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BY EMAIL

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Dear Mr. Peverini:

RE: EBR REGISTRY NO. 012-9356 - FINAL DRAFT OF *STRATEGY FOR A WASTE-FREE ONTARIO (DECEMBER 2016)*

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 final draft of the proposed *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 posting.

Having carefully reviewed the draft Strategy, it is our overall view that some key waste-related considerations are addressed in an appropriate manner. For example, CELA, CNWM and TEA conclude that the Strategy properly sets out the environmental and socio-economic rationale for enhancing resource recovery and developing the circular economy.¹ Similarly, the Strategy provides a concise description of the new legislative regime,² and correctly highlights the importance of further public and sectoral education/outreach activities in order to facilitate the societal “culture change” that will be required in the coming years.³

However, there are several other important aspects of the draft Strategy which, in our opinion, should be reconsidered, revised or deleted before the Strategy is approved and web-posted, as discussed below in more detail. In particular, CELA, CNWM and TEA submit that the matters which need to be revisited in the Strategy include: (i) redefining the provincial vision and goals (including interim goals);⁴ (ii) expanding the proposed objectives and actions intended to achieve

¹ Strategy, page 6.

² *Ibid*, pages 8 to 9.

³ *Ibid*, pages 7, 26.

⁴ *Ibid*, page 10.

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the provincial vision;⁵ and (iii) improving the nature and number of performance measures for evaluating progress (or non-progress) in implementing the provincial vision.⁶

We further note that once promulgated, the Strategy does not have to be publicly reviewed again for another ten years.⁷ Accordingly, CELA, CNWM and TEA call upon the Ontario government to use this opportunity to strengthen and improve the draft Strategy before it comes into effect and charts Ontario's waste management course over the next decade.

Moreover, while the legislation provides that the Strategy should be reviewed at least once per decade, CELA, CNWM and TEA submit that during the critical early years of its implementation, the Strategy should be publicly reviewed more frequently (e.g. every five years) on the basis of the performance measures, enforcement track record, and other relevant information. This will enable the provincial government, stakeholders and members of the public to better assess which aspects of the new regime are working well, and which aspects may require renewed scrutiny, further regulatory action, or additional resources and programs.

We note that in many instances, the Strategy envisions further stakeholder meetings (and other forms of public consultation) as regulations, programs and other measures are developed under the new legislation. Thus, CELA, CNWM and TEA urge the provincial government to ensure that there are fair and effective engagement processes to facilitate meaningful participation by non-governmental environmental organizations. Among other things, this means providing groups with timely notice, access to relevant data and information, and appropriate financial assistance to fully engage in the consultation exercises. In our view, these steps will significantly improve transparency, enhance the credibility of public consultations, and ensure informed governmental decisions under the Strategy.

PART I – BACKGROUND

CELA, CNWM and TEA attended the regional consultation sessions which were undertaken last year by your Ministry in relation to the initial draft of the Strategy. In addition, CELA, CNWM and TEA filed a joint submission on the draft Strategy when we provided our responses to the various questions set out in the Ministry's consultation guide on Bill 151.⁸ CELA and TEA also appeared as witnesses before the Standing Committee on Social Policy⁹ prior to the Ontario Legislature's passage of Bill 151 (*Waste-Free Ontario Act, 2016*).

In summary, CELA, CNWM and TEA support strong legislation, comprehensive regulations, effective policies and timely implementation of measures aimed at achieving "zero waste" and "zero GHG emissions." However, in our opinion, the draft Strategy remains inadequate and

⁵ *Ibid*, pages 11 to 13.

⁶ *Ibid*, page 40.

⁷ *Resource Recovery and Circular Economy Act, 2016*, S.O. 2016, c. 12, Sched. 1, subsection 3(3).

⁸ MOECC, *Consultation Guide for the Proposed Waste-Free Ontario Framework* (Winter 2016). The joint submission is available at CELA's website (<http://www.cela.ca/letter-waste-free-ontario-act>). These comments on the proposed Strategy includes, or expands upon, various issues which were previously raised in the joint submission, and which remain outstanding at the present time.

⁹ *Hansard* (April 19, 2016), page SP-931.

unlikely to result in much tangible progress in Ontario's waste reduction/diversion efforts. We therefore conclude that the Strategy requires further substantive improvements, as described below in Part II of this submission.

