

February 1, 2010

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Ministry of the Environment
Integrated Environmental Policy Division
Waste Management Policy Branch
135 St Clair Avenue West, Floor 7
Toronto Ontario M4V 1P5

Via email and fax

To Ms Grunwald:

Re: From Waste to Worth: The Role of Waste Diversion in the Green Economy, A Minister's Report on the Review of Ontario's Waste Diversion Act, 2002 (the Minister's Report), EBR # 010-8164

We, the undersigned, would first like to applaud the strong and proactive direction that the Government of Ontario has proposed for waste diversion in the province – as detailed in its discussion papers *Towards a Zero Waste Future*, October 2008, and *From Waste to Worth*, October 2009.

The Organizations Named Below Support the Following Principles in Responding to the Government of Ontario's Consultation on Waste Diversion – Waste to Worth

1. Clear Responsibility & Strong Enforcement

We commend the government for its proposal that diversion programs follow the principle of individual producer responsibility and that producers (including manufacturer, first importer or brand owner) must bear full responsibility for their products and packaging. Costs should be borne by producers, with clear onus and obligations specified for producers. Definitions of diversion should be prescriptive, but the program should provide for flexibility and support choices of individual corporations to pursue waste diversion at a corporate level or as program participants, with the province providing advance notice of the applicability of the program requirements.

The above organizations support a strong role for WDO for administration and oversight of designated waste diversion programs provided that the governance structure and make-up of the WDO Board of Directors is publicly accountable and dedicated to the principles of EPR and the 3R's hierarchy. The government should make a commitment and design the program to ensure the WDO has sufficient resources, both financial and human, for their specified roles as determined.

The above organizations call for strong provincial government accountability for the waste diversion programs (key for its credibility and success) with the Minister approving programs or at least setting its main parameters such as specific diversion targets, timelines, penalties and service standards. These parameters should be set in regulation and in detail in the revised Waste Diversion Act. Orphaned products that are already in the market place should be dealt with pursuant to a government program for transition to new programs.

A strong waste diversion program in Ontario will see some changes to the way waste is managed in this Province. Accordingly, it will be essential that the program entail vigorous, immediate enforcement. The Ministry of Environment must maintain and significantly increase its enforcement capacity to uphold the laws of the revised Waste Diversion Act. The Minister should have an oversight role in transitioning existing programs as well as in monitoring the interpretation of roles and outcomes of all major participants (such as WDO). In the event of delegation of responsibility, the Minister should retain overall responsibility for the waste diversion program in Ontario. For example, legislation should provide for directive powers which should be utilized by the Minister.

In order to ensure that all waste management parties (collectors, haulers and processors) and their downstream sub-vendors adhere to the highest of 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. Further, annual reporting on progress in reaching each target should be required of producers with an annual progress summary reported to the Ministry of Environment and the public.

Considerations should also be made on who and how to manage performance-based financial penalties if a producer or collective does not meet their waste diversion targets on time.

2. Outcomes Based with Strong Standards

The above named organizations strongly support the move towards more outcomes-based waste diversion programs in Ontario. We support the four outcomes proposed in the Minister's report (on page 17), provided that strong and very specific standards are adhered to. Quantifiable, clear and aggressive targets, timelines, and penalties should be specified.

In the case of material-specific waste diversion targets, incentives that result in a highly contaminated mixed waste stream should be avoided. Some materials should be chosen for initial visionary targets. Within the same sector, targets should be consistent.

In the case of managing wastes in accordance with the concept of diversion, we stress that the 3R's hierarchy (reduce, reuse, recycle) and environmentally sustainable methods of diversion should be preferred and measured. Accounting methods should be prescribed for reporting against a range of outcomes such as creation of less waste in the first place, amount reused and value added recycling. Residues should be subtracted from diversion in reporting totals.

EFW (Energy from Waste) should not be included in measurement of diversion targets. The above named organizations support anaerobic digestion of one method of decomposing food

waste, manure, and organics. While some energy is derived from this process, the final material produced is valuable organic matter that can be returned to improve the health of the soil, encouraging a cyclic loop that benefits the environment. We agree with the Minister's policy proposal that burning waste without recovering material for reuse should not be counted as diversion. However, EFW processes including 'advanced thermal treatments' such as pyrolysis have the potential to cause negative health and environmental impacts. We submit that these should not be included as diversion options.

