

### Eco fees and why they're here to stay

Ontario's waste diversion programs, and more particularly their costs, have finally begun to register in the consciousness of the Ontario public. The appearance of the "Orange Drop" programs for disposal of household "Special Wastes" and the "Eco Fees" attached to certain hardware and garden items after July 1st for the purpose of funding those programs have attracted attention.

Consumers have woken up to the fact that they will be contributing about \$200 million in 2010 to "divert" waste that used to be managed, seemingly free-of-charge, by the municipality or by business. Having the new fees pop up at exactly the same time as the introduction of the HST has been an unforced political error for which the Ministry of the Environment is still kicking itself. There may have been sullen acquiescence for the new HST but the Eco Fee and the ineptitude of its introduction generated voluble taxpayer anger.

The Ontario Government concluded that it had to get involved. On July 13, 2010, the (now former) Minister of the Environment, John Gerretsen, issued a letter suspending the payment of the fees. The commitment of the McGuinty Government to its waste diversion programs seemed to falter and there seemed to be a possibility that the entire structure was going to be cancelled or modified.

### blame it on the blue box

So how did we get to July 13th? The problem begins with the success of Ontario's Blue Box. The Ontario public embraced curbside recycling in such a big way and felt so good about their green participation that governments realized they could probably hit them up for a cash contribution at the same time. Ontario's consumers have been paying for their own environmental scruples since 2004, although they are only now realizing it.

The Blue Box, a blue plastic bin for household recyclables, was introduced in Kitchener, Waterloo in 1983. It proved to be very popular and spread throughout the Province so that as of 2000, over 80 % of Ontario households had access to curbside recycling programs. Unfortunately, the funding for the Blue Box did not keep pace. When it was initiated, the Blue Box was funded by a combination of industry, municipalities, and the Province. Industrial contributors came mostly from the newspaper industry and the soft drink and

grocery manufacturers who were making voluntary contributions in a bid to pre-empt any move to deposit-return programs. The municipalities were doing the collecting and sorting, and from the Province, the Ministry of the Environment funded operating costs.

Financial support from the Ministry of the Environment shrank over time and they stopped funding completely in 1996 in the first term of the Harris Government, leaving the municipalities and industries to deal with it on their own. There were strains in the ranks of the payment volunteers even before that, but after 1996 the issue became increasingly acute.

## waste diversion in Ontario

Finally in 2002, the Harris government introduced Bill 90, the *Waste Diversion Act, 2002* to create a more formal structure where all the industry participants would be compelled to contribute. This would eliminate the industry “free riders” who had been benefitting from the Blue Box but not paying the costs.

The new legislation created an innovative scheme to generate funding for municipal waste diversion and recycling programs from the industries that generate the waste and recyclables. An umbrella organization, Waste Diversion Ontario, was created with initial members representing manufacturers, retailers, municipalities, “Brand-owners,”<sup>1</sup> and other stakeholders in the waste and recycling area. On the direction of the Minister, Waste Diversion Ontario was to develop waste diversion programs for the wastes that the Minister designates, not limited to Blue Box materials. Each waste diversion program was to be developed in co-operation with an “industry funding organization” and was to include research and development activities, activities to reduce, reuse and recycle waste, communications activities, and educational and public awareness programs.

Funding levels and cost allocations were to be established by the industry groups on a voluntary basis. The model was intended to promote a level of industry self-regulation, with the individual industry groups being given responsibility to establish and collect levies to pay their share of the bill. The original Blue Box contributors were very active in framing the legislation whose theme was along the lines of: *“We accept this as industry’s problem. We in industry will solve the problem and we will pay for it but we do not want the heavy hand of the Ministry of the Environment in this. They only make it more expensive and slow down decisions.”*

The Ontario Waste Diversion scheme was broadly based on principles of “Product Stewardship” and “Extended Producer Responsibility,” the concept being that the producer or the person who introduces a product into the marketplace retains some degree of responsibility for its disposition at the end of its life. For example, the automobile manufacturer who puts electrical switches containing mercury into the automobile cannot simply walk away after the car has been sold. The producer retains some responsibility to deal with the mercury or to contribute to its disposal. The goal of Extended Producer Responsibility would be that when the price for disposal gets too high, the producer will stop using mercury and find an alternative.

