



## STAFF REPORT ACTION REQUIRED

### New Provincial Waste Management Framework Legislation – Bill 151: Waste-Free Ontario Act

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| <b>Date:</b>             | February 11, 2016  |
| <b>To:</b>               | Public Works and Infrastructure Committee                      |
| <b>From:</b>             | Acting Deputy General Manager, Solid Waste Management Services |
| <b>Wards:</b>            | All  |
| <b>Reference Number:</b> | P:\2016\Cluster B\SWM\February\001PW (AFS#21674)               |

#### SUMMARY

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On November 26, 2015, the Minister of the Environment and Climate Change (the Minister) introduced Bill 151: *Waste-Free Ontario Act* (the Act). The Act intends to establish a full Extended Producer Responsibility (EPR) system and enable development of a circular economy to increase resource recovery and waste reduction. The Act also includes provisions to transition from the current waste system (in which municipalities collect, process, and seek funding) to the new EPR system (in which producers collect and process at their expense). The Minister also introduced an accompanying Strategy that establishes the goals to achieve zero waste and zero greenhouse gas emissions from the waste sector in Ontario.

This report presents key aspects of the Act and identifies potential implications or changes that the Act could have on Toronto's integrated waste management system. This report highlights areas of alignment and issues with the proposed legislation. Staff recommend that the City engage the Ministry and their appropriate officials to recommend changes to the Act and further assurances that the new system will not adversely affect current service levels. Concurrently, Solid Waste Management Services, in coordination with other City Divisions, is submitting a consolidated response on specific sections of the Act and Strategy to the Ministry's posting on the Environmental Registry.

Also included in this report is a report back on the Minister's response to a letter submitted by Solid Waste Management Services on June 2, 2015, regarding the potential implications of any new agreements regarding liquor, wine and beer sales in Ontario, for the Toronto's Blue Bin recycling program.

## **RECOMMENDATIONS**

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The Acting Deputy General Manager, Solid Waste Management Services, recommends that:

1. City Council request that the Province incorporate the recommendations regarding Bill 151: Waste-Free Ontario Act as identified in Attachment 3, to the February 11, 2016 report from the Acting Deputy General Manager, Solid Waste Management Services.
2. City Council request the City Manager and/or his designate to continue negotiations with provincial officials to advance the City's priorities for Bill 151: Waste-Free Ontario Act.
3. City Council request the Acting Deputy General Manager, Solid Waste Management Services, report back to the Public Works and Infrastructure Committee on the status of Bill 151: Waste-Free Ontario Act, its implementation, and any anticipated impacts on Solid Waste Management Services programs.

### **Financial Impact**

There are no immediate financial implications resulting from this report. The future impacts of the proposed Provincial legislation on Solid Waste Management Services' program costs and funding are yet to be determined and will depend on the outcome of consultations with the Province and anticipated future studies regarding implications of the proposed legislation on the waste system.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **Decision History**

At its meeting of June 17, 2015, the Public Works and Infrastructure Committee, "Item PW6.8 – Potential Implications of Expansion of Beers Sales in Ontario and Extension of Beer Store Deposit Return Program", directed the General Manager, Solid Waste Management Services to report back to the Public Works and Infrastructure Committee on the Provincial response as part of the expected report on the changes to the Waste Diversion Act.

The Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW6.8>

At its meeting of July 7, 8 and 9, 2015, City Council adopted Motion MM8.50 entitled, "Waste Reduction and Resource Recovery Framework Legislation", and recommended that the General Manager, Solid Waste Management Services, and designates continue to participate in provincial efforts to prepare and adopt new waste reduction legislation, vote on all appropriate matters at Waste Diversion Ontario's Municipal Industry Program Committee and report to the Public Works and Infrastructure Committee in the fall 2015 on the status of all such efforts.

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.MM8.50>

## ISSUE BACKGROUND

### Overview of Current Legislation

Waste management in Ontario is currently governed by the *Environmental Protection Act*, R.S.O. 1990 (EPA) and the *Waste Diversion Act, 2002*, (WDA). The EPA and its regulations address waste collection and processing in general and include, among other things, mandatory diversion requirements (often referred to as the '3Rs Regulations'). The WDA provides a cost recovery program for certain diverted items by establishing and empowering Waste Diversion Ontario to carry out various diversion programs on behalf of the Minister. Current programs include the Blue Box/Bin recycling program, Household Hazardous Waste, Paints and Coatings, Electronic Waste (E-waste), and Used Tires.

