



Retail Council of Canada

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Ministry of the Environment
Integrated Environmental Policy Division, Waste Management Policy Branch
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Via E-Mail: alena.grunwald@ontario.ca

**RE: Retail Council of Canada Submission on Ontario *Waste Diversion Act* Review
EBR Registry Number: 010-8164**

Dear Ms. Grunwald:

On behalf of Retail Council of Canada (RCC) and its members operating in Ontario, I am writing in response to the October 28, 2009 Environmental Bill of Rights (EBR) Registry Posting #010-8164, *From Waste to Worth: The Role of Waste Diversion in the Green Economy, A Minister's Report on the Review of Ontario's Waste Diversion Act, 2002*.

RCC has been the Voice of Retail in Canada since 1963. We speak for an industry that touches the daily lives of Canadians in every corner of the country – by providing jobs, career opportunities, and by investing in the communities we serve. RCC is a not-for-profit, industry-funded association representing more than 40,000 store fronts of all retail formats across Canada, including department, specialty, discount, and independent stores, and online merchants.

The retail industry is one of the most competitive and vibrant sectors of Ontario's economy, creating over \$151 billion in 2008, an increase of 3.5 per cent over the previous year. With over 82,000 establishments in Québec, the retail sector reaches every corner of the province. Employment in the retail sector represents 11 per cent of the province's total employment, directly employing over 806,000 citizens. The contributions made by this economic sector are felt in every corner of the province and affect the lives of all residents.

Retailers, as the sellers of designated products and the touch point for both consumers and manufacturers, have a significant stake in the development of stewardship programs. Currently, RCC's members are active participants in over 40 such programs across the country and will be called upon to expand their role as new ones are developed. RCC and its members are committed to waste diversion as a whole.

RCC has been actively participating in the government's review of the WDA. We met with senior Ministry officials numerous times, participated in consultation sessions and provided a written submission (dated April 2009) during the first initial review. Since then we have attended the Ontario Ministry of the Environment (MOE) consultation session on December 9, 2009 and met with Ministry staff directly on January 18, 2010 to discuss the latest Minister's Report and proposed recommendations. We applaud the government's inclusive and open consultation process and appreciate the opportunity to provide our input on this important review, which has significant implications for small and large retailers across the province. The following represents the initial thoughts of retailers, which may be added to and/or refined as further discussion and consultation takes place.

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Waste Diversion Framework

Section 6.2 of the Minister's Report outlines four broad proposed outcomes for Ontario new waste diversion framework and RCC believes that the first two proposed outcomes contradict each other: (1) increased waste diversion and (2) innovation in sustainable product and packaging design.

RCC believes the scope of the review, and any amendments made to the Act, should be limited to waste diversion and recycling only. RCC also recommends that any amendments to the Act, or if new provincial waste diversion legislation is developed, must over-ride, and thereby render inoperative, existing municipal by-laws that address packaging and recycling in order to ensure a harmonized approach to waste diversion.

That said, package design and reduction does need to be addressed as it is a critical issue for our members and as more packaging is introduced into the marketplace, more confusion and uncertainty is created over the types of materials packaging decision-makers should use. Not to mention this becomes even more complex when individual municipalities get involved by banning certain materials, as is the case with the City of Toronto's by-law no. 356-2009. Effective June 1, 2010, bags that are not compatible with the City of Toronto's Blue Box program will be banned.

This ban further continues to feed into the challenges that a lack of harmonized policy brings to retailers across the province. The need for legislation and regulation to encourage harmonization with federal, provincial and territorial and municipal laws cannot be overstated. We cannot continue down a path where industry is put in the position of having to comply with a patchwork of requirements.

Proposed New Waste Diversion Strategy: Individual Producer Responsibility

Overall, RCC supports the government's objective of increased flexibility, diversion, competition and ensuring clear and effective oversight, as outlined in section 7 of the Minister's Report.

That said we believe that the government's objective to allow "individual producers to meet their waste diversion requirements either by joining a materials management scheme or by developing their own individual waste plan" (page 17) can be accomplished within the existing waste diversion framework, with a few key changes.

