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Environmental Law
Association**
EQUITY. JUSTICE. HEALTH.



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Resource Recovery Branch
Ministry of the Environment and Climate Change
40 St. Clair Avenue West, Floor 8
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Transmission by email

Dear Ms. Sookhoo:

RE: EBR REGISTRY NOS. 012-5832 and 012-5834 - WASTE-FREE ONTARIO ACT, 2015 (BILL 151) AND DRAFT STRATEGY FOR A WASTE-FREE ONTARIO

On behalf of the Canadian Environmental Law Association (“CELA”), Citizens’ Network on Waste Management (“CNWM”) and Toronto Environmental Alliance (“TEA”), we are writing to provide comments on the proposed *Waste-Free Ontario Act, 2015* (“Bill 151”) and the draft *Strategy for a Waste-Free Ontario: Building the Circular Economy* (“Strategy”). This submission has been sent to you in accordance with the above-noted EBR Registry postings.

Please be advised that CELA, CNWM and TEA attended pre-consultation meetings and three of the regional consultation sessions (Kitchener, Toronto and Ottawa) which were undertaken by your Ministry. We have also conferred with other individuals and groups within the environmental community. Accordingly, we have framed our comments as responses to the various questions set out in the Ministry’s consultation guide on Bill 151.¹

PART I – BACKGROUND AND GENERAL COMMENTS

CELA, CNWM, and TEA have long advocated the development of laws, regulations and policies aimed at preventing or avoiding waste creation, implementing the 3R’s, maximizing waste diversion, and ensuring that residual waste is managed in an environmentally sound manner that avoids the generation and release of toxic chemicals from production/destruction processes and consumer products. For example, CELA, CNWM and TEA worked with other groups in reviewing and responding to Bill 91 (*Waste Reduction Act, 2013*) and its associated waste reduction strategy. While Bill 91 died on the order paper, it appears to us that several of the

¹ MOECC, *Consultation Guide for the Proposed Waste-Free Ontario Framework* (Winter 2016).

fundamental problems in Bill 91 have unfortunately been carried forward and replicated in Bill 151, as discussed below.

At the outset, it should be emphasized that CELA, CNWM and TEA support strong legislation, comprehensive regulations, effective policies and timely implementation of measures aimed towards the laudable “zero waste” goal entrenched in the draft Strategy. We also support the intent of establishing a circular economy that can reduce greenhouse gas emissions through resource recovery and waste reduction. However, as currently drafted, Bill 151 and the Strategy are inadequate and unlikely to result in much tangible progress in Ontario’s waste reduction/diversion efforts or in the promotion of innovation in product design and packaging. CELA, CNWM and TEA therefore conclude that Bill 151 and the Strategy both require substantive improvements as this important (and long overdue) initiative proceeds through the legislative process.

In particular, we find that it is difficult to comment on the claimed efficacy of Bill 151 since it is essentially enabling legislation, and since the implementing regulations (or policy statements or directions) have not been released to date. Nevertheless, our general comments about Bill 151 and the draft Strategy may be summarized as follows:

- Part I of the proposed *Resource Recovery and Circular Economy Act* (“RRCEA”) contains insufficient definitions, omits key goals and objectives from the list of provincial interests, and inexplicably lacks a statement of legislative purpose. Moreover, the RRCEA fails to specify that energy-from-waste facilities do not constitute “recovery” or “diversion” for the purposes of the Bill 151 regime;
- despite the operational importance of policy statements under the new regime, Part II of the RRCEA fails to impose a mandatory duty (or deadline) on the Minister to actually issue any policy statements, which are intended to provide binding direction on how to implement the provincial interests set out in the legislation;
- Part III of the RRCEA contains an inappropriate and ill-conceived proposal to empower the new Resource Productivity and Recovery Authority (“Authority”) to conduct compliance and enforcement activities under the legislation;
- additional legal and public accountability mechanisms are required to ensure that the Authority acts in accordance with the public interest and carries out its activities in an effective, efficient and equitable manner;
- there is considerable uncertainty about the nature and extent of the new producer responsibility regime under Part IV of the RRCEA, particularly given the absence of any draft regulations which describe the precise roles and responsibilities of persons and entities subject to (or exempted from) the legislation;
- Part V of the RRCEA contains a reasonable suite of compliance and enforcement tools, but they should be used by Ministry staff (not the Authority), especially given the Ministry’s resources, mandate and expertise in enforcement matters;

- the transition of existing waste diversion programs into new and improved versions under the RRCEA must be carefully planned and managed (with predictable timelines for reduction targets), and meaningful public and stakeholder consultation must be undertaken to ensure a smooth, timely and orderly transition; and
- the draft Strategy requires timelines and additional goals and objectives, and the proposed actions and performance measures require further consideration.

The above-noted concerns – and our corresponding recommendations – are described in more detail below in Part II of this submission.

PART II – SPECIFIC COMMENTS ON BILL 151 AND THE STRATEGY

The Ministry’s consultation guide on Bill 151 solicits public input on five broad topics: (i) provincial interest and policy statements; (ii) oversight, compliance and enforcement; (iii) producer responsibility; (iv) transition; and (v) draft Strategy. Within each topic, various issues are discussed, and specific questions are posed, by the Bill 151 consultation guide. In this submission, CELA, CNWM and TEA review the key issues and provide answers to the Ministry’s questions.

(i) Provincial Interest and Policy Statements

Overview

Schedule 1 of Bill 151 proposes to enact the RRCEA. Part I of the RRCEA outlines the provincial interest in establishing a system for resource recovery and waste reduction that “aims” to achieve fifteen different outcomes or objectives, including:

- minimizing greenhouse emissions from resource recovery and waste reduction activities;
- minimizing the generation of waste, including waste from products and packaging;
- increasing the durability, reusability and recyclability of products and packaging;
- holding appropriate persons “responsible” for products and packaging;
- decreasing hazardous and toxic substances in products and packaging; and
- minimizing waste disposal.²

Similarly, Part II of the RRCEA requires various public and private entities to “have regard” for the above-noted provincial interests,³ and empowers the provincial government to issue “policy

² RRCEA, section 2.

³ RRCEA, section 10.

statements” regarding resource recovery and waste reduction.⁴ If issued, these policy statements will be binding on certain persons and entities whose activities or decisions will be required by law to be “consistent” with applicable policy statements.⁵

Consultation Questions

The Ministry’s consultation guide poses the following three questions about the provincial interest and policy statements:

- Question 1 Are there any additional matters that should be added to the list of provincial interest aims?
- Question 2 What should be the priority areas and focus of the initial policy statements? What key components do you think they should include?
- Question 3 Do you think the proposed Act has sufficient “teeth” (e.g. Director’s requirement for review and report) to make the policy statements effective? If not, what additions would you suggest?

Our response to each of these questions is set out below.

