



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

May 16, 2012

Mr. Michael Scott
Executive Director
Waste Diversion Ontario
4711 Yonge St., Ste. 1102
Toronto, ON

Dear Mr. Scott:

Re: Comments to the Review of the Waste Diversion Ontario's Policy and Procedures for Industry Stewardship Plans (ISPs)

The Canadian Environmental Law Association (CELA) is submitting the following comments in response to the current review of Waste Diversion Ontario's Policy and Procedures for Industry Stewardship Plans (ISPs). CELA is a public interest law group founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens' groups in the courts and before tribunals on a wide variety of environmental matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization. Our organization has a long history of engaging in legislative analysis on waste management matters.

CELA has submitted comments to the Ontario government expressing the need to amend the Ontario Waste Diversion Act (WDA) to address the fundamental weaknesses of the Act that is negatively affecting implementation of waste diversion programs, that divert waste from landfills and increase materials management for purposes of recycling, treatment for other application or eventual sound environmental disposal. As part of a broader coalition of environmental organizations, CELA noted in a letter to Premier McGuinty dated October 20th, 2011 that financing, underperformance, transparency and accountability within the WDA should be addressed.¹

Furthermore, CELA would like to note that the WDA also plays an important role in toxic chemicals management. Designated waste may include toxic chemicals found in specific products, released due to industrial recycling processes or from the continued use of toxic

¹ Letter to Premier Dalton McGuinty on Ontario Waste Diversion Act dated October 20, 2011. See at <http://www.cela.ca/sites/cela.ca/files/810LTR%20-%20Premier%20re%20WDA%20-%20final%20-%20October%202011-5.pdf>

substances in final products that contain recycled material. These toxic substances may have adverse impacts on the environment or human health. The effective implementation of WDA and implementation of diversion programs creates opportunities for job creations and innovation in waste management technology but can overshadow the potential benefits for protecting the environment and health from toxic substances that can be found in a waste material.

The consultation on WDO's Policy and Procedures for Industry Stewardship Plans (ISPs) is inadequate to address the fundamental weaknesses with the Act. However, we recognize that the review process will add value to our knowledge base by identifying critical issues on the management and administrative requirements for the effective operations of diversion programs. It will also provide opportunities to address financial matters for operating the diversion program (from collection, to recycle, to eventual disposal of unwanted materials). However, this review represents one aspect of the problem facing Ontario's waste diversion efforts. Without a fulsome and transparent review of the WDA, the province of Ontario will face growing challenges for managing Ontario's waste including elevated risk associated with toxic chemicals from products or industrial processes, continuing demands for natural resources, and costs and investments required for disposal regimes, affecting efforts that promote extended producer responsibility. It will make it difficult to "maximize diversion" and ensure that "producers remain responsible for the recycling and safe disposal of the waste their products create" as noted in a letter by the Honourable Jim Bradley, Minister of the Environment dated February 9th 2012. Furthermore, the current waste diversion program framework, which has the potential to provide benefits to economy (through job creation and technology innovation), the environment and reduce impacts to health of Ontario from landfilling waste, continues to be the target of strong criticism from the public and the industry.

In the February 9th 2012 letter from the Honourable Jim Bradley, the Minister focused on section 7 of the WDA and stated that there was a need to review financial costs associated with different aspects of the development and implementation of diversion programs. The letter requires the WDO to consider "whether the plan achieves waste diversion targets that are similar or better than the associated waste diversion program." CELA submits that this consideration is too narrow and should be expanded to provide careful consideration and review of the specific benefits made to the environment or human health from diversion programs or applicable procedures followed by the WDO, the IFO and Industry Stewards. Such a review should also include how the current diversion plans and applicable procedures followed by the IFO or Industry Stewards contribute to the management of designated waste and the prevention of the release of waste containing toxic substances into Ontario's waterways, air or land from designated waste.

CELA offers the following comments to the WDO related to the review of its policy and procedures for IFO and ISPs:

1) Review WDO's authority and role in effectively achieving the goals of the WDA and implementing the full scope of the WDA.

The role of WDO as administer of the Waste Diversion Program needs to be further clarified and strengthened to improve the operations of the waste diversion programs, which are primarily

operated and developed by the Industry Funding Organizations (IFOs) and, in specific circumstances, the industry stewards. In part, the lack of clarity in WDO's role and authority over diversion programs is due to the WDA. One area where the WDO should have leadership is in administration of an acceptable methodology template that will be followed by the IFO exercise and applicable industry stewards to use for achieving the goals of the diversion programs. Currently, the IFO appears to have authority to determine the methodology that should be followed by affected industry. This arrangement is contributing to inequities within industry and does not contribute to improvements in approaches.

