



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Update on New Provincial Waste Management Framework Legislation - Bill 151: Waste-Free Ontario Act, 2016

**Date:** May 24, 2017

**To:** Public Works and Infrastructure Committee

**From:** General Manager, Solid Waste Management Services

**Wards:** All

#### REASON FOR CONFIDENTIAL INFORMATION

---

The report involves the security of the property of the City.

#### SUMMARY

---

Since 2002, the costs associated with the delivery of municipal residential blue box recycling services has been shared between Municipalities and Producers (the companies that are responsible for primarily the generation and distribution of Printed Paper and Packaging) under a model of Extended Producer Responsibility (EPR). EPR is a policy approach under which producers are given a significant responsibility – financial and/or physical – for the processing or disposal of post-consumer products. Assigning such responsibility should in principle provide incentives to prevent wastes at the source, promote product design for the environment and support the achievement of public recycling and materials management goals.

The funding model to date, under the former *Waste Diversion Act, 2002*, (WDA) was supposed to result in a 50/50 split of the total municipal program net costs. However each year, due largely to ambiguous legislative provisions in the former *Waste Diversion Act, 2002* that led to competing interpretations in the calculation process and unresolved differences of opinion between the municipalities and the producers, municipalities have not historically received 50% of their actual report costs. For Toronto this has resulted in a reduced payment from Producers annually ranging from \$800,000.00 to \$3,500,000.00 (representing a 0.4% to 1.5% pressure on the rate budget).

Recently, the Province of Ontario has passed new legislation that will see recycling services transition to a full EPR model, the implementation of which is still a provincial

work in progress as the Ministry of Environment and Climate Change (MOECC) develops the enabling regulations. Under a full EPR model, a greater allocation of costs and operational responsibilities will be borne by the Producers, in exchange for control over the delivery of services. This report outlines:

- the Province's implementation of the new legislation;
- the expected timelines;
- City staff engagement with implementation and future developments, including collaborating with other municipalities to coordinate resources and establish common principles to manage the transition to full EPR.

To maximize these opportunities and to protect the City's rate payers and residents' interests, it is crucial that the City plays a significant role in the formulation of these new regulations and works collaboratively with other municipalities in the Province. As such, staff is seeking Council authority for the City Manager or his designate to continue to work with the Province and stakeholders on implementation, and for the General Manager, Solid Waste Management Services to enter into any necessary agreements to that end, including but not limited to, continued transition operations and a possible joint municipal cooperation agreement. This report also requests authority for the General Manager, Solid Waste Management Services (and/or his designate) to negotiate and enter into agreements for the City's continued waste diversion operations throughout the transition period under the *Waste Diversion Transition Act, 2016* (WDTA).

Attached to this is a confidential attachment outlining pricing updates as they relate to existing agreements.

## **RECOMMENDATIONS**

---

The General Manager, Solid Waste Management Services recommends that:

1. City Council request the City Manager and/or his designate to continue consulting and negotiating with provincial officials to ensure inclusion of the City's priorities in future regulations or policy statements that implement the *Waste Diversion Transition Act, 2016*, the *Resource Recovery and Circular Economy Act, 2016*, and the Ministry of the Environment and Climate Change (MOECC) Strategy for a Waste-Free Ontario: Building the Circular Economy.
2. City Council authorize the General Manager, Solid Waste Management Services and/or his designate to vote on all appropriate matters of the Resource Productivity and Recovery Authority's Municipal Industry Program Committee and Continuous Improvement Fund Board.
3. City Council renew and extend until 2022, the authorization for the General Manager, Solid Waste Management Services and/or his designate to negotiate and enter into any agreements (including but not limited to agreements to receive external funding) necessary for the City's continued waste diversion operations throughout the transition period under the *Waste Diversion Transition Act, 2016*, based in part on the updated

pricing information presented in the Confidential Attachment, on terms satisfactory to the General Manager, Solid Waste Management Services and each in a form satisfactory to the City Solicitor.

4. City Council authorize the General Manager, Solid Waste Management Services and/or his designate to negotiate and enter into any agreements or acknowledgements necessary in connection with the efforts indicated in Recommendation 1 on terms and conditions satisfactory to the General Manager and each in a form satisfactory to the General Manager and City Solicitor.

5. City Council request the General Manager, Solid Waste Management Services to report back to the Public Works and Infrastructure Committee on the status of the implementation of *Waste-Free Ontario Act, 2016* and associated regulations and any anticipated impacts on Solid Waste Management Services programs and services.

