



AMO and AMRC Discussion Paper on the Five Year Review of the *Waste Diversion Act*

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Table 1 – Proposed amendments by Theme

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1.0 Introduction

The establishment of the *Waste Diversion Act* (WDA) by the Province of Ontario was an important step in acknowledging and defining the responsibilities of industry stewards who produce, import and market products within this jurisdiction. The Act sets the framework for the promotion, diversion and recycling of “designated wastes” from landfill disposal and thermal treatment. The Act provides a financial cost-sharing partnership with industry funding organizations, currently *Stewardship Ontario*, and Ontario’s municipalities, with proposed and ongoing recycling/diversion programs for wastes that are specifically designated under the Act.

This year marks the first opportunity to review the provisions and intent of the WDA for the Province, *Waste Diversion Ontario* (WDO), *Stewardship Ontario* and Ontario’s municipalities. While many facets of the Act have served both industry and municipalities well in establishing and governing the cost management framework, the Association of Municipalities of Ontario (AMO) and the Association of Municipal Recycling Coordinators (AMRC) regard this review as a timely opportunity to provide a needed impetus for policy and program leadership to be reflected within the WDA and the governance structure of *Waste Diversion Ontario*.

In doing so, AMO and AMRC have reviewed prior changes recommended by *Stewardship Ontario* and other parties in 2006.

It is AMO and AMRC’s position that the recommendations contained within this discussion paper continue to ensure fairness and transparency in the legislation as well as meet the needs of AMO membership. AMO and AMRC presented a prior draft of this discussion paper to staff from *Waste Diversion Ontario* and *Stewardship Ontario* in May and June of 2007. A prior draft of this discussion paper was endorsed by eleven municipalities.

2.0 The Need for Comprehensive New Waste Management Legislation in Ontario

Before delving into specific recommendations for the *Waste Diversion Act*, AMO and AMRC would like to take this opportunity to put forward a new recommendation. Following up on our joint response to the draft **Policy Statement on Waste Management Planning** (Environmental Registry #010-0420), AMO and AMRC recommend that the Ministry of the Environment review the need to put in place stand-alone comprehensive legislation governing virtually all waste management matters.

Like drinking water, solid waste matters are of prime importance to all Ontario residents. Given the impending threat of U.S. border closure to waste (and the shame of exports commencing at all), at this juncture, there is a need for consistency, clarity of direction and comprehensive rules for all sectors (municipal, industrial, commercial and institutional). It is AMO and AMRC's position that our recommended changes for the *Waste Diversion Act* would fit nicely into one piece of legislation – with only one Part addressing waste diversion matters. The rest could deal with waste management auditing and planning, waste approvals (Part V of the EPA), recycling, composting, landfill disposal and thermal treatment matters. AMO and AMRC recommend virtually all waste management matters be handled under one piece of legislation, with the exception of environmental assessment requirements relating to waste management projects which would continue to be governed by the *Environmental Assessment Act* and its regulations.

As the Ministry recently announced that it is hiring more provincial environmental enforcement officers, it is now opportune to re-evaluate the extent of its role relating to waste management. Many sectors are relying on the Ministry to assume a key leadership role in this area. As such, AMO and AMRC recommend the release of a Provincial white paper on waste management as a prelude to the drafting of comprehensive new legislation.

3.0 Proposed Amendments to the *Waste Diversion Act*

AMO and AMRC propose amendments to the Act in accordance with the following five themes:

- 1. Waste Diversion Program Development in accordance with Accepted Policy Principles and Program Development in a Timely Manner**
- 2. Continuous Monitoring and Improvement**
- 3. Enhanced Consultation**
- 4. Dispute Resolution**
- 5. Technical Amendments**

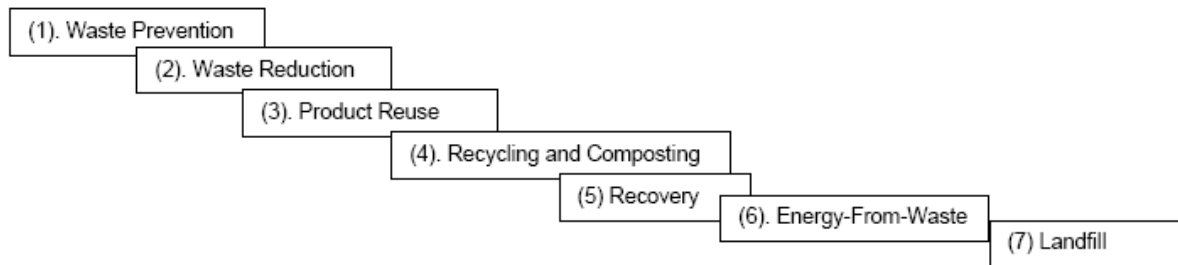
Our proposed amendments have been organized by theme in the attached Table 1. We provide a short summary and discussion about each theme and the proposed amendments. A more detailed rationale for each amendment is contained beside the proposed amendment in the Table. We have also indicated if the proposed amendment stems from a suggestion of AMO, an AMRC member, WDO or Stewardship Ontario. The column on the right indicates whether the amendment is supported by one or more organizations.

