
CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW & POLICY

517 College Street, Suite 400, Toronto, Ontario M6G 4A2 (416) 923-3529 FAX (416) 923-5949

Comments on Municipal Waste Management Powers in Ontario: A Discussion Paper

Mark Winfield
Director of Research
Canadian Institute for Environmental Law and Policy

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The Institute was pleased to receive a copy of the Ministry of Municipal Affairs' discussion paper Municipal Waste Management Powers in Ontario. The paper raises a number of important public policy issues and its proposals warrant close examination.

Proposal # 1: General Waste Management.

The paper's proposal to grant municipalities permissive authority over waste management responds to long-standing requests from municipal governments that their legislative authority in the area be clarified. The proposal, as it relates to solid waste, would affirm municipal powers to conduct activities which many have already undertaken. It would, therefore, seem an appropriate step.

The effects of the implementation of the proposals regarding municipal powers over hazardous and liquid wastes are less clear. It would seem reasonable to assume that the intention is to give municipalities the authority to address the household hazardous

waste issue and to strengthen their capacity to deal with the discharge of industrial wastes into sewage systems. However, it will be necessary to clarify the relationship which would exist between new municipal powers in these areas and the province's current regulatory regime, especially as it relates to hazardous waste management under Part V of the Environmental Protection Act.

Proposal # 2: Increased Penalties

The suggestion that penalties for breaches of municipal by-laws related to waste management be raised is appropriate and welcome. As noted in the paper, this would be consistent with existing arrangements regarding industrial discharges to sewers. It would strengthen municipalities' capacity to divert solid waste from disposal and to curb illegal dumping. Increased penalties for illegal disposal will be particularly important as tipping fees rise, user-pay systems are imposed and landfilling bans on particular materials are implemented.

Proposal # 3: Access to Property

This proposal appears acceptable provided that adequate safeguards are put in place and compensatory arrangements made for property holders.

Proposed Options

1. Regulating the Flow of Waste

At a minimum, municipal control over the flow of residential

waste, as proposed in Option A, should be affirmed. Options B and C are somewhat more controversial. Some municipal control over ICI wastes appears necessary in order to ensure, for example, that landfilling bans on specific materials imposed by municipalities are effective. Notwithstanding this concern, municipalities should ask themselves if assumption of control of ICI waste does not also entail an acceptance of responsibility to provide for its disposal or diversion. This could involve substantial new obligations and costs for a municipality. Perhaps the best arrangement is for residential collection, where a natural monopoly exists, to remain a public sector responsibility, while ICI generators are left to deal with their wastes as they see fit. Rising disposal costs should, in most cases, provide adequate incentives to ICI generators to practice the 3Rs and arrange for the composting of organic wastes.

Given these considerations, municipalities should be granted permissive authority to control the flow of both residential and ICI wastes as proposed in Option C. However, municipalities should exercise any new powers over ICI wastes with caution. Rather than assuming blanket responsibility for ICI wastes, applications of municipal legislative power should be carefully targeted at problem areas and sectors. Municipalities should seek, to the greatest extent possible, to provide incentives to ICI generators to design and undertake 3R activities on their own initiative, as opposed to proscribing particular practices and procedures.

2. and 3. Compensating Municipalities with Landfill Facilities and the Regulation of Tipping Fees

Proposed options 2 and 3 are closely related and should be addressed together. They raise the question of how tipping fees should be determined and how the resulting revenues ought to be distributed. Increased tipping fees have been demonstrated to have a substantial capacity to encourage waste generators to seek to divert wastes from landfill. Indeed, tipping fee levels may be one of the most important policy instruments available to promote 3Rs practices.

The Ministry of Municipal Affairs' discussion paper proposes permitting municipalities to regulate tipping fees at all landfills within their jurisdiction and to require compensation from private landfills which make windfall profits as a result of rising fees. This proposal suffers from a number of weaknesses. It does not address the possibility that some municipalities may choose to continue to subsidize landfilling costs through general revenues. In addition, a municipal capacity to obtain profits from private landfills may provide incentives to municipalities to promote disposal at such facilities.

A better approach might involve the setting of a minimum tipping fee for each municipality. The fee could be set through a provincial formula for determining the full costs of disposal to a municipality. This would include such factors as the costs of

planning and obtaining approvals for a facility, operating costs, and financial arrangements for closure and ongoing post-closure care. In addition, there could be an allowance for the creation of a contingency fund against unanticipated environmental damage. The costs of 3Rs infrastructure also might be factored in, along with an above full cost margin to further promote 3Rs and composting activities. No landfill, either public or private, would be allowed to charge below the calculated floor fee for the jurisdiction in question. Local tipping fee levels could be appealed to the OMB. Arrangements should be made for windfall profits accruing to private operators to be assigned to an environmental liability and post-closure care guarantee fund.

Such a fee structure would ensure that municipalities collect sufficient revenues to maintain the long-term financial position of their waste management system. It would also prevent jurisdictions from using cheap disposal costs as a means of attracting investment, while permitting some flexibility in terms of taking into account local conditions. Further, the capacity of private landfill operators to undermine municipal efforts to promote the 3Rs by offering low-cost disposal would be limited. The possibility of using regionally-based formulas, to take into account the broad variations which exist between major regions of the province, might also be explored. This would address the concern that the factors affecting waste-disposal costs in Northern and Southern Ontario may be very different.

Tying fees in some way to the real costs of waste management would prevent tipping fees becoming a source of general revenue for municipalities. The emergence of tipping fees as a revenue source could provide a serious disincentive to municipalities to undertake 3Rs efforts. Care must also be taken to ensure that 3Rs activities do not depend upon revenues generated by the ongoing landfilling of waste for financial support.

4. Charging for Waste Management Services

The proposal that municipalities be granted authority to charge for collecting and disposing of waste by class, volume, weight, or any other criteria they choose has considerable positive potential. As noted earlier, the pricing of waste management services has substantial potential as an instrument for the promotion of the 3Rs and composting. User pay charges provide generators with a direct financial incentive to reduce their waste.

In the event that municipalities choose to adopt a user-pay approach to waste management services, it will be essential that the previously hidden costs of garbage collection and disposal be eliminated from property taxes. They should be replaced by a direct charge based on the volume of waste collected by the municipality. Residents must have the option of selecting a lower level of service than is currently provided, and be financially rewarded for doing so. A user-pay arrangement would put solid waste management services on the same basis as other municipal utilities, such as

water and electricity.

Concerns have been raised that user-pay systems could be unfair to large families and encourage illegal dumping. Large families already receive additional support through the general income tax system. A continuation of this approach would seem more appropriate than attempting to make specific financial arrangements for waste disposal services. As for the question of illegal dumping, the increased penalties proposed under potential power #2 ought to limit the extent of this problem. Public education programs also will play a significant role in this regard.

5. Allocating Authority to Upper and Lower Tier and Lower Tier Municipalities

Option B would provide the greatest flexibility to upper and lower tier municipalities to make arrangements for solid waste management among themselves. The transfer of all powers to upper tier municipalities is likely to be strongly resisted by lower tier municipalities. In addition, lower tier municipalities should be provided some responsibilities in the waste management field, as this provides them with an incentive to take part in 3Rs and composting activities. Making lower tier municipalities responsible for the 3Rs and collection runs the risk of fragmentation and a loss of economies of scale in 3Rs operations.

The province may also wish to consider legislative amendments

to permit upper tier municipalities to implement a user-pay system on lower tier municipalities. Such a proposal was made in the Institute's 1989 publication, A Regulatory Agenda for Solid Waste Reduction. This would provide additional incentives to lower tier municipalities to participate in 3Rs programs. _