RCC recommends that the MOE preserve the current collective-model approach but in order to achieve greater flexibility and greater competition (through the creation of alternative programs) the MOE should work with Waste Diversion Ontario (WDO) to revise the existing Procedures for Industry Stewardship Plans (ISP).

The current ISP procedures do not permit individual producers to come forward with alternative program plans unless a collective program plan has been developed and approved by the government. To date, there are no approved ISPs in Ontario.

Section 34 of the current WDA states that:

- (1) *On application, Waste Diversion Ontario may approve a written plan for the purposes of this section if,
(a) the plan relates to a designated waste for which the Minister has approved a waste diversion program under section 26; and
(b) Waste Diversion Ontario is satisfied that the plan will achieve objectives that are similar to or better than the objectives of the waste diversion program approved by the Minister.*

RCC recommends that the Act be revised to remove the above underlined subsection. This would provide flexibility to stewards who wish to remain in existing collective Industry Funding Organizations (IFO)

currently operating programs for designated waste, but would also allow industry to come forward sooner with their individual ISPs for approval, thereby allowing them to opt-out of the collective IFO, if they choose.

We believe that our recommendation to change the ISP process will achieve the government's objective for Individual Producer Responsibility; and by maintaining the current collective model, it will also provide flexibility and choice to producers wishing to remain in a collective.

Effective Oversight: Roles and Responsibilities

Section 7.4 of the Minister's Report outlines the proposed roles for the MOE and WDO. RCC agrees with the proposed role for MOE to set the legislative policy framework and maintain enforcement. To truly "give producers flexibility to meet requirements in the ways that best suit their business" (page 13), the Ministry must only set the legislative policy framework and maintain enforcement and remove themselves from plan development and implementation oversight.

For the most part, RCC supports the proposed role for WDO to carry out oversight and compliance though we would extend that to include oversight and compliance for both IFOs and ISPs, as per our above recommendation, to ensure that all programs are compliant with the new Act. We support the proposal that under WDO's new mandate, they would no longer be involved in program plan development, management and implementation.

The Minister's Report proposes that the selection of WDO Board Directors would be made by government, based on desired skills and competencies. Given that producers are responsible for developing and implementing waste diversion programs, the governance structure of the new WDO must include representation from the affected producers, to ensure that the diversity of interests is reflected in Board decision-making and that affected sectors are appropriately represented.

As stated earlier, retailers have a significant stake in the development of effective stewardship programs. In addition to being sellers of designated products, some of RCC's members are also product brand owners and are responsible for the end-of-life management of those products and packaging. Given the major role that retailers play in product stewardship, retailers must be represented in the decision-making bodies related waste diversion in Ontario.

Blue Box Program Transition Planning

Section 8 of the Minister's Report outlines the issue of transitioning to the proposed model. However, as stated earlier, RCC believes that we can achieve the government's objective by maintaining the current approach with changes to the ISP process.

Most of the current programs are already EPR models (tires, e-waste and hazardous waste effective July) and would not have to be transitioned; only Blue Box will require a transition plan. Given the complexities surrounding the Blue Box program (ie. lack of harmonization, dealing with existing contractual obligations between municipalities and service providers) the Blue Box program will require a clear and phased-in plan to successfully facilitate the shift to full EPR, without disrupting current services and/or confusing consumers.

When transitioning to any new legal framework it is important to consider risk mitigation to ensure that the original "legacy" organizations will not be burdened with extra costs resulting from the potential exit of stewards from the approved program.

In previous discussions, RCC has recommended that the government provide, at a minimum, at least five years to implement the transition, from the date of Cabinet's approval of the revisions to the WDA, as industry will need a significant amount of time to undertake such a massive overhaul to the Blue Box program. This timeframe should be flexible as it may take more time depending on how long it takes to identify who will develop the transition plan, developing the plan, and the time needed to consult with affected stakeholders and consider feedback on a draft transition plan. The transition plan should also take into account the need to transition the Ontario Blue Box program into a harmonized program with consistent materials collected and recycled across the province.