3.1 Waste Diversion Program Development in accordance with Accepted Policy principles and Program Development in a Timely Manner

One of the more interesting items to note with the WDA is that although the legislation allows for the development and implementation of a “waste diversion program”, there is no functional or working definition of such a program. While this does offer maximum flexibility, it also ensures the programs may not be developed to the same standards over time. Given this concern, AMO and AMRC offer a new definition for increased certainty within the Act.

AMO and AMRC would also like to ensure that the legislation directs that plan or program development be done with due consideration of Provincial government policy, AMO and AMRC’s Waste Management Hierarchy principles referenced in Figure 1 below or any other matter of “Provincial interest” that the Minister considers relevant for the program. This is reflected in the new subsection 25(1) proposed in the Act.

Figure 1 – AMO AND AMRC’s Waste Management Hierarchy



In the event that there is merit in the Province retaining a higher level of decision-making control for particular or pressing issues of provincial significance, provisions could be included in the Act which would allow for the identification of a “Provincial Interest”. If the Province wishes to proceed in such a direction, consideration should be given to the advanced identification of specific Provincial Interests either within the legislation, policy statements or regulations or combination thereof, as has been done with the *Planning Act*. This option will also be discussed below in section 3.4 on Dispute Resolution.

We are also looking for clear direction within the legislation to encourage harmonization of waste reduction and packaging protocols that may be developed by the Federal Government. A small amendment has been developed to update the wording in subsection 25(3) “non-promotion principles” to discourage program development that leapfrogs the progressive steps of the waste management hierarchy.

Program development has been problematic in Ontario where an industry funding organization has delayed plan development or delivered an un-approvable program plan. AMO and AMRC have adopted WDO’s suggestion in the new subsection 23(6) that the Minister specify a program commencement date and reimbursement of WDO’s costs where the Minister does not approve a waste diversion program in the new subsection 26(5).

In addition, AMO and AMRC are recommending new decision-making options for the Minister in relation to program approval. At present, there is a decided lack of flexibility as the Minister may only approve or not approve a waste diversion program. AMO and AMRC suggest in subsection 26(3) that the Minister’s power be broadened to allow the Minister to send the program back to WDO for further modification. This should be of assistance to the Ministry and Ministry staff.

3.2 Continuous Monitoring and Improvement

The stated purpose of the Act is to “promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs.” It is AMO and AMRC’s opinion that the mere operation of a waste diversion program is not enough; the legislation must direct periodic re-evaluation of such programs to encourage a culture of “continuous improvement” for WDO, Stewardship Ontario, industry stewards and Ontario’s municipalities. Having said that, a program cannot be measurable without objective measurement criteria, financial incentives and tools to discourage alteration to packaging materials that do not promote responsible, whole life-cycle considerations. For these reasons, AMO and AMRC recommend incorporation of the concept of “monitoring”, stated requirements to measure efficiency and effectiveness and the ability to impose financial incentives within the recommendations to sections 1, 27(2), 29(1), 30(3), 32(2), 33(2) and a new subsection 29(3) within the WDA.

With regard to the blue box recycling program, AMO and AMRC’s February 2007 Discussion Paper on *Strengthening Extended Producer Responsibilities for Ontario’s Blue Box* drew attention to the fundamental funding inequity imposed on Ontario municipalities due to the Act and its associated Plan. Despite the specific provisions of section 25(5) of the Act, Ontario’s municipalities are not receiving payments equal to 50 per cent of the total net costs incurred by those municipalities as a result of the program. As well, since municipalities may agree to move to best practices for the blue box recycling program, there remains little argument for sustaining municipalities at a 50% funding level. In addition, the recent designation of Waste Electrical and Electronic Equipment (WEEE) waste, indicates that industry stewards will be responsible for payment of 100% of the net costs associated with implementing the program. For the above reasons, AMO and AMRC recommend deletion of section 25(5) from the Act and the placement of cost-sharing/formulas within the regulation governing the designation of specific materials. For the Blue Box Program, this will mean an amendment to *O. Regulation 273/02*, made under the *Waste Diversion Act, 2002*, as set out in Table 2. As regulations can be amended on a much more frequent basis, this will allow adjustments to funding formulas which are reflective of actual plan responsibilities. This policy change will ensure that programs and their resulting plans will reflect and adjust funding levels in accordance with the functional and managerial responsibilities of handling designated wastes.