Under the WDA programs, the City receives reimbursement for some, but not all, of the items that the EPA regulations require the City to divert, based on items designated by the Minister, by regulation under the WDA. The WDA requires producers to pay or fund a portion of municipalities' cost to manage designated residential waste materials. The funding arrangements vary by material type with regulations requiring producers to cover up to 50 per cent of Blue Bin recycling costs and provide partial funding for the other waste diversion programs. Attachment 1 provides an overview of current levels of funding for programs.

### *Blue Bin funding challenges related to Current WDA*

Negotiations with Stewardship Ontario, the Industry Funding Organization that represents industry stewards of printed paper and packaging, have been challenging, as stewards contend that municipalities operate inefficient Blue Box (Blue Bin recycling in Toronto) programs, resulting in higher net costs. Stewards claim that they need not provide funding for those increased costs.. Municipalities disagree that its Blue Box programs are inefficient. Nonetheless, this disagreement has often resulted in Toronto receiving less than 50 per cent of its actual total net cost to manage the City's Blue Bin recycling materials. In 2013, industry stewards and municipalities were unable to come to an agreement on the 2013 steward obligation. This ultimately led to arbitration. Although the arbitrator ruled in favour of municipalities (that municipalities should receive 50 per cent of their actual verified total net costs), Stewardship Ontario did not agree to use the recommended funding methodology in the subsequent year, resulting in an impasse for 2015. More recently, municipal funding for the Blue Box program may be further reduced pending the outcome of studies which requests further analysis on specific aspects of the program.

### *Provincial Response on Implications of Expansion of Beer Sales*

In a letter dated June 2, 2015, Solid Waste Management Services requested that the Minister consider taking action to assist municipalities in reducing the impact that expanded beer sales in

Ontario could have on municipal waste management systems. Solid Waste Management Services received a response letter, dated November 4, 2015, indicating the Ministry's commitment to the Ontario Deposit Return Program and to reducing waste and increasing extended producer responsibility (see Attachment 4). The Minister also indicated that a copy of the letter was provided to the Ministry of Finance, as they are responsible for oversight of the Ontario Deposit Return Program. Solid Waste Management Services has since sent a follow-up letter to the Minister of Finance, requesting their response to items outlined in the initial letter dated June 2, 2015.

### Momentum leading towards a full Extended Producer Responsibility System

Recognizing the diversion shortcomings in the WDA, the Province introduced Bill 91: Proposed Waste Reduction Act in June 2013 as a first step toward shifting more diversion obligations to producers. The proposed legislation recognized the role of municipalities in the integrated waste management system. Solid Waste Management Services, along with other municipal associations, participated in consultation sessions and formally submitted staff comments in September 2013 through the Environmental Registry. Bill 91 however, died on the order paper with the General Election call in May 2014.

Following the 2014 Provincial election, the Premier of Ontario's mandate letter to the Minister included a goal of re-introducing waste reduction legislation. The draft Waste Reduction and Resource Recovery Policy Framework was released in April 2015, which centred on establishing an Extended Producer Responsibility regime, making producers fully accountable for the proper end-of-life management of their products and packaging.

As directed by City Council, Solid Waste Management Services participated in consultations and advocated for full cost recovery from product stewards for the City's role in managing waste. Comments shared at the consultation sessions are outlined in Attachment 5.

### Bill 151: *Waste-Free Ontario Act*

On November 26, 2015, the Minister introduced for first reading, Bill 151: *Waste-Free Ontario Act* that is intended to change the existing waste diversion framework and support a circular economy, aimed to increase waste reduction and resource recovery. The enabling legislation consists of the *Resource Recovery and Circular Economy Act* and the *Waste Diversion Transition Act*. The Minister also introduced a draft of the Strategy for a Waste-Free Ontario: Building the Circular Economy (the Strategy). Each component is further outlined below.

Simultaneously, the Ministry also posted the proposed legislative framework and Strategy on the Environmental Registry and has requested comments by February 29, 2016. Within the principles of City Council's adopted Motion MM8.50 entitled, "Waste Reduction and Resource Recovery Framework Legislation", City staff prepared a detailed response which was submitted by the province's consultation deadline (Attachment 3).

### *Overview of Resource Recovery and Circular Economy Act (RRCEA)*

The proposed RRCEA identifies the provincial interests in creating this new system and enables the Ministry to issue policy statements to provide further direction on resource recovery and waste reduction. The RRCEA establishes an EPR regime that aims to hold responsible persons accountable for recovering some, if not all, of the waste and packaging associated with their products. In addition to mandating collection and processing of producer waste, the RRCEA would enable the provincial government to set targets for such waste reduction and resource recovery. Moreover, the proposed legislation would give producers the flexibility to determine how best to meet these regulatory obligations.

