We Need Your Support of the AMO position on the Waste Diversion Act and the Blue Box Program Plan Review

Issue:
As we advised in November, the Minister of the Environment launched a discussion paper to officially begin the five year review of the Waste Diversion Act (WDA). He also directed Waste Diversion Ontario (WDO) to conduct a review of the Blue Box Program Plan (BBPP). AMO has submitted responses to both of these requests. AMO needs your written comments to the Minister in support of both these positions.

Background:
The Ministry of the Environment is looking for feedback on the challenges associated with Ontario’s waste diversion framework, the programs under it, and the proposed plan for moving forward. A number of consultation sessions have been held across the province and now the Ministry is looking for written submissions. AMO through its Waste Task Force, has developed responses to both of these reviews which are attached (please click here). You will note that both of the letters reflect very closely the position papers developed by AMO and supported by you, our members. The responses highlight municipal challenges and perspectives and will help shape any recommended changes to the WDA, the BBPP and the strategic waste management directions. We need you to advise the Minister and the WDO of the Environment in writing that you support these positions.

Action:
That your municipality supports the attached AMO positions with correspondence to the Minister of the Environment by January 15, 2009 for the WDA and by February 27, 2009 for the BBPP.

For responses to WDA, BBPP:
Hon. John Gerretsen
Minister of the Environment
12th Floor - 135 St Clair Avenue West
Toronto ON M4V1P5

For responses to BBPP Only:
Andy Pollock
Vice Chair
Waste Diversion Ontario
45 Sheppard Avenue East – Suite 920
Toronto, ON M2N 5W9

Hon. John Gerretsen
Minister of the Environment
12th Floor – 135 St. Clair Avenue West
Toronto, ON M4V 1P5
December 19, 2008

Hon. John Gerretsen
Minister of the Environment
12th Floor - 135 St Clair Ave W
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Andrew Pollock
Vice-Chair
Waste Diversion Ontario
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Dear Minister Gerretsen and Mr. Pollock:

Re: Review of the Blue Box Program Plan

This is in response to the Blue Box Program Plan Review recently directed by the Minister of the Environment. While the current Blue Box Program has been successful, it has become obvious to those in the business that recycling alone is not enough. Ontarians are throwing out as much waste today, perhaps more than at the time the Blue Box was first implemented some 20 years ago. Over this 20 year period it was the property taxpayers of this Province who have paid for all of the disposal costs of this waste, and most of the recycling cost. It is time to for this practice to stop

Most companies that make the printed paper and packaging material that are collected in the Blue Box do not think of recycling and disposal during the design stage of their product as they pay only a small fraction of the actual cost of managing it. When companies have full responsibility for the costs of managing their product at the end of the lifecycle, we will get products that are designed better for the environment and cost less to manage when we are done using them.

The Association of Municipalities of Ontario (AMO) and the Municipal Waste Association (MWA), formerly known as AMRC, supports the shifting of full responsibility for all activities related to managing discarded consumer packaging and printed paper to the stewards responsible for producing this packaging. This Extended Producer Responsibility (EPR) framework will provide the incentive for stewards to examine and implement new design into their products to reduce the amount of the material in the first place, to enable reuse, to design with recyclability in mind and to design it in a way that it will be cost effective. This is not an unusual concept to most of the stewards to the Ontario Blue Box program as EPR programs exist in other Provinces of Canada and other countries in the world where these stewards market printed paper and packaging.

AMO and MWA prepared the "AMO and AMRC Discussion Paper for an Alternative Approach to Ontario’s Blue Box Funding Model" a position paper which has been submitted to the Minister and strongly advocates for full Extended Producer Responsibility on all costs associated with the management of all post consumer packaging and printed paper. It recommends among other things, an expanded list of designated Blue Box materials to include all post consumer packaging and printed paper. It advocates that all costs associated with the management of this material be...
paid by the stewards including any costs associated with the management of the litter and garbage stream (energy recovery and landfill). It advocates for incentives and penalties, defining and enforcing recovery targets, management of problematic materials and promotion and education strategies.

The transition to a full EPR program, whereby the responsibility for managing consumer packaging and printed paper in the residential waste stream transfers from municipalities to industry, will involve some major policy changes that will need to be implemented, AMO and MWA believe it can be done in 3 years.