An explicit prioritization of reduction and reuse should be included in a revised Waste Diversion Act and required in every diversion program proposed by the Ministry of Environment. Standards for collection, processing and marketing should also be provided. There must be separate targets for the residential and IC&I sectors in order to ensure there is no backsliding on existing diversion rates. Annual assessment should include remaining potential for diversion and analysis of barriers remaining to the diversion objectives.

In the case of providing for consumer convenience and accessibility through minimum service standards, the above noted organizations emphasize that accessibility of programs will be essential. Among the producers' responsibilities should be to ensure that it is easy for consumers and businesses to return or route materials to a diversion stream. Options must be widely available to consumers and commercial businesses.

In addition, there should be appropriate mechanisms to accommodate different needs of users (such as rural and urban residences, single-family and multi-residential buildings, businesses and institutions) and to ensure coverage for Northern Ontario. In addition, there should be regional equity in opportunities to participate in diversion – people need to be able to access good diversion programs in all regions of the province. Broad participation must be one of the outcome-based program targets and measured in a variety of ways. In addition program design should ensure that excess transaction costs to participate in diversion are avoided and this should be one of the criteria for approving programs.

The above named organizations recommend provision for an annual report to the legislature by the Environmental Commissioner regarding the objectives and targets and their achievement. A new Act should be prescribed to continue under the Environmental Bill of Rights Registry such that all waste diversion program proposals submitted by producers are subject to comment under the EBR. The public's access to and feedback on this information is imperative and the additional scrutiny will encourage producers to propose more robust diversion programs. In addition, the application of section 9 of Environmental Bill of Rights Regulation 73/94 should be ensured, i.e. the right to request an investigation of a suspected offence regarding any new offence provisions under the Act.

The policy proposal to establish a Long Term Schedule for designating materials for diversion is applauded by our organizations. We support the materials and timelines as set out on page 23 of the consultation document (ICI packaging and paper; e-waste phase III and construction and demolition all to be implemented over two years; bulky items over the medium term and vehicles, branded organics and small household items within five years.). However, the government should strive to designate branded organics with an earlier timeline. There is a high

demand for organics processing facilities Ontario-wide and a shorter timeline for branded organics could be the appropriate signal to encourage greater investment and capacity in this area.

3. Effective Education

Given that a significant improvement in waste diversion is needed, (with an ultimate societal goal of zero waste), effective education will be key to the success of the new programs. Preparing education material and selection of education audiences should be based on identification of reasons for non-participation in diversion or for inadequate participation in diversion.

Industrial, Commercial and Institutional sectors in particular may need specific training in new programs as there are many waste streams currently sent to landfill. Specific sectoral training will likely be needed, for example, EPR in the automobile sector and other product-based sectors. Occupational training including re-training for new opportunities in waste diversion industries is also needed and complementary to the goals of this waste diversion policy and a green economy. Revenues such as from disposal levies or other waste diversion programs should have some funds explicitly earmarked to support education.

4. Levies and Bans

The above noted organizations strongly support disposal levies and bans. In order to provide incentives for diversion and disincentives for disposal, some regulatory ‘sticks’ are needed. In particular, the proposed disposal levy should not be considered a government tax. This levy acts as a fee that, once imposed, will better reflect the true cost of disposal in Ontario. The levy will also help to level the playing field between diversion costs and disposal costs, creating a disincentive to disposal of valuable materials. This disposal levy should be applied to every tonne of ‘waste’ destined for landfills, incinerators, EFW and thermal treatment facilities.

We are not in the best position to provide advice on the amount the disposal levy should be set. Levies should, however, be set to reflect social and environmental costs of disposal and so should be set high enough so as to make diversion financially competitive or even preferable to disposal. We recommend that accessibility of diversion be considered. Available diversion capacity should result in higher levies. It will also be important to ensure that program designs avoid illegal dumping problems (i.e. ensure a disincentive to disposal/dumping; but do not set levies at so high a cost as to encourage widespread illegal disposal). Recommendations provided earlier in this submission regarding accessibility of programs, reasonable costs and education will be pertinent in this respect. The objective is to support behavior change in respect of the levels of levies set.