6. City Council direct that the confidential information contained in Confidential Attachment 1 remain confidential in its entirety as it pertains to the security of the property of the City and in order to protect the competitive position, future economic and legal interests of the City.

## **FINANCIAL IMPACT**

---

There are no immediate financial implications resulting from this report.

The future impacts of the regulations, policy statements, and programs established under the WDPA and the *Resource Recovery and Circular Economy Act, 2016* (RRCEA) on Solid Waste Management Services' program costs and funding are yet to be determined.

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 March 31 and April 1, 2016, City Council adopted Item PW11.2 entitled "New Provincial Waste Management Framework Legislation - Bill 151: *Waste-Free Ontario Act*", and requested that the General Manager, Solid Waste Management Services to 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.

The City Council Decision document can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PW11.2>

At its meeting of July 7, 8 and 9, 2015, City Council adopted Motion MM8.50 entitled, "Waste Reduction and Resource Recovery Framework Legislation - by Councillor Jaye Robinson, seconded by Councillor Mary-Margaret McMahon". City Council direct the

General Manager, Solid Waste Management Services and designates to 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>

At its meeting held on June 10, 11 and 12, 2015, City Council adopted Item PW5.4 entitled "Authority to Negotiate and Enter into Agreements for Waste Diversion Processing Capacity, Initiatives and Funding". City Council authorize the General Manager, Solid Waste Management Services to negotiate and enter into any and all agreements and amending agreements necessary to initiate, continue and/or enhance arrangements for the receipt of external funding for waste diversion operations with respect to waste products and waste streams indicated in Chapters 841, 844 and 846 of the Code including all schedules thereto, each such agreement being for a term of years not to surpass December 31, 2020 on terms and conditions satisfactory to the General Manager, Solid Waste Management Services, Deputy City Manager and Chief Financial Officer and in a form satisfactory to the City Solicitor.

The City Council Decision can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW5.4>

## COMMENTS

---

### ISSUE BACKGROUND

On June 9, 2016, the *Waste-Free Ontario Act, 2016* (WFOA) received Royal Assent. Following this, on November 30, 2016, the Lieutenant Governor proclaimed the WFOA that included the *Waste Diversion Transition Act, 2016* (WDTA; Schedule 2 to the WFOA) and the *Resource Recovery and Circular Economy Act, 2016* (RRCEA; Schedule 1 to the WFOA).

In February 2017 as required by the RRCEA, the Minister finalized the accompanying Strategy for a Waste-Free Ontario (the Strategy) that establishes goals of a zero waste Ontario and zero greenhouse gas emissions from Ontario's waste sector and outlines the vision for a circular economy.

The following provides a more detailed account of the new legislation, the underlying legal framework, and the opportunity for the City to both support and influence the implementation of this new legislation.

#### *Overview of Current and Previous Legislation*

On June 9, 2016, WFOA received Royal Assent. Thereafter, on November 30, 2016, the Lieutenant Governor proclaimed the WFOA that comprised of the *Waste Diversion Transition Act, 2016* (Schedule 2 to the WFOA) and the *Resource Recovery and Circular Economy Act, 2016* (Schedule 1 to the WFOA). In addition, upon proclamation,

the WDA was repealed and Waste Diversion Ontario was dissolved. The new Resource Productivity and Recovery Authority (the Authority) was established to manage transition matters in the short term as well as prepare for, administer, and enforce EPR matters established from the RRCEA.

Previously, waste diversion programs and regulations in Ontario affecting municipalities was governed under the WDA. The WDTA and RRCEA replaces and enhances the waste diversion framework established under the former WDA, respectively.

The former WDA primarily provided a cost-recovery framework for certain items designated by Ministerial regulation under the WDA. The WDA framework required brand owners and/or first importers who introduce products or packaging to the Ontario market to be partially responsible for the cost of managing these products at the end of their useful lives. Stewardship programs established under the former WDA included the Blue Box Program Plan (Blue Bin recycling program), Municipal Hazardous or Special Waste, Phase 1 and 2 (household hazardous wastes and paints and coatings), Waste Electronic and Electrical Equipment, and Used tires. Each of these programs funds all or a portion of municipal costs to manage the designated material.