PART II – COMMENTS ON THE DRAFT STRATEGY

(a) Overview

Under the new legislative regime,¹⁰ the Strategy must address the following matters:

- provincial goals regarding waste reduction and the circular economy;
- governmental actions needed to achieve these goals; and
- performance measures to assess progress in implementing these goals.

In addition, as a matter of law, the Strategy is required to “support”¹¹ the numerous provincial interests outlined in the legislation, including:

- protecting the natural environment and human health;
- fostering the growth and development of the circular economy;
- 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.¹²

These and other provincial interests collectively form the benchmark used by CELA, CNWM and TEA in this submission to determine whether the Strategy fully satisfies the applicable legislative requirements, at an appropriate level of detail, in order to minimize waste generation, maximize resource recovery, and build the circular economy in Ontario. After undertaking this analysis, we conclude that there is considerable room for improvement in the Strategy in order to make Ontario's new regime more effective, efficient and responsive to the provincial interests entrenched within the new statute.

¹⁰ *Resource Recovery and Circular Economy Act, 2016*, S.O. 2016, c. 12, Sched. 1, section 4.

¹¹ *Ibid*, subsection 3(1).

¹² *Ibid*, section 2.

(b) Provincial Vision and Goals

While Ontario’s new legislation specifies that the Strategy must contain “goals,” the law does not expressly require the Strategy to include an overarching mission statement or policy aim. Nevertheless, the draft Strategy briefly sets out its provincial “vision” as follows:

The vision for Ontario is one where waste is seen as a resource that can be recovered, reused and reintegrated to achieve a circular economy.¹³

CELA, CNWM and TEA do not necessarily object to the inclusion of a provincial “vision” in the Strategy, which is presumably intended to set the overall policy direction for the new waste management framework. However, the key question is whether the Strategy’s proposed vision is sufficiently progressive and comprehensive in order to facilitate the paradigm shift that is needed to transform Ontario from a consumer society to a conserver society. On this point, it appears to CELA, CNWM and TEA that the sparse “vision” currently being proposed in the Strategy is simply aspirational in nature and too narrow in its scope.

For example, by specifying that “waste” should be seen as a “resource” to be re-utilized, the provincial vision overlooks the compelling need for Ontarians to prevent the creation of waste in the first place, and to avoid the unnecessary use of resources. Indeed, the current formulation of the Strategy’s vision seems to suggest that continued waste generation is acceptable, as long as the material in question does not get sent to a disposal site. Thus, CELA, CNWM and TEA submit that the vision does not adequately reflect or prioritize the well-known 3Rs hierarchy (reduce, reuse, recycle). In our view, this glaring omission should be remedied in the next iteration of the Strategy, particularly since this vision is intended to guide the goals, objectives and actions to be undertaken pursuant to the Strategy. In addition, the vision should require the highest possible end-use of recovered materials in order to avoid “down-cycling” of valuable resources.

RECOMMENDATION #1: The provincial vision in the Strategy must be directed at preventing or avoiding the creation of waste in the first place, and to avoid the unnecessary use of resources. Therefore, the Strategy should be revised to expressly reflect and prioritize the 3Rs hierarchy of reduce, reuse and recycle in descending order of preference. The vision should also require the highest possible end-use of recovered materials.

In response to the statutory obligation to include goals, the draft Strategy sets out just two goals: (i) “achieving zero waste Ontario” and (ii) “eliminating greenhouse gas emissions from the waste sector.”¹⁴ Both of these are described in the Strategy as “visionary” goals, and the essential “guiding principles” underlying these goals are briefly described in the Strategy.¹⁵

One principle that is conspicuously absent from these goals is the precautionary principle, which, in our view, will be highly relevant to governmental decision-making when policy statements, regulatory standards and other instruments are being developed under the new law. This is

¹³ Strategy, page 10.

¹⁴ *Ibid*, page 10.

¹⁵ *Ibid*.

particularly true in relation to governmental decisions aimed at reducing the toxicity of products and packaging, protecting human health, implementing disposal bans, and minimizing the environmental impacts of waste sector activities. Accordingly, CELA, CNWM and TEA recommend that the provincial goals in the Strategy should be revised to expressly include the precautionary principle.