Some recommended policy changes would include:

- Introducing a new regulation requiring the Industry Funding Organization to implement a Province-wide blue box recycling program that provides the same level of service currently provided to the residents of Ontario, or better. This may include curbside collection, multi-residential collection and public space recycling programs. Other mechanisms may be introduced, i.e., deposit-return; depot; return to vendor, etc. that would augment existing recycling programs. The key to remember is the level of service to the resident, whatever the approach(s) chosen the service needs to be equal to what is currently available or better to ensure an increase in the rate of participation and to ensure resident satisfaction. The new regulation will need to establish clear service standards with respect to service frequency, local promotion and education activity, and financial penalties for poor performance to ensure existing collection service standards are maintained. It is imperative that Province-wide promotion and education activities in support of program performance be central to any plan. In addition, financial incentives need to be provided to municipalities for local promotion and education in support of the program in much the same manner as has been implemented with the Municipal Hazardous and Special Waste Plan (MHSW). It is also imperative that annual auditing and monitoring of all systems be undertaken to document all stages of the management of the material the reduction and reuse but also disposal. Reducing the materials from disposal is as much a key in diverting this resource as it is in the reduction of this material in the design stages of its development.

- Change the definition of Blue Box Waste in Regulation 101/94 to include all consumer packaging and printed paper.

  Establish a short-term timeframe of three years by which time all consumer packaging and printed paper must be accepted in residential recycling programs, with strict recycling targets for each type of packaging and printed paper product.

- Although we support the shifting of responsibilities and costs to the stewards, we believe that there is a role for municipalities. Municipalities will continue to collect garbage, source separated organics and yard waste material at the curb and have the expertise and associated infrastructure to support recycling collection activities (e.g. complaint response system, mapping for routing, etc.). In many municipalities, recyclables are being co-collected with other materials. We therefore support the concept of municipalities having the opportunity to negotiate or bid on the delivery of all services and especially on the collection of recyclables. This too is nothing new as municipalities will have the opportunity to enter into contractual arrangements with OES to delivery the WEEE program at a set fee.
During the 3 year transition period in which industry is adjusting the Blue Box system to accommodate all consumer packaging and printed paper, all municipal costs of managing non-recyclable packaging in the municipal waste and litter stream needs to be compensated at 100%. After the transition period expires, municipalities would be responsible for managing any Blue Box Waste remaining in the municipal waste stream. This speaks to municipalities using existing tools under the Municipal Act to limit garbage bags and pushing BB material out of the disposal stream and into reuse and recycling. The amount of the material in the garbage is expected to reduce as quickly as municipalities implement those tools.

In this recommended approach the municipal role would be one of fee for service for those municipalities that would voluntarily wish to continue with the delivery of recycling collection (as is the case with WEEE).

**Stewardship Fees**

Steward fees will need to reflect the actual cost of managing the consumer packaging and printed paper that is recycled, ends up as litter or is disposed of in municipal garbage collection systems. What needs to be remembered is the absolute fundamental requirement to implement a Provincial Hierarchy Policy or Chain that management of these materials must take. We need to be cognizant of the fact that the disposal of consumer packaging and printed paper is often less expensive than managing the material in the 3R’s hierarchy. Accordingly, there needs to be incentives and penalties built into the fee structure using the Hierarchy as a basis for the formula. In other words, those redesigning the product to be more reusable or easily recyclable should be rewarded while those producing difficult materials to recycle or producing materials for disposal should be penalized with higher fees. Practically speaking this must result in increased fees to cover the full cost of managing consumer packaging and printed paper. Specifically the formula will need to shift more costs from better performing to poorer performing materials, reward materials that achieve material specific recycling targets (and penalize those that don’t) and credit stewards that incorporate recycled content in their products and packaging.

Any company or sector that currently exists, or a new one that chooses to implement an alternative recovery system (e.g. deposit-return), should remain an obligated steward to pay for the costs associated with managing any of their consumer packaging or printed paper that is still being managed by another system i.e. curbside/multi-residential/public space recycling system or disposal.

**Environmentally Responsible Management**

AMO and MWA supports the following mechanisms being added to the Blue Box Program Plan to ensure environmentally responsible management of Blue Box material:

- vendor qualification standards for collection contractors, processing facilities and end markets
- investment in processing technology to reduce cross-contamination of collected material
- investment in Ontario-based material converters and end markets to expand capacity (particularly for hard to recycle plastic packaging) and to more effectively manage contamination levels in material collected in multi-material recycling programs.
Additional Blue Box Waste

AMO and MWA supports redefining Blue Box Waste as “all consumer packaging and printed paper” including primary, secondary, tertiary and in-store packaging that is conceived to be distributed to household consumers. Other types of residential waste, such as furniture, toys, dishware, tools, clothing, mattresses, diapers, etc. should be the subject of separate Waste Diversion Plans under the WDA.

