

GREENMAIL

NEWSLETTER

*A Report On Developments
in Environmental
Regulation*

June 2005

INSIDE

PAGE 2

- **WASTE DIVERSION AT 60%**
 - **DESIGNATION**
-

PAGE 3

- **WEEE WASTE DIVERSION PROGRAM**
-

PAGE 4

- **WEEE MANAGEMENT IN ONTARIO**
- **CONCLUSION**

NEW WASTE DIVERSION INITIATIVES WASTE ELECTRONIC AND ELECTRICAL EQUIPMENT

INTRODUCTION

Our recent Greenmail publications have followed Ontario's efforts to improve recycling and send less waste to landfills. The Harris government was aiming for a scheme of "extended producer responsibility" or "EPR" when it enacted the *Waste Diversion Act, 2002* in June 2002. In its most simple form, EPR means that the responsibility of a manufacturer does not cease when his product is sold; instead, the manufacturer must also make some provision for the disposition of his product at the end of its life-cycle.

In the long term, this allocation of responsibility is intended to provide an incentive for manufacturers to modify products or redesign packaging to reduce the amount of waste to be disposed. In the short term, as a substitute for EPR, "Product Stewardship" may be implemented where funding for waste diversion and recycling programs is obtained from the industries who generate the waste and recyclable materials. The current Ontario mechanism for securing Blue Box funding from industry stakeholders¹ is an example of this short-term solution.

WASTE DIVERSION ONTARIO (WDO)

Under the *Waste Diversion Act, 2002*, an umbrella group, Waste Diversion Ontario (WDO), was created as a not-for-profit corporation and given the responsibility to develop waste diversion programs. WDO is run by a Board made up of representatives of the relevant stakeholders. At present, WDO's membership is heavily slanted towards the municipal sector and those sectors dealing with packaged goods, paper and paper products, and food products that find their way into the Blue Box. With the addition of larger items, such as tires, and the extension to the electronics area as discussed below, it is anticipated that the WDO makeup will change.

Waste Diversion Ontario is required, under the legislation, to work with a special industry group referred to as the "Industry Funding Organization" or "IFO", one for each designated category of waste. The WDO, in conjunction with the IFO, is responsible for drafting each waste diversion program plan and establishing the funding requirements. The waste diversion program plan designates certain industry members as "stewards" of their products. This is the heart of the whole Product Stewardship scheme since the "stewards" are responsible for the program funding!

¹ See our January 2005 Greenmail.

The *Waste Diversion Act, 2002*, not surprisingly for legislation drafted under the Harris Government, aims to give industry a large measure of self regulation. Once a waste diversion program is accepted by the Minister of the Environment, the establishment of program budgets and the allocation of program costs to the stewards are established by the IFO without any input from the government. The IFO is responsible for invoicing and collecting the levies from the stewards. Once the levies are established, the invoices are due and payable just like any other account in the normal course of business.

WASTE DIVERSION AT 60%

In June 2004, Leona Dombrowsky, the new Minister of the Environment in the McGuinty government, released a discussion paper that set a 60% goal for waste diversion to be met by the end of 2008. According to the Ministry background papers, diversion rates² in many of the larger municipalities were typically between 35-40%, leaving an enormous challenge to reach the 2008 goal. The White Paper discusses municipalities such as the County of Wellington with a 57% diversion rate and also mentions some of the players in the industrial, commercial, and institutional sectors (ICI) with impressive track records. For example, the White Paper cites the Beer Store³ with a 97% recovery rate for glass recycling and the GTAA (Greater Toronto Airports Authority) which achieved a diversion goal in its construction waste of 90% for its recent Terminal 1 project.

So the Minister is now taking steps to ratchet up the waste diversion performance of Ontario industry. Now that the Blue Box waste, oils, and used tires have been dealt with (as discussed in earlier *Greenmails*), the Minister has now set her sights on waste electronic and electrical equipment or “WEEE”. A draft regulation was published in October 2004 on the Environmental Bill of Rights Registry. In December 2004, the Minister issued a formal designation of certain E-wastes and sent a written request to WDO to establish a waste diversion program for WEEE.

DESIGNATION

The first step to create a waste diversion program under the *Waste Diversion Act, 2002* is to “designate” the relevant waste by regulation. Initial indications from the Ministry in 2004 were focussed on computers and related electronics. Activists have raised serious concerns for some time now about the export of end-of-life electronics to China where their fate was frequently suspect because of inadequate workplace health and safety standards and primitive environmental controls. In 2003, an industry organization, *Electronic Product Stewardship Canada* (EPSC), was created, representing manufacturers of computers, monitors, and high-end electronics such as televisions and sound systems. Companies like Hewlett-Packard and Sony were participants in a number of the early stages of the consultation process. Some parties expected that EPSC would form the core of the IFO for an electronics waste diversion program.

As noted above, the legislation requires that a waste diversion program be produced by the WDO in conjunction with an IFO. In the case of used oil or used tires, the two waste designated most recently, the number of significant industry participants is relatively few and creation of a grouping as the “IFO” has not proven to be particularly difficult. The range of representatives for “Blue Box” IFO purposes was, of course, far broader and represents a number of different industries. Fortunately, those industries had been working together under the aegis of CSR (Corporations Supporting Recycling) for over a decade when the Minister’s designation first came out in 2003 for the paper, glass, metals, plastics, and textiles forming the Blue Box family of materials.

The formation of EPSC by an industry group was intended to give a head start to an electronics group so that at least a preliminary structure could be in place when the Minister published the initial request for a waste diversion program. But the expectation that the designation of waste would be limited to computers and high-end electronics was way off the mark!