CELA, CNWM and TEA Response

With respect to Question 1, CELA, CNWM and TEA submit that while the RRCEA’s proposed list of provincial interests appears lengthy, it inexplicably omits some key aims and objectives, such as protecting the natural environment and safeguarding public health and safety. In our view, the public policy rationale for the RRCEA is not just simply diverting materials from disposal, but also ensuring that the full life cycle of products, from the design and manufacturing, use, and management of products and packaging, do not adversely affect ecological sustainability or public health.⁶ These paramount considerations should be incorporated into the RRCEA, particularly if the legislation is intended to “maximize the re-integration of recovered materials back into the economy.”⁷ After all, this societal objective contemplates more than merely reducing waste; instead, it requires changing Ontario’s economy so that it is based on the use of recovered materials rather than raw materials.

Surprisingly, not even the well-known 3R’s hierarchy (reduce, reuse, recycle) is reflected or prioritized in the RRCEA. Similarly, the RRCEA contains no definitions of these terms, nor does it define “waste”, “waste diversion”, “waste disposal”, “recycling” or other key words, phrases and concepts embedded within the legislation. For the purposes of greater certainty, CELA, CNWM and TEA submit that the RRCEA’s sparse definitions section should be expanded to

⁴ RRCEA, section 11.

⁵ RRCEA, section 12.

⁶ This public interest consideration presumably underlies the provincial interests listed in section 2(e), (f) and (g), but CELA, CNWM and TEA submit that it should be expressly entrenched as an overarching goal of the RRCEA for the purposes of greater certainty and enhanced accountability.

⁷ Draft Strategy, page 5.

include these and other relevant terms (e.g. “prevention” or “avoidance”, “upcycling”, “downcycling”, or “open- and closed-loop recycling.”). Moreover, when entrenching the 3R’s hierarchy, the RRCEA should ensure the highest possible end-use of recovered materials. In addition, subsection 2(d) of the RRCEA should not fixate on “end-of-life” management of products and packaging, but should be recast to ensure appropriate design, use and recovery throughout their entire life cycle.

Other important environmental planning considerations – such as the precautionary principle, ecosystem approach, polluter pays and intergenerational equity – are also conspicuously absent from the RRCEA, despite their direct relevance to the matters addressed under the legislation. Several of these principles are recognized under other provincial statutes,⁸ and should be entrenched in the RRCEA in order to assist in the interpretation and application of the legislation, regulations and policy statements.

We are also unclear why section 2 does not use, define or even mention the “zero waste” and “zero greenhouse gas emissions” objectives which are the central pillars of the draft Strategy. Surprisingly, aside from the short title of the RRCEA, not even the key term “circular economy” is used or defined in the legislation, although it is the centerpiece of the draft Strategy. At a minimum, these concepts should be entrenched and explained in the RRCEA. For example, the Vision Statement on page 5 of the Strategy should be incorporated directly into Part I of the RRCEA. Otherwise, it appears to CELA, CNWM and TEA that there is a significant disconnect between the draft Strategy and the RRCEA.

Similarly, there appears to be considerable inconsistency (if not operative conflict) between the RRCEA and the draft Strategy in relation to greenhouse gas (“GHG”) emissions. For example, while the draft Strategy proposes “zero GHG emissions from the waste sector”, the RRCEA is aimed at “minimizing” GHG emissions “resulting from resource recovery activities and waste reduction activities.” It appears to us that the goal of “zero” emissions from the “waste sector” has been framed too narrowly, and may not necessarily include the GHG emissions associated with waste transportation, sending collected materials to energy-from-waste facilities, or exporting collected materials to other jurisdictions for disposal purposes. This skewed approach misses the most significant GHG reductions resulting from waste reduction and resource recovery since these activities tend to occur “upstream” long before the disposal stage is reached. Thus, an unintended consequence of simply looking at the “waste sector” is that the increased energy use at a recycling or composting facility may appear as increases in GHG emissions.

In our view, the preferable approach is to re-state this provincial interest as “reducing GHG emissions from materials management and products/packaging processing in all life cycle stages.” In this regard, we note that huge reductions of GHG emissions will result from reintegrating recovered materials into new products. In almost all cases, substantially less GHG gases are generated when a product is made from recycled materials instead of raw materials, as correctly noted in the draft Strategy.⁹

⁸ See, for example, the *Environmental Bill of Rights, 1993* (“EBR”), section 2, and the Ministry’s *Statement of Environmental Values* adopted under sections 7 and 11 of the EBR.

⁹ Draft Strategy, page 8.

CELA, CNWM and TEA further note that aside from the provincial interests listed in section 2, the RRCEA does not include a purpose statement. This omission stands in stark contrast to Bill 151's Schedule 2 inclusion of the proposed *Waste Diversion Transition Act, 2015* ("WDTA"), which contains a concise statement of the intended legislative purpose of the WDTA.¹⁰ Indeed, most of Ontario's key environmental statutes contain purpose statements,¹¹ and we are unaware of any persuasive legal reason why the RRCEA cannot include a clear statement of its intended purposes.

On this point, it appears to us that the RRCEA's list of provincial interests (and issuance of binding policy statements to elaborate upon these interests) is modelled upon the similar approach used in the *Planning Act* and the Provincial Policy Statement ("PPS") issued thereunder. It is noteworthy, however, that although section 2 of the *Planning Act* sets out various provincial interests, the Act nevertheless includes an upfront statement of purpose.¹² In our view, the RRCEA also requires a statement of its purposes, as the legislative intent should be expressly entrenched in the Act, rather than be omitted entirely or left to subjective guesswork.

RECOMENDATION #1: The RRCEA should be amended to include:

- (i) protection of human health and the environment as matters of provincial interest under section 2;**
- (ii) the 3R's hierarchy, in descending order of priority: waste avoidance/reduction, reuse, recycle, with legal requirements for highest possible end-use of recovered materials;**
- (iii) appropriate definitions of key words, phrases and concepts, including "reduce", "reuse", "recycle", "waste", "diversion" and "disposal";**
- (iv) relevant environmental planning principles such as the precautionary principle, ecosystem approach, polluter pays, and intergenerational equity;**
- (v) the goals of "zero waste", "zero greenhouse gas emissions", "reintegration of recovered materials" and "circular economy", with appropriate definitions of each term;**
- (vi) the provincial interest of reducing greenhouse gas emissions from materials management and products/packaging processing in all life cycle stages; and**
- (vii) a broad statement of purpose that reflects the foregoing amendments and the overall public interest objectives of the legislation.**

¹⁰ WDTA, section 1.

¹¹ EBR, section 2; *Environmental Protection Act*, section 3; *Environmental Assessment Act*, section 2; *Ontario Water Resources Act*, section 0.1; *Clean Water Act, 2006*, section 1; *Nutrient Management Act, 2002*, section 1; *Safe Drinking Water Act, 2002*, section 1.

¹² *Planning Act*, section 1.1.

With respect to Question 2, CELA, CNWM and TEA note that the implicit assumption is that policy statements will, in fact, be issued from time to time by the Minister. However, the permissive language used in section 11 of the RRCEA merely provides that the Minister “may” issue policy statements. This Ministerial discretion stands in contrast to the peremptory language of section 3 of the RRCEA, which provides that the Minister “shall” develop the Strategy, and “shall” review the Strategy every 10 years.