#### *The Waste Diversion Transition Act, 2016*

The WDTA allows for existing waste diversion stewardship programs established under the former WDA to operate seamlessly until full EPR under the RRCEA is fully implemented. The WDTA empowers the Minister to make changes to the transition programs, including increasing stewardship funding levels in the Blue Box Program Plan (BBPP) beyond the current 50%, and allows for regulations by the Lieutenant Governor in Council. Meanwhile, the Authority which was established under the RRCEA is authorized under the WDTA to manage transition matters. The existing BBPP continues to operate under the WDTA. Efforts by the City of Toronto and Ontario municipalities to increase the annual steward obligation for designated blue box materials are separate and distinct from any efforts to establish principles for future full EPR programs established under the RRCEA.

#### *The Resource Recovery and Circular Economy Act, 2016*

The RRCEA shifts the waste management framework, making producers wholly responsible, financially and operationally, for the management of designated wastes. This approach may not be compatible with Regulation 101/94 under the *Environmental Protection Act* (EPA), where municipalities over a certain population size are obligated to manage residential "Blue Box" recyclables, and could require that the EPA Regulation be revoked. Discussions with MOECC staff have indicated that the Minister is inclined to recommend that outcome once all programs have transitioned to programs under the RRCEA. Revocation of Regulation 101/94 will remove the legal obligation for municipalities to manage residential "Blue Box" recyclables.

The RRCEA enhances the former WDA and the WDTA by imposing full EPR onto Producers. The RRCEA requires producers to, among other things:

- Assume complete responsibility, financial and operational, for the collection, transfer and processing of designated wastes.
- Seek new packaging approaches to reduce waste generation.
- Educate the public and involve stakeholders in the process.

Under the new framework, producers may choose service providers to ensure they can meet targets and other performance obligations set by regulation for the recovery of their designated materials. Producers may negotiate with municipalities to execute the service provision role. Moreover, in previous consultation with stakeholders and via the Strategy, the MOECC has represented to municipalities that collection of designated materials by producers should occur in a manner consistent with current municipal service delivery levels and standards.

Future regulation and/or policy statements under the RRCEA will determine the specific operational requirements for full EPR programs for designated wastes. Regulations are expected to include explicit diversion targets, service levels, performance standards, materials designated and penalties. Municipal input into these regulations will significantly impact whether the stewards retain the City's waste collection services and ability to recover costs for delivering Blue Bin recycling or other waste diversion services.

Regulations under the RRCEA will establish the service level standards for full EPR programs, as well as the scope of materials for which the stewards will have to comply. The regulations will determine the range of municipally managed Blue Bin or other designated wastes for which the service provider receives funding or reimbursement. The affected producers will determine if they will approach Municipalities whether to act as a service provider or cease delivery of diversion services for designated wastes (Blue Box, waste electronics, hazardous wastes and used tires). In essence, programs operating under the RRCEA will be evaluated based on outcomes set by Regulation, and enforced by the Authority. The City will have no control over how Producers meet these targets.

It is critical that the City be able to influence the development of regulations under the RRCEA to obtain the fairest outcome regarding diversion programs for designated wastes for all ratepayers and residents.

### *Timeline for Future Developments related to the Act*

Table 1 - Anticipated Timeline for Implementation of the *Waste-Free Ontario Act, 2016*

<b>Year</b>	<b>Implementation Action</b>
<b>2016</b>	<ul style="list-style-type: none"> <li>• <i>Waste-Free Ontario Act</i> is promulgated</li> <li>• Establish the Resource Productivity and Recovery Authority</li> </ul>
<b>2017</b>	<ul style="list-style-type: none"> <li>• Begin development of Organics Action Plan</li> <li>• Develop and consult on 3Rs regulations under EPA</li> <li>• Begin Transition of Used Tires Program - Ontario Tire Stewardship (OTS)</li> <li>• Establish Resource Productivity and Recovery Registry</li> <li>• Develop and consult on First Provincial Policy Statement (expected to address food and organic wastes)</li> </ul>
<b>2018</b>	<ul style="list-style-type: none"> <li>• Develop and consult on first disposal bans (e.g. food waste, existing designated materials)</li> <li>• Begin implementation of Organics Action Plan</li> <li>• Begin implementing first Provincial Policy Statement</li> <li>• Begin designating new materials under producer responsibility regulations/RRCEA</li> <li>• Complete transition of the Used Tires Program (OTS)</li> </ul>
<b>2019</b>	<ul style="list-style-type: none"> <li>• Begin implementing amended 3Rs Regulations</li> </ul>
<b>2020</b>	<ul style="list-style-type: none"> <li>• Designate additional materials under RRCEA</li> <li>• Complete transition of existing waste diversion programs (Except Blue Box Program Plan)</li> <li>• Interim Goal: 30% Diversion</li> </ul>
<b>2021</b>	<ul style="list-style-type: none"> <li>• Begin Implementing disposal bans on designated materials</li> <li>• First Ministry review of Waste-Free Ontario Act/Strategy</li> </ul>
<b>2022</b>	<ul style="list-style-type: none"> <li>• Complete Transition of Blue Box Program</li> </ul>