3.3 Enhanced Consultation

In the past, changes have been made to waste diversion plans without any consultation of those parties affected. AMO and AMRC would like to remind the Minister of the changes to the funding contribution of newspaper stewards in 2005 to allow for in-kind contributions rather than actual financial contributions. This change was accomplished through lobbying of the Provincial government without input from Ontario's municipalities. This change has not worked well since its inception and thus AMO and AMRC recommend the deletion of subsection 31(2).

We wish to prevent such unfortunate incidents from occurring again and would therefore request to have all decision points within the WDA incorporate fairness, transparency and open accountability principles. One of the ways to ensure such procedural mechanisms are followed is to make sure that adequate consultation is undertaken so that all parties have a chance to put forward their views on program and plan development and changes thereto.

At present, section 7 of the Act allows the Minister the sole discretion to establish policies applicable to WDO. While AMO and AMRC agree that this is an appropriate role for the Minister, due to the shared financial impacts of potential policy development, it would be easier to accept the potential plan impacts, if interested parties were consulted in advance of imposing policy changes. AMO and AMRC recommend that consultation of such policies, in advance of their imposition would be more beneficial for all interested parties and ensure that there are no surprises for all concerned. Thus, AMO and AMRC recommend the addition of a new subsection 7(2) to enshrine this principle of consultation. This is also consistent with the consultation currently being undertaken on the Municipal Hazardous and Special Waste Plan recently developed.

In addition, AMO and AMRC recommend that WDO's approval of a proposed waste diversion program be made public and the details of the program be provided to the IFO and Ontario's municipalities *before* the program is submitted for Ministerial approval. This is also essentially what occurred with the Municipal Hazardous or Special Waste Plan and would give one last chance to ensure adequate consultation is done, particularly in situations where the timeline for development of such programs are extremely short. It also may alleviate potential problems in implementation later in process or avoid potential disputes in the future. This is reflected in the new proposed subsection 23(5).

3.4 Dispute Resolution

Despite best efforts, situations may evolve that cannot be satisfactorily resolved following adequate consultation. Until such time as the new governance structure for WDO has been established as discussed in section 4.0, AMO and AMRC recommend an appeal mechanism to an independent tribunal be incorporated within the Act to ensure that all parties have an ability to advance arguments related to important program components. This appeal mechanism would not be available to the public-at-large, since the public interest is primarily represented by WDO and recipient municipalities. The Ministry of the Environment would not be a party with an automatic appeal right as the Minister is accountable through the general electoral process.

AMO and AMRC propose that potential appeals be heard by the Environmental Review Tribunal as members of that Tribunal has legal expertise in interpreting environmental legislation and experience in hearing matters with broad and potentially conflicting environmental, planning, financial and societal interests. The appropriate levels of fees for filing such appeals would require some further determination to ensure that appeals are not filed for frivolous or vexatious items. Proposed subsections to deal with the proposed appeal mechanism are new subsections 26(6)-(10) and an amendment to subsection 34(7).

As previously stated, should an issue of pressing Provincial Interest be identified, consideration should be given to the advanced identification either within the legislation, policy statements, regulations or combination thereof, of specific Provincial interests as has been done in the *Planning Act*. In such a circumstance, the Act could provide that where a Provincial Interest has been identified, the Tribunal would only be able to provide a recommended decision to Cabinet. A sufficient notice period, for the identification of a particular Provincial Interest, should be statutorily identified so as to ensure that the parties to a hearing are not prejudiced by last minute identifications long after case preparations have commenced. Due to the specialized nature of this amendment, proposed wording has not been provided by AMO and AMRC in this discussion paper.

3.5 Technical Amendments

WDO has indicated that it needs an effective mechanism to recover the costs of its operations from industry funding organizations such as *Stewardship Ontario*. AMO and AMRC submit that any disputes that cannot be resolved by the parties should be referred to the Minister for decision within 30 days of referral. Because these concerns are not specifically related to the design of waste diversion programs, AMO and AMRC believe that such decisions can and should be made by the Minister in a timely fashion. AMO and AMRC agree with WDO that recourse should not be made to the legal system for such matters and therefore submits a new subsection 32(4) for adoption.

