharmaceuticals and sharps).

The 2009 Ministry of Environment paper titled 'Waste to Worth: The Role of Waste Diversion in the Green Economy' outlined a schedule for extending producer responsibility to more products and waste streams such as printed paper and packaging in the ICI sector, expanding the current definition of electronic waste, construction and demolition waste, branded organics, bulky items such as furniture and mattresses, and small household items such as toys.

This list of products and schedule should be re-visited and updated as part of the new legislative framework to ensure Ontario can reach our waste diversion goals and increase the efficiency by which we utilize natural resources and energy and minimize the impact on our climate.

Organic Waste Diversion

Many municipal governments have already introduced collection of household organics on a voluntary basis to meet environmental goals and reduce disposal requirements.

However, given the heavy financial burden associated with these programs, they should not be mandatory until substantial funding is provided by the stewards of branded organics such as diapers, food packaging, disposable paper products, etc. Branded organics represent over 14%⁴ of the tonnage collected in Toronto's green bin program.

In addition, organics programs are severely hampered by an excessively demanding regulatory structure on issues such as odour emissions, rules for use of finished compost and arduous approvals process. In order to successfully implement increased diversion of organic waste, these regulatory issues would need to be addressed.

Municipal-controlled access to funds for continuous improvement in performance and efficiency

The new legislative framework must provide continued access to a fund for expenditures needed for continuous improvement for municipalities. Funding could come from pro-rata contributions by municipalities on an annual basis as deductions from fair compensation from producers for services provided and other funding opportunities.

Smaller municipalities, in particular, also require access to technical support and training.

The fund should be managed, and the training provided, by a collective of municipalities. Producer involvement is not required as it may create excessive conflict between different objectives and priorities.

The funding should not be limited to improvements for systems related to designated materials but to be utilized across all components of an integrated waste management system.

Conclusion

Municipalities are ready to work with the Province along with other interested waste diversion parties, including producers and service providers, to address issues that have become apparent with the *Waste Diversion Act (2002)*. We remain committed to realizing our shared objectives of environmental protection and striving to minimize impacts to water, soil and air in our communities.

We would be happy to discuss any of the elements of this paper with you and MOECC officials in further detail and look forward to continued conversation on how together we can design a new legislative framework for waste diversion in Ontario.

⁴ City of Toronto 2012-2013 Single Family Waste Composition Study