Given the operational importance of resource recovery/waste reduction policy statements in furthering provincial interests and implementing the new RRCEA regime, we submit that the issuance of policy statements should be mandatory, not optional. On this point, we note that for the past two decades, the Minister has enjoyed similar discretion under the *Environmental Assessment Act* to issue “policy guidelines” dealing with the “protection, conservation and wise management of the environment,”¹³ but has not promulgated a single one to date. Accordingly, CELA, CNWM and TEA caution against leaving the Minister with unfettered discretion to issue policy statements – or not – under the RRCEA.

In addition, we submit that consideration should be given to imposing a specific timeframe for the development of the initial set of policy statements. As currently drafted, the RRCEA stipulates that the policy statements should be reviewed at least once every 10 years, but imposes no clear deadline or timeframe for the actual issuance of any policy statements. We note that the timeframe can either be expressed in a quantitative manner (e.g., within 12 months of the Act’s coming into force), or in a qualitative manner (e.g., within a reasonable time after the Act comes into force). CELA, CNWM and TEA prefer the quantitative approach,¹⁴ but the essential requirement is that a clear timeframe should be entrenched in the RRCEA.

With respect to developing policy statements, CELA, CNWM and TEA support the need for the Minister to consult with municipal representatives, industry stakeholders, environmental and health groups, and the public at large.¹⁵ We also agree that policy statements should be deemed to be “policies” under the EBR,¹⁶ and should be subject to the mandatory notice/comment obligations under Part II of the EBR.

In terms of the priority topics to be addressed by the initial set of policy statements, CELA, CNWM and TEA offer the following suggestions:

- in light of sections 2(b) and 2(i) of the RRCEA, waste generation/diversion statistics clearly confirm that the Industrial, Commercial and Institutional (IC&I) sector is the one most deserving of greater provincial direction on “minimizing” the generation of waste and “increasing the reuse and recycling of waste”. In our view, the opportunities for waste reduction and diversion within the IC&I sector should be pursued aggressively by a

¹³ *Environmental Assessment Act*, section 27.1.

¹⁴ The quantitative approach was used under the EBR, which required prescribed ministries to prepare draft *Statements of Environmental Values* within three months, and to finalize these documents within nine months: see EBR, sections 7 to 10.

¹⁵ RRCEA, subsection 11(2).

¹⁶ RRCEA, subsection 11(7).

coordinated and comprehensive provincial program that includes regulatory standards and disposal bans;

- in light of section 2(e) of the RRCEA, there is a pressing need for detailed provincial direction on technical options for “decreasing hazardous and toxic substances in products and packaging” (e.g., innovative design, chemical substitution, material reformulation, etc.). In particular, consideration should be given to how Ontario’s *Toxics Reduction Act* can be used (or amended) to achieve this important provincial interest;
- in light of section 2(f) of the RRCEA, there should be an immediate policy statement that describes how the existing provincial framework for approving new or expanded waste disposal sites will be integrated, tightened up and utilized to ensure that waste disposal is minimized (or, preferably, avoided). If Ontario is serious about working towards “zero waste”, then waste disposal should only be available as a last resort for residual materials that cannot technically be reduced, reused or recycled at the present time. This also means that the province must ensure that waste disposal capacity is not overbuilt, which would be antithetical to “reintegrating” recovered materials within the economy. In short, the current approvals framework under the *Environmental Assessment Act* and *Environmental Protection Act* will have to be fundamentally revised and realigned to be consistent with the new resource recovery/circular economy paradigm.¹⁷ As long as waste producers (or other actors) perceive that it may be easier, faster or cheaper to burn or bury resources at waste disposal sites, then that will likely be their preferred approach to the extent permitted by law, regardless of the well-documented environmental and socio-economic benefits of the 3R’s hierarchy. In addition, CELA, CNWM and TEA seek to ensure that proposals for energy-from-waste (“EFW”) are not considered as acceptable “recovery” or “diversion” activities under the Bill 151 regime.

RECOMMENDATION #2: The RRCEA should be amended to:

- (i) specify that the Minister “shall” issue resource recovery and waste reduction policy statements; and**
- (ii) impose a clear timeframe for the development and issuance of policy statements.**

RECOMMENDATION #3: At the earliest possible opportunity, the initial set of policy statements under the RRCEA should address:

¹⁷ At a minimum, passage of Bill 151 should be accompanied by consequential amendments to the *Environmental Assessment Act*, O.Reg. 101/07, Part V of the *Environmental Protection Act*, and O.Reg. 206/97. For example, landfills and energy-from-waste facilities should not be subject to streamlined “environmental screening” procedures or “scoped” environmental assessment processes. In our view, statutory approvals for these least-desired facilities should be harder – not easier – to obtain in Ontario, primarily because disposal of valuable resources is antithetical to the zero waste and circular economy objectives. Thus, proponents of waste disposal facilities should be required to conduct robust environmental assessments which evaluate the environmental pros/cons of “alternatives to” the undertaking (e.g., the 3R’s), and which address the threshold question of whether there is a demonstrable public interest “need” (or rationale) for another waste disposal facility of the size, scale and capacity being proposed by the proponent.

- (i) **all types of waste materials currently generated within the IC&I sector, including construction and demolition wastes and organic wastes;**
- (ii) **the technical options available for requiring the prevention, or decreasing the toxicity, of chemical substances used in products and packaging which enters the waste stream;**
- (iii) **the need to revise and use Ontario's waste disposal approvals process in a manner that deters the overbuilding of disposal capacity, and that is consistent with the provincial interest of minimizing (or avoiding) waste disposal at the earliest possible opportunity;**
- (iv) **how the circular economy should consider the full life cycle of products/packaging to effectively achieve its goals for zero greenhouse gas emissions, and to avoid and reduce toxic chemicals in products/packaging; and**
- (v) **the development (with public input) of industry product standards to ensure that producers consider the full life cycle of their products, including the use of toxic chemicals in their design and production. These standards must also require designing systems which maximize recovery, reuse and recycling in order to reduce the need for raw materials and ensure reintegration of used materials back into the economy, as described in the draft Strategy.**

With respect to Question 3, CELA, CNWM and TEA submit that policy statements, in and of themselves, will be insufficient to fully achieve the RRCEA's objectives at the provincial, regional and local levels. For example, it will be necessary for the policy statements to be accompanied by implementation manuals, guidance materials, technical criteria and other explanatory documents that provide adequate information, at an appropriate level of detail, to ensure that everyone understands (and complies with) the obligations imposed under the RRCEA and regulations. On this point, we note that the PPS under the *Planning Act* does not exist as a solitary document. Instead, the provincial government has periodically issued a number of related materials so that stakeholders, decision-makers and other interested parties can understand how provincial interests are to be identified, protected and advanced in the land use planning context. In our view, a similar approach is required under the RRCEA.

