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FIVE-YEAR REVIEW OF THE WASTE DIVERSION ACT

The Solid Waste Management Committee recommends the adoption of the recommendations contained in the following report, September 20, 2007, from the Director, Solid Waste and Administration:

1. RECOMMENDATIONS

It is recommended that:

1. Council endorse the submission of the Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators related to proposed changes to the *Waste Diversion Act* (Attachment 1, letter dated September 3, 2007).
2. The Regional Clerk forward Council's endorsement and this report to the Minister of the Environment and the Clerks of the local municipalities.

2. PURPOSE

This report provides Council with an overview of recommended changes to the *Waste Diversion Act* as proposed by the Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators in advance of the pending five-year review of the Act by the Province.

3. BACKGROUND

The *Waste Diversion Act* was established by the Province of Ontario in June of 2002 with the purpose of promoting the three Rs (i.e., Reduce, Reuse and Recycle) through the development, implementation and operation of diversion plans for "designated materials". Waste Diversion Ontario is the non-crown corporation established under the Act with the responsibility to carry out the requirements of the Act.

Under the Act, the Minister of the Environment designates a waste for diversion. An Industry Funding Organization or IFO is then formed by Waste Diversion Ontario consisting of relevant brand owners, first importers or product "stewards". The Industry Funding Organization is then responsible for creating a diversion plan for the designated material. The plan may involve the use of municipal infrastructure, as was the case with the blue box, or it may not. The Blue Box Program plan is the only approved diversion plan to date. Waste Diversion Ontario, is, however, awaiting approval by the Minister of plans for the diversion and funding of electronic and household hazardous waste.

The Act has been an important first step to provide the frame work for financial cost-sharing partnerships between municipalities and industry to support the diversion of designated materials. Section 44.1 of the Act requires that a review of the Act be undertaken every five years. It is expected that the Ministry of the Environment will be releasing a “white paper” in the near future with proposed amendments to the Act. The Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators have taken a proactive approach to the pending review and submitted the attached discussion paper (*Attachment 2, Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators Discussion Paper on the Five Year Review of the Waste Diversion Act, August, 2007*) for the Minister’s consideration.

4. ANALYSIS AND OPTIONS

Having worked within the Act over the past five years, municipalities have identified several sections that require modification. The following is a summary of the primary changes proposed by Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators. Additional information supporting the rationale for these recommendations is available in the attached submission.

Establish Stand-Alone Comprehensive Waste Legislation

Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators are recommending that the Ministry consider establishing a comprehensive new Act governing virtually all waste management matters with the exception of environmental assessment requirements. This will provide better consistency, clarity of direction and comprehensive rules for all stakeholders (i.e., municipal, industrial, commercial and institutional, product stewards).

Require Program Commencement Dates be Specified

In December of 2005, municipalities released a policy paper (*AMO's Proposal for a Integrated Provincial Waste Strategy*) which, among other things, proposed an extended waste management hierarchy including:

1. Waste prevention
2. Waste reduction
3. Product reuse
4. Recycling and composting
5. Recovery
6. Energy from waste
7. Landfill

This hierarchy was subsequently adopted by the Ministry in their proposed Policy Statement on waste management master plans (*Policy Statement on Waste Management Planning: Best Practice for Waste Managers, June 12, 2007*). Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators are, therefore, recommending that the *Waste Diversion Act* be amended to ensure

development of diversion plans for designated materials consider this waste management hierarchy.

In the past, some industry funding organizations have delayed plan development, and in doing so, have avoided their associated financial obligations. It is recommended that a section be added to the Act to require that program commencement dates be specified and the funding organization be responsible for reimbursement of Waste Diversion Ontario costs where the Minister does not approve the program.

Continuous Monitoring and Improvement

Program development for designated materials is currently limited to approval of the initial plan. Legislation which requires periodic re-evaluation and encourages a culture of continuous improvement for Waste Diversion Ontario, Stewardship Ontario, industry stewards and Ontario municipalities is recommended. Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators further recommend incorporation of the concept of “monitoring” stated requirements to measure efficiency and effectiveness and the ability to impose financial incentives.