Blue Box Waste Collected Outside the Blue Box

AMO and MWA’s position is that all consumer packaging and printer paper should be recyclable and included in the curbside/multi-residential/public space recycling system, or alternative recovery systems fully funded and operated by industry. Municipalities should be reimbursed for 100% of the cost of managing consumer packaging and printed paper in the waste and litter streams. It is recognized that municipalities need to commit to use the tools at their disposal to limit the amount of garbage and force post consumer packaging and printed paper into the Blue Box stream.

Program Performance

- ALL Post Consumer Products and Printed Paper to be collected in all municipal programs.

- Each material type needs a robust target for reducing, reusing and finally recycling. It needs to be reviewed and a new target for every year of a 5 year plan. The Plan should also reviewed every 3 years and new targets set. Severe penalties for those materials not meeting the targets or those products that have not changed to be compliant with the Hierarchy must be implemented and acted upon by the Government. This could include the direction for the establishment of a product specific system.

Industry must be fully responsible for the management and cost of the program for all communities in Ontario. All communities in the Province must have access to recycling that is equal or better than the existing program. Industry should investigate how/where to consolidate materials in outlying communities before shipping to market that does not place undue hardships on the communities. Cost of freight from northern/isolated communities must be covered.

As stewards assume full responsibility for recycling, efforts to increase efficiency of the program should be undertaken and should include harmonization of materials, transportation, deposit-return; return to vendor; compost; etc.

Promotion & Education programs conducted at the Provincial level need to provide a consistent and comprehensive level of service. To reach the resident at the community level, adequate industry funded financial incentives need to be provided to municipalities in order that they may target specific curbside collection requirements.

Problematic Wastes

1. A Packaging Review Panel (and/or a set of standards for packaging or products using EPR principles) should be struck, that will develop an Ontario logo system for identifying how the material is to be handled at the end of its life, whether that be through deposit-return, return to vendor, Blue Box, compost, etc.
2. There is a need for a standard review of any new packaging or product coming onto the market. This should also be used on any product already in the market place, particularly those currently identified as difficult materials. The producer/packager should have to go through a process that is similar in scope to the Environmental Assessment (EA), showing the alternatives considered. If the material is not recyclable, it should not be allowed into the marketplace. If the material does not fit into the Blue Box, or can't be readily processed with existing infrastructure (must be able to be processed with a lowest common denominator MRF), it should be handled in a different way at that producers full cost. Any cost of the standard review to be borne by the steward.

3. Through continuous improvement, any material not reaching the Program target must be financially penalized. The penalty can also include the expulsion of the problem material from a Program and direction to the steward to set up an alternative method of managing this material.

4. Stewards are to be responsible for the province-wide consistent and continuous and robust Promotion and Education.

Municipalities should be compensated to continue with community level promotion and education programs, particularly as it relates to the blue box materials to divert them from disposal and into the blue box.

ICI Wastes

1. The IC&I sector needs their own BBPP with ground rules and oversight set by the government. Special attention needs to be given to the multi family residential and the BIA's where they are currently part of the municipal BB system.

2. The IC&I sector represents significant volume and tonnage of materials and could conceivably add an additional two times what the residential sector is currently processing. This could mean significant ramifications on existing processing capacity and markets.

3. Continual enforcement of Regulations, especially on waste audits and waste reduction work plans as required by Regulation 102/94.

4. Ministry to create incentives for the IC&I sector to recycle and for the private sector waste management companies to participate.

5. Identify end markets and develop a phased in approach to ensure that end markets are growing at comparable rates. Focus on material to be recycled; recycled content; and, market development.

Yours sincerely,

[Signature]

Peter Hume
President

cc: Hon. John Gerretsen, Minister of the Environment
    Jamie MacDonald, Senior Special Adviser, Policy, Ministry of the Environment
    John Vidan, Director, Waste Mgmt. Policy Branch, Ministry of the Environment
December 19, 2008

Alena Grunwald
Project Manager
Ministry of the Environment
Integrated Environmental Planning Division
Waste Management Policy Branch
35 St Clair Avenue West - Floor 7
Toronto, ON M4V 1P5

Dear Ms. Grunwald:

Re: Response to the Review of the Ontario’s Waste Diversion Act, 2002 Discussion Paper, EBR 010-4676

This is the response from the Association of Municipalities of Ontario (AMO) and the (Municipal Waste Association (MWA) formerly the AMRC to the Ministers invitation to participate and respond to the review of the Waste Diversion Act, 2002.