RECOMMENDATION #2: The provincial goals in the Strategy should be revised to expressly include the precautionary principle in order to guide governmental decision-making under the new legislation.

Although laudable, CELA, CNWM and TEA again regard the proposed provincial goals as aspirational in nature, and they are insufficiently detailed to provide any meaningful direction. For example, although there is brief mention of waste reduction, reuse, and recycling, CELA, CNWM and TEA note that the goals discussion in the Strategy fails to recognize or entrench the 3Rs hierarchy. In short, while the goals discussion indicates that waste reduction, reuse and recycle are governmental priorities, the Strategy does not indicate any particular preference or priority for waste reduction over other forms of waste management. Similarly, the provincial goals should require the highest possible end-use of recovered materials in order to avoid “down-cycling” of valuable resources. Again, these inexplicable oversights must be adequately addressed in revised Strategy goals.

RECOMMENDATION #3: The provincial goals in the Strategy should be revised to expressly reflect and prioritize the 3Rs hierarchy of reduce, reuse and recycle in descending order of preference. The provincial goals should also require the highest possible end-use of recovered materials.

CELA, CNWM and TEA further note that the two proposed goals are essentially qualitative, and do not set out any quantitative targets nor any clear timelines or deadlines for reaching these goals. We are aware that the Strategy describes certain “interim goals” for waste diversion rates¹⁶ (e.g. 30% diversion by 2020), but the overall provincial goals themselves lack any discernible targets or timeframes. For monitoring, assessment and accountability purposes, CELA, CNWM and TEA submit that the provincial goals should be amended to include specific targets and appropriate deadlines.

RECOMMENDATION #4: The provincial goals in the Strategy should be revised to include specific targets and appropriate deadlines for achieving the outcomes described in the goals.

As currently proposed, the two provincial goals only address some – but not all – of the provincial interests articulated in the legislation. For example, while the legislation specifies sixteen different provincial interests (including “protect human health,” “foster fairness to consumers” and “promote competition”), very few of these appear to be directly reflected in the two goals. Accordingly, CELA, CNWM and TEA submit that to the maximum possible extent, the goals

¹⁶ *Ibid.* CELA CNWM and TEA view the province’s “interim goals” as very modest and dilatory, and we therefore urge Ontario to pursue a more aggressive agenda for improving diversion rates, particularly in the IC&I sector.

should be reframed and broadened to address or subsume all of the provincial interests established by law.

RECOMMENDATION #5: The provincial goals in the Strategy should be reframed and broadened to address or subsume all of the provincial interests codified in the new legislation.

CELA, CNWM and TEA remain concerned about the proposed wording of the goal aimed at “zero discharge of GHG emissions from the waste sector.” Our organizations strongly support the timely transition to a low-carbon economy, but we are unclear on precisely which “waste sector” activities are caught by this goal. Does it only apply to resource recovery facilities, or does it extend to all aspects (and all stages) of the waste management industry in Ontario (e.g. waste collection, transportation, export or disposal activities)?

Moreover, it is uncertain how this goal will be operationalized in the coming years. If, for example, there is greater energy use at a recycling or composting facility (as compared to traditional landfills or dumps), will this be characterized as an increase in GHG emissions, and how will this be considered under the Strategy or in the environmental approvals process? Similarly, how will this sectoral goal address or mandate “upstream” GHG reductions (e.g. using recovered materials rather than raw materials) when products and packaging are manufactured at first instance? On this latter point, CELA, CNWM and TEA submit that the provincial goal of “reducing GHG emissions” should not be restricted to the “waste sector”, but instead should be extended to all sectors involved in materials management and products/packaging in all life cycle stages.

Accordingly, CELA, CNWM and TEA recommend that additional clarification about this provincial goal should be provided in the Strategy.

RECOMMENDATION #6: The Strategy’s goal regarding “zero GHG emissions from the waste sector” should be clarified and expanded to provide greater certainty about its proposed scope, intended application, and likely implications in the environmental standard-setting and permit-issuing process in Ontario.

