

GREENMAIL

NEWSLETTER

A Report On Developments
in Environmental
Regulation

October 2003

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**UNFINISHED ENVIRONMENTAL BUSINESS AND THE
2003 ONTARIO ELECTION
(THE WASTE DIVERSION ACT, 2002)**

In June, 2002, Ontario's Tory government brought into force the *Waste Diversion Act, 2002*, legislation creating a model for product stewardship and producer responsibility for waste. The new legislation (originally introduced as Bill 90) created an innovative scheme to produce funding for municipal waste diversion and recycling programs from the industries who generate the waste and recyclables. Ontario has had an extensive curb-side collection program in place for household recyclables for over a decade. Known as the "Blue Box" program, it has become a victim of its own success and municipalities are aggressively searching for assistance in funding these programs.

An umbrella organisation, Waste Diversion Ontario (WDO), was created by the new Act with initial members representing manufacturers, retailers, municipalities, brandowners, and other stakeholders in the waste and recycling area. Depending on the designated waste, individual industry groups under the umbrella were to contribute to specific municipal waste diversion costs. Funds were to be raised through levies imposed on the affected industries who were designated as "stewards" of their products. Those funds were then to be paid out to the municipalities for municipal recycling programs. Funding levels and cost allocations were to be established by the industry groups on a voluntary basis. The model was based on industry self-regulation with the individual industry groups being given responsibility to establish and collect levies to pay their share of the bill.

The initial waste diversion program and funding scheme was submitted to the Minister of the Environment for his approval at the end of February 2003 but no decision was reached before the October 2nd Provincial Election overtook him. The defeat of the Tory government has left the whole WDO process and the funding in limbo. This article explains where Ontario industries and municipalities are and what issues face Leona Dombrowsky, the new Minister of the Environment who was sworn in on October 23rd.

WASTE DIVERSION ONTARIO

The *Waste Diversion Act, 2002*,¹ created Waste Diversion Ontario (WDO), a non-share corporation that might also be called "Blue Box III". WDO's initial Board of Directors,² appointed in August 2002, included all the major food, soft-drink, retail and consumer products interests who had been involved in previous

¹ Royal Assent on June 27, 2002.

² Voting Members: AMO (Association of Municipalities of Ontario), Retail Council of Canada, Corporations Supporting Recycling (CSR), Canadian Newspaper Association (CAN), LCBO, Brewers of Ontario, Recycling Council of Ontario. Observer but non-voting: Ontario Waste Management Association, Paper and Paperboard Packaging Council, Ontario Community Newspaper Association, Canadian Manufacturers of Chemical Specialties.

structures dealing with Blue Box funding. Waste Diversion Ontario was an umbrella organization with responsibility for the overall implementation of waste diversion programs in the province. The *Waste Diversion Act, 2002* contemplated that WDO, on the direction of the Minister, was to develop waste diversion programs for the wastes that are designated, not limited to Blue Box materials. Each waste diversion program was to be developed in co-operation with an “industry funding organization” or IFO. Each waste diversion program was to include research and development activities, activities to reduce, reuse and recycle waste, communications activities, and educational and public awareness programs.

A waste diversion program was to provide for collections of fees from the relevant industry “stewards” and payment of those funds to the municipalities. The “steward” designation is the real crunch in the new program because the “stewards” get to pay the bills! For the five Blue Box materials designated first, payments were to be made in amounts equal to **50 percent of the municipal net costs** for the diversion program relating to the designated waste. Levels for other wastes handled through municipal programs would have to be negotiated. As an alternative, an industry group for a designated material could create their own separate waste diversion program and could choose to take responsibility as “stewards” for their own products in the waste stream.

DESIGNATION OF WASTE

Under the new Act, the Minister of the Environment made an initial designation of existing Blue Box materials (paper, metal, glass, plastic, textiles). In September 2002, the Minister made a formal request to the WDO to provide a waste diversion program for the five initial designated wastes. The Minister’s letter asked that an initial IFO be created and that the program plan be filed by the end of February 2003. Shortly after the Minister’s letter, the initial IFO was formed as “Stewardship Ontario”. The core members of Stewardship Ontario came from “CSR” or “Corporations Supporting Recycling,” the consortium of food, beverage, and packaging companies who have previously been involved in the organization of the Blue

Box plus the Retail Council of Canada and the Canadian Newspaper Association.

BLUE BOX PROGRAM PLAN

The Blue Box Program Plan was submitted to WDO for review and discussion on February 14, 2003. The Program Plan was a massive document, in excess of a hundred pages with two hundred pages of additional appendices. An amended version of the Plan was submitted to the Minister of the Environment, Mr. Stockwell, for approval. The key features of the Program Plan are:

1. confirmation of Stewardship Ontario as the industry funding organization or IFO for the initial Blue Box materials designated - paper glass, metal, plastic³ ;
2. calculation of the net municipal Blue Box program operating costs to be used for the first year of the program;
3. development of a model for the allocation of municipal funding;
4. development of overall program and material-specific recovery targets for the Blue Box Program Plan;
5. methodology and procedures for calculating net municipal Blue Box program operating costs in subsequent years;
6. the designation of *stewards*, the parties bearing financial responsibility under the program for Blue Box wastes;
7. the establishment of a *de minimis* threshold, where minor players in a specific industry were to be exempt;
8. calculation of relevant Blue Box waste and data reporting;
9. establishment of methods for determining the amount of fees to be paid by industry members based on quantities of relevant materials generated in the residential waste stream, material recovered through municipal recycling programs, and total system costs;
10. calculation of appropriate Blue Box tonnages and establishment of calculation factors for relevant stewards; and

³ The fifth material is textiles which is not significant in terms of its contribution to the problem or the solution.