Moreover, the policy statements must not consist of a few pages of environmental platitudes, or an abbreviated wish list of desired outcomes under the RRCEA. To the contrary, like the PPS under the *Planning Act*, the policy statements should elaborate upon the provincial interests, and should specifically direct how such interests are to be addressed or implemented under the RRCEA. Among other things, the policy statements under the RRCEA should contain reasonably detailed preambles, objectives, definitions or glossaries, general and special policies, measurable targets, specific timeframes, figures, maps, and interpretive provisions for resolving potential conflicts between different policy statements that may be applicable in the same situation.

The need for greater certainty and adequate detail is particularly acute since the RRCEA will require designated persons and entities to undertake their powers, duties and activities “in a manner that is consistent with all applicable policy statements.”¹⁸ Similarly, municipalities will be obliged by the RRCEA to ensure that official plans are “consistent” with the policy statements, and to undertake any necessary official plan amendments (or zoning by-law revisions) to achieve consistency.¹⁹ For accountability purposes, these provisions mean that the RRCEA policy statements must contain sufficient particulars in order to serve as a meaningful benchmark for assessing whether – or to what extent – there has been “consistency” with applicable policy statements. The policy statements should also confirm that they set out *minimum* standards, and that designated persons and entities may take measures which go beyond provincial requirements in order to address specific issues of local concern, provided that such measures do not conflict with the policy statements.

CELA, CNWM and TEA further submit that once the policy statements have been finalized, appropriate training, education and outreach programs should be undertaken so that interested persons and entities fully understand, and duly comply with, their obligations under the policy statements.

We note that the RRCEA contains a paramountcy clause that is intended to resolve conflicts between the policy statements and other prescribed instruments, such as the PPS.²⁰ CELA, CNWM and TEA have no objection in principle to this clause, but observe that the proposed rules (e.g., whichever gives “greatest protection” prevails) may be easier to state than to apply in cases involving actual or potential conflict.

In practice, however, it may be preferable to anticipate and prevent conflicts by amending other instruments before they create a conflict scenario under the RRCEA. For example, the only specific waste management policy in the PPS simply stipulates that waste management systems should: (i) be of an “appropriate” size and type; (ii) facilitate, encourage or promote the 3 R’s; and (iii) comply with provincial laws and standards.²¹ While it is difficult to foresee how this vague policy direction can create any operative conflicts, we submit that it would be prudent to amend (if not expand) this sparse PPS provision to bring it into line with RRCEA policy statements once they are issued. A similar conformity exercise should be carried out in relation to other listed provincial plans²² once the RRCEA policy statements are finalized.

To ensure that persons and entities are acting in a manner “consistent” with the policy statements, the RRCEA empowers the Ministry to appoint Directors who can review, require reports and otherwise publicize whether there is – or is not – consistency.²³ While only Ministry staff can be appointed as Directors under the RRCEA,²⁴ we are unclear whether such Directors would remain as public servants or become staff of the independent Authority. While the

¹⁸ RRCEA, section 12.

¹⁹ RRCEA, section 14.

²⁰ RRCEA, section 15.

²¹ PPS, Policy 1.6.10.1.

²² RRCEA, subsection 15(4).

²³ RRCEA, sections 16 to 18.

²⁴ RRCEA, section 16.

Director's directions to specified persons or entities are intended to be binding,²⁵ we are also unclear why the Ministry is not empowered to conduct compliance and enforcement activities in the event that there is non-compliance with Director's requirements issued under section 17 of the RRCEA. In the absence of any compelling justification for this apparent omission, CELA, CNWM and TEA submit that the Ministry should undertake compliance/enforcement activities in relation to alleged contraventions under section 17 of the RRCEA. Our further submissions regarding compliance/enforcement are set out below in relation to Part III of the RRCEA.

RECOMMENDATION #4: The RRCEA policy statements should:

- (i) be accompanied by implementation manuals, guidance materials, technical criteria and other appropriate explanatory documents or information;**
- (ii) contain sufficient particulars and detailed policies for the purposes of assessing whether persons or entities have acted in a manner that is "consistent" with the policy statements; and**
- (iii) be accompanied by appropriate training, education and outreach activities aimed at persons or entities whose decisions or activities may be caught by the policy statements.**

RECOMMENDATION #5: Once the RRCEA policy statements are finalized, the provincial government should systematically review and revise the PPS and provincial plans to ensure conformity and to avoid potential conflicts during implementation. The provincial government should also assess the extent of compliance with the policy statements, and assess whether enforcement mechanisms are needed within the policy statements to ensure timely and effective implementation.

RECOMMENDATION #6: The RRCEA should be amended to enable the Ministry to conduct compliance and enforcement activities in relation to alleged contraventions of Directors' requirements or directions under section 17.

(ii) Oversight, Compliance and Enforcement

Overview

Part III of the RRCEA proposes to establish the new Authority, which is intended to replace the existing Waste Diversion Ontario. The Authority is empowered by the RRCEA to perform two main roles: operate a data clearinghouse (e.g., oversee registration, collect data for monitoring/reporting purposes, etc.); and conduct compliance and enforcement activities under the RRCEA.²⁶ The Minister of the Environment and Climate Change ("Minister") has discretion to issue policy statements in relation to the Authority's activities under the RRCEA.²⁷ While the

²⁵ RRCEA, subsections 17(3) and (6), and subsection 98(3).

²⁶ RRCEA, sections 24, 50, 77.

²⁷ RRCEA, section 31.

Authority is deemed to not be a Crown agency,²⁸ the provincial Auditor General is authorized to conduct audits of the Authority.²⁹

Consultation Questions

The Ministry's consultation guide poses the following four questions about oversight, compliance and enforcement:

- Question 1 What skills and expertise are needed for the Authority's full Board to fulfill its new mandate?
- Question 2 What are your views on the proposed checks and balances for the government's oversight over the Authority?
- Question 3 Are there additional requirements that are necessary to assure the Ministry and stakeholders that the Authority will operate efficiently and effectively.
- Question 4 Does the Authority have appropriate compliance and enforcement tools to fulfill its oversight role?

Our response to each of these questions is set out below.

CELA, CNWM and TEA Response

With respect to Question 1, CELA, CNWM and TEA take no position on the types of skill sets, background or expertise that should be possessed by the Authority's Board members. However, it goes without saying that the Board members should be knowledgeable and experienced in the various issues that will likely be considered or decided by the Board. In addition, it may be helpful for Board members to have experience or knowledge of environmental and public health issues (particularly in relation to toxic substances), although this can also be addressed through appropriate training and professional development opportunities for Board appointees.

While the RRCEA contemplates the passage of a regulation prescribing the qualifications needed by Board members,³⁰ it is also possible for the RRCEA itself to codify the eligibility criteria for appointing or electing Board members,³¹ but we make no specific recommendation in this regard. For the reasons set out below, CELA, CNWM and TEA submit that it will not be necessary for Board members to be well-versed in compliance/enforcement matters since the Authority should not be given compliance and enforcement powers.