The updated anticipated timeline provides a skeleton for municipalities to plan and resource future consultation activities. However, significant uncertainty remains with respect to program transitions and the implementation of major policies like disposal bans. Absent detailed plans from the MOECC, forecasting of service levels, capital investments and program fees will be challenging for the City. Notably, the Strategy indicates that the transition of the BBPP will not occur until at least 2022, which means that the City could continue to experience challenges with steward funding negotiations for the BBPP operating under the WDTA for the foreseeable future.

Furthermore, despite articulating municipalities' preference to prioritize the transition of the BBPP, the MOECC is proceeding with a transition order that does not reflect municipal input. On February 17, 2017, the Minister issued a letter to Ontario Tire Stewardship (OTS) requesting that the program submit a wind-up and transition plan before October 31, 2017. The wind-up plan must be developed in accordance with direction from the Minister, the WDTA and its regulations. Consultation with stewards, municipalities and affected stakeholders will occur during development of the wind-up plan and implementation of the wind-up is anticipated to begin by March 31, 2018. OTS must cease operations by December 31, 2018 and a new program for management of used tires will be established on or before January 1, 2019.

### *Joint Municipal Efforts on Transition of Stewardship Programs*

As the City continues to consult on WDTA and RRCEA implementation, its effort may be enhanced by working cooperatively with other Ontario municipalities. Throughout consultation on the WFOA, municipalities have consistently expressed the significance and urgency of transitioning the BBPP to a new program under the RRCEA full producer responsibility framework. Prioritizing the BBPP is critical to ensuring the continued provision of convenient, efficient, and economical recycling services to City ratepayers during the transition period. The difficulty in establishing the annual Steward Obligation under the existing BBPP remains under the WDTA. The existing BBPP process has been disadvantageous to municipalities for more than a decade. The funding arrangement under the existing BBPP does not result in payment of the full municipal cost of managing these materials, and the annual process for negotiating the funding obligation is difficult and resource-intensive for municipalities. The current proposal for the BBPP transition in 2022 is estimated to cost municipalities \$650M as each year it takes to transition, municipalities will incur \$130M.

As time advances towards a Municipal and Provincial election year in 2018, action on transitioning the BBPP becomes critical to avoid further unpredictable delays and address challenges with the Blue Bin Program. Discussion with MOECC staff have indicated to the City and Association of Municipalities of Ontario (AMO) that if municipalities and stewards can determine shared principles on the transition of the BBPP, the Minister will issue a letter to the Authority requiring that transition occur swiftly. If these shared principles can be developed by the end of Q3 2017, the BBPP transition could be completed by Q2 2019, more than three years ahead of the transition schedule currently offered in the Strategy.

### *Joint Municipal Models*

Producers of designated Blue Box wastes are currently represented nationally and provincially by the Canadian Steward Services Alliance (CSSA) and Stewardship Ontario (SO), respectively. These well-resourced organizations allow Producers to develop unified positions representing the best interests of producers. Municipalities lack a similarly cohesive advocate to further the municipal position. Due in large part to a lack of coordinated resources and a lack of time dedicated to negotiation related to



the BBPP, municipalities have historically been unable to effectively represent the best interest of tax and ratepayers with regard to management of Blue Box wastes. Discussions with MOECC staff have indicated that the Province prefers a unified municipal position on program operations. A collaborative effort would also benefit from a greatly enhanced pool of resources for data and policy analysis than currently exists under one roof.

The City and municipalities, together with advice and support from Regional Public Works Commissioners of Ontario and AMO, are exploring various governance models such as a joint municipal board, a joint municipal corporation or a comprehensive governance agreement to advance the municipal position in the integrated waste management system. Through combined efforts, municipal partners would develop overarching principles related to the BBPP transition and collaborate with CSSA/SO to determine shared values and standards for a new Blue Box program under the WDTA and a future full EPR program under the RRCEA. Common principles could include recovery targets by material type, accessibility and service levels, and an iterative increase in annual Blue Box fees towards full producer responsibility.

Municipal partners and stakeholders would further establish specific and prescriptive recommendations for the Authority on BBPP transition, should the Minister issue the transition order. These recommendations would include a requirement that existing service levels are maintained for City ratepayers.