The Strategy indicates that energy from waste (“EFW”) and “alternative fuels” will not count towards diversion in Ontario.¹⁷ CELA, CNWM and TEA concur with this policy position, and we urge Ontario not to change its stance on this issue, even if lobbied to do so by EFW or alternative fuel proponents during the current consultation exercise. In addition, even if EFWs or alternative fuel facilities purportedly “recover” some energy from used materials, they should nevertheless be characterized as waste disposal options under the Strategy, just like dumps or landfills. In our view, new or expanded landfills do not constitute preferred “resource recovery” facilities merely because there may be some EFW technology tacked on to such facilities.

RECOMMENDATION #7: The Strategy should state that EFW and alternative fuels facilities are waste disposal methods like landfilling, and do not count as waste diversion or resource recovery in Ontario.

¹⁷ *Ibid.*

(c) Governmental Objectives and Actions

The bulk of the draft Strategy focuses on the four governmental objectives¹⁸ and fifteen actions which are being proposed to achieve the provincial vision and goals.¹⁹ The Strategy also outlines the suggested “sequencing” and anticipated timelines for implementing these proposed actions.²⁰

As a matter of statutory interpretation, the new legislation only requires the Strategy to contain “goals,” not “objectives.” Nevertheless, CELA, CNWM and TEA do not object in principle to the inclusion of appropriate provincial objectives which provide further operational details on how (and when) the Strategy’s vision and goals will be implemented.

However, it is unclear to us why the proposed “waste reduction” objective belatedly appears as the third of four objectives. This apparent lack of upfront emphasis on waste reduction undoubtedly flows from the Strategy’s failure to entrench and prioritize the 3Rs hierarchy in the proposed vision and goals, as discussed above. In any event, CELA, CNWM and TEA submit that waste reduction is of paramount importance in Ontario’s forthcoming “zero waste” regime, and should not be buried or glossed over in the Strategy. As described above, waste reduction should be the high-priority centerpiece of the new regime in order to avoid unnecessary use of resources and to prevent the creation of waste in the first place. Successful and timely implementation of this objective will, in turn, decrease the volumes (and toxicity) of residual wastes that will have to be recovered, managed, and processed through the various diversion programs contemplated by the Strategy.

RECOMMENDATION #8: The Strategy’s proposed provincial objectives should be re-ordered to identify waste reduction as the highest and most important governmental priority.

In addition, CELA, CNWM and TEA have reviewed the four proposed actions under the “waste reduction” objective,²¹ and we conclude that these actions are primarily focused on diversion efforts and resource recovery, rather than waste avoidance *per se*. For example, Action 9 (designating new materials) may assist in waste diversion, but may not necessarily prevent the creation of pre- and post-consumer waste. Action 10 (developing an organics action plan) may assist in diverting organic waste from disposal, but the efficacy of this intended action remains unknown since the plan itself has not yet been developed. Similarly, Action 11 (reusing excess soils) depends heavily on strategies, policy statements and other tools which have not been developed to date. Moreover, Action 12 (implementing “modern regulatory approaches”) has little or no direct bearing on waste reduction activities, and appears to lay the groundwork for “simplifying” (or rolling back) existing regulatory standards and approval requirements in the environmental context.

In our opinion, if Ontario is serious about implementing waste reduction, then it is incumbent upon the province to commit to concrete actions that actually facilitate, promote or mandate waste

¹⁸ These proposed objectives are: (i) enhance provincial direction and oversight; (ii) enable efficient and effective recovery systems; (iii) increase waste reduction and improve resource productivity; and (iv) create conditions for sustainable end-markets.

¹⁹ Strategy, pages 11, 14 to 35.

²⁰ *Ibid*, pages 36 to 39.

²¹ *Ibid*, pages 27 to 32.

reduction. For example, the Strategy should commit to all necessary actions needed to implement durability standards, which would be consistent with the provincial interests listed in the new legislation.

RECOMMENDATION #9: The Strategy must include specific actions that effectively facilitate, promote or mandate waste reduction within Ontario.

