

**Attachment 3**

**1. City Submission Regarding Bill 151 – Waste Free Ontario Act**

The City of Toronto (the “City”) applauds the introduction by Minister Murray of the *Waste-Free Ontario Act* (“WFOA” or “Bill 151”) and the accompanying draft Strategy. City staff appreciate the complexity of getting to “zero waste” and believe the proposed legislation is a positive step forward toward this goal.

Attached are section by section comments on Bill 151 with recommended modifications to strengthen the proposed legislation. However, in particulate, we recommend five main changes to Bill 151, as follows:

- Change the Blue Box reimbursement standard in Section 11 of the *Waste Diversion Transition Act* to require producers to reimburse municipalities for “actual costs incurred” instead of “total net costs incurred”, in order to provide clarity to municipalities and stewards.
- 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 municipal waste operations and negatively affect diversion rates. This is in addition to the existing obligations under the Toronto-Ontario Cooperation and Consultation Agreement.
- Add a provision allowing municipalities to seek reimbursement – either from administrative penalties collected or from the Province calling on a Performance Bond or Letter of Credit - for actual costs incurred when municipalities collect and process designated diversion materials that the policy statements and regulations otherwise require producers to collect, process, and/or reduce (through packaging). This would further promote extended producer responsibility and protect municipal taxpayers, in case municipalities become collectors and processors of last resort.
- 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.
- Add to Bill 151’s Provincial Interest provision to recognize the wider benefits of waste diversion:
  - “foster fairness for taxpayers”;
  - “increase diversion rates significantly above the current baseline for annual diversion rates across Ontario municipalities”.

These requests address City staff concerns that the proposed legislation does not recognize the strengths of existing municipal integrated waste management systems and the benefits they bring to Ontarians and our

environment. We recommend that Bill 151 be strengthened by including the above additional language to ensure the regulations and policy statements to follow will avoid undue financial burdens on municipal waste operations and to maintain customer service levels in waste collection and waste diversion that have been the subject of continuous improvement over the last decade.

We believe this monumental shift to extended producers responsibility could bring more diversion, better packaging, and greater efficiencies if the above proposed changes are reflected in a revised draft of Bill 151.

The City has significant expertise in the management of solid waste and would like to meet with you under the Toronto-Ontario Cooperation and Consultation Agreement to further discuss these recommendations and approaches to bring Ontario closer to its zero waste goals.

**2. Section-by-Section Comments and Modifications to the Waste-Free Ontario Act  
("WFOA" or "Bill 151")**

<b>Section / Topic</b>	<b>City Staff Recommendation</b>
<b>RESOURCE RECOVERY AND CIRCULAR ECONOMY ACT (RRCEA)– Schedule 1 to Waste-Free Ontario Act</b>	
PART 1 – GENERAL	<p>Include with the legislation an explanatory note as to the differences among the Provincial Interest, Policy Statements, the Strategy, and Goals. This would help determine order of precedence, whether they are mandatory and/or enforceable and if some dependent on others.</p> <p>If in considering the above comment, Ministry of the Environment and Climate Change (MOECC) determines that there is no significant differences among these terms, then City staff recommend one defined term. For example, the Provincial interest alone could include the goals of the strategy or could inform the regulations which include whichever targets are established. This would remove the need for policy statements.</p> <p>Having multiple instruments risks inconsistencies that can compromise effective enforcement.</p> <p>There needs to be a first policy statement issued (or somehow included with Bill 151) that details the role of policy statements and how they relate to regulations, the Provincial Interest, and Strategy.</p>
Section 1 – Definitions	<p>Add definitions for “metrics”, “performance measures” and/or “targets.”</p> <ul style="list-style-type: none"> <li>• Use different terms to refer to targets that MOECC will set for producers and targets that the Authority will set for itself.</li> <li>• Tonnage targets that MOECC sets for producer collection and producer processing should be high enough to provide certainty to other actors (e.g. Municipalities) that producers will be completely responsible for these steps for their products.</li> </ul> <p>Add definition for “reduction.”</p>