AMO and AMRC have also adopted the recommendation of *Stewardship Ontario* that each industry funding organization shall be managed by its board of directors to be selected from stewards of the designated waste. This improves accountability and ensures appropriate oversight.

In the development of the Municipal Hazardous or Special Waste Plan development, it was clearly communicated that there was no Provincial Interest in supporting the imposition of visible fees being imposed on consumers of products that produce designated wastes. As such, AMO and AMRC have amended the Minister's regulation making authority under subsection 42(1) of the Act to prohibit such fees. Earlier on in the legislation, however, in the amended subsection 30(3), AMO and AMRC have left an opening in the legislation to entertain the possibility of such fees, given that they may be more appropriate for one or more sectors.

Last, but most importantly, AMO and AMRC recommend that a review of the WDA continue to be conducted every six years. This will ensure that the legislation continues to incorporate public policy principles, waste management and diversion principles, Provincial Interest priorities and a stated dedication to continuous improvement. This six-year review cycle is reflected in an amendment to subsection 44(1).

4.0 Proposed Governance changes to the WDO Board of Directors

The Act provides for specific composition of the WDO Board of Directors. It also allows for an operating agreement to specify an alternative structure of members of the Board of Directors and observers (section 6.01).

WDO considered governance matters at its 13 December 2006 and 24 January 2007 Board meetings. There was recognition within WDO that it was time to move away from a representation governance model towards a more balanced structure of the WDO Board to reflect a broader membership at large. In particular, WDO has recognized that its Board must be based on a process that mitigates allegiance to nominating organizations and encourages fiduciary responsibilities to WDO. WDO's Governance Committee also recommended that industry representation come from sources other than IFOs as section 5 of the Act requires that WDO monitor the effectiveness and efficiency of programs being implemented by IFOs.

WDO's governance committee brought forward 3 potential changes to Board structure, of which the following structure was adopted at the meeting of 24 January 2007:

- 5 industry representatives jointly appointed by industry associations;
- 5 stakeholder representatives comprised of
 - o 4 municipal representatives jointly appointed by municipal associations
 - o 1 Environmental Non-Governmental Organization (ENGO) representative jointly appointed by the Ontario Environmental Network and the Recycling Council of Ontario; and
- 4 unrelated Directors appointed by the Minister.

These changes were summarized in a 26 January 2007 letter from WDO to the Minister of the Environment. It is our understanding that this new governance committee structure was to be finalized at WDO's Annual General Meeting on 19 April 2007. As of 18 April 2007, this proposed governance structure was also posted for a thirty-day public comment period on the Environmental Registry (Registry No. 010-0195).

AMO and AMRC are in full support of this new structure and thank WDO for addressing the inherent concerns of the existing structure. For AMO and AMRC and the Ministry, it is important to note that the five industry representatives must represent the four active waste material types that have been designated under the Act (Blue Box, Used Tires, WEEE and MHSW). If more materials are designated in the future, the five industry representatives must be adjusted by their respective industry associations.

5.0 Concluding Remarks

In 2002, the Province, in drafting the WDA, had the foresight to direct a public review of the legislation five years after the Act came into force. WDA is a unique piece of legislation, one of the few that allows for government policy and program direction be delegated to an arms-length non-profit organization to implement, oversee and direct a significant and ongoing financial partnership between industry stewards and Ontario's municipalities. AMO and AMRC are confident that the proposed amendments discussed in this paper and which are set out in more detail in Tables 1 and 2, reflect timely and principled amendments to the legislation. As previously stated, AMO and AMRC support reviewing the legislation every six years. And, as stated at the first, AMO and AMRC also support the release of a white paper to stimulate province-wide interest in the need for new comprehensive waste management legislation.