Industrial, Commercial & Institutional (IC&I) Waste

RCC believes that Industrial, Commercial and Institutional (IC&I) waste diversion should be kept separate and outside the scope of the WDA. We recommend that the government maintain the existing provincial 3Rs regulations but strengthen them by making the waste haulers accountable to ensure that the waste is in fact diverted from landfill by requiring them to maintain accurate records of designated materials they remove from IC&I sites; recording the amount of recyclable waste and non-recyclable waste that they remove and deliver to waste disposal sites; ensuring this information is submitted to MOE on a regular basis (at least annually); and having MOE be responsible for auditing and verifying the accuracy of the records kept and the information submitted to it.

Consultation on Revised WDA

RCC recommends that the MOE post the revised *Waste Diversion Act* on the Environmental Bill of Rights registry for a 60-to-90-day public comment period.

Voluntary Stewards and Remitters Agreements

In light of the complexities of the supply chain, RCC believes the revised Act should allow "voluntary stewards" or "remitters", who would be permitted to report and remit on their legal obligations to the IFO or ISP, even though they would technically not be the designated steward.

For example, with the Ontario Municipal Hazardous or Special Waste (MHSW) program, the designated steward is defined on a hierarchy so if there is both a brand owner and first importer of MHSW located in Ontario, it is the brand owner who is considered the steward, not the first importer. However, it may be more feasible for the first importer to report and remit but under the current WDA they would not be permitted to. The Ontario MHSW program plan allows for a "Remitters Agreement", which permits the designated steward and a third party to enter into a contractual agreement to allow that third party to report and remit their obligations. However, the steward is fully liable for reporting and payment of fees. This is causing great confusion in the marketplace especially for national stewards and retailers who operate in other provinces where "voluntary stewards" are permitted. The Ontario process is cumbersome due to the legal tests required and an additional administrative and financial burden to both stewards and those wishing to remit on a steward's behalf. This burden is once again further complicated for national stewards or those who wish to remit on a steward's behalf who do business nationally.

As fees get passed down from the designated steward to parties who then sell to the end-user (ie. vendor to retailer), the vendor charges the fee on all of the designated products supplied into Ontario, even though some of those products may eventually be shipped to stores outside Ontario. Typically, large national or regional retailers do not order products on a per-province basis; rather they order products in bulk and then distribute them to warehouses and stores as required. In these cases, the merchandise is shipped from vendors to retailers' warehouses where it is centrally stocked and then allocated and shipped via their internal supply chain to stores across the country.

As many national retailers have warehouses in Ontario from which they ship product to other provinces the task of keeping track of what product remains with an end user residing in Ontario is difficult.

In Ontario, stewards cannot delegate or assign the responsibility of reporting sales and paying steward fees to others, even though in some cases it is more feasible and logical to do so. The revised WDA should permit this flexibility and recognize that such an agreement should be between the two businesses only, a consistent practice among other provinces.

Targets

Section 7.3 of the Discussion Paper proposes to set 5-year material-specific collection and waste diversion targets, as well as penalties, which would be levied on producers and/or materials management schemes who fail to meet their five-year target.

While retailers are committed to achieving high levels of diversion from landfill and compliance across product categories, RCC and its members believe that programs must be operational for at least one year before performance targets are established, to allow industry to gather the best available data in which to set reasonable and appropriate targets. For targets to be achievable, they must be realistic, they must be based on best available data and the must be based on processing, collection and recycling capacity available for the materials. We recommend that the revised WDA should not include any targets and that target setting be left to the discretion of the individual program plans, which are subject to Ministerial approval.

Conclusion

Thank you for the opportunity to provide our comments on the Ontario *Waste Diversion Act* Review (EBR Registry Posting #010-8164). Retailers are committed to waste diversion and responsible environmental stewardship, and recognize that this is a critical component to any business. Retailers play a critical role in the development of product stewardship programs and we want to work together on identifying solutions to improving waste diversion in Ontario.

If you require any further information or clarification, please do not hesitate to contact me at (888) 373-8245.

Sincerely,



Rachel Kagan
National Director, Environmental Affairs