² Based on 2003 statistics

³ Ontario’s beer retail outlets which are run as a collective distribution system representing the major brewers.

The breadth of the products that are to be included as designated E-wastes under the regulation made on December 14, 2004 is stunning! The list attached to the new regulation, Ontario Regulation 393/04, includes:

1. **Appliances:** Forty-nine items which vary from the large-knitting machines, air conditioners- to the manageable -blenders, coffee makers, carpet sweepers, glue guns, and power tools.
2. **Information technology equipment:** Twenty eight items in this category including the core of what most guessed would be the basic E-wastes; computers, computer keyboards, monitors, printers, scanners, and laptop computers. But it also covers bar code scanners, point-of-sale terminals, and other more esoteric hardware.
3. **Telecommunications equipment:** This category has the old (CB radios, modems, telephones, telexes), the not-so-old (satellite television transmitting equipment, GPS instruments), and the bizarre –traffic signals! It includes twenty- seven items.
4. **Audio visual equipment.** This category, twenty- two items in all, includes amplifiers, cameras, headphones, mixing boards, radios, televisions, tuners and VCRs.³
5. **Toys, leisure and sports equipment.** This extraordinary hodge-podge covers action figures, building sets, outdoor and sports toys, PC games, plush toys, portable hardware and accessories, thirteen items in total.
6. **Electrical and electronic tools.** The *Home Depot* catalogue in reverse - electric drills, fasteners, generators, grinders, lawn mowers, nail guns and sanders. It includes thirty-three items.
7. **Navigational, measuring, medical and control instruments.** This category includes dialysis machines, freezers, hearing aids, instruments for industrial process control, medical equipment, meteorological instruments, nuclear medicine, soil testing instruments and surveying instruments. It covers thirty-four items.

A list of the relevant Canadian brand owners and distributors of the WEEE products could fill a CD Rom. It is as if one combined the end-of-life products from Canadian Tire, Best Buy, and your local hospital. Creating a coherent Industry Funding Organization for all the designated products in the draft Regulation as it appeared in October would be an extraordinarily difficult job. The Minister fortunately did a serious editing job before submitting a request for a WEEE program to the WDO. The list concentrates on household appliances, information technology equipment, telecommunications equipment and audio visual equipment. There is, nevertheless, still an imposing list of items which have been designated.

WEEE WASTE DIVERSION PROGRAM

The Ministry's letter in December 2004 directed Waste Diversion Ontario to proceed with program development in three parts: (1) create program requirements for priority waste categories; (2) undertake a study of the state of waste electronic management in Ontario; and (3) proceed with the Minister's final program request.

The Minister directed WDO to prepare a consultation plan to be submitted by May 1, 2005. The program plan is to address, as a priority, items from the first four of the seven categories, leaning heavily on the information technology equipment, telecommunications equipment and audiovisual equipment listed in the regulations. The program is to contain incentives for reducing waste and increasing recyclability; a research and development component and an educational and public awareness component. The program must start with at least a program for waste electronics generated by residential sources.

The initial program is to define “stewards” as persons who are brand owners⁴, assemblers (in the case of non-branded equipment) and first importers of the relevant products.

Insofar as the new IFO is concerned, the Board is to include stewards from each of the four priority WEEE categories, from municipalities, consumers, recyclers, retailers and, for the first time, environmental non-governmental organizations or “NGOs”.

WEEE MANAGEMENT IN ONTARIO

The Minister’s request also required that a study be undertaken to assess current WEEE management in Ontario, to view options with respect to internalizing program costs, to estimate material flow in Ontario, provide an overview of producers affected by the program and make recommendations for the expansion of the program to additional equipment. The study was to be produced to the Minister by June 1, 2005.

CONCLUSION

The Minister has presented the industry with a real challenge. The diversity of the stakeholders and in particular, the enormous range of commercial interests involved as “stewards” presents a complex puzzle. The creation of the Industry Funding Organization requires all the parties to be pulling in the same direction at the same time - a daunting task at the best of times.

The tight timetable is also a challenge. A study on material flows for laptop computers or for refrigerators or other White Goods would, on its own, be a major undertaking. To assemble that level for information for twenty or thirty different products that are not necessarily going to the same consumers, or coming from the same industrial sector, seems like an overwhelming job for someone to accomplish in six months.

An industry working group has been created to satisfy the Minister’s program requirements but the timeframes have proven to be too ambitious. The fact that the Ontario model is likely to be replicated in the Province of Quebec makes the stakes even higher for industry participants to produce workable solutions to problems that are challenging industrialized economies right across the globe. The WDO has asked for more time to complete the various studies required and the Minister has now agreed to extend the reporting period to July 2005. The Minister has set an aggressive timetable but the extent of the endeavour is slowly becoming evident to all the parties involved. It is not clear when Ontario industries and consumers can expect to see action on end-of-life electronics and electrical equipment but the work proceeds and we will continue to report on its progress.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

© Copyright 2005 McMillan Binch Mendelson LLP

For further information, please contact:

Michael M. Peterson

416.865.7839

michael.peterson@mbmlex.com

⁴ As we have explained in a previous Greenmail, the use of the “brandowner” term is unusual in Canadian legislation, if not unique. It is meant to capture products such as private label popcans or food packages which may be manufactured outside the province of Ontario. The manufacturer may be beyond the reach of Ontario waste diversion legislation but the store that distributes the product to the consumer in Ontario is not. For something like Perrier water or Twinings Tea, the brandowner may not even have an office in Canada so the legislation falls back on the first importer (such as Loblaws or Costco).