With respect to Questions 2 and 3, we support the RRCEA's proposals to: (i) enable the Minister to enter into an operating agreement with the Authority; (ii) empower the Minister to issue "policy directions" to the Authority; (iii) empower the Minister to require the Authority to

²⁸ RRCEA, section 37.

²⁹ RRECA, section 43.

³⁰ RRCEA, subsection 25(6).

³¹ See, for example, *Canadian Environmental Assessment Act, 2012*, subsection 42(1).

undertake public consultations, prepare reports, or conduct reviews; require the Authority to prepare business plans, retain an independent auditor, and prepare annual reports; and (v) authorize the Minister to appoint an administrator of the Authority under certain circumstances.³² In addition, we strongly support the RRCEA's proposal to enable the provincial Auditor General to audit and report upon the Authority's fiscal activities and procedures.³³

However, to enhance public accountability and to ensure that the Authority is operating in an effective manner, CELA, CNWM and TEA submit that additional checks and balances are necessary. For example, since the Authority is not an agency of the Crown,³⁴ it will not be subject to the provincial *Freedom of Information and Protection of Privacy Act* ("FIPPA"). In our view, this is a major oversight that must be rectified by designating the Authority as an institution to which the FIPPA applies. This is particularly true in light of the Authority's broad authority to "advise or report to the Minister on any matter related to resource recovery or waste reduction."³⁵ In addition, the RRCEA should be subject to the *Ombudsman Act*, which provides another layer of public accountability.

Similarly, while the RRCEA provides that the Strategy and policy statements are deemed to be "policies" for EBR purposes,³⁶ it will still be necessary for the RRCEA itself to be prescribed as a statute to which the EBR applies. Otherwise, some key EBR tools available under Part II (public participation), Part IV (application for review), Part V (application for investigation) and Part VII (whistle-blower protection) may not be fully applicable under the RRCEA. Thus, CELA, CNWM and TEA submit that upon the passage of Bill 151, O.Reg. 73/94 must be immediately amended to wholly prescribe the RRCEA under the EBR.

RECOMMENDATION #7: The Authority must be fully subject to the *Freedom of Information and Protection of Privacy Act*. The RRCEA must also be subject to the *Ombudsman Act*, and must be a prescribed statute for the purposes of Parts II, IV, V, and VII of the EBR.

With respect to Question 4, we submit that it is not appropriate for the Authority to be given compliance/enforcement powers or responsibilities under the RRCEA. CELA, CNWM and TEA have no objection to the standard suite of compliance/enforcement tools contained within the RRCEA, but we maintain that these tools should be used by Ministry staff, not outsourced to an Authority with no history of compliance/enforcement activities. Accordingly, section 77 of the RRCEA must be amended to delete the reference to the Authority, and to specify that it is the Ministry that "shall exercise powers and perform duties in relation to compliance with and enforcement of this Act."

³² RRCEA, sections 28 to 31, 33, 42, 44, 54.

³³ RRCEA, section 43.

³⁴ RRCEA, section 37.

³⁵ RRCEA, section 30, paragraph 2.

³⁶ RRCEA, section 6 and subsection 11(7). In addition, the operating agreement between the Minister and the Authority is deemed to be a regulation for the purposes of section 16 of the EBR.

The reasons supporting our position were outlined in a 2013 letter to the Minister (and the Attorney General) in relation to Bill 91,³⁷ which is appended to this submission and may be summarized as follows:

- any delegation of enforcement powers from the Ministry (which has the necessary resources, mandate and experience) to a third-party entity (which has none) will seriously threaten the administration of justice in Ontario;
- there is no evidence to substantiate the apparent belief that transferring enforcement powers from the Ministry to a third-party entity will necessarily result in more timely or effective enforcement of environmental law;
- to the contrary, evidence arising from the track record of the Technical Standards and Safety Authority (which assumed compliance/enforcement powers from the Ministry of Government Services) has been troubling and problematic, as confirmed by the provincial Auditor General and other commentators;
- transferring enforcement powers to a third-party entity raises concerns about independence, credibility and fairness, particularly if the entity is being expected to conduct prosecutions against its contacts within the regulated sectors; and
- law enforcement is a core government function that should remain within government itself for accountability purposes.

Despite such concerns, the Ministry now claims that there is stakeholder support for empowering the Authority to undertake compliance/enforcement activities. Even if this is true, it must be noted that such views are not determinative, nor are they unanimous within the environmental community or the public at large. Moreover, this claim does not satisfactorily address the fundamental legal and policy concerns about this unjustified departure from current compliance/enforcement practices under Ontario's environmental laws. Indeed, we are unaware of any evidence demonstrating that the Authority's predecessor (Waste Diversion Ontario) is foundering due to a lack of its own compliance and enforcement powers.

On this point, we note that the Ministry's slide deck presentation during the regional consultation sessions simply asserted that the Authority "needs" appropriate compliance/enforcement tools.³⁸ However, no evidence or arguments were presented to verify or substantiate this so-called "need." Similarly, the draft Strategy contends that the Authority should be responsible for ensuring compliance with the RRCEA, but the Strategy does not provide any reasons why this should be the case.³⁹ Accordingly, CELA, CNWM and TEA submit that the Ministry has fundamentally failed to justify its proposal to download compliance/enforcement powers to the Authority. In short, there is no rational public policy basis for this extraordinary and ill-conceived proposal.

³⁷ Letter from CELA to the Hon. James Bradley dated September 25, 2013.

³⁸ MOECC, *A Proposed Framework for a Waste-Free Ontario* (Winter 2016), slide 15.

³⁹ Draft Strategy, page 17.

It may be argued by the Ministry that the Authority is best placed to ensure compliance with requirements developed under the RRCEA. In response, CELA, CNWM and TEA submit that such arguments are not persuasive, particularly since there are instances where the Ministry undertakes compliance/enforcement activities under specialized standards developed outside of the Ministry itself. For example, while regulatory standards under the *Nutrient Management Act* are developed by the Ontario Ministry of Agriculture, Food and Rural Affairs (“OMAFRA”), these standards are actually enforced by MOECC staff, not OMAFRA or a third-party entity.

RECOMMENDATION #8: Section 77 of the RRCEA must be amended to remove the Authority’s power to undertake compliance and enforcement activities, and to instead specify that the Ministry has the power to undertake compliance/enforcement activities under the legislation.

(iii) Producer Responsibility

Overview

Part IV of the RRCEA empowers the provincial government to promulgate “outcome-based” regulations which require “brand holders” or other specified persons to carry out certain responsibilities in relation to prescribed classes of products and different types of packaging.⁴⁰ These responsibilities may include registration, waste reduction, collection, management, promotion and education, reporting and record-keeping.⁴¹ In addition, RRCEA regulations may be developed to prohibit the sale of certain materials in Ontario if prescribed persons are failing to collect such materials at end-of-life, or the prescribed persons are “habitually” failing to comply with other regulatory responsibilities under the RRCEA.⁴²

Consultation Questions

The Ministry’s consultation guide poses the following three questions about producer responsibility:

- Question 1 Are the roles and responsibilities of government, Authority, producers and others involved in resource recovery and waste reduction clearly identified? If not, do you have suggestions to improve clarity?

