

Appendix A - AMO Response to Bill 91



Office of the President

Sent by e-mail: jbradley.mpp.co@liberal.ola.org
jim.bradley@ontario.ca

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.

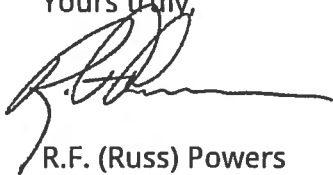
The municipal sector is also supportive of moving to including Industrial, Commercial and Institutional (ICI) diversion for paper and packaging given that sector's low diversion rates. However, we are mindful that there is a complexity of current arrangements that would need to be addressed to make this 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,



R.F. (Russ) Powers
President



September 3rd, 2013

Mr. John Coyne
Vice-President Unilever, Canada and
Chair, Canadian Steward Services Alliance
500- 160 Bloor Street East,
Toronto, Ontario
M4W 3R2

Subject: Invitation To Meet To Discuss Areas Of Mutual Interest Regarding Bill 91

Dear Mr. Coyne,

The Regional Public Works Commissioners of Ontario (RPWCO), the Association of Municipalities of Ontario (AMO) and the Municipal Waste Association (MWA) have been actively engaged in preparing a detailed response to the Waste Reduction Strategy and Act (Bill 91). The letter we are preparing as our submission for September 4th presents a summary of positions and recommendations on the Strategy and Act that are shared by RPWCO, AMO and MWA member municipalities. Our members represent diverse municipalities from across Ontario, have extensive experience in waste reduction programs and have achieved a high degree of consensus on a broad range of critical issues.

The members of RPWCO represent single and upper-tier municipalities that, collectively, provide the full spectrum of Public Works infrastructure and services to over 80% of the population of Ontario. AMO is a non-profit organization representing Ontario municipal governments. MWA is a not-for-profit organization formed by Ontario waste management professionals to facilitate the sharing of municipal waste reduction and recycling information and experience. Waste reduction is a key priority for each of our organizations and all of our members; we have a long history of involvement in waste reduction programs and look forward to participating in the further evolution of these programs.

The purpose of reaching out to you is two-fold. First, we will provide you with a copy of our letter following submission to the Ministry of the Environment. We are interested in hearing your views on our positions and suggestions to improve the Strategy and Act. As noted in our submission, we believe that there must be a continued and vital role for municipalities in the end-of-life management of products and packaging within a system of full producer responsibility. We also believe that strong partnerships between municipalities and producers are vital to success.

Municipal curbside and depot collection services represent the public face of waste diversion in Ontario, and these programs are well positioned to continue to manage critical aspects of waste

Association of Municipalities of Ontario
200 University Ave., Suite 801
Toronto ON M5H 3C6 Canada
E-mail: amo@amo.on.ca; www.amo.on.ca
Tel: (416) 971-9856; Fax: (416) 971-6191
Toll-free in Ontario: 1-877-426-6527

RPWCO
c/o 17250 Yonge Street
Newmarket ON L3Y 6Z1
E-mail: erin.mahoney@york.ca
Tel: 905-830-4444 Ext. 5125
Fax: 905-895-0206

Municipal Waste Association
127 Wyndham Street North
Suite 100
Guelph ON N1H 4E9
E-mail: mwa@municipalwaste.ca
www.municipalwaste.ca
Tel: 519-823-1990; Fax: 519-823-0084



reduction into the future. Curbside collection offers an efficient, integrated strategy for recovering many recyclable materials and robust and sustainable curbside and drop off systems are essential if the existing strong diversion rates are to be maintained during the transition to producer responsibility.

The second - and more important - reason for this letter is to extend an invitation to you and your organization to meet with us (and potentially other key stakeholders) over the course of the next few weeks and months to discuss areas of mutual interest and to explore opportunities to address issues of concern as this proposed Act and Strategy move forward.

We believe that the process of carefully thinking through our respective responses to the Act has raised vitally important issues that need to be resolved if we - jointly - are to drive new improvements in the areas of waste reduction, reuse and diversion in Ontario.

This will not be a simple or short discussion. Rather, we propose to begin our discussions by understanding where we are in agreement and then establish a process to identify and work through areas where we may have different views, all within a mutually agreed timeframe.

We believe we can all agree that a positive outcome from such a process would benefit everyone - businesses, municipalities, the province and, most important of all, Ontario's consumers and taxpayers.

We look forward to arranging a first meeting with you within the next few weeks.

Sincerely,

Monika Turner
 Director of Policy, AMO

Erin Mahoney
 RPWCO Chair

Shirley McLean
 MWA Chair

Appendix B – AMO Letter to MPPs



Office of the President

September 23, 2013

Dear Member of Provincial Parliament:

I am writing today to make sure you understand municipal governments' interest in Bill 91. The current *Waste Diversion Act, 2002* has created an uneven playing field whereby residents fund the Blue Box program more than those that create the products and packaging. That needs to change – to increase producers' financial responsibility for the end-of-life management of materials they introduce into the marketplace.

In the course of the ten plus years of experience, it is time to again improve Ontario's waste diversion system. Bill 91, *the Waste Reduction Act*, is a significant step to address the collective concerns on the state of waste diversion in Ontario. We are supportive of the draft legislation as:

- It provides the opportunity to increase the 50% cap on producers' funding of municipal collection activities.
- It outlines a clear dispute resolution process should the municipal sector and producers require it.

We are urging you to get Bill 91 debated and through 2nd Reading quickly so that the Standing Committee can consider it and refine it. We are supportive of Bill 91. It does help residents and property taxpayers but like most proposed legislation, it can be improved and Standing Committee is the vehicle to do this – to strengthen the proposed waste reduction legislation for the benefit of all.

For your reference, please find the August 2013 AMO submission to the Ministry of Environment on Bill 91, the proposed *Waste Reduction Act*. If you have any questions or comments on AMO's Bill 91 submission, please contact Monika Turner, AMO Director of Policy, at mturner@amo.on.ca.

Yours truly,

A handwritten signature in black ink, appearing to read 'R.F. Powers', written over a horizontal line.

R.F. (Russ) Powers
President