Section / Topic	City Staff Recommendation
Section 2 – Provincial Interest	<p>City staff commend the Province for identifying these important waste goals.</p> <p>It is recommended that the following interests be added to the list to ensure regulatory balance between costs to producers and costs to municipalities:</p> <ul style="list-style-type: none"> <li>• foster fairness for taxpayers</li> </ul> <p>Provincial interest (a) is not clear as to whether it covers both operations and diversion. It is recommended that this be clarified.</p> <p>It is recommended that Provincial interest (e) about reducing toxics in packaging be addressed through separate, dedicated legislation pursuant to the Ontario Environmental Protection Act and/or federal standards. Removing toxics should not become an alternative or substitute approach for producers to also satisfy waste reduction packaging regulations under Bill 151. Instead, producers should be expected to accomplish both. Reducing the size of packaging or making the packaging more conducive to reuse or recycling all help to achieve diversion targets and are appropriate mandates (or sometimes even incentives) for producers. However efforts to reduce toxics from packaging is a separate issue that should be handled through separate toxic reduction packaging regulation pursuant.</p> <p>Provincial interests (l) and (m) can be read to conflict. It is recommended that this be clarified.</p>
Section 3 - Strategy	
Subsection 3(3)	<p>Change periodic reviews from 10 years to five years. The waste field is constantly changing so the legislative and regulatory schemes need to stay current. Many pieces of Provincial legislation, such as the City of Toronto Act or the Planning Act are reviewed every five years.</p>
Subsection 3(4)	<p>It is recommended that the Bill confirm that municipalities are among those with whom the Ministry will provide ample consultation. This is in addition to consultation with Toronto under the Toronto-Ontario Cooperation and Consultation Agreement.</p>

Section / Topic	City Staff Recommendation
Section 4 -- Contents	Include in this section or in a preliminary regulation the criteria to be used for defining “performance measure” in Section 4(3) and “other matters” in Section 4(4). Such standards must be articulated in advance and then relied upon to avoid arbitrary and inconsistent regulations.
Subsection 4(3)	<p>Consult municipalities on the appropriate tonnage for such performance measures. Use existing data (such as from the Datacall) to establish a baseline above which producers must meet tonnage requirements. Otherwise, diversion rates unlikely to increase above current levels.</p> <p>Create performance measures specific to each sector identified in the current diversion regulations – namely, municipal, industrial, commercial, institutional, and multi-residential.</p> <p>Indicate who will be assessing the progress in achieving the performance measures and the opportunity for review and consultation by third parties.</p> <p>Despite the mandatory language that the strategy should set forth performance measures, the current draft strategy does not appear to have any. (Part 4.0 of the Strategy entitled “Measuring Progress” (on p. 33) outlines categories on which performance measures could focus but does not then include any actual measures for assess progress.)</p>
Section 5 – Progress Reports	
Subsection 5(2)	<p>Consideration should be given to how and when progress measures are being set.</p> <p>An opportunity for and consideration of third party comments and feedback on the published report should also be considered.</p>
PART II – APPLICATION OF PROVINCIAL INTEREST	The City is concerned about the lack of effective compliance with the Provincial interest and policy statements. Standards such as “shall have regard to” and “is consistent with”, together with a compliance process that largely rests on MOECC review of a report submitted by an interested party, all appear to sidestep the penalties and other remedies set forth in Part V of the RRCEA that should otherwise apply to the persons and requirements in Part IV. In other words, policy statements appear to be a weaker compliance tool than regulations. Consider replacing policy statements with regulations