- Question 2 Are the proposed responsibilities (e.g., registration, waste reduction, collection, management, promotion/education, record keeping and reporting) appropriate and sufficiently scoped to ensure that obligations are met and proper oversight is provided?

- Question 3 What types of products and packaging should the government first consider for designation under the new producer responsibility regime? Why?

⁴⁰ RRCEA, sections 60-61.

⁴¹ RRCEA, sections 66-72.

⁴² RRCEA, section 75.

Our response to each of these questions is set out below.

CELA, CNWM and TEA Response

With respect to Questions 1 and 2, CELA, CNWM and TEA find it exceedingly difficult to comment upon the clarity or efficacy of the new RRCEA regime since draft regulations have not been released to date. The success of the RRCEA regime will greatly depend upon the nature and extent of regulations which identify designated materials, identify the persons responsible for such materials, and prescribe clear targets and requirements that responsible persons must meet. Until such regulations are available in draft form, we cannot comment on whether roles and responsibilities under the RRCEA have been clearly articulated or adequately scoped. This is particularly true if the Ontario government also intends to pass regulations exempting persons, entities or materials from RRCEA requirements for producer responsibility.⁴³

It is also unclear whether the forthcoming regulations will allow for regional differences in meeting the prescribed requirements. In this regard, we are opposed to any regulations that would permit responsible persons to meet their RRCEA obligations by tallying up their activities in one area of the province, but disregarding or overlooking other areas (e.g. rural or remote communities). In our view, this fragmented approach is inconsistent with the zero waste/circular economy goal, and persons and entities should remain responsible for all of their products and packaging across the entire province throughout the year, not just under favourable conditions in easy-to-serve sectors or geographic regions.

In any event, this present lack of clarity may be resolved if draft regulations (including proposed exemptions) are publicly released as the RRCEA proceeds through the legislative process. Once draft regulations are available, then all interested persons, stakeholders and legislators can obtain a better and more precise understanding of what the new RRCEA regime will – or will not – require if enacted.

RECOMMENDATION #9: As the RRCEA proceeds through the legislative process, and before the RRCEA receives third reading and royal assent, key implementing regulations should be publicly released in draft form.

With respect to Question 3, CELA, CNWM and TEA submit that materials collected within existing waste diversion programs are the obvious early candidates for designation and regulation under the RRCEA. This is because these diversion programs tend to have some infrastructure already in place (e.g. electronics) and/or some degree of public awareness or participation (e.g. blue box). Thus, it should be relatively easy to wind these programs up, and bring them forward in a new and improved form under the RRCEA.

After these materials are brought under the new regime, priority should be placed on designating and regulating materials within sectors that have had historically low rates of waste diversion, or where there are clear opportunities to make considerable progress under the RRCEA, or where the potential negative environmental impacts are the greatest (e.g., toxics releases, GHG releases, etc.). In this regard, priority should be given to designating materials that are not just toxic when

⁴³ RRCEA, subsection 102(b).

disposed, but may also pose toxicity issues or difficulties when recycled (or that may prevent them from being recycled).

In our view, one early candidate for the new RRCEA regime is the solid waste and organics generated within the IC&I sector, as noted above. CELA, CNWM and TEA generally agree with the other potential candidates listed in the draft Strategy for early inclusion (e.g., packaging, fluorescent bulbs/tubes, household appliances, carpets/mattresses, etc.). However, we would stress the need to prioritize actions in relation to used batteries in light of their environmental and public health risks if they are sent to disposal.

In addition, CELA, CNWM and TEA note that at the global level, through the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) and the Basel Convention (Basel Convention) on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, there are focused discussions to address concerns associated with recycling processes that may perpetuate the presence of toxic substances in products. For example, the use of toxic flame retardants in electronic products have been the subject of recent negotiations under the Stockholm Convention and the Basel Convention.

Other international considerations include whether – or to what extent – Bill 151 should restrict the export of waste to other jurisdictions for disposal purposes rather than reuse or recycling. CELA, CNWM and TEA submit that disposal-related exports should be strongly discouraged since they may be contributing to environmental problems elsewhere, and they represent losses of valuable used materials needed for Ontario’s circular economy. For example, our understanding is that approximately 30% of ICI sector wastes are currently being sent to the U.S. for disposal. While it may not be permissible under international trade agreements to fully close Ontario’s borders to waste exports, we see no reason why such exports cannot be discouraged under the Bill 151 regime. In addition, such waste exports should not be counted towards meeting diversion targets that Ontario companies will be obliged to satisfy under the RRCEA.

Moreover, the RRCEA leaves unanswered some fundamental questions about the role of “responsible persons” in relation to disposal of products and packaging. For example, the MOECC slide deck⁴⁴ states that “management” of collected materials only includes facilitating reuse or recycling of materials, including recovery of nutrients. Disposal is conspicuously absent from this list of management responsibilities, which appears to suggest that municipalities may end up being stuck with the responsibility and cost of disposing leftover materials. We are aware that subsection 69(2) of the RRCEA indicates that future regulations may require responsible persons to address “disposal”, but there is considerable uncertainty as to when – or if – such regulations will be promulgated. Unless and until this significant omission is rectified, we submit that the Bill 151 regime cannot be construed as a full Extended Producer Responsibility (“EPR”) program if industry is not made responsible for disposal of its products and packaging.

In order to provide a direct incentive for innovation and redesign, the producer responsibility regime under Bill 151 should not only require producers to meet ambitious material recovery targets, but should also ensure that producers contribute towards the costs of handling or disposal

⁴⁴ MOECC, *A Proposed Framework for Waste-Free Ontario* (Winter 2016), slide 14.

of materials that were not collected and diverted. When setting the initial targets for material recovery, the numerical requirements should be based on the best or highest possible recovery rates that can be achieved (especially if combined with other measures, such as the bottle deposit system utilized by the Beer Store). In addition, the targets must not result in any rollbacks in the recovery rates within current diversion programs, and current service standards should be maintained and gradually increased in order to make public participation as convenient and efficient as possible. In our view, setting – and meeting – the highest possible recovery targets will help avoid the needless disposal of used materials that should otherwise be reintegrated into the circular economy.

RECOMMENDATION #10: Materials collected under current diversion programs should be designated and regulated first under the RRCEA. Other candidates for early inclusion under the RRCEA includes solid waste and organics generated within the IC&I sector. Recycling processes must be closely regulated to ensure that toxic substances in recovered materials are not simply perpetuated in new products or packaging.

RECOMMENDATION #11: Material recovery targets should be ambitious and require the highest possible recovery rates, and should not allow any reductions in current recovery rates or service standards.

RECOMMENDATION #12: Responsible persons should be made responsible for the disposal of collected materials (if not otherwise reused or recycled), and should be discouraged from exporting collected materials to other jurisdictions for disposal purposes.