11. allocation of total costs across designated Blue Box materials to determine the per ton/per kilogram levy rate. Examples of initial rates were 0.028¢/kg of newspapers, 3.647¢/ kg for steel packaging, and 4.019¢ for coloured glass. Because of the value of aluminium packaging (recycled aluminium selling for \$1500 to \$1800/tonne), the participants responsible for aluminium packaging are to receive a credit of 5.457¢/kg.

SUBMISSION TO THE MINISTER OF THE ENVIRONMENT

The directors of Stewardship Ontario voted overwhelmingly on February 19, 2003 to approve the plan and submit it to the Minister. The one dissenting voice was the representative of the Recycling Council of Ontario (RCO).

Although most of the participants recognize that there were certain deficiencies in what had been submitted to the Minister (those that voted in favour as well as RCO), there is no doubt that the Blue Box Program Plan was a tremendous accomplishment. The amount of information pulled together into a coherent submission in a very short period of time was impressive. Most of the WDO board members would have acknowledged certain flaws where the Program Plan did not fully meet the goals set by the Minister, but given the very challenging time constraints, the working groups under Stewardship Ontario, the Association of Municipalities of Ontario, and others, did an excellent job and submitted a plan that produced most of what the Minister had requested.

RESPONSE BY THE MINISTRY OF THE ENVIRONMENT

A great silence followed. In the back rooms, Ministry of the Environment staff pointed out some of the deficiencies mentioned above. Some of the industry participants continued to lobby the Minister with a view either to derailing the entire program or to sending it back to Stewardship Ontario to correct some of the

problems. The lack of progress was exacerbated by the resignation in July of Minister Stockwell as a result of alleged expense account abuses. The summer recess intervened, to be followed by the election call. The approval required from the Minister for the implementation of the Blue Box Program Plan has yet to appear.⁴

WHAT NEXT?

The defeat of the Eves government leaves the municipalities and industry participants alike wondering what is going to happen next.

Some of the deficiencies noted in the original submission have proven to be far more than minor. In calculating initial municipal costs, there were many assumptions made as to municipal recycling costs and recycling revenues. Cost accounting is not, apparently, a strength of municipal accounting systems. The net costs established in the original Program Plan as the basis for 2003 fees were \$62.5 million. The industry stewards' contribution contemplated by the Blue Box Program Plan was to be 50 % of that, or \$31,250,000, plus the cost of running the IFO.

The estimates for future program costs forecast that the \$62.5 million would escalate to \$77.4 million for the 2004 levies. Now, using real numbers instead of assumptions, informed speculation is that the \$62.5 million has grown to more than \$100 million! Industry levies that may have been palatable based on a total cost of \$62.5 million become rapidly unpalatable when the number increases by 60 percent in the first year with no cap whatsoever on subsequent years.

A more fundamental complaint points to a disconnect between the overall goal of waste diversion and the designation of the "stewards" for the various products on which levies are paid. Ontario's paper mills participate in effective programs for capturing and recycling newsprint, corrugated boxes, fine papers, etc. They are still going to pay large amounts as levies on the wastes that they divert. Other producers whose products are recycled minimally or

⁴ In June, 2003, the Minister added used tires and used oil to the list of designated substances. The relevant industry groups already have some infrastructure in place for collecting and recycling those products so there is a strong possibility that the "stewards" will end up dealing with this themselves, without relying on municipal waste collection and disposal facilities.

not at all are making no contribution to waste diversion and lower contributions to levies. If waste diversion is the ultimate goal, it is hard to understand how this is accomplished by levying fees on industries with a good recycling track record and giving a free pass to those whose products are not recycled at all.

There are immediate decisions to be made post-election. The WDO, which now has an executive director, an office and staff, will run out of money within the next few months if the Blue Box Program Plan is not approved and if levies cannot be collected from “stewards”. Some interim funding may be available from the LCBO who contribute towards recycling of glass. That decision on interim funding is likely to be the first step by the new Minister of the Environment.

The bigger issue involving the funding by the stewards to the municipalities is next. Some industry participants will tell Ms. Dombrowsky that the whole structure is flawed, that it is penalizing the good guys, and that industries who do nothing to divert waste or participate in recycling are being rewarded. A second group will argue that the new legislation creates at least a solid step in the right direction. Some readjustments may be necessary but it represents a culmination in a process that began a decade ago. To abandon it now would leave the municipalities with nothing and create ten more years of delay.

This will be high on the agenda of the new Minister. Without a crystal ball, we will be forced to wait on events to advise the reader further.

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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.

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