



Ontario Changes the Rules for Funding Product Stewardship Programs

*By Usman Valiante**

The expansion of Ontario's Municipal Household and Special Waste (MHSW) waste program on July 1, 2010 led to a firestorm controversy with regard to the use of "eco-fees" levied on producers of designated waste materials as a means to generate revenue to cover the cost of industry operated product stewardship programs.

The controversy led to the Ontario government suspending the levying of eco-fees for the expanded slate of materials that included rechargeable batteries, pharmaceutical wastes and mercury containing devices such as lamps and switches. In the interim, the Ontario government has been covering the costs of collecting and recycling these materials.

On Thursday, February 9, 2012, Minister of the Environment Jim Bradley amended O. Reg. 542/06 (Municipal Household and Special Waste - MHSW) under the Ontario *Waste Diversion Act, 2002* (WDA).¹ The amendment fundamentally alters the financing of the Ontario MHSW program for the management of materials such as paints, single-use batteries, and automotive wastes such as anti-freeze and oil filters.

The Minister is also requiring the Ontario used tires program (UTP) and Waste Electronics and Electrical Equipment program (WEEE) to fund their programs in a manner consistent with that prescribed in O. Reg. 542/06 for MHSW.

These amendments are notable in that they involve a radical departure from the approach to cost recovery typically employed by Canadian industry operated product stewardship programs.

Problems with Traditional Stewardship Program Funding Mechanisms

In most Canadian jurisdictions producers discharge their waste diversion responsibilities collectively by participating in stewardship agencies. These agencies – in Ontario they are referred to as Industry Funding Organizations or IFOs – operate programs to collect, transport and process various materials on behalf of producers or "stewards."

Canadian stewardship agencies typically cover the cost of operating their programs by projecting various program costs (*i.e.*, collection, transportation and processing) for the prospective year and then prorating those costs on a projected sales unit basis for each class of product or waste material being managed.

¹ See <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTE1ODA5&statusId=MTczMzY1&language=en>.

Hence, every like product – say a television in the case of WEEE – from every individual producer bears the same portion of projected program cost. These projected costs are then passed on through the supply chain from producer to distributor to retailer to the consumer as separate “eco-fees” added to the product price.

In some instances such as Ontario’s WEEE program, retailers remit eco-fees on electronics directly to the stewardship agencies on behalf of producers, thereby bypassing producers entirely.

The challenge with this approach to program funding is that there is often a very significant variance between the aggregate revenue collected from stewards through their projected fees and the actual program cost realized during the year for which the projections were made.

As an example, if both unit sales of televisions and program costs associated with recycling televisions were underestimated in deriving the projected eco-fees then the fees produce insufficient revenue and thus a large deficit in the actual operating year.

This fiscal imbalance with Ontario stewardship programs can affect environmental performance. For example, in 2011 Ontario Electronic Stewardship (OES) ran a significant revenue surplus as it was not meeting its recycling targets and was therefore “under-spending.” OES’ surplus came under public scrutiny in the media.

In response, OES reduced its fees to stewards in July 2011, despite the fact that doing so would clearly result in a large deficit were OES to meet its diversion targets in the following year. OES is now seeking to reduce financial incentives to WEEE processors for their recycling services in order to address the impending deficit in the 2012 program year.

Stewardship Programs to Shift to Actual Cost Recovery Funding

To address the fiscal imbalance within Ontario recycling programs the new stewardship program funding requirements replace the prospective eco-fees with a program funding approach based on actual costs incurred. Specifically, the approach allocates actual program costs incurred in the previous fiscal quarter to stewards by prorating those costs based on a given steward’s market-share of the overall amount of material supplied into the market by all stewards in the same quarter.

The result is that rather than stewards being invoiced on a per unit basis they receive an invoice for their lump sum share of the costs incurred by the stewardship agency in the previous quarter. Because the approach invoices on the basis of actual costs incurred in the past quarter, the surpluses and deficits common to these programs will be eliminated.

It has been argued that projecting fixed eco-fees facilitates passage of those eco-fees directly down to consumers at the point of sale and results in outcomes no different than that of overt price-fixing: consumers pay fixed recycling prices that are not the subject of competition between stewards on the management of their individual wastes.

The changes to how stewardship costs are allocated to producers much more closely reflects the conventions of how other costs of business accrue to producers in free markets. As such, it is anticipated that these changes will provide producers with an incentive to make stewardship programs more efficient and cost effective for the consumer.

Minister's Directives to WDO Seek to Improve Oversight of Diversion Programs

The minister issued a number of other significant policy directives to Waste Diversion Ontario (WDO) to complement the new cost allocation methodology. These include replacing the sectoral interest-based governance of WDO with a skills-based board² and increased WDO oversight of stewardship program effectiveness, whether those programs are delivered through IFOs or by stewards through voluntary Industry Stewardship Plans under s. 34 of WDA.³

Finally, the minister has also requested that WDO review the approach by which stewardship programs provide waste service providers with financial incentives for collecting, transporting and processing wastes. Specifically, the review will address the impact of these incentives on competitive markets and whether the incentive systems as structured are effective in supporting the achievement of waste diversion targets and program objectives set forth by the Government of Ontario.

These new policy directives to WDO are the most far reaching since the enactment of the WDA in 2002. In redefining the economic transactions between stewardship organizations and producers, and refining the economic transactions between stewardship organizations and the waste service sector, the new regulatory requirements and supplemental policy directives serve as important first steps towards more economically efficient waste diversion in Ontario.

**Usman Valiante is a Senior Policy Analyst at Corporate Policy Group LLP where he develops and evaluates public policies and designs and implements commercial programs regarding the environment; (416) 420-4222, usman.valiante@corporatepolicygroup.com*

² See Proposal for Changes to Waste Diversion Ontario's Governance Structure: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTEzNzI5&statusId=MTcwMzgx&language=en>.

³ See letter from Ontario Minister of the Environment to WDO, February 9, 2012: http://www.ene.gov.on.ca/groups/lr/@ene/@business/@waste/documents/natedocs/stdprod_093184.pdf.