With respect to the other provincial objectives and proposed actions, CELA, CNWM and TEA remain concerned that the Strategy is long on promises but short on details. For example, the first objective (enhance provincial direction/oversight) is accompanied by Action 1, which merely commits the province to setting up the Resource Productivity and Recovery Authority (“the Authority”). In our view, this is not a strategic action, but a legal duty that has been imposed upon the provincial government under the new statute.²² Similarly, Action 2 stipulates that the Minister will issue policy statements, but this is simply a commitment to use the legal tools already provided in the new statute.²³

In addition, Action 2 merely recites the statutory provincial interests, but does not otherwise disclose any particulars on the intended content of the forthcoming policy statements, or describe how the policy statements will be used to advance the waste reduction/recovery/reintegration agenda. CELA, CNWM and TEA note, for example, that Action 2 speculates that policy statements “could” be used to address certain topics,²⁴ but no clear commitment to do so is contained in the Strategy.

Similar concerns exist in relation to Action 3, which states that relevant data will be collected by the Authority and become publicly available in the registry maintained by the Authority.²⁵ In our view, this statement simply reflects the legal requirements already imposed by the statute, and does not outline any new strategic directions or ground-breaking efforts by Ontario.

In relation to the second objective (enable efficient/effective recovery systems), CELA, CNWM and TEA find that there is an alarming paucity of detail in the proposed actions which are supposed to usher in the “zero waste” era. For example, Action 4 calls for the smooth transition of existing waste diversion programs into the new producer responsibility regime.²⁶ This is an unexceptional action, particularly since it is already mandated by the new legislation. In our view, the bigger and more pressing issue is for the provincial government to propose specific actions and programs to target (or ban) materials that are not presently caught within existing diversion programs. The current approach creates opportunities for significant delays in the work needed to advance material bans by unnecessarily focusing on the waste streams already identified under the legislation.

²² *Resource Recovery and Circular Economy Act, 2016*, S.O. 2016, c. 12, Sched. 1, sections 25 to 26, 28.

²³ *Ibid*, section 11.

²⁴ Strategy, page 16.

²⁵ *Ibid*, pages 17 to 18.

²⁶ *Ibid*, pages 19 to 21.

In our view, Action 5 (amend the existing 3Rs regulations)²⁷ is commendable but long overdue, particularly since these regulations have been in place since the early 1990s. However, the effectiveness (and eventual outcome) of Action 5 remains in considerable doubt at this time, particularly since the Strategy merely commits to creating a multi-stakeholder committee that could “consider” certain matters. In our opinion, this is not action but inaction on an important law reform priority. Action 6 (establish service provider requirements) suffers from the same ambiguous commitment by the province to merely “consider” certain measures.²⁸

From the public interest perspective, Action 7 (ensure that landfills are well planned) is of questionable utility for various reasons. For example, it is unclear why this Action is restricted to landfills, when it is beyond dispute that thermal treatment facilities may also pose threats to the environment and public health. In our view, incineration is not environmentally benign, does not count as waste diversion, and should not be glossed over or ignored in Action 7. Moreover, as described above, Ontario must safeguard against approving any new/expanded landfills and incinerators that provide more disposal capacity than is demonstrably warranted, particularly since these facilities would destroy – not reuse or recycle – the valuable used materials needed for the circular economy.

CELA, CNWM and TEA further note that the text accompanying Action 7 makes dubious claims about the “forecasted” need for significantly more landfill capacity in Ontario’s future. However, no actual references are provided in the Strategy to substantiate these claims, as the endnotes only cite the “Ministry of the Environment and Climate Change,” rather than any specific publications or peer-reviewed literature. Indeed, the so-called “need” for additional disposal capacity can be significantly diminished if Ontario rapidly establishes disposal bans for various materials, as discussed below.

In relation to the fourth objective (create sustainable end-markets), Action 13 commits the province to improving or modernizing environmental standards in order to provide market certainty and level playing fields.²⁹ Once again, however, this Action is undermined by including a laundry list of topics which the province is currently “considering,” but for which no decisions have yet been made. In addition, it appears that Action 13 is duplicative of Action 12, which also addresses “modernization” of regulatory standards.

CELA, CNWM and TEA note with particular interest that Action 13 commits the province to “reviewing” the legal, regulatory and policy framework governing waste disposal standards and approval requirements. In this regard, given the relevant provincial interests (e.g. “minimize the need for disposal” and “minimize the environmental impacts that result from waste disposal”), CELA, CNWM and TEA submit that Ontario should tighten up – not loosen – the existing provincial framework for approving new or expanded waste disposal sites. In our view, if Ontario is serious about working towards “zero waste,” then approvals for waste disposal sites should be increasingly difficult for proponents to obtain, and should only be available as a last resort for residual materials that cannot technically be reduced, reused or recycled.