TABLE 1 – PROPOSED AMENDMENTS, NEW PROVISIONS OR DELETION

Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
Policy Framework & Program Development				
1.	1.	Purpose The purpose of this Act is to <u>provide for the development, implementation, operation and monitoring of waste diversion programs which prevent, reduce, re-use and recycle waste.</u>	MOE staff has often stated that the purpose of the Act is to promote Extended Producer Responsibility and change behaviour, but this is not stated in the Act. AMO AND AMRC's clause modifies suggested language from Stewardship Ontario staff.	AMO AMRC Stewardship Ontario (SO)
N/A	2.	Definition "waste diversion program" means a system of management for the prevention, re-use, reduction, recycling or disposal of waste prescribed by the regulations or designated wastes contained within the residual waste stream for disposal at a landfill, thermal conversion or thermal degradation facility.	The legislation is lacking a general definition of this very important concept. The latter clause is intended to cover the possibility of having stewards pay for recyclables that arrive at a landfill or alternative treatment facility.	AMO AMRC
N/A	23(6)	Program Specifications In developing the program, the Minister may specify the program commencement date.	The above amendment will clearly specify that the program will begin at a set time.	AMO AMRC Waste Diversion Ontario (WDO) SO
This bumps the existing s. 25(1) to 25(2)	25(1)	Mandatory information inclusion A waste diversion program developed under this Act for a designated waste shall include: 1. Consideration of the waste management hierarchy developed by the Association of Municipalities of Ontario and the Association of Municipal Recycling Coordinators and published in its discussion paper "AMO AND AMRC's Proposal for an Provincial Integrated Waste Management Strategy" released in December, 2005;	This ensures that minimum mandatory waste management information is presented within each waste diversion plan, as well as giving the Minister the flexibility to add new information within the Minister's discretion. This gives the Minister flexibility to add new geographic-specific or general policy objectives that correspond with new Provincial priorities. This would bump the existing subsection (1) to subsection (2) and each subsection will be renumbered accordingly. The other option is to change the permissive wording of "may" to "shall" in the existing subsection 25 (1) and add the above principles as new paragraphs 5 to 7.	AMO AMRC WDO

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Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
		2. Consideration of Ontario's waste strategy objectives; and 3. Consideration of any item of Provincial interest or other item that the Minister considers relevant.	WDO identified a similar issue in its 15 February 2006 AMRC Workshop presentation.	
25(1)	25(2)	Contents of waste diversion program A waste diversion program developed under this Act for a designated waste shall include the following: 1. Activities to prevent, reduce, reuse and recycle the designated waste. 2. Research and development activities relating to the management of the designated waste. 3. Activities to develop and promote products that result from the waste diversion program. 4. Education and public awareness activities to support the waste diversion program. 5. <u>Activities to encourage the harmonization of extended producer responsibility programs and packaging protocols to reduce waste in concert with the federal government, other provinces and territories of Canada.</u>	The new paragraph is added to support a percentage of efforts aimed at promoting waste reduction in Ontario and beyond. The change from "may" to "shall" was suggested by Stewardship Ontario staff.	AMO AMRC SO
25(2)	25(3)	Non-Promotion principles A waste diversion program developed under this Act for a designated waste shall not promote any of the following: 1. <u>The burning or thermal treatment</u> of the designated waste. 2. The landfilling of the designated waste. 3. The application of the designated waste to land. 4. Any activity prescribed by regulations.	"Thermal treatment" was the term adopted by the Province in O.Reg. 101/07 "Waste Management Projects" regulation. The reason for the amendment is to recognize that plasma gasification and other types of thermal conversion treatment may become economically viable forms of waste technologies for Ontario in the near future. While related, these technologies are not considered "burning" or "incineration" in the traditional way.	AMO AMRC

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			As such, the legislation needs to be updated to anticipate this technological advance. More importantly, the WDA should encourage waste prevention, reduction, re-use and recycling and composting of waste as a fundamental Provincial policy priorities before the approval of designated waste should be considered for energy from waste and landfill technologies. This ensures that “residual waste” treatment of such resources will truly reflect their residual waste status. This amendment also stems from the presentations of WDO and Stewardship Ontario on 15 February 2006. Please note, that as the preceding amendment has bumped subsection (2), this amendment will be to the new subsection (3).	
25(5)	25(5)	Promotion and Education Notwithstanding subsections (3) and (4), a waste diversion program developed under this Act must provide for funding from industry stewards to be determined in a manner that results in the 100 per cent of the total costs, of public awareness and education activities to support the waste diversion program.	The old subsection 25(5) regarding Blue Box payments to municipalities is deleted in its entirety and has been replaced by amended wording in Table 2 – <i>Amendments to O.Reg. 273/02 Blue Box Waste</i>. This removes the provision from legislation and places it in the appropriate regulation. For other program plans, AMO AND AMRC recommends that the Ministry consider the re-enactment of such cost-sharing clauses within the regulation that designates the waste. There is a need, common to all existing and potential program plans, to conduct appropriate Provincial-wide promotion and education (P & E). As has been shown in the recent negotiation of the Municipal Hazardous or Special Waste Plan, industry stewards are desirous of Provincial-wide P & E activities to ensure that the public is informed and has appropriate access to programs. Municipalities will continue to supplement Provincial-wide messaging with locally-relevant P & E activities. The proposed amendment rebalances the functional responsibility and fiscal costs associated with such activities.	AMO AMRC