Section / Topic	City Staff Recommendation
	<p>altogether or strengthening the compliance standards found in policy statements.</p> <p>Depending on what the policy statement requires, the proposed Act may not have appropriate measures to ensure policy statements are effective. If the policy statement addresses something where strict compliance is not essential to achieving the objectives of the RRCEA, then the report and Director’s review probably suffice. But where a policy statement is issued as an alternative to promulgating a regulation so that the compliance threshold that attaches is lower (i.e. “have regard for” or “be consistent with” instead of “shall” or “must”), then in that situation, a report and Director’s review would not have enough “teeth.” With most of the requirements in the RRCEA, the default should be for MOECC to regulate and then have the Authority use its investigatory and prosecutorial powers under Part V to ensure compliance. Policy statements should be issued sparingly or in ways that complement and enhance regulation rather than replace it.</p>
Section 10 – Regard for provincial interest	Define “shall have regard to.”
Section 11 – Policy statements	<p>Where policy statements can be used to establish waste diversion performance measures or targets for producers, the City is concerned that such targets could minimize the obligation on producers and other Section 61 and 62 persons to reduce, reuse, and recycle. Presumably, upon meeting one or more of the targets, these persons may no longer need to comply with the collection and management obligations in Part IV of the RRCEA. That, in turn, could lead to municipalities having to undertake a great deal more collection and management than envisioned by Bill 151, without the municipality receiving any Provincial or steward funding. That scenario would adversely affect municipal budgets across the Province, leading to a combination of increased taxes and fees together with reductions in municipal services. That outcome could also expose Ontario to financial instability. In the end, Bill 151 fails as a tool for creating extended producer responsibility and moving to “zero waste.”</p> <p>Consequently, the Province must address such unwelcome risk as part any target setting. MOECC should first establish a baseline based on current diversion levels (perhaps derived from Datacall data) and then increase from there so that implementation of Bill 151 results in greater diversion rates than currently experienced. After that, any target setting must be high enough so that municipalities can project</p>

Section / Topic	City Staff Recommendation
	<p>for annual budgets whether and how their collection and processing systems will need to provide backup. Ideally, the targets should be set high enough so that such municipal backup is never needed and Bill 151 succeeds in achieving extended producer responsibility.</p> <p>Additionally, with respect to targets, there should be:</p> <ul style="list-style-type: none"> <li>• Separate targets for each sector covered by existing diversion regulations – namely, municipal, industrial, commercial, institutional, and multi-residential.</li> <li>• Separate targets based on Ontario geography (perhaps as per Subsection 13(2)).</li> <li>• A target for the amount of a producer’s waste that is allowed to enter the residual waste stream, exceedances of which the collecting and processing entity (most likely municipalities) should be entitled to reimbursement either directly from the producers or from a portion of enforcement penalties collected by the Province.</li> </ul> <p>The City is also seeking clarification on whether targets are the same as performance measures. Should this be the intent, recommend using one term.</p> <p>Although it may not be the Ministry's intention, the City is concerned that the Minister may issue policy statements as an alternative to bringing forward regulations, thereby lowering the compliance threshold applicable to producer and avoiding more comprehensive enforcement and penalties which could lead to lower waste diversion.</p> <p>The integration of the Provincial policy statements with existing municipal By-laws and the Official Plan will require significant staff resources for study and transition.</p> <p>Past experience with Provincial policy statements under the Planning Act indicates that policy statements alone may not achieve the Minister’s desired results for waste reduction and diversion.</p>

Section / Topic	City Staff Recommendation
Subsection 11(2)	The City welcomes inclusion of “municipalities” in the consultation requirements.
Subsection 11(3)	Limit the Minister’s discretion so that it does not undermine the consultation that occurs pursuant to Subsection 11(2). Maybe allow Minister amendments only when necessary to realign the policy statement with the Provincial interest (in Section 2) and/or the Strategy (in Section 3)?
Subsection 11(4)	Change periodic review from 10 years to five years to keep current with developments in the waste field.
Section 12 – Consistency with policy statements	<p>More explanation is needed about whether a local measure is “consistent with all applicable policy statements.”</p> <p>In particular, please confirm that a municipal by-law that is authorized by Section 8 of the City of Toronto Act and is not in conflict with Bill 151 (or any other Provincial or federal measure) meets this consistency standard. Is that how the test in Section 14(4) also works?</p> <p>Also, please clarify that the test set out in Section 13(1) is what determines whether a policy statement is applicable for this section?</p>
Section 13 – Applications and exceptions	
Subsection 13(2)	Be more specific in this subsection (as opposed to in a policy statement or regulation) as to how a policy statement might apply differently.
Section 14 – Amendments to ensure consistency with policy statements	<ul style="list-style-type: none"> <li>• Storing waste items outdoors (open storage) could present zoning problem.</li> <li>• Neighbourhood collection could present zoning problem.</li> <li>• Using industrial areas unclear.</li> <li>• Processing facilities would require formal planning reviews</li> <li>• Planning Act’s “ancillary rule” may allow businesses to create depot without concern for zoning by-law.</li> </ul>
Subsection 14(4)	What does “necessary to achieve consistency” mean? Same as in Section 12?