Industry Funding of at Least 50%

Section 25(5) of the Act summarizes the portion of funding municipalities are to receive for the Blue Box program from industry as being ‘equal to 50%’. Other program plans, like those planned for electronic and household hazardous waste, are establishing 80% to 100% funding from industry for the program. As regulations can be amended on a more frequent basis, Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators are proposing this section be deleted and replaced with a cost-sharing formula within the regulation governing the specific designated material so that future funding is not limited to 50%.

Enhanced Consultation

In the past, different last minute lobbying efforts made by industry stewards to the Minister have resulted in changes to the Act without any consultation of those parties affected. Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators recommend a procedural mechanism be put in place so that all parties affected are consulted in advance of imposing any new policy changes.

Dispute Resolution

The current governance structure of the Waste Diversion Ontario board is unbalanced in that board decisions often side with the industry sector because a majority of the board is comprised of industry representatives. The present board structure has been challenged and is under review as of April of 2007. Until such time as the new governance structure for Waste Diversion Ontario has been established, situations may arise that can not be resolved through consultation. Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators recommend that an appeal mechanism in the form of an independent tribunal, similar to the *Planning Act* be incorporated within the *Waste*

Diversion Act. Appeals could also be heard by the Environmental Review Tribunal for legal expertise in environmental legislation.

Allow Visible User Fees

There is currently little support from the Province for the imposition of visible fees on consumer products related to a designated waste as there is fear that the public misinterprets such fees as new taxes. Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators have, however, recommended that section 30(3) of the Act include provisions to consider such fees in the future.

Last, Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators recommend that the review period of the Act continue to be conducted every six years to ensure legislation continues to incorporate waste management and diversion principles.

Regional staff was a part of the development of the Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators report. The recommendations presented are sound and will result in a stronger Act. It is proposed that the Region endorse the Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators submission and forward a Council resolution to that effect to the Minister of the Environment.

5. FINANCIAL IMPLICATIONS

Over the past three years, York Region, together with its lower-tier municipalities have spent over \$25 million on the operation of the Region's Blue Box program. In turn, associated product stewards have, through the Waste Diversion Ontario paid approximately \$10 million to the Region and local municipalities. This represents almost 40% of total costs during the same period:

Table 1

Year	York Region Net System Cost	Total York Funding from Waste Diversion Ontario
2005	\$6,161,379.00	\$2,192,400.56
2006	7,349,899.00	3,293,396.82
2007	12,145,239.00	4,755,905.00
Total	\$25,656,517.00	\$10,241,702.38

In 2006, the Region also spent over \$840,000 on the management of residential electronic and household hazardous waste. The upcoming review of the Act could have significant implications on the funding that municipalities receive for programs such as the Region's

electronic and household hazardous waste diversion programs. The recommended changes to the Act are intended to expedite the designation of new materials and establish more favourable funding for municipalities.

6. LOCAL MUNICIPAL IMPACT

The outcome of the pending review of the *Waste Diversion Act* may impact the waste diversion programs offered by the Region and local municipalities to our residents. Regional staff intends to closely monitor and comment on any proposed changes to the Act to ensure the interests of local residents are protected. It is recommended that this report be forwarded to the local municipalities to ensure they are aware of the upcoming legislative review.

7. CONCLUSION

The Ontario *Waste Diversion Act* provides the Minister of the Environment with the authority to designate materials for diversion. The Act also provides the Ministry with the authority to require that manufacturers and distributors of associated materials establish and fund diversion programs for their materials. As such, the Act has potentially significant implications on how municipal diversion programs are operated and funded.

The Act is almost five years old and scheduled for review. The Association of Municipalities of Ontario and Association of Municipal Recycling Coordinators have worked collaboratively with York Region and other municipalities to prepare and submit recommended changes to the Act to ensure the interests of Ontario's municipalities are protected. It is recommended that Council endorse these recommendations and forward a resolution to that effect to the Minister of the Environment.

For more information on this report contact Mike Birett, Manager, Waste Diversion of the Solid Waste Management Branch at extension 5738 in the Transportation and Works Department.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are attached to this report.)