At the outset, AMO and WMA advocate the enactment of a new Ontario Waste Management Act, of which one part would address waste diversion issues. This change is required as waste diversion and waste management matters are currently addressed in the Waste Diversion Act, 2002 and the Environmental Protection Act. AMO/WMA do not advocate making amendments to the Environmental Assessment Act, as this Act has been reviewed extensively in the recent past. Comprehensive legislation addressing all aspects of waste management and resource recovery is required for Ontario.

Full Extended Producer Responsibility

1. How can the Act be revised to embed extended producer responsibility in Ontario’s waste diversion framework to drive toward zero waste and foster a green economy?

The preamble and/or purposes of the new Ontario Waste Management Act must clearly embed the following guiding principles to aid in interpretation of the legislation:

- Waste as a resource – with zero waste as the provincial goal by a realistic target date; and
- Extended producer responsibility as a methodology to assist in the preventing of generation, reducing, reusing, recycling, recovering energy and disposing of waste.
2. How can existing waste diversion programs move toward fuller extended producer responsibility?

Industry stewards must be empowered to take full life cycle responsibility for all aspects of a product or packaging for products imported or manufactured in Ontario. Stewards would be responsible for meeting material specific diversion (re-use and recycling) targets. Stewards would, however, be free to design product stewardship programs that may or may not include the existing blue box delivery model provided the level of service for Ontario residents remains the same and has the potential for improving.

3. What are the roles and responsibilities of municipalities in a full extended producer responsibility framework?

Municipalities owning or operating waste disposal facilities may continue to offer services to the public and industry stewards. Stewardship groups may opt to contract with municipalities for delivery of services to the residential and the industry commercial and institutional (IC&I) sectors, where efficiencies continue to exist. Stewardship groups would be responsible for provincial-wide promotion and education of their programs. Municipalities can provide local promotion and education to encourage residents to the most appropriate collection method or place of collection, at stewards’ cost.

Define extended producer responsibility to benefit the environment

4. How can the extended producer responsibility principle be defined in the Act in order to recognize the impact of waste and non-waste factors?

EPR must be extended to all materials, such that eventually all materials have inherent value and are not considered waste.

As for non-waste factors such as energy efficiency, toxics reduction, greenhouse gas emissions and use of raw materials, the fees should reward products that are capable of re-use, increased use of recycled materials. The fee structure should not take into account greenhouse gas emissions or toxics reduction as other jurisdictions or other Ontario Ministries can best regulate those issues. AMO/WMA declines to comment on energy efficiency, since recycling of materials will always be more energy-efficient than manufacture from a raw state and has, thus, been accounted for as noted above.

5. How can programs best extend producer responsibility beyond that portion of the waste stream that is recycled?

For both the residential and IC&I sectors, AMO/WMA supports the monitoring of the way waste is disposed in Ontario to aid in the setting of waste reduction and diversion targets. AMO/WMA supports the incorporation and expansion of the principles of Bill 105, currently before the Ontario Legislature (further commented on in response to question number 21). For example, through mandated and steward-financed periodic waste audits, operators of
waste disposal and energy recovery facilities will know what percentage of their waste streams are composed of recyclables and those materials that cannot be recycled. This data would be submitted to both Ministry of the Environment and Waste Diversion Ontario (WDO). WDO would coordinate the funding remittal of that portion of fees from the appropriate IFO to the operator of the facility. This funding contribution is intended to off-set the cost of operating and maintaining the costs, especially long-term costs in landfill site maintenance following closure. The Ministry of the Environment will use the data to assist in enforcement Province-wide waste shed infrastructure planning and policy development.

Incorporate greater flexibility for industry in meeting extended producer responsibility requirements.

6. Does the Act provide the incentives necessary to encourage industry-led stewardship plans and individual stewardship plans?

(a) If so, how can those tools be used to encourage the development of industry-led waste diversion programs?

(b) If not, what additional tools are required to provide maximum flexibility for producers?