2) Role of establishing environmental standards and targets for designated waste remains the responsibility of the Minister of the Environment.

During the May 14th webinar held by the WDO, comments were made with respect to standard setting for Waste Diversion Programs and the role of WDO in setting standards. Any efforts that relate to environmental standards, particularly as it applies to waste management, remain under the authority of the provincial government. There are various avenues where the relevant government agency should seek input in establishing standards, including posting proposal standards for public comment on the *Environmental Bill of Rights*. However, CELA would not support a proposal or arrangement where standard setting proposals are placed under the authority of WDO or the Industry Funding Organization. The WDO is expected to contribute to the standard setting process relevant for waste but should not be responsible for establishing such standards. Furthermore, standards should be enforceable and obligations should be in place to ensure that such standards are met and compliance should be reviewed by a third party.

3) Increase accountability and rationale by IFO and the industry stewardship on nature of the targets and progress made to achieve targets.

The targets established for diversion programs should be enforceable. The plans should include substantial rationale to explain the nature of targets established for waste diversion. Targets should be accompanied with an analysis on the benefits that will be gained for environmental protection and health. The Plans that are prepared often generally only focus and emphasize the components needed for every phase of the recovery progress of designated waste. However, information is not available on how the specific phases of the diversion program address concerns related to the designated waste.

Providing these details in the plans can help demonstrate the value and contributions of the diversion programs developed. It will also create a benchmark for evaluation of programs and identify where potential improvements in the system can be made by the participating industry.

4) Review the purpose and scope of the Annual Reports as required from the IFO and Industry Stewards Plan.

The WDA requires annual reports from IFO and ISP with specific information requirements outlined in the Act. These annual reports are submitted to the WDO by IFO and IPS and represent a key element for public reporting on waste diversion programs in Ontario. The IFOs and IPS should be required to place greater emphasis on reviewing and analyzing the data to

demonstrate accountability of IFO and IPS in achieving the goals of the diversion programs. The level of assessment needed by WDO on the data contained in annual reports should include:

- a. qualitative and quantitative assessment of efforts undertaken by industry to achieve the targets of the diversion program recognizing that each industry may employ different strategies to improve its diversion efforts.
- b. Require access to the analysis approach and background data submitted by industry
- c. Validate data submitted by industry on its progress in achieving targets using independent auditing of each program to determine if goals of the waste diversion plans are being achieved.

The WDO should also review annual reports and provide recommendations to the IFO and specific Industry Stewards identifying areas of the program that need to be improved and schedule follow-up with the proponents to assess progress in this regard. Trends observed over time related to diversion efforts are also essential and should be undertaken by WDO based on the annual reports submitted by IFO and the industry steward.

5) Harmonization issues

During the May 14th webinar session, the issue of harmonization among the Canadian provinces and territories as well as other countries, such as the European Union, was raised. It is valuable and necessary for the continuous improvement of Ontario's waste diversion initiatives to assess the scope and progress made on waste diversion by other jurisdictions, including provinces and territories and other countries. Such an assessment will inform the decision-makers on new approaches and systems in place for waste diversion. This assessment will also provide a feedback to identify and review relevant regulatory actions that have been enforced to support waste diversion efforts. Ontario should seek to offer the most effective diversion programs. It would be difficult to achieve this if no consideration is given to the efforts of other jurisdictions with waste diversion programs.

Similarly, it would be difficult for Ontario to offer the most effective diversion program if it doesn't review the actions taken by the federal government. The federal-provincial relationship on waste offers one area where improvements in communication and consideration should be made by the province. While Canada's federal government has been engaged in key international negotiations related to chemicals management and waste management, with specific focus on the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* and the *Stockholm Convention on Persistent Organic Pollutants*, the obligations set out in these agreements are not clearly and effectively reflected in the goals and focus of waste management regimes, including the waste diversion programs. As a Party to these key international agreements, Canada is obligated to meet the goals of these agreements. Improved and transparent communications between Canada and the provinces would help in this regard.

If you have questions regarding our comments, please do not hesitate to contact our office.

Thank you for your consideration.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Fe de Leon", followed by a horizontal line extending to the right.

Fe de Leon
Researcher