²⁷ *Ibid*, page 22.

²⁸ *Ibid*, page 23.

²⁹ *Ibid*, page 33.

In light of the serious risks and impacts posed by waste disposal sites, CELA, CNWM and TEA strongly oppose the potential development of the Environmental Activity Sector Registry regulations which would dispense with the need for site-specific approvals in the waste disposal context. In our view, this is another reason why incineration/EFW should be included in the Strategy's definition of disposal, and we note that the approval requirements for EFWs have already been weakened in comparison with landfilling under Ontario's legal framework.³⁰

In addition, we submit 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* should be fundamentally revised and realigned to be consistent with the new resource recovery/circular economy paradigm.³¹ 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 3Rs hierarchy.

In our view, Action 14 (using green procurement practices)³² is an appropriate and potentially potent mechanism for building the circular economy. Again, however, this Action simply lists considerations that the provincial government will "review" before embarking further down this path.

Similarly, Action 15 (disposal bans) has considerable potential to drive (if not expedite) the move to "zero waste." However, this Action does not actually commit Ontario to implementing any disposal bans, even in relation to the five materials described in the Action 15. Instead, the province merely intends to "consider" these potential candidates for disposal bans "over the long-term."³³ In our view, timely and effective use of these bans could dramatically reduce the need for disposal facilities and assist in significantly increasing the recovery of resources to be reintegrated into the circular economy. Accordingly, Action 15 should clearly state that disposal bans will be put in place by the province (not just "considered"), especially given that many jurisdictions are already using such bans. In these circumstances, CELA, CNWM and TEA submit that disposal bans do not require years of further delay or additional study; instead, what is needed is expeditious provincial action in terms of banning various products and packaging from disposal.

³⁰ See O.Reg. 101/07, which permits certain EFWs to go through a streamlined environmental screening process, rather than an individual environmental assessment.

³¹ At a minimum, Ontario should commit to implementing 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.

³² Strategy, page 34.

³³ *Ibid*, page 35.

In summary, it appears to CELA, CNWM and TEA that the Strategy's objectives and actions are cast in overgeneralized terms, provide few substantive details, and consist largely of options still to be considered, reviewed and selected by Ontario. While this approach confers considerable discretion and flexibility upon the provincial government, it serves to undermine the accountability, certainty and predictability that many stakeholders reasonably expect in the implementation of the forthcoming "zero waste" regime. Therefore, CELA, CNWM and TEA recommend that further work should be undertaken by the province to transform the Strategy's objectives and actions into a collection of concrete steps that will be undertaken by Ontario.

RECOMMENDATION #10: The Strategy's objectives and actions should be revisited and reframed as a clear and concise set of specific commitments, measures and programs to be implemented (not just "considered") by the provincial government.

(d) Performance Measures

Measurable performance indicators are important for evaluating whether progress is being made (or not) in implementing the Strategy, and for determining whether any further adjustments or corrective actions are needed. Accordingly, CELA, CNWM and TEA are pleased to see that the Strategy includes some proposed performance measures, but we are astounded that this discussion is limited to a single page.³⁴

We also note that the Strategy is silent on how frequently these performance measures will be assessed, or whether (or when) the analytical results will be released for public review/comment. In particular, there is no indication whether these items will be evaluated by Ontario on an annual basis, or every five or ten years, or whenever the province, in its discretion, decides that an evaluation is warranted. This matter should be clarified in the Strategy, particularly since the projected roll-out of the Strategy is scheduled to occur until 2050.³⁵ Thus, it will be necessary to identify and assess short-, medium- and long-term trends in order to ensure that the province actually achieves "zero waste" within this anticipated timeframe (or sooner).

RECOMMENDATION #11: The Strategy should be revised to clarify how frequently the performance measures are going to be assessed by the Ontario government, and when the assessment results will be subject to public review/comment opportunities. During the early stages of the Strategy's implementation, the performance measures should be assessed and reported upon every four to five years.

More importantly, CELA, CNWM and TEA are concerned that the proposed performance measures largely involve statements of good intentions, generic commitments, or preferred outcomes. For example, aside from collecting and reporting raw data, it is unclear how Ontario proposes to critically review whether any tangible progress is being made in relation to improving "understanding resource recovery and value." Similarly, the Strategy fails to fully explain how

³⁴ *Ibid*, page 40.