<sup>1</sup> “Brand-owners” are typically the famous, multinational corporations with well-known trade-marks who may not always have a local presence in a specific province but may sell through arms-length retailers. The by-products of Brand-owner success are only too evident in our waste bins and elsewhere.

The original budget for the Blue Box based on 2003 numbers was \$62 million, of which the industry funding organization (Stewardship Ontario – don't forget that name) contributed half and the municipalities the other half. That number quickly rose to \$77 million for 2004. The Blue Box program was supplemented by a new program for municipal hazardous and special waste (MHSW) in 2008, and for waste electronic and electrical equipment (WEEE) and used tires, beginning 2009.

Despite the recession, the totals for all these programs are now well in excess of \$200 million and the number will rise in future. For example, the Blue Box program generated significant revenue for municipalities from recyclables such as aluminum cans<sup>2</sup> but the recession kicked the bottom out of markets for recyclables and municipal deficits have been growing.

### after the eco fees?

Although there was clearly some weakening in the knees in the senior staff at the Ministry of the Environment when the fuss over the eco fees began, they came to their senses quickly. They must have realized that unwinding the eco fees would have meant unwinding the entire MHSW program. The WEEE participants would then point out that the 13¢ per lawn fertilizer container that was added at the cash register for the MHSW fees was dwarfed by the \$18 or \$20 or \$25 in "environmental fees" that are already added at the cash register for a new TV or computer monitor. A challenge to the WEEE fees would then have cascaded to the Blue Box. The Ministry of the Environment must have realized that the entire structure was in jeopardy.

Fortunately, cooler heads prevailed and a short but very pithy speech, delivered by (now former) Minister Gerretsen on July 20th, made all the good points that were behind the creation of the Waste Diversion Programs in the first place:

- We need to dispose of our hazardous materials carefully to protect our air, land and water.
- This kind of protection comes at a cost. It is not free.
- The Waste Diversion Programs that are being challenged have been developed by industry, not by the Ministry of the Environment.
- The programs are managed by Stewardship Ontario, a non-profit industry funding organization that was created by Ontario businesses.
- The MHSW program has already existed for several years and was not created on July 1st, merely expanded.
- Consumers were not well informed by Stewardship Ontario and the MHSW program will be reviewed for 90 days (to get it right).

### environmental commissioner

The Minister got considerable support a week later from a report dated July 27, 2010, provided by Gord Miller, the Environmental Commissioner of Ontario to the Legislative Assembly. The Commissioner weighed in that the MSHW Program is a good plan and should not be scrapped. He also pointed out that the programs to divert special

<sup>2</sup> Prior to 2008, approaching \$2000/tonne.

wastes come with a cost and that the principles of Extended Producer Responsibility have considerable merit. The Environmental Commissioner points out that effective Stewardship programs require “correct price signals” and must capture *all* of the waste management costs, not just part. The Ministry had issued a Waste Diversion discussion paper in October 2008 that suggested a rationale for an expansion of Waste Diversion and an expansion of extended producer responsibility. The Environmental Commissioner picked up on this and recommended that the MHSW program should go further and support 100% of the costs including costs of MHSW of materials that do not pass through the MSHW Program but instead get diverted to municipal landfills.

### and so then what happens?

Whether the Ministry of the Environment is really grateful for Commissioner Miller’s help is uncertain. In addressing the Eco Fees, the Ministry website talks about the development of a “new system that works for consumers and works to protect our landfills and waterways from dangerous materials.” Given the basic premise mentioned by John Gerretsen in his July 20th paper, it will be interesting to see how “new” the program can be. Certainly, Commissioner Miller makes it more difficult to go backwards but a great leap forward would not be consistent with the past performance of Premier McGuinty. Minister Gerretsen has been replaced, allegedly because of his mishandling of the Eco Fees, by a new Minister, John Wilkinson. We should know by the end of October whether there will be movement to even more waste diversion or whether some more incremental approach will be followed. In light of former Minister Gerretsen’s speech of July 20th, it will be very surprising if the Ministry backs away from \$200 million worth of financial support and an infrastructure funded by industry that has already implemented a number of waste diversion programs.

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### a cautionary note

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