(iv) Transition

Overview

Schedule 2 of Bill 151 proposes to enact a new law entitled the *Waste Diversion Transition Act, 2015* (“WDTA”). If enacted, the WDTA would replace the existing *Waste Diversion Act, 2002*, and is intended to facilitate the orderly transition (and winding up) of current waste diversion programs⁴⁵ into the new regime for products and packaging under the RRCEA.⁴⁶ This transition is to be overseen by the Authority,⁴⁷ which is empowered to appoint inspectors for the purposes of enforcing the WDTA.⁴⁸

Consultation Questions

The Ministry’s consultation guide poses the following three questions about transition:

⁴⁵ These existing programs include: blue box waste; municipal hazardous or special waste; used tires; and waste electrical and electronic equipment.

⁴⁶ WDTA, sections 1, 9, 14, 32, 36, 75.

⁴⁷ WDTA, section 5.

⁴⁸ WDTA, sections 45.

- Question 1 How should relevant parties such as municipalities, producers, waste management service providers, as well as other parties, be effectively engaged on transition matters?
- Question 2 Which programs would you recommend as being the first to be transitioned to the new producer responsibilities under the proposed *Resource Recovery and Circular Economy Act*, and why?
- Question 3 What do you see as the key issues that would need to be addressed as a part of transition planning and implementation?

Our response to each of these questions is set out below.

CELA, CNWM and TEA Response

With respect to Questions 1 and 3, CELA, CNWM and TEA recommend that meaningful public and stakeholder consultation efforts should be undertaken by the Authority and/or Ontario to ensure that the environmental, technical and financial implications of transition are identified, evaluated and mitigated. This consultation should include timely public notices (including EBR Registry notices), adequate comment periods, discussion papers, questionnaires, webinars, focus groups, workshops and meetings. The proposed regime should also ensure that the transition process includes an explicit review of the current programs (e.g. the Electronic Stewardship program) and consideration of opportunities for improvements that support key EPR principles.

RECOMMENDATION #13: Meaningful public and stakeholder consultation must be carried out by the Authority and/or Ontario in order to plan and implement smooth transitions of existing waste diversion programs into new and improved versions under the RRCEA regime, with a priority focus upon implementing all EPR principles.

With respect to Question 2, our suggestions for candidates for early transition into the new regime are described above in relation to Part IV of the RRCEA.

(v) Draft Strategy

Overview

The RRCEA imposes a legal duty on the Minister to develop a Strategy that supports the provincial interests set out in the legislation.⁴⁹ Among other things, the Strategy must contain: (i) goals;⁵⁰ (ii) summary of the legislative and non-legislative actions that may be undertaken to achieve the goals; and (iii) performance measures for assessing progress in meeting the goals.⁵¹ In addition, the Minister is obliged to prepare and web-post progress reports every five years in

⁴⁹ RRCEA, section 3.

⁵⁰ While the Strategy must contain “goals”, it is not required by law to impose timelines for achieving these goals: see RRCEA, section 4, paragraph 1.

⁵¹ RRCEA, section 4.

order to describe the measures undertaken, and the success achieved, in meeting the Strategy's goals.⁵²

Consultation Questions

The Ministry's consultation guide poses the following three questions about the draft Strategy:

- Question 1 Does the draft Strategy set appropriate goals?
- Question 2 The draft Strategy outlines proposed priorities and timelines. What do you think of the proposed list of priorities for the first two years?
- Question 3 Do you think these are appropriate performance measures? Are there any key performance measures that are missing?

Our response to each of these questions is set out below.

CELA, CNWM and TEA Response

With respect to Question 1, CELA, CNWM and TEA submit that the Strategy (like the RRCEA) should be amended to include clear timelines, and set out goals that aim to protect the natural environment and safeguard public health and safety. In addition, the 3R's hierarchy should be reflected and prioritized within the Strategy, with waste reduction receiving the highest provincial preference, followed by reuse, followed by recycling. As noted above, the Strategy's "circular economy", "zero waste" and "zero greenhouse gas" goals should be expressly entrenched in the RRCEA.

RECOMMENDATION #14: The Strategy should include clear timelines and set out goals aimed at protecting the natural environment and safeguarding human health and safety. The 3R's hierarchy (waste avoidance/reduction, reuse, recycle) should be reflected and prioritized within the Strategy, and should support a robust EPR regime in Ontario.

With respect to Question 2, we have no objections to the various actions and timelines that are proposed for 2016-17. However, it goes without saying that this suggested timing is contingent on when Bill 151 is passed and proclaimed into force, which may end up being later than what is depicted by the graphic in the Ministry's consultation guide. If, for example, Bill 151 is referred to a standing committee for public hearings (which we would support), then the anticipated timelines will need to be adjusted accordingly. In our view, it is far more important to ensure that the Bill is improved and strengthened, rather than whisk Bill 151 quickly through the Ontario Legislature in its present form in order to meet pre-ordained deadlines. Having said this, we see no reason why Bill 151 cannot be amended, passed and proclaimed into force within the next 12 months, including the various amendments to the bill recommended in this submission.

RECOMMENDATION #15: Bill 151 should be referred to an appropriate Standing Committee for public hearings and clause-by-clause review.

⁵² RRCEA, section 5.

With respect to Question 3, we submit that in the short-term, an appropriate measure for progress towards the “zero waste” goal includes declining tonnage of Ontario waste sent to disposal within the province or neighbouring jurisdictions (e.g. dumps, landfills, incinerators, and other forms of thermal treatment, including energy-from-waste sites and industrial facilities using waste as “alternative fuel”). However, as industry continues to move towards greater use of lightweight plastics, an alternative to a tonnage-based performance measure will have to be developed.

On the general issue of disposal, we note that both the Strategy⁵³ and the Ministry’s consultation slide deck⁵⁴ tend to focus primarily on landfills. In our view, this focus is too narrow and needs to be expanded to include all forms of thermal treatment facilities. In short, incineration is not environmentally benign, does not count as waste diversion, and should not be glossed over or ignored in the Strategy. Moreover, as described above, Ontario must safeguard against approving any new/expanded incinerators which provide more disposal capacity than is warranted, particularly since these facilities would destroy – not reuse or recycle – the valuable used materials needed for the circular economy.

RECOMMENDATION #16: The short-term performance measure for achieving the “zero waste” goal should include declining tonnages of waste sent to disposal, not just landfills.

Although section 2(e) of the RRCEA describes decreasing hazardous or toxic substances in products and packaging as a provincial interest, it appears that no performance measures have been proposed in relation to this matter. Indeed, the draft Strategy makes no mention of the *Toxics Reduction Act* (“TRA”) or how this law may be used to help achieve this important objective.

In this regard, CELA, CNWM and TEA note that the Ministry has not fully implemented the TRA, particularly with the respects to consumer products. Regulations under the TRA to address consumer products could provide important opportunities to reduce the use and release of toxic substances in products. In addition, it is necessary to consider EPR principles in the development of such regulations under the TRA.

RECOMMENDATION #17: A performance measure should be established for assessing whether progress is being made in decreasing hazardous or toxic substances in products and packaging.