The RRCEA also establishes the Resource Productivity and Recovery Authority (the Authority) to replace Waste Diversion Ontario. The Authority would be responsible for overseeing the transition of current programs to the new waste framework and for compliance and enforcement, under both the current and new waste frameworks.

### *Overview of Waste Diversion Transition Act (WDTA)*

If the Act is enacted, the WDTA would replace the existing governing legislation and enable transition of existing programs to the new EPR regime under the RRCEA. It also allows for the wind-up of the existing waste diversion programs and Industry Funding Organizations that operate these programs.

### *Overview of Strategy for a Waste-Free Ontario: Building the Circular Economy (the Strategy)*

The Strategy that would be established by the Authority, will outline the vision and goals for resource recovery and waste reduction. It provides a framework to support two Provincial goals: a zero waste Ontario and zero greenhouse gas emissions from the waste sector. It also includes three objectives to help the Province meet these goals:

- Increase resource productivity to reduce waste;
- Enable an efficient and effective recycling system by shifting to an EPR system and provide producers flexibility to design programs to meet targets; and
- Create conditions to support sustainable end-markets.

### Anticipated Implementation Timeline for Bill 151: Waste Free Ontario Act

The draft Strategy released together with the Act, proposes a timeline for implementation of this new waste management framework in Ontario. The transition of different producer responsibility programs will take place on a staggered schedule, although program transitions may overlap. Ministry staff indicated during consultation sessions that the Government aims to pass the Act by June 2016. Attachment 2 outlines the Ministry's anticipated timeline for the implementation of Bill 151, if passed in 2016.

With second reading and Committee work occurring before then, there is little time for the City to ensure that the Minister addresses the key concerns presented in the Environmental Registry submission. Consequently, this report is recommending that City Council request that the Mayor and the City Manager negotiate with provincial officials to advance the City's priorities for Bill 151.

## **COMMENTS**

### Areas of Alignment between the Proposed Act and City of Toronto Waste Diversion Programs

#### *Support for Shifting to a Full Producer Responsibility System*

The City supports the general intention of updating the waste management framework in Ontario, which would enable a shift towards a full EPR system. The Strategy commits the Minister to develop full producer responsibility programs for designated waste material. The Act also includes language which allows the Minister/Authority to increase the funding cap on existing producer responsibility programs, including the residential Blue Bin recycling program. The City has historically advocated that producers be responsible for the full cost of managing their materials through funding arrangements that are fair and transparent.

#### *Leadership in Waste Diversion through Provincial Interest and Policy Statements*

The City supports the Ministry's goal, as committed to in the Strategy, and the objectives outlined in the Provincial Interest statements contained in the Act. The Ministry's stated goal of achieving "Zero Waste" focusses on waste reduction at the source and employs the primary metric of reduction of waste to landfill. This principle is in alignment with the City's Long Term Waste Management Strategy, currently under development, which seeks to extend the life of Green Lane Landfill.

The Province's interest in minimizing the greenhouse gases associated with resource recovery and waste management activities aligns well with the City's own greenhouse gas emissions reduction goals outlined in the Climate Change Action Plan (2007). The City of Toronto has set a long-term target to reduce our overall greenhouse gas (GHG) emissions by 80% by 2050 (based on 1990 levels).

#### *Introduction of Increased Oversight and Enforcement Powers for the new Authority*

A new system of oversight for the proposed Resource Productivity and Recovery Authority includes empowering the Authority with proper enforcement tools and administrative penalties and may provide incentive for greater waste diversion. The City supports the intended review of the 3Rs Regulations under the *Environmental Protection Act* which compels groups outside the residential sector to implement waste diversion programs.

*Commitment for an Organics Action Plan as outlined in Strategy for a Waste-Free Ontario*

Noted in the Strategy is the Province’s intent to develop an organics management plan over the next several years. The City supports the development of this plan as it is in alignment with Provincial and City goals to reduce greenhouse gas emissions. The City is committed, having already invested in anaerobic digestion to process Green Bin organic materials and undertaking projects to effectively utilize the renewable biogas produced by processing organic materials.

*Consultation on Bill 151 and Strategy for a Waste-Free Ontario*

As directed by City Council, Solid Waste Management Services and Legal Services attended consultation sessions with the Province on the Act. Details on the consultation sessions that were attended are outlined in Attachment 5. Solid Waste Management Services through the Environmental Executive Team, engaged other city divisions to review the Act and accompanying Strategy. Comments received were considered and integrated into a consolidated response to the Province by City staff (Attachment 3). It is recommended that City Council formally request that the Ministry of Environment and Climate Change implement these recommendations.