³⁵ *Ibid*, pages 12 to 13.

progress will be assessed in relation to “effectively” implementing producer responsibility, generator and service provider requirements, or “modern environmental standards.”³⁶

More fundamentally, the proposed performance measures generally do not establish any quantitative criteria, timelines or benchmarks for assessing which is – or is not – acceptable progress in achieving the Strategy. The single quantitative measure that has been mentioned in this section of the Strategy is merely described as a “potential target” (e.g. 40% diversion for organics by 2025, and 60 % by 2035).³⁷ Similarly, there is no discussion of whether, how and when contingency measures will be triggered or developed if the data collection/analysis suggests that there are problems in achieving the Strategy in a timely and effective manner. In our view, these omissions must be addressed in the finalized Strategy.

RECOMMENDATION #12: The Strategy’s proposed performance measures should be reconsidered and revised in order to include appropriate criteria, timelines, and triggers for mid-course adjustments or contingency measures.

It further appears to CELA, CNWM and TEA that certain proposed performance measures should be significantly amended or refined. For example, the Strategy proposes that the province’s “move towards zero waste” will be assessed solely on the basis of “declining tonnes of waste sent to landfill.”³⁸ In our view, this is an inaccurate, inappropriate and potentially misleading measure for various reasons.

First, it is uncertain whether the generic term “landfill” is intended to include all forms of land-based waste disposal sites that are currently allowed in Ontario (e.g. dumps, organic soil conditioning sites, derelict motor vehicle sites, hazardous waste facilities, etc.) Second, it is unclear why this proposed measure is restricted to “landfill” tonnages, or why it excludes: (i) tonnages disposed at thermal treatment facilities (e.g. incineration, gasification, pyrolysis or plasma arc treatment); (ii) tonnages used at waste-derived fuel sites; or (iii) tonnages exported to other jurisdictions for disposal. Third, the waste tonnage disposed at Ontario’s “landfills” is a poor indicator of “zero waste” progress if there are continued (or increased) waste tonnages that end up in thermal treatment facilities (or other disposal sites), and that represent materials that will be destroyed rather than be recovered and reintegrated into the circular economy. Fourth, as industry moves towards the use of increasingly lighter materials (including plastics) in products and packaging, a simplistic tonnage measure (rather than a volume-based or composition-based metric) may not necessarily be helpful for the purposes of tracking “zero waste” progress. For these kinds of problematic materials, specific provincial targets and timelines should be established to assist in determining whether progress is being made toward Ontario’s overall goals and objectives.

Accordingly, CELA, CNWM and TEA strongly recommend that the “zero waste” performance measure should be revised before the Strategy is finalized.

³⁶ *Ibid*, page 40.

³⁷ This also begs the question of whether the organics diversion targets in the Strategy are sufficiently aggressive and timely. In our view, the Strategy should commit to actual targets (not “potential” ones), and should require faster and better diversion rates for organics.

³⁸ Strategy, page 40.

RECOMMENDATION #13: The Strategy’s performance measure for “zero waste” should be revised to include declining tonnages sent to all types of waste disposal sites in Ontario, or exported to other jurisdictions for disposal purposes. Consideration should be given to developing other appropriate metrics for assessing the volume and composition of wastes sent to disposal.

As noted above, the new legislation identifies decreasing the toxicity, and increasing the durability, reusability and recyclability, of products and packaging as provincial interests, and these matters are briefly mentioned in the Strategy. However, no specific performance measure has been proposed to assess progress in achieving these important interests. Accordingly, CELA, CNWM and TEA recommend that the Strategy should articulate performance measures in relation to the matters.

RECOMMENDATION #14: The Strategy should establish appropriate performance measures for assessing whether progress is being made in relation to the provincial interests in decreasing the toxicity, and increasing the durability, reusability, and recyclability, of products and packaging.

PART III – CONCLUSION AND SUMMARY OF RECOMMENDATIONS

In general terms, a strategy should consist of a careful plan of actions and methods that aim to achieve a major policy goal or desired outcome. For the foregoing reasons, however, CELA, CNWM and TEA submit that the draft Strategy is incomplete and plagued by various shortcomings.