The Act could be used to encourage the development of industry-led waste diversion programs. Materials, with re-use and recycling targets, could be designated ahead of program development with longer lead times to develop programs, which would encourage industry-led programs.

AMO/WMA does not support the continuation of voluntary contributions such as the in-kind advertising contributions— as are currently utilized by the Canadian Newspaper Association and the Ontario Community Newspapers Association in the current Blue Box Program Plan – since these do not provide a stable and guaranteed secure funding contribution to the industry funding organization and Ontario’s municipalities.

Aside from more realistic time to develop plans and markets, AMO/WMA do not believe that additional tools are required for producers. Industry should be reminded that they always have an option to bring forward an industry-led waste diversion program to WDO or the Ministry under subsection 34(1) and 34(2) of the Act. In this view, however, this application should be made solely to the Minister for approval, with a copy of the application being submitted to WDO for any review comments back to the Minister.

7. Extended producer responsibility programs are typically built on annual fee setting cycles. Can the fee setting cycles of the programs be redesigned to react more quickly to marketplace changes, or the entrance of new products and packaging into the market?
Yes, the fee setting cycles can be adjusted to react more quickly to market changes and new introductions into the market. At present, stewards report market sales information on a quarterly basis with stewards' fees being set on an annual basis. In AMO/WMA's opinion, it should be able to adjust fees so that they are set using the prior quarter's sales to more accurately reflect market share.

With material specific diversion targets being phased-in over time, both the stewardship organization and WDO should be able to anticipate new product and packaging entries into the markets.

*Fee Visibility*

8. *As a key principle of an EPR approach, should the province call for fees related to environmental management costs to be included in the product cost as a factor of production, rather than added separately at the point of sale?*

AMO/WMA agrees that visible fees should not be added separately at the point of sale. Deposit return fees have been incorporated into the product costs and are not shown separately to consumers. AMO/WMA supports the internalization of the fees that producers and stewards of products will be required to pay to compete in the Ontario marketplace. The only instance in which visible fees may be palatable is for retailing of products with high toxicity – to directly promote consumer choice to more environmentally-friendly alternatives.

*Impact on Existing Markets*

9. *How can Ontario ensure fairness and competition when introducing waste diversion programs?*

This is a difficult question – since market factors cannot and do not always promote reduction or recycling programs. In many cases, it appears to cost more to recycle and it certainly is more complicated to design a viable recycling program, rather than shipping waste to landfill disposal within or outside of Ontario. Where materials are to be designated, it makes sense to give realistic development timeframes to allow stewards to change product and packaging materials and develop infrastructure processing and local markets. Open competition and transparent contract procurement must be practiced with the use of established MERX postings at all times.

*Stewardship models*

10. *How could individual stewardship be incorporated into the Act to better drive diversion?*
Stewards that openly redesign products and packaging using “design for environment” to reduce product and packaging waste or utilize recycled or easy-to-recycle materials with local infrastructure, should receive credit offsets against their fees payable to the industry funding organization. Product stewards that introduce products or packaging that leap-frog one of the steps of the waste management hierarchy toward energy recovery or waste disposal should be penalized correspondingly.

11. **What tools would help consumers better manage the wastes they generate?**

The Province could pass consumer protection legislation that would allow all consumers who utilize retail outlets to leave product packaging at the retail outlet, to facilitate easy recovery for re-use, recycling, energy recovery or disposal, as appropriate. If consumers purchase products on-line, the return of both the product and/or the product packaging, should be explicitly at the cost of the retailer, distributor or industry steward. If products or packaging cannot be returned to point of sale, then they must be managed through steward funded programs. This legislation would also ensure that advertising of these options be readily available to all consumers to increase waste recovery efforts in Ontario.

**Improve and extend stewardship**

12. **How can stewardship best be extended to materials outside current waste diversion programs such as new, non-recyclable materials or waste that ends up as litter?**

Increased fees would be levied to those stewards who introduce new non-recyclable materials or convert from easy to more difficult recyclable materials into the market. In addition to steward fees, the Province should impose targeted provincial excise fees on such products, upon import. Municipalities would continue to be responsible for the collection and disposal of litter and would conduct regular waste audits at their facilities. With audit information available, stewards whose products end up as litter would be financially responsible to contribute to the municipality’s long-term cost of managing the waste disposal, waste processing or energy recovery facility.