Resources for supporting this research would be drawn from both City and AMO membership staff. Should a comprehensive governance agreement be the preferred option, staff are requesting authorization from City Council for the General Manager, Solid Waste Management Services, to enter into such an agreement. Should other models requiring the formation of a separate legal entity prove the better approach, staff would report back to secure specific City Council authorization for the City to help form and participate in such a venture.

#### *Consideration of Potential WDTA and RRCEA Impacts to Existing Processing Operations and Contracts*

The scale of the waste diversion processing capacity needs of the City require long-term contracts in order to secure the most competitive pricing. This is because large-scale capital investments that service providers must undertake in order to deliver the services (i.e. the purchase of specialized equipment or facility modifications) must be incorporated into the overall contract pricing and because the processing capacity requirements for Toronto exceed that of any other municipality or entity in the Province. For example, it is common for service providers to have to commit the majority of their processing operations for a given waste stream (i.e. Blue Bin recyclables) to Toronto.

Historically, Solid Waste Management Services has renewed its agreements for waste diversion processing, in accordance with all of the City's purchasing policies, at least one to two years in advance in order to plan accordingly for procurement award and service provider preparation. The advance timing allows service providers to build facilities able to manage the City's processing capacity and technical needs and/or to

provide time for existing smaller contracts to expire so that they are able to manage the quantities required in the contracts.

The City also faces pressure from volatile global market conditions for low value materials, such as polystyrene, where markets are declining in terms of the number of available vendors and the cost required to sustainably recover resources from these materials. As long as the City continues to be fully responsible for the management of Blue Bin recycling, the risk associated with market volatility will continue.

Within the next five years, Solid Waste Management Services has a number of contracts that will need to be renewed or re-tendered but that are also identified for transition to full producer funding in the WFOA (i.e. Blue Bin Recyclables Processing, Electronics Recycling and Household Hazardous Waste Recycling and Safe Disposal etc.).

Obtaining the authority via Recommendation No. 3 will decrease the risk of higher priced, short-term contracts for the City (that is due to the uncertainty of timing related to the wind-up and transition from existing diversion programs) and provide for the flexibility to ensure the most cost-competitive services are secured.

Confidential Attachment 1 solely contains commercially confidential pricing information as it relates to Recommendation No. 3.

## **Next Steps**

The transition of existing waste diversion programs under the WDTA and implementation of new programs and policies under the RRCEA will occur over several years. Staff will actively participate in consultation to promote the City's role in the integrated waste management system. Expected opportunities for public comment in 2017 may include:

- Resource Productivity and Recovery Authority Business Plans for 2017 and 2018.
- Wind-up and Transition plans for Ontario Tire Stewardship (Used Tires program).
- First Provincial Policy Statement (Food and Organic Wastes).
- Proposed Food and Organic Waste Framework.
- Framework for review of 3Rs Regulations under *Ontario Environmental Protection Act*.

The timeline for new programs and transitioning of existing programs under the WDTA and RREA remains unclear. City staff will explore a variety of models for developing common municipal principles on transition of existing stewardship programs under the WDTA and development of future full EPR programs under the RRCEA.

Staff will continue to engage municipal partners and organizations to advance the municipal perspective on issues related to the WDTA, the RRCEA and the Strategy as opportunities develop. The City's Long Term Waste Management Strategy aligns with the goals and principles of the new provincial waste management framework legislation and Toronto is well positioned to demonstrate continued leadership in waste reduction and the adoption of a circular economy. Staff will maintain collaborative efforts with the Province and waste management stakeholders to advance waste reduction opportunities for all residents, businesses and organizations in the City. Future reports will update Committee and City Council when regulations under the RRCEA have been released.

## **CONTACT**

---

Vincent Sferrazza, Director, Policy, Planning and Support. Solid Waste Management Services, Telephone: 416-392-9095, Email: [Vincent.Sferrazza@toronto.ca](mailto:Vincent.Sferrazza@toronto.ca)

Charlotte Ueta, Acting Manager, Waste Management Planning, Policy, Planning and Support, Solid Waste Management Services, Telephone: 416-392-8506, Email: [Charlotte.Ueta@toronto.ca](mailto:Charlotte.Ueta@toronto.ca)

## **SIGNATURE**

---

Jim McKay  
General Manager  
Solid Waste Management Services

## **ATTACHMENTS**

---

Confidential Attachment 1 - Waste-Free Ontario Act Designated Material Pricing