Among other things, the Strategy contains an inadequate provincial vision, and sets out narrowly framed goals that fail to affirm the paramount importance of waste reduction. In addition, the Strategy lacks sufficient prescriptive detail about the actual implementation measures that will be undertaken (and periodically assessed) by the provincial government. Similarly, the “actions” outlined in the Strategy largely consist of various options that the province may – or may not – pursue after it has further “considered” them in due course. Thus, CELA, CNWM and TEA submit that the Strategy is not particularly strategic, and is best characterized as a green paper (or a plan to make a plan) in relation to resource recovery and the circular economy.

Accordingly, unless the Strategy is substantially amended and upgraded, CELA, CNWM and TEA are unable to conclude that the Strategy will materially improve or expedite resource recovery activities and waste reduction efforts. This is particularly true within the IC&I sector, which has had historically low diversion rates across the province, and therefore requires focused attention during the early implementation stages of Ontario’s new regime.

In summary, our specific recommendations are as follows:

RECOMMENDATION #1: The provincial vision in the Strategy must be directed at preventing or avoiding the creation of waste in the first place, and to avoid the unnecessary use of resources. Therefore, the Strategy should be revised to expressly reflect and prioritize

the 3Rs hierarchy of reduce, reuse and recycle in descending order of preference. The vision should also require the highest possible end-use of recovered materials.

RECOMMENDATION #2: The provincial goals in the Strategy should be revised to expressly include the precautionary principle in order to guide governmental decision-making under the new legislation.

RECOMMENDATION #3: The provincial goals in the Strategy should be revised to expressly reflect and prioritize the 3Rs hierarchy of reduce, reuse and recycle in descending order of preference. The provincial goals should also require the highest possible end-use of recovered materials.

RECOMMENDATION #4: The provincial goals in the Strategy should be revised to include specific targets and appropriate deadlines for achieving the outcomes described in the goals.

RECOMMENDATION #5: The provincial goals in the Strategy should be reframed and broadened to address or subsume all of the provincial interests codified in the new legislation.

RECOMMENDATION #6: The Strategy's goal regarding "zero GHG emissions from the waste sector" should be clarified and expanded to provide greater certainty about its proposed scope, intended application, and likely implications in the environmental standard-setting and permit-issuing process in Ontario.

RECOMMENDATION #7: The Strategy should state that EFW and alternative fuels facilities are waste disposal methods like landfilling, and do not count as waste diversion or resource recovery in Ontario.

RECOMMENDATION #8: The Strategy's proposed provincial objectives should be re-ordered to identify waste reduction as the highest and most important governmental priority.

RECOMMENDATION #9: The Strategy must include specific actions that effectively facilitate, promote or mandate waste reduction within Ontario.

RECOMMENDATION #10: The Strategy's objectives and actions should be revisited and reframed as a clear and concise set of specific commitments, measures and programs to be implemented (not just "considered") by the provincial government.

RECOMMENDATION #11: The Strategy should be revised to clarify how frequently the performance measures are going to be assessed by the Ontario government, and when the assessment results will be subject to public review/comment opportunities. During the early stages of the Strategy's implementation, the performance measures should be assessed and reported upon every four to five years.

RECOMMENDATION #12: The Strategy's proposed performance measures should be reconsidered and revised in order to include appropriate criteria, timelines, and triggers for mid-course adjustments or contingency measures.

RECOMMENDATION #13: The Strategy’s performance measure for “zero waste” should be revised to include declining tonnages sent to all types of waste disposal sites in Ontario, or exported to other jurisdictions for disposal purposes. Consideration should be given to developing other appropriate metrics for assessing the volume and composition of wastes sent to disposal.

RECOMMENDATION #14: The Strategy should establish appropriate performance measures for assessing whether progress is being made in relation to the provincial interests in decreasing the toxicity, and increasing the durability, reusability, and recyclability, of 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 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 draft Strategy.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel



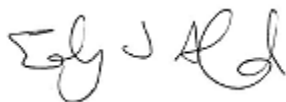
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Waste Campaigner

cc. The Hon. Glen Murray, Minister of the Environment and Climate Change
Dianne Saxe, Environmental Commissioner of Ontario