Section / Topic	City Staff Recommendation
Section 17 – Reviews	What is the intent behind having a special report review procedure for policy statement compliance that is separate and apart from investigations and other processes in Part V?
Subsection 17(4)	Note comments above with Section 11 about the Director’s report review process not necessarily being sufficient to ensure compliance.
Subsection 17(5)	Define “consistent with” and “consistency.”
PART III – RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY	<p>Generally, the City agrees with the expansion of the Authority’s role and powers from the WDO. However, with respect to enforcement, there appear to be some hurdles.</p> <p>The Act empowers the proposed Authority with new oversight and enforcement abilities. The City, via Municipal Licensing and Standards and Solid Waste Management Services staff, should retain a role in monitoring and enforcement of City diversion programs, especially in areas where the City has demonstrated leadership in implementing programs (i.e. Multi-residential and Divisions, Agencies and Corporations. Any such arrangement could result in increased operational costs for the City and may remove on the City’s ability to design the enforcement regime.</p> <p>Additional items are as indicated below.</p>
Section 25 – Board of Directors	
Subsection 25(2)	Add requirement that composition have equal number of municipal and producer representatives.
Subsection 25(4)	Include "observers" to be more transparent.
Subsection 25(6)	Add that "persons" cannot have any conflicts of interest.
Section 26 – Transition, initial board of directors	
Subsection 26(1)	<p>Add requirement that composition have equal number of municipal and producer representatives.</p> <p>Remove “Despite section 25” and instead include qualifications criteria similar to Subsection 25(6).</p>

<b>Section / Topic</b>	<b>City Staff Recommendation</b>
Subsection 26(2)	Add sustainability, climate change, business background, scientific, data collection statistical and compliance, board experience, accounts, prosecutorial / enforcement experience and social equity to the qualifications list.
Section 54 – Administrator	
Subsection 54(1)	If the Minister is to appoint an Administrator, the Minister must include among selection criteria a credible knowledge of how municipal waste collection and processing occurs.
PART IV – RESOURCE RECOVERY AND WASTE REDUCTION RESPONSIBILITIES	Generally, the City commends the WFOA’s statutory authorization for the Province to promulgate regulations regarding registration, waste reduction, promotion and education, and record and recording keeping requirements for products and packaging in Sections 67, 70, and 72, respectively. However, the City is concerned that collection and management regulations envisioned by Section 68 and 69 could undermine years of progress under the Waste Diversion Act in increasing organics and blue box/bin separation and diversion. The City suggests below some alternative approaches.
Section 59 -- Interpretation	The definition of “market” needs to account for products intended for sale that do not make it to the shelf (e.g. rotten or expired produce; damaged goods) as these also will be disposed, unless these items are covered elsewhere.
Section 60 – Designated classes	<p>The City is concerned that the Province’s list of designated materials will not be nearly as comprehensive as the City’s current list, thereby causing the City to have to collect additional materials without any Provincial or steward funding. MOECC must create comprehensive designation lists and strive to update the lists annually to keep current with constantly changing technologies and markets that allow for greater resource recovery.</p> <p>Moreover, indicate in this section (as opposed to in a forthcoming policy statement or regulation) the criteria to guide the designation process – namely, stability, life-cycle costs (e.g. landfill space; transport), and ability for multiple waste processes to accept it.</p>
Section 61 – Product and its primary packaging	This section needs to clearly address who is responsible for waste collection and processing and when reimbursement of the collector and processor is required under the following scenarios:

Section / Topic	City Staff Recommendation
	<ul style="list-style-type: none"> <li>• waste generated during the time period that the Province is determining whether, via Section 61, the RRCEA applies to the waste generator</li> <li>• waste generated while an entity is seeking <i>de minimus</i> status, via Section 61</li> </ul>
Section 64 – Other persons performing activity related to resource recovery or waste reduction	Revise for clarity to confirm whether this section, if not section 61(1), includes first importers.
Section 66	Ensuring complete registration could be a resource-intensive process for both the person required to register and the Province. Efforts should be made to minimize the costliness of this process by using existing databases so that such monies can be available for enforcement and other aspects.
Section 67	Please clarify in this section (and not in a subsequent policy statement or regulation) whether waste reduction efforts can qualify as alternative incentives for producers to not have to meet as much of their diversion targets.
Subsection 67(3)	<p>This section should be mandatory, not discretionary.</p> <p>Also, as indicated above, none of the design requirement regulations should credit the removal of toxins as an alternative to meeting a diversion target. Instead, reducing toxins in packaging should be pursued separately under the Ontario Environmental Protection Act and not as part of Bill 151’s effort to reduce waste.</p>
<p>Section 68 – Responsibility for collection system</p> <p>Section 69 – Responsibility to manage collected material</p>	<p>Requiring Section 61 / 62 persons to “establish[] and operat[e] a collection system for prescribed materials in a designated class” (Section 68) and, possible as well, “establish[] and operat[e] a system . . . for managing the material collected” (Section 69) could lead over time to the unravelling and dismantling of the City’s waste diversion programs that the City, together with Provincial support, has been developing and implementing for more than a decade.</p> <p>To prevent that unravelling, MOECC must first make sure, as discussed above, that any tonnage targets or performance measures set are high enough so that municipalities do not have resume collection and/or processing part way through the process.</p>

Section / Topic	City Staff Recommendation
	<p>Moreover, Section 68 and 69 should require that Section 61/62 “persons” use best efforts to collect and process with through existing municipal and private systems. This approach will greatly reduce the risk of “stranded assets” within existing systems and should also avoid frustrating and confusing current waste customers by otherwise requiring them to dispose of waste in different manners. It will also most likely reduce greenhouse gas emissions through efficiencies.</p> <p>Regarding the waste customers, the City with the help and support of the Province, has spent years educating waste customers on diversion. If Section 61/62 “persons” devise different or more approaches—especially establishing numerous drop-off depots – then those years of progress could be quickly undermined.</p> <p>Presumably, for these reasons, MOECC has stated publicly in Bill 151 consultation sessions that curbside collection should not be adversely affected by the regulatory system promulgated under the RRCEA. Consequently, this section (and not subsequent regulations) should make clear that Section 61/62 persons must work within existing systems.</p> <p>At the same time, however, if the City is a partner in the collection and management required of Section 61/62 persons and those persons fully reimburse the City for the costs of such collection and processing then such an approach to waste diversion could prove more comprehensive and effective than the limited programs currently available from Waste Diversion Ontario. To ensure that the Province’s policy statements and regulations pertaining to collection and management are promulgated in a manner that is helpful, not harmful, the Province must consult heavily and meaningfully with municipalities in preparing these materials.</p> <p>The Province needs to fully understand:</p> <ul style="list-style-type: none"> <li>- How municipal collection and management occurs.</li> <li>- How such systems are becoming more efficient and effective.</li> <li>- Potential scenarios and impacts of system fragmentation.</li> </ul> <p>The City would like to meet regularly with MOECC staff to have further discussions on these.</p>

Section / Topic	City Staff Recommendation
Section 70	<p>Where the City needs to supplement producer promotion and education to ensure zero waste, this provision should provide for Provincial cost reimbursement. For Bill 151 to succeed, consumers must cooperate. The City is often better positioned to more effectively reach residents and businesses than each of the Section 61 and 62 persons.</p> <p>Responsibilities are not defined for promotion and education on waste diversion which may shift under the new framework. The City requires a framework that will preserve our existing communications role to ensure consistency in language, terminology, and comprehensive messaging.</p>
PART V	<p>Where the City has indicated that the producer should provide reimbursement, this part of the RRCEA should explicitly authorize the Province to reimburse municipalities for such costs from the penalties monies collected in enforcement proceedings.</p> <p>Additionally, note that effective enforcement against Section 61/62 persons may sometimes need to include the gathering and use of evidence from municipal waste audit data. Regulations will need to provide a comprehensive inspection process.</p>
Section 76	<p>The definition of “place” should explicitly add a third party waste bin.</p>
<b>WASTE DIVERSION TRANSITION ACT (“WDTA”) - Schedule 2 to the WASTE FREE ONTARIO ACT</b>	
General	<p>The City is concerned that the WDTA has not sufficiently addressed any of the problems under the Waste Diversion Act, 2002 (“WDA”) that led to the arbitration in 2014 (and the stalemate in 2015) over the standard for and the amount of the steward obligation in the blue box program.</p> <p>Given how many years that transition of all WDA programs to the RRCEA regulatory framework might take, the WDTA provides an to address in the short term the WDA’s shortcomings and pilot new approaches for the future. Below are important statutory changes.</p> <p>The status quo of the WDA is continued by WDTA until such time as this latter act is repealed. The timing of the repeal will depend on the amount of time that it takes to wind down the existing waste diversion programs. That, in turn, will likely not happen until the new model under the RRCEA is ready to be up and running.</p>