Decreased fees or one-time credits would be levied on stewards who decrease packaging or sell different amounts of products upon consumer demand (i.e. paint sold by room dimension).

**Establish the 3Rs hierarchy in the Act**

13. **How can the 3Rs be better entrenched in the Act to drive toward zero waste and foster a green economy?**
AMO/WMA supports the incorporation of a schedule in the waste/resource management legislation which goes beyond the 3Rs and clearly sets out the waste management hierarchy: prevent waste generation, reduce, re-use, compost, recycle, energy derived from waste, waste disposal without energy recovery. Should another hierarchy develop in the future or changes need to be made, the schedule could be amended in the future.

14. **Does the Act provide the necessary tools required to promote the 3Rs?**

   (a) **If so, how can those tools be used more effectively?**

   (b) **If not, what additional tools are needed?**

Waste reduction, re-use and diversion targets were set for Municipal Special or Hazardous Waste and Waste Electronics and Electrical Equipment Plans. Continued monitoring of the progress towards these targets must be formally made by WDO Ontario and informally by the appropriate Industry Funding Organization or industry, in the case of an industry-led stewardship plan. As such, AMO/WMA supports the inclusion of “continuous improvement” as an explicit program policy role for WDO. For more information on explicit changes to the legislative wording, please see the AMO/AMRC Review of the Waste Diversion Act Discussion Paper submitted in July 2007, which is attached to this submission.

Where targets are not made and progress is not observed, funding levels should be able to be adjusted by WDO to promote the development of markets and corresponding infrastructure. This would require increased funding approval powers for WDO. Stewards can avoid the rise in funding contributions by utilizing proper design for environment principles or adjusting funding levels on their own to cover their costs of implementing extended producer responsibility. WDO would also act to ensure that the cost of the programs is realistic and fair for producers to ultimately impose on Ontario consumers.

15. **What additional principles should be embedded in the Act to guide development of waste diversion programs in the province?**

AMO/AMRC continues to support the inclusion of open, broad and inclusive consultation in the development of waste diversion programs. The AMO/AMRC July 2007 Discussion Paper (attached) went into great depth as to the need for increased public consultation and how to enshrine this principle in the Act.

Where industry proposes to impose industry-led waste reduction and diversion plans, AMO/WMA would also like to see the industry conduct consultation with key stakeholders on their proposed changes. This would have, perhaps, staved off the introduction of such problematic packaging materials, such as the Coleman “Green Key”, into Ontario markets.
The role of the consumer

16. How can the Act be used to better encourage and leverage the role of the consumer in the 3Rs hierarchy?

AMO/WMA supports and has expanded on the examples cited in the WDA Discussion Paper to empower consumers in making responsible decisions, such as:

- Ensuring robust, steward-led Provincial-wide promotion and education messaging on waste diversion (reduction, composting and recycling) programs;
- Ensuring complementary local education by municipalities in the delivery of local waste disposal and energy recovery programs;
- Requiring retailers make it easy for consumers to take back products and packaging at point of sale and when consumers no longer need the products and/or packaging;
- Incorporating deposit return systems for certain products and packaging to spur on higher levels of collection;
- Entrenching consumer access options to above systems, irregardless of population density or geography;
- Requiring products to have clear labels to inform consumers of options for take back, deposit return, recycling and environmental impacts of disposal for products and the packaging of products; and
- The Ministry of the Environment should work with the Ministry of Education, Ministry of Training, Colleges and Universities, Ministry of Health Promotion and the Ministry of Economic Development to provide consumer-based education on the cost and impacts associated with the purchase of products and packaging.

17. What are the incentives that would most likely result in greater waste reduction and reuse?

We have seen that deposit return can properly incent consumers to divert materials from waste disposal and the Blue Box to an appropriate and convenient deposit return point of contact.

Local municipal control needs to be continued and expanded to implement material-specific landfill and energy recovery bans on all facilities. Municipalities may need to consider implementation of clear bags for disposal, to allow for easier enforcement of mandatory diversion and recycling by-laws. Where municipalities fail to act, the Minister may be empowered under legislation to impose bans on designated materials and other methods to encourage waste reduction and diversion. All municipalities within certain geographic areas may need to consider implementing tag-a-bag fee systems.
18. What additional incentives would most likely drive greater waste diversion efforts by consumers?

Local municipal promotion and education campaigns focusing on who bears the ultimate cost for recycling (stewards) and waste disposal (municipalities with steward contribution).