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Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
26(3)	26(3)	Decision of Minister (3) The Minister shall, <u>within sixty (60) days receipt of a program from Waste Diversion Ontario</u> , decide in writing <u>whether to approve, not approve, or send the program back to Waste Diversion Ontario for further modification.</u>	This provides the Minister with more flexibility than at present (which only allows for approval or disapproval), in the case that the development of a waste diversion program has omitted any of the criteria that it should have taken into account. It also provides a reasonable timeframe in which the Minister shall provide an explanation, particularly for a refusal of a program. The option of sending the program back to WDO may help that organization and may allow WDO some additional flexibility to finalize program development, especially if the conditions set out in the Minister's program request letter can not be easily met.	AMO AMRC WDO SO
N/A	26(5)	Costs reimbursed (5) The costs associated with developing a waste diversion program which is not approved by the Minister shall be assumed by the Province of Ontario.	This new proposed subsection ensures that Waste Diversion Ontario will get their program development costs covered, despite the lack of steward funding. It should be generally accepted that Waste Diversion Ontario always tries to provide the Ministry with "approvable" programs.	AMO AMRC WDO SO
N/A	27(2)	Material change specification A material change means a significant alteration to the objectives of an approved waste diversion program or amendment to the items included in subsections 25 (1) or 25 (2) and contained in an approved waste diversion program.	This new subsection provides further clarity as to what is and is not a material program change and thus what will and will not require Ministerial approval to the change.	AMO AMRC
Enhanced Consultation				
N/A	7(2)	Consultation The Minister shall consult with interested persons on policies applicable to Waste Diversion Ontario.	This amendment stems from Region of York's 15 February 2006 presentation at the 2006 AMRC Spring Workshop. This amendment addresses the need for adequate time for comment and review by stakeholders to policy issues of concern.	AMO AMRC Stewardship Ontario (SO)

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Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
			The existing section 7 will remain the same but change to subsection 7.(1) “The Minister may establish policies applicable to Waste Diversion Ontario and the board of directors shall ensure that the policies are implemented promptly and efficiently”.	
N/A	23(5)	Approval in Principle Waste Diversion Ontario shall publicize its approval-in-principle and details of the proposed waste diversion program for Ontario municipalities and the relevant industry funding organization and provide for at least 60 days review, before Waste Diversion Ontario submits the program to the Minister for his or her approval.	This provides a level playing field and allows the interested parties an opportunity to provide initial commentary to influence program development at an early stage, before the program is submitted to the Minister for final approval. This should set the stage for the Minister or an independent forum to solve any remaining program concerns.	AMO AMRC
N/A	26(4)	Posting of Decision (4) The Minister shall post the written decision about a program, as referenced in subsection (3), on the Environmental Registry within sixty (60) days receipt of the program from Waste Diversion Ontario.	This provides a natural extension of ongoing consultation efforts, allowing the public to know what the Minister’s decision is regarding a particular program submission.	AMO AMRC
30(8)	30(8)	A rule made under this section is effective against a person <u>as of the date of the commencement of the approved waste diversion program.</u>	Previously, the rules associated with an IFO would not be effective until the person had received a copy of the rule or notice as to how to obtain a copy of the rule. Most, if not all, stewards will be aware of the program commencement date. As such, this provides that the rules are effective as of the date of program implementation, without the need to provide specific additional notice. This ups the ante for all potential Ontario stewards to ensure that they know of their status in regards to approved or proposed waste diversion programs.	AMO AMRC WDO SO

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Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
31(2)	N/A	<i>Voluntary Contributions</i> <i>(2) The industry funding organization may, with the approval of Waste Diversion Ontario, reduce the amount of fees payable by a person under subsection (1) or exempt a person under subsection (1) if the person has made voluntary contributions of money, goods or services to the organization.</i>	The practice of allowing for voluntary contributions by the newspaper stewards in lieu of cash payments has not worked in practice since it was approved as part of the Blue Box Program Plan. Therefore, AMO AND AMRC recommends its deletion from the Act.	AMO AMRC WDO
Continuous Monitoring and Improvement				
29(1)	29(1)	Implementation, <u>Operation and Monitoring</u> of Program If an industry funding organization is designated by the regulations as the industry funding organization for a waste diversion program, Waste Diversion Ontario and the industry funding organization shall implement, <u>operate and monitor</u> the program in accordance with the agreement referred to in subsection 25 (3).	This amendment originates from WDO's 15 February 2006 presentation. They have been added to further define the scope of Waste Diversion Ontario's efforts to monitor the progress of waste diversion programs.	AMO AMRC WDO SO
N/A	29(3)	In implementing the program, Waste Diversion Ontario and the industry funding organization shall agree on the principles of monitoring and measures of efficiency and effectiveness and reports on these items shall be brought to the attention of the Waste Diversion Ontario board of directors on a semi-annual basis.	See above.	AMO AMRC WDO
30(3)	30(3)	In making rules under clause (1) (b), the industry funding organization shall have regard to the following principles: 1. The total amount of fees paid by stewards under subsection 31(1) should not exceed the sum of the following amounts: i. The costs of developing, implementing, <u>operating and monitoring</u> of the program.	The first minor amendment deals with the insertion of the word "monitoring" in paragraph 1. Stewardship Ontario has suggested that IFOs be explicitly permitted to provide financial incentives. This raises an interesting conundrum as stewards have a commercial connection in the making and recycling of various products. As such, this amendment would appear to allow for the subsidization of costs associated with complying with the Act.	AMO AMRC WDO SO