Section / Topic	City Staff Recommendation
Section 5 – Authority’s duties	<p>The Authority is not provided with clear, explicit power to set the steward obligation for the Blue Box program in the event of disagreement between Stewardship Ontario and municipalities. Without clarity, it is open to debate whether or not the Authority is authorized to resolve such a dispute. The WDO interpreted s. 5(e)(i) of the WDA, a provision identical in wording to s. 5(j)(i) of the WDTA, as being limited to the funding allocation, or pay-out, model (i.e. what percentage of the steward obligation any individual municipality received) and not disputes about the steward obligation. The arbitrator found that the 2014 arbitration was brought before him pursuant to the agreement of the parties. The absence of such a power leads to uncertainty as to whether the Authority should resolve such a dispute and the binding nature of any decision that it may make. The WDTA itself should clearly define how the steward obligation should be calculated such that it is unnecessary to provide a dispute resolution power to the Authority.</p>
Section 11 – Blue box program payments to municipalities	<p>There remains no clarity as to what is meant by “total net costs incurred by those municipalities as a result of the program” or how to calculate it, which remains a divisive issue between producers and municipalities.</p> <p>The arbitrator used the existing Datacall to determine the 2014 Steward Obligation. The arbitrator’s methodology should be explicitly incorporated into the WDTA through statutory language. Attached to this submission is a letter dated June 16, 2015, where the City provided to the Province with a suggested draft regulation that addresses these issues.</p> <p>The words “payments” and “paid” should be defined or this section should otherwise be clarified as being limited to cash payments, as the arbitrator found that the current system of in-kind advertising in lieu of cash payments is extremely unfair to municipalities.</p>
Section 34 – Payment of stewardship fees	<p>Similar to s. 31 of the WDA, this section only deals with exemptions to payment of fees to an industry funding organization (IFO) made by a person required to pay fees to that IFO but who provides voluntary goods or services to the IFO instead. This section should be modified in conjunction with s. 11 to clarify that it does not provide statutory authority for a reduction of cash payments of the steward obligation to municipalities through the provision of a good or service such as free advertising in certain newspapers.</p>

### **3. Comments on Draft Strategy for a Waste Free Ontario: Building the Circular Economy (the Strategy)**

#### Strategy Goals

Several factors, outlined in the Strategy, may require further consideration in order to help successfully achieve the intended targets of achieving zero waste and zero greenhouse gas emissions from the waste sector.

#### *Zero Waste*

While achieving zero waste may be unattainable in light of leakage of materials that are not captured through the waste system, it may serve better to indicate a goal of how much more diversion than previously sought under the Waste Diversion Act. The Strategy should also include goals of changing behaviour and reuse of recovered materials so that policy statements and regulations might follow to better ensure a circular economy and not just a greater diversion program.

#### *Greenhouse Gas Emissions*

It is suggested that the province continues to enforce methane capture technologies across all provincial landfill sites as well as promote the use of methane for energy production. Currently, waste transportation related emissions from the private sector are difficult to estimate on a municipal level due to a lack of reporting and tracking standards. Mandatory reporting on the volume, composition and transportation of IC&I waste within the province and evaluation of waste transportation emissions should be incorporated into the Province's *Resource Recovery and Circular Economy Act, 2015* in order to successfully achieve the zero greenhouse gas target.