Finally, CELA, CNWM and TEA submit that in tone and content, the draft Strategy more closely resembles a discussion paper outlining good intentions and generic options (with glossy graphics and photographs), rather than a concise set of strategic provincial directions, concrete actions, clear targets, and quantifiable timeframes. In our view, it would be preferable to remove some of the extraneous clutter from the Strategy and relocate it to more appropriate companion documents, such as public education materials, factsheets, or FAQs.

⁵³ Draft Strategy, pages 26 to 27.

⁵⁴ MOECC, *A Proposed Framework for a Waste-Free Ontario* (Winter 2016), slide 22.

PART III – CONCLUSION AND SUMMARY OF RECOMMENDATIONS

For the foregoing reasons, CELA, CNWM and TEA submit that in their present form, Bill 151 and the Strategy are incomplete and plagued by serious shortcomings which should be rectified forthwith. Moreover, given the absence of any draft regulations under Bill 151, we are unable to conclude at this time that the new legislation will substantially improve resource recovery activities or waste reduction efforts, particularly within the IC&I sector.

In summary, our specific recommendations are as follows:

RECOMENDATION #1: The RRCEA should be amended to include:

- (i) protection of human health and the environment as matters of provincial interest under section 2;**
- (ii) the 3R's hierarchy, in descending order of priority: waste avoidance/reduction, reuse, recycle, with legal requirements for highest possible end-use of recovered materials;**
- (iii) appropriate definitions of key words, phrases and concepts, including “reduce”, “reuse”, “recycle”, “waste”, “diversion” and “disposal”;**
- (iv) relevant environmental planning principles such as the precautionary principle, ecosystem approach, polluter pays, and intergenerational equity;**
- (v) the goals of “zero waste”, “zero greenhouse gas emissions”, “reintegration of recovered materials” and “circular economy”, with appropriate definitions of each term;**
- (vi) the provincial interest of reducing greenhouse gas emissions from materials management and products/packaging processing in all life cycle stages; and**
- (vi) a broad statement of purpose that reflects the foregoing amendments and the overall public interest objectives of the legislation.**

RECOMMENDATION #2: The RRCEA should be amended to:

- (i) specify that the Minister “shall” issue resource recovery and waste reduction policy statements; and**
- (ii) impose a clear timeframe for the development and issuance of policy statements.**

RECOMMENDATION #3: At the earliest possible opportunity, the initial set of policy statements under the RRCEA should address:

- (i) all types of waste materials currently generated within the IC&I sector, including construction and demolition wastes and organic wastes;**
- (ii) the technical options available for requiring the prevention, or decreasing the toxicity, of chemical substances used in products and packaging which enters the waste stream;**
- (iii) the need to revise and use Ontario’s waste disposal approvals process in a manner that deters the overbuilding of disposal capacity, and that is consistent with the provincial interest of minimizing (or avoiding) waste disposal at the earliest possible opportunity;**
- (iv) how the circular economy should consider the full life cycle of products/packaging to effectively achieve its goals for zero greenhouse gas emissions, and to avoid and reduce toxic chemicals in products/packaging; and**
- (v) the development (with public input) of industry product standards to ensure that producers consider the full life cycle of their products, including the use of toxic chemicals in their design and production. These standards must also require designing systems which maximize recovery, reuse and recycling in order to reduce the need for raw materials and ensure reintegration of used materials back into the economy, as described in the draft Strategy.**

RECOMMENDATION #4: The RRCEA policy statements should:

- (i) be accompanied by implementation manuals, guidance materials, technical criteria and other appropriate explanatory documents or information;**
- (ii) contain sufficient particulars and detailed policies for the purposes of assessing whether persons or entities have acted in a manner that is “consistent” with the policy statements; and**
- (iii) be accompanied by appropriate training, education and outreach activities aimed at persons or entities whose decisions or activities may be caught by the policy statements.**

RECOMMENDATION #5: Once the RRCEA policy statements are finalized, the provincial government should systematically review and revise the PPS and provincial plans to ensure conformity and to avoid potential conflicts during implementation. The provincial government should also assess the extent of compliance with the policy statements, and assess whether enforcement mechanisms are needed within the policy statements to ensure timely and effective implementation.

RECOMMENDATION #6: The RRCEA should be amended to enable the Ministry to conduct compliance and enforcement activities in relation to alleged contraventions of Directors’ requirements or directions under section 17.

RECOMMENDATION #7: The Authority must be fully subject to the *Freedom of Information and Protection of Privacy Act*. The RRCEA must also be subject to the *Ombudsman Act*, and must be a prescribed statute for the purposes of Parts II, IV, V, and VII of the EBR.

RECOMMENDATION #8: Section 77 of the RRCEA must be amended to remove the Authority's power to undertake compliance and enforcement activities, and to instead specify that the Ministry has the power to undertake compliance/enforcement activities under the legislation.

RECOMMENDATION #9: As the RRCEA proceeds through the legislative process, and before the RRCEA receives third reading and royal assent, key implementing regulations should be publicly released in draft form.

RECOMMENDATION #10: Materials collected under current diversion programs should be designated and regulated first under the RRCEA. Other candidates for early inclusion under the RRCEA includes solid waste and organics generated within the IC&I sector. Recycling processes must be closely regulated to ensure that toxic substances in recovered materials are not simply perpetuated in new products or packaging.

RECOMMENDATION #11: Material recovery targets should be ambitious and require the highest possible recovery rates, and should not allow any reductions in current recovery rates or service standards.

RECOMMENDATION #12: Responsible persons should be made responsible for the disposal of collected materials (if not otherwise reused or recycled), and should be discouraged from exporting collected materials to other jurisdictions for disposal purposes.

RECOMMENDATION #13: Meaningful public and stakeholder consultation must be carried out by the Authority and/or Ontario in order to plan and implement smooth transitions of existing waste diversion programs into new and improved versions under the RRCEA regime, with a priority focus upon implementing all EPR principles.

RECOMMENDATION #14: The Strategy should include clear timelines and set out goals aimed at protecting the natural environment and safeguarding human health and safety. The 3R's hierarchy (waste avoidance/reduction, reuse recycle) should be reflected and prioritized within the Strategy, and should support a robust EPR regime in Ontario.

RECOMMENDATION #15: Bill 151 should be referred to an appropriate Standing Committee for public hearings and clause-by-clause review.

RECOMMENDATION #16: The short-term performance measure for achieving the "zero waste" goal should include declining tonnages of waste sent to disposal, not just landfills.

RECOMMENDATION #17: A performance measure should be established for assessing whether progress is being made in decreasing hazardous or toxic substances in products and packaging.

We trust that the foregoing comments and recommendations will be taken into account by the Ministry as it considers its next steps regarding Bill 151 and the draft Strategy.

Please feel free to contact the undersigned if you have any questions arising from this submission. If requested, we would be pleased to meet with you or Ministry staff to further discuss our recommendations for amendments to the proposed legislation and the draft Strategy.

Yours truly,

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