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		ii. A reasonable share of costs not referred to in subparagraph i that are incurred by Waste Diversion Ontario in carrying out its responsibilities under this Act. iii. A reasonable share of costs incurred by the Ministry in administering this Act. 2. The fee paid by a steward should fairly reflect the proportion of the sum referred to in paragraph 1 that is attributable to the steward. 3. <u>The industry funding organization shall be allowed to provide financial incentives to stewards to support the policy objectives of approved waste diversion programs and principles of this Act.</u> 4. <u>The cost of an approved waste diversion program shall be borne directly by the stewards and, if appropriate, by consumers of products that become a designated waste.</u> 5. <u>A steward for a waste diversion program shall continue to pay the relevant fee until the steward's quota of product which contributes to the waste reaches <i>de minimus</i> levels in the waste stream.</u>	Subparagraph 4 opens the doors to visible or invisible fees, as the case may be. This change was suggested by Stewardship Ontario staff. Subparagraph 5 will ensure that a steward such as the LCBO will continue paying their fair share of a program until the products are no longer caught by waste diversion program streams. This change has been suggested by AMRC.	
32 (2)	32(2)	The fund shall be held in trust by the industry funding organization for the following purposes: 1. To pay the costs of developing, implementing, operating <u>and monitoring</u> the waste diversion program. 2. To pay a reasonable share of costs not referred to in paragraph 1 that are incurred by Waste Diversion Ontario in carrying out its responsibilities under this Act. 3. To a reasonable share of costs incurred by the Ministry in administering this Act.	The Act needs to be amended to ensure that monitoring of on-going progress becomes a regular feature for the industry funding organizations. This will assist Waste Diversion Ontario in its responsibility to monitor program effectiveness.	AMO AMRC WDO SO

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Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
33(2)	33(2)	The report shall include the following: 1. Information about waste diversion programs developed, implemented, <u>operated and monitored</u> under this Act during the previous year. 2. Audited financial statements for the industry funding organization and a copy of the auditor's report on the organization under subsection 21 (2). 3. A description of the consultation undertaken by the industry funding organization during the previous year under subsection 29 (2) and a summary of the results of the consultation. 4. <u>A description of the monitoring and measurement of the effectiveness and efficiency of the waste diversion programs operated under this Act during the previous year.</u>	Same as above.	AMO AMRC WDO SO
Dispute Resolution				
N/A	26(6)	An appeal, from the approval-in-principle of a program by Waste Diversion Ontario, shall lie to the Environmental Review Tribunal, within 20 days of the making of the decision, solely on one or more of the following items: 1. The objectives of the program; 2. The methods that will be used to measure whether the program objectives are met; 3. The estimate of the breakdown of program costs of implementing and operating the program and who will incur them; and 4. The compositions and appointment of the board of directors of the appropriate industry funding organization.	An appeal to an independent tribunal is required to solve differences between stakeholders and would represent a final arbiter of decision-making authority. This should ensure buy-in from all stakeholders, especially given that an independent tribunal has helped smooth out any rough edges associated with any program or funding matters. This should also reduce the amount of lobbying of the Minister by industry stakeholders and Ontario municipalities. This proposed amendment is modeled in most respects after the Ontario Municipal Board and provisions under the <i>Planning Act</i>. While we examined the appointment of a hearing officer for content hearings under the <i>Clean Water Act</i>, these individuals provide an interim step and advice only to the Minister, which does not fulfill the need of the potential parties.	AMO AMRC