Staff Comments on the proposed Act and Strategy

In July 2015, City Council endorsed support of a legislative framework that promotes full producer responsibility and increased waste reduction efforts and respects the fundamental municipal role in the integrated waste management system. This includes a fair and transparent model of full cost recovery for the collection, processing and transfer of designated wastes.

While the intent of the proposed Act and Strategy appears to align with City priorities, the proposed legislation is silent on or deficient in supporting key elements previously advocated on by the City. Table 1 identifies these areas and includes comments on how these areas can be strengthened.

**Table 1 – Key Areas for Recommended Changes**

| <b>Areas for Change</b>  | <b>Recommendation</b>  |
|--|--|
| The language in the WDTA does not resolve current disagreements between municipalities and producers regarding Blue Box funding by producers to municipalities for collection and processing services. | Change the Blue Box reimbursement standard in the WDTA to require producers to reimburse municipalities for “actual costs incurred” instead of “total net costs incurred.”   |
| There is no separate (or exclusive) role for municipalities, who are key actors in Ontario's waste management system, in:<br><br>a. Providing Blue box collection and processing                       | Add a provision requiring the Province to appoint a municipal advisory body authorized to assist the Province in its preparation of any policy statements or regulations that could pose a significant financial burden on current municipal waste operations. This is in addition |

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| <p>b. Transition of existing programs (namely, blue box, municipal hazardous waste, and e-waste)</p> <p>c. Decision making on programs and schemes for designated waste that will affect the City’s integrated waste management system.</p>   | <p>to the exiting obligations under the Toronto-Ontario Cooperation and Consultation Agreement.</p>  |
| <p>No obligation for the producers (who will now be required under Bill 151 to handle collection and processing of the waste from their products) to reimburse municipalities for costs that they incur to handle the designated materials that end up in municipal waste and /or litter streams instead of in the producers’ recovery program.</p> | <p>Add a provision requiring the Province to reimburse municipalities for actual costs incurred when municipalities collect and manage designated diversion materials that the policy statements and regulations otherwise require producers to collect, manage, and/or reduce (through packaging).</p>  |
| <p>No principles or methodology proposed to define whatever diversion targets (if any) that the Minster proposes when issuing policy statements under Bill 151.</p>   | <p>Add language that producers must demonstrate that consideration has been given to using and improving upon existing best practices established in collection, processing and recovery systems already in operation by working in collaboration with municipalities prior to satisfying their collection, processing, and package reduction obligations.</p> |
| <p>Provincial Interest provision needs to recognize the wider benefits of waste diversion.</p>  | <p>Add to the Act's Provincial Interest provision:</p> <p>a. "foster fairness for taxpayers"; and</p> <p>b. “increase diversion rates significantly above the baseline for annual diversion rates across Ontario municipalities”.</p>  |

**Next Steps**

Solid Waste Management Services supports the general principles of the Act and the Provincial interest to reduce the amount of waste to landfill. Until the Ministry begins issuing its policy statements and bringing forward regulations, details regarding the full impact on the City’s integrated waste management system remains unclear. Potential impacts however, could be resolved by addressing the comments outlined in the report and Attachment 3.



As directed by City Council, Solid Waste Management Services will continue to work with the Province. In light of the concerns outlined in this report and the short time frame of the anticipated June 2016 adoption of the Act, political engagement is essential to ensure that the Act acknowledges the City's achievements in diversion efforts and recognizes the vital role that they play in effective service delivery and that producers fully fund the associated costs for management and diversion of waste.

Solid Waste Management Services will also be investigating conducting further studies of the City's waste system to examine potential implications, including loss of efficiency from potential future fragmentation of the integrated waste management system and change of the municipal role in the new waste system. Findings from the study will be used to determine the full cost impacts of transitioning the existing Blue Box/Bin recycling program to the proposed new full producer responsibility framework.

## **CONTACT**

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## **SIGNATURE**

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## **ATTACHMENTS**

Attachment 1 – Overview of WDA Funding in 2014

Attachment 2 – Anticipated Timeline for Implementation of Bill 151

Attachment 3 – City Submission Regarding Bill 151 – Waste Free Ontario Act

Attachment 4 – Response on Ontario Deposit Return Program (letter from Ministry of the Environment and Climate Change – received November 10, 2015)

Attachment 5 – Consultation Lead Up to Bill 151: Waste-Free Ontario Act