19. What information regarding the environmental impacts of products and packaging should be made available to consumers and how?

Retailers should be required to post signs explaining the mobilius loop and plastics codes and explaining what product packaging can be placed in blue box, take back (return to retail) and deposit return programs. With stewards taking responsibility for implementing full extended producer responsibility across the Province, there will likely be a standardization of the materials accepted in the Blue Box and at return-to-retail locations. This standardization of materials will be reflected in Ontario-wide promotion and education messaging for all consumers.

In addition to charging for plastic or paper bags, retailers should make consumers aware that packaging can be returned to the store at point of sale or when product is no longer needed.

Enhance 3Rs regulations

20. Should Ontario continue to promote approaches to waste diversion that focus on facilitating diversion by waste generators?

   (a) If so, how could these approaches complement an extended producer responsibility framework?

See answer to question number 18 above.

21. How could data reporting and other 3Rs obligations be used to enhance diversion?

Data reporting needs to shift from tonnes of designated materials to another measure such as volumes to properly address the trend towards lighter plastic packaging that is either harder-to-recycle or incompatible with marketing of high quality compost or processing at composting facilities.

Data reporting and regular waste audits at stewards’ cost needs to be conducted at final disposal and energy recovery facilities to ensure that the cost of dealing with litter and waste residue is properly accounted for and financially assisted by stewards within an extended producer responsibility methodology.
AMO/WMA supports the principles of current private members Bill 105 that would provide a means for monitoring the way waste is diverted and disposed in Ontario. Carriers who remove waste from Industrial, Commercial and Institutional (IC&I) sites would be required to keep records of the amount of designated materials removed and delivered to diversion and disposal sites. Reporting would be done on a quarterly basis to the Ministry of the Environment with the same monitoring and reporting requirements imposed on the owners or operators of waste processing and disposal sites. The Ministry of the Environment would be responsible for auditing and verifying accuracy of records and submitted information with appropriate offence and enforcement provisions. These provisions would assist the Ministry, WDO, municipalities in proper waste flow monitoring and industry stewards in planning for appropriate infrastructure investments. It would also discourage activities at some waste disposal sites that claim to actively “re-use or recycle” materials on-site, with very little actual “diversion” from landfill. For example, using construction and demolition wastes on landfill sites to build roads, should not be considered diversion from landfill, as it is being done to support landfill disposal activities.

22. What, if any, amendments to the 3Rs regulations could be made to support future extended producer responsibility programs?

As with our submission on the revision to the Blue Box Program Plan, AMO/WMA strongly supports the shifting the full responsibility for all activities related to managing discarded consumer packaging and printed paper to industry stewards. This framework would provide stewards and Stewardship Ontario with the necessary financial incentives to reward for “design for environment” for waste reduction, reuse and select packaging that can be cost effectively reused or recycled. This transition to a full extended producer responsibility program will involve major policy changes that will need to be implemented over several years. AMO/WMA recommends the following amendments to the 3Rs regulations and beyond:

- Redefine Blue Box waste in the legislation as all consumer packaging and printed paper, including primary, secondary, tertiary and in-store packaging that is conceived to be distributed to household consumers. Other types of residential waste, such as furniture, dishware, clothing, mattresses, diapers, toys, etc., would be the subject of separate waste diversion program plans;
- Repeal O.Reg. 101/94 and introduce a new regulation requiring Stewardship Ontario to implement the same level of service or better including curbside, multi-residential and public space recycling for municipalities over 5,000 in population and for those municipalities under 5,000 in population who are currently running a curbside collection program. This new regulation or revised Blue Box Program Plan would have to establish clear service standards with respect to service frequency, local promotion and education activity and financial penalties for poor performance to ensure maintenance of existing service collection standards. The regulation or new Program Plan would also specify requirements for Province-wide promotion and education activities to support program performance;
- Establish a timeframe (3 years) by which all consumer packaging and printed paper must be accepted in residential recycling programs, with strict reduction, re-use and recycling targets for each type of packaging and printed paper product;
- Stewards may design the new Program Plan; however, municipalities will likely have a key role in collection due to current co-collection of recyclables, waste and compost programs. AMO/WMO supports the concept of municipalities being allowed to negotiate or bid on collection contract with stewards for delivery of these services. Until contracts can be assigned to Stewardship Ontario, stranded costs must be addressed through the Plan development (with Stewardship Ontario paying the full system costs with a fee for service, leasing facilities or systems or entering into other contractual arrangements for municipal service); and
- During the 3-year transition timeframe and beyond, require Stewardship Ontario to pay 100% funding to municipalities for the cost of managing non-recyclable packaging and printed paper remaining in the municipal waste stream.