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June 16, 2015

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Dear Mr. Fleming,

**Re: Ontario's Blue Box programs urgently need your assistance**

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Unfortunately, municipalities and stewards have reached an impasse again on how much stewards need to pay the legislated Obligation to support Ontario's world-class Blue Box recycling programs. The City of Toronto is asking for your help to resolve this impasse to ensure sustainable ongoing funding for Ontario Blue Box programs while the provincial government develops the new Resource Recovery legislation.

We ask that the Minister direct the development of a Ministerial regulation under the *Waste Diversion Act, 2002* (WDA) to determine how the annual Steward Obligation is to be calculated and paid through the implementation of the recommendations of the respected arbitrator, retired Justice Robert Armstrong, from the 2014 Steward Obligation arbitration. Mr. Armstrong set out an approach that he was satisfied to be fair and reasonable to determine the net costs incurred in section 25(5) of the WDA which he recommended should be followed in subsequent years. We believe the Arbitrator's recommendations should be followed.

We also request that the Minister give policy direction to create a fairer and more transparent system of in-kind deductions and for use of the resulting advertising allowances. This is important as they were deemed to be extremely unfair to the municipalities, but not as urgent as clarifying the amount of the Obligation.

As you know, section 25(5) of the WDA requires stewards to pay 50% of Blue Box costs:

*Blue box program payments to municipalities*

(5) A waste diversion program developed under this Act for blue box waste must provide for payments to municipalities to be determined in a manner that results in the total



amount paid to all municipalities under the program being equal to 50 per cent of the total net costs incurred by those municipalities as a result of the program.

Regrettably, municipalities and stewards cannot agree on what this means. Although 2015 is almost half over and payment of the initial installment of the 2015 Steward Obligation is owed in two weeks, the amount of the 2015 Steward Obligation remains contested. This is far too late for proper planning by either municipalities or stewards. For the sake of all parties and the seamless continuity of the municipal Blue Box programs, provincial clarity is urgently needed on how your government intends this important provincial statute to work, and on how much funding stewards must provide to municipal Blue Box programs, including the City of Toronto.

None of the methods used in previous years to determine the Steward Obligation are now acceptable to both parties. The City of Toronto will no longer accept the deep cuts to public funding that the stewards' organization demands, as these cuts would transfer millions of dollars of cost from industry, producers and retailers to our municipal taxpayers. As you know, the 2014 Obligation was determined through an intensive arbitration, which cost millions and took nearly a year to complete. At the direction of Waste Diversion Ontario, this enormous investment of public and private resources resulted in clear recommendations on how the Steward Obligation should be calculated in 2015 and future years. The City of Toronto accepts these recommendations; stewards do not.

Because the parties have incompatible interpretations of section 25(5), yielding calculations of the 2015 Steward Obligation that are millions of dollars apart, no consensual solution can be expected. We have tried direct negotiations and mediation. Waste Diversion Ontario has considered the matter. However, there has been no resolution. We are therefore seeking the assistance of the Minister of Environment and Climate Change (the Minister) to resolve this stalemate. Under the WDA, it appears that no one other than the Minister has the statutory power to cut this Gordian knot.

As we understand the law, the only authority who can decide the Steward Obligation in a way that binds both municipalities and stewards is the Minister, and only by a regulation under subsection 42(1) of the WDA. That section allows the Minister to make regulations,

- (j) defining any word or expression used in this Act that is not already defined; and
- (k) respecting any matter that the Minister considers advisable to carry out the purpose of this Act.

The WDA gave the Minister this authority precisely so that he can establish clear rules when they are needed, to preserve and promote important resource recovery programs such as the Ontario Blue Box. That time is now. We cannot wait for the several years until the new Resource Recovery statute is in effect. Municipal Blue Box programs require funding now, and stewards need to know now what fees they have to pay.

The City of Toronto therefore requests that the Minister direct the immediate development of a regulation defining exactly how the Steward Obligation should be calculated each year for the remainder of the effective life of the WDA, leaving no room for confusion or ambiguity. The Association of Municipalities of Ontario will be providing a similar letter requesting the same Ministerial action. We propose that the regulation should follow the recommendations of Mr. Armstrong. For the assistance of the Minister and Ministry staff, a potential draft regulation is enclosed for the appropriate review and action. We know that the Minister had hoped that municipalities and stewards would be able to resolve this question by ourselves for the last few years of the WDA. Please be assured that we worked hard to find solutions that would meet both our and the stewards' interests, and are equally disappointed that this proved unsuccessful.