Materials that are banned from disposal should be specified from the outset of the new program – beginning with designated Blue Box materials. Thereafter additional disposal bans should be prioritized and phased in. Bans should not be conditional on whether processing markets and infrastructure are in place as investors will need greater economic certainty and timelines before they invest in establishing new processing capacity. Bans should also not be conditional on

whether a viable alternative to disposal exists for a designated material. Instead they can be used to drive the development of alternatives to disposal and to encourage the substitution of lower risk products into the production process. If human health is identified as a significant risk, banning should be put in place as soon as that risk is identified. As with the disposal levy, disposal bans should be applied to all 'waste' destined for landfills, incinerators, EFW and thermal treatment facilities.

Any revenue accrued from the collection of levy funds should be managed in a publicly accountable way by an arms length decision making body. These funds should not be funneled into general revenues for the government, nor should they go back to reduce the fees of industries affected by the disposal levy. These funds should explicitly be used for the promotion of waste diversion initiatives in Ontario. A few possible areas where this money could be used include public education and outreach, increasing waste diversion capacity and establishing markets.

Considerations also need to be made on who and how to manage the revenue from disposal ban fines.

5. Well Planned Implementation and Policy Integration

Although some implementation and integration issues are already mentioned in this submission, the above-noted groups make additional recommendations to ensure a robust, well implemented and cohesive approach to waste diversion in Ontario.

In particular, it is important to ensure integration with other policy regimes in Ontario. This includes integration with the new Toxic Reduction Planning regime, as well as with green energy programs.

It is obviously critical to ensure integration with composting and organics programs and with nutrient management provisions. Furthermore, it would be necessary to systematically review and revise other waste related programs to ensure consistency with a new Waste Diversion Act.

Not only should government procurement policies be consistent with diversion targets, but the provincial government's procurement policies should provide for markets for newly diverted material.

Waste diversion and a goal of zero waste is a component of environmental sustainability.

``Design for environment`` should be a fundamental priority in program design. This should include provision for Life Cycle Analysis of materials in order to ensure the least amount of resources are used during the entire life of a product.. In addition, lower toxic materials should be used, for a variety of reasons including ensuring the maximum ability to re-use or recycle materials safely and to support the Toxics Reduction Act.

The program should ensure research and development of best practices regarding the end of life phase of materials and products, another appropriate use of levies. The program must encourage cradle to cradle materials and products management by producers.

In program design, the government and its agencies should consider incentives for development of best practices regarding design for environment, which may vary across sectors. In addition, it should ensure consistency of government procurement policies with waste reduction targets. For example, reductions in Green House Gas emissions, toxic releases, water use, human health impacts, and other environmental costs of waste streams could be included in accounting methods and reporting. An example of how health cost analysis could be accomplished is through modeling, similar to Health Canada's Air Quality Benefits Assessment Tool, which could demonstrate the human health benefits of waste diversion.

The program should also support eco-labelling, for example for parts and components in order to expedite appropriate re-use. The province should develop lists of chemicals that companies should be planning to remove from products because of their inclusion on various lists internationally (i.e. otherwise there may be restrictions on markets for the re-used products and materials). On a related note, toxic reduction planning should be expanded to include waste management and diversion planning.

CONCLUSION

Ontario is at a potential turning point in which we have the opportunity to radically alter our production and handling of waste materials in this province. We appreciate the opportunity to provide our comments to the provincial government on the `Waste to Worth` consultation document. We encourage the provincial government to continue to pursue a strong, effective and innovative new strategy for waste diversion in Ontario which would be supportive of economies, jobs, and environmental sustainability. We see this direction as consistent with the recent provincial initiatives regarding Green Energy and Green Economy, and Toxic Reduction Planning, and Green House Gas reduction among others.

Yours truly,

Canadian Association of Physicians for the Environment (CAPE)
Canadian Environmental Law Association (CELA)
Canadian Institute for Environmental Law and Policy (CIELAP)
Citizens' Network on Waste Management
Ecojustice
Great Lakes United (GLU)
Ontario Centre for Engineering and Public Policy (OCEPP)
Ontario Public Health Association (OPHA)
Registered Nurses' Association of Ontario (RNAO)
Toronto Environmental Alliance (TEA)

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