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N/A	26(7)	Parties to an appeal An appeal shall only be available to one or more of the following parties: 1. recipient municipalities; 2. the industry funding organization which co-operated in the development of the program.	It is fitting that an appeal be limited to those persons with an especial interest in the progress of the development of a waste diversion program. The interest of the public-at-large, although they may have an interest in the ongoing work and funding of such programs, is already represented by WDO and recipient municipalities. The Minister of Environment is accountable through the electoral process as well as under the <i>Environmental Bill of Rights</i>.	AMO AMRC
N/A	26(8)	On an appeal, the Environmental Review Tribunal shall hold a hearing, of which notice shall be given to Waste Diversion Ontario, and to other persons or public bodies and in a manner as the Environmental Review Tribunal may determine.	The ERT should have the right to make rules to govern its proceedings.	AMO AMRC
N/A	26(9)	A decision of the Environmental Review Tribunal shall be final.	This is a standard degree of deference granted to Tribunal.	AMO AMRC
N/A	26(10)	An appeal from a decision of the Environmental Review Tribunal shall lie to the Divisional Court only on a question of law.	This is also a standard clause in regards to appeals from quasi-judicial tribunals.	AMO AMRC
N/A	32(4)	Cost Dispute Resolution Any disputes concerning the share of costs and payment of costs incurred by Waste Diversion Ontario or the Ministry as referred to in subsection 32 (2) paragraph 2 and paragraph 3 respectively, if they cannot be resolved by the parties, shall be referred to the Minister and decided by the Minister within 30 days of referral.	WDO would like an effective way to recover its costs from industry funding organizations. As such, the suggested method should provide a quick and effective method of ensuring that WDO gets their costs in a timely manner.	AMO AMRC WDO

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Old No.	New No.	Proposed <u>Amendment</u> , New Provision or Deletion	Policy Rationale	Organization s in Support of Legislative Change
Technical Amendments				
22 (1)	22(1)	Waste Diversion Ontario shall, not later than <u>May 1</u> in each year, (a) prepare a report in accordance with this section on its activities during its previous year; and (b) provide a copy of the report to the Minister and make the report available to the public.	Since both WDO's report and the industry funding organization (IFO) annual reports are due on April 1 of each year, this results in the production of a WDO annual report containing IFO information that is one year out of date. This change that should greatly improve the knowledge base and WDO work product.	AMO AMRC WDO
N/A	24(3)	The industry funding organization shall be managed by its board of directors to be selected from stewards of the designated waste.	This amendment has been proposed to reflect the governance structure changes lately proposed by Stewardship Ontario and reflect ownership of programs by the relevant stewards. AMO AND AMRC have no concerns with this new provision as proposed by Stewardship Ontario staff.	AMO AMRC WDO SO
42(1)(k)	42(k) and 42(l)	Regulations (k) prohibiting industry stewards from charging separate fees to consumers with respect to the costs associated with funding, implementing and operating waste diversion programs; (l) respecting any matter that the Minister considers advisable to carry out the purpose of this Act.	This proposed change would expand the Minister's regulation making authority to decide whether or not to ensure that industry costs to support waste diversion programs are not passed onto consumers through visible fees.	AMO AMRC
44(1)	44(1)	Review of the Act The Minister shall cause a review of this Act to be undertaken <u>within six years of the prior review conducted by the Minister.</u>	Due the variable and ever-changing nature of recycling and waste management, packaging materials and other legislation, AMO AND AMRC recommends that every six years that the Minister undertake a public review of the WDA. This removes the timing from the Provincial election cycle, a year during which many policy initiatives may not always come to fruition. Reviews every four years, were deemed too frequent by AMO AND AMRC. Regular reviews of key pieces of legislation are routinely included in the drafting of Federal Government legislation. Moreover, the decisions regarding consumer packaging (which become designated wastes following purchase or consumption of a product) are often made by industry stewards	AMO AMRC WDO

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			without any regard to the directives or financial impacts of provincial or federal legislation. To ensure that the WDA remains current and responsive to both industry trends and municipal needs, AMO AND AMRC recommends that a regular six-year review be included in the provisions of the WDA.	

TABLE 2 – PROPOSED AMENDMENT TO ONTARIO REGULATION 273/02

Old No.	New No.	Proposed New Provision	Policy Rationale	Organizations in Support of Legislative Change
N/A	3.	Blue Box program payments to municipalities A waste diversion program developed under this Act for blue box waste must provide for payments to municipalities to be determined in a manner that results in the total amount paid to all municipalities under the program being equal to a minimum of 50 per cent of the total net costs incurred by those municipalities as a result of the program.	Despite explicit direction in the Act, Ontario's municipalities are not being paid 50% of their total net costs. If the Municipal Industry Program Committee agrees to best practices in regards to Blue Box, 50% will be the minimum threshold for cost-sharing in regards to that particular Program Plan.	AMO AMRC WDO