We would ask to meet with Ministry staff at the earliest convenience so that we can discuss our sincere request with a proposed draft regulation that would provide a quick resolution to this outstanding dispute.

We appreciate your consideration of our urgent requirement on behalf of the City of Toronto and its Blue Box program.

Yours sincerely,



E. (Beth) Goodger  
General Manager  
Solid Waste Management Services

EG/as

- cc. Honourable Ted McMeekin, Minister, Municipal Affairs and Housing  
Honourable Glen Murray, Minister, Environment and Climate Change  
David Pearce, Managing Director, Stewardship Ontario  
Michael Scott, CEO, Waste Diversion Ontario  
Annette Synowiec, Acting Director, Policy, Planning & Support, Solid Waste Management Services, City of Toronto  
Monika Turner, Director of Policy, Association of Municipalities of Ontario  
Lou Di Gironimo, Acting Deputy City Manager, City of Toronto  
Wendy Ren, Ph.D., Director, Resource Recovery Policy Branch, Ministry of Environment and Climate Change

Attachment – Draft Ontario Regulation



**DRAFT**

**ONTARIO REGULATION \_\_/15  
made under the  
WASTE DIVERSION ACT, 2002**

**Amending O. Reg. 273/02 (BLUE BOX WASTE)**

1. Ontario Regulation 273/02 is amended by adding the following sections:
  3. In section 25(5) of the Act, “the total net costs incurred by those municipalities as a result of the program” means the amount calculated by Waste Diversion Ontario in accordance with this regulation, as follows:

**Total Gross Costs – Total Gross Revenues.**
  4. Waste Diversion Ontario shall calculate the Steward Obligation in each Calculation Year for payment by Stewardship Ontario to municipal Blue Box programs in the Payment Year.
  5. Each municipal Blue Box program must report to Waste Diversion Ontario, by April 20 of the Calculation Year:
    - a. the gross cost incurred by the program in the Program Year to collect, transport, sort, process and sell or dispose of the classes of materials described in section 1, including associated expenses for information, awareness and educational activities, for management of residue and materials without market value, and for direct and indirect capital and administrative costs, and
    - b. the revenue received by the program in the Program Year, including for the sale or disposal of the materials collected in its Blue Box program.
  6. A municipal Blue Box program’s report, submitted to Waste Diversion Ontario under section 5, shall be signed by the municipality’s external auditor, if it claims gross costs minus revenues of more than \$1 million.
  7. For the purposes of section 3, Waste Diversion Ontario shall calculate Total Gross Costs as follows:
    - a. By July 15 of the Calculation Year, Waste Diversion Ontario shall take reasonable steps to verify the accuracy of each report described in clause 5(a) and may make any appropriate adjustments to ensure the accuracy of the reported costs.



- b. the Blue Box Program Plan developed under this Act for Blue Box waste, as amended, is deemed to provide that the total amount that Stewardship Ontario pays to all municipal Blue Box programs each year is 50 per cent of “the total net costs incurred by those municipalities as a result of the program” calculated in accordance with this regulation.
11. Municipal Blue Box program efforts to adopt best practices, to improve effectiveness and to contain costs shall receive an aggregate weighting of at least 25% in the allocation of each year's funding among individual municipal Blue Box programs.
12. In the calendar year 2015, each deadline for action by Waste Diversion Ontario shall be July 31, 2015, and not as set out in sections 7 and 8.
13. In this regulation,
  - a. “Calculation Year” means the calendar year in which Waste Diversion Ontario calculates the Steward Obligation in accordance with this regulation;
  - b. “municipal Blue Box program” means a program, operated by or on behalf of one or more municipal governments, by one or more First Nations and/or by an unorganized territory, which collects, transports, sorts, processes and/or sells or disposes of the classes of materials described in section 1 primarily from residential sources;
  - c. “Payment Year” means twelve calendar months commencing April 1 in the calendar year following the Calculation Year,
  - d. “Program Year” means the calendar year prior to the Calculation Year, and
  - e. “Steward Obligation” means 50% of the amount calculated annually in accordance with section 3, for payment annually by Stewardship Ontario.