Revisions to the Act

23. **Is there a role for existing Act programs to encourage the facilitation of diversion by IC&I waste generators?**

(a) *If so, are the available tools appropriate or are additional tools necessary?*

*O.Reg. 101/94,* one of the current 3Rs regulations under the *Environmental Protection Act* limits the Blue Box Program Plan to certain mandatory and optional collection of certain municipal waste materials generated within municipalities with greater than 5000 persons. *O.Reg. 102/94* imposes waste reduction and waste auditing responsibilities on certain operators in large IC&I sectors. *O.Reg. 103/94* imposes requirements for source separation and recycling programs on larger multi-residential buildings and on the owners and operators of large IC&I facilities set out in *O.Reg. 102/94.*

There are, however, no mandatory waste diversion (reduction and recycling) targets for IC&I sectors caught by the 3Rs regulations. Not all municipalities offer recyclable collection services to the IC&I sectors located in their communities and not all communities have access to private recyclable collection service. In addition, until recently, the Ministry of the Environment carried out little to no enforcement of *O.Reg.* 102/94 and *O.Reg.* 103/94. The result has been a spotty patchwork of recycling programs serving IC&I generators across Ontario.

Should the Minister expand the designation of materials for the Blue Box Program Plan to all consumer packaging and printed paper – and remove the population requirement and size sector requirements within the regulations - this would capture materials targeted for retail in the residential sector and all of the IC&I sector and ensure increased capture rates. The responsibility would need to be placed on the IFO to serve both the residential and IC&I sectors. The IFO, WDO and the Ministry of the Environment would implement ongoing enforcement of ICI waste reduction, auditing and participation in recycling programs.
Additional targeted promotion and education would be required from the IFO to let all players in the IC&I sector know of the increased service requirements.

Municipalities could assist in the pursuit of these policy goals. In case of construction and demolition, they can ensure that a requirement for issuance of a building permit for demolition and construction of new housing and structures would require submission of a waste reduction, re-use, recycling and disposal plan and an appropriate money bond – which would be released back to the developer upon successful completion and verification of the requirements of the waste plan. The Building Code Act should not be allowed to be an obstacle for developing this as a standard municipal building permit practice.

Extending responsibility for wastes in the IC&I sectors to producers

24. How can responsibility be extended to producers to address the end of life management of their products and packaging sold or supplied to the IC&I sectors?

(a) What authorities should be included in the EPA or the Act to facilitate this?

As previously stated, the Ministry should extend the responsibility of producers for the management of all consumer packaging of products and printed paper. This would enable end of life management for all sectors to be addressed within the appropriate WDO or industry-developed Program Plans. Please see our answer to question number 22 for specific policy direction regarding legislative authorities.

25. Are there any aspects of existing waste diversion programs that could provide a means of facilitating extended producer responsibility for products and packaging generated in the IC&I sectors?

Please see answers to question numbers 23 and 27.

Priority IC&I sectors or specific materials/range of materials

26. Do any specific IC&I sectors lend themselves more readily to application of extended producer responsibility?

See answer to question number 27.

27. Are any specific materials generated by IC&I sectors more appropriate for extended producer responsibility programs?

It would be appropriate to direct efforts at materials generated in larger quantities (the low hanging fruit) by the IC&I sector for extended producer responsibility programs. For instance, compostable materials comprise a large percentage of waste generated by the IC&I sector. For large producers, these materials could be designated and managed in ways similar to current initiatives serving the residential sector.
Wood and drywall waste from the construction and demolition (C&D) activities also comprise a large percentage of IC&I waste. Encouragement of building technologies with substantially less wood, use of more sustainable types of wood products, re-use and recycling through wood chipping could prevent the generation of wood C&D waste. Industry stewards should be encouraged to continue efforts at developing local and effective technologies for the recycling of drywall.

AMO/WMA recognizes that some materials – such as those generated by hospitals and medical establishments – may not be appropriate to meet re-use or recycling targets and instead remain dedicated for energy recovery or toxic landfill disposal.

28. What other tools could help encourage IC&I establishments to divert as much waste as possible?

Like the producers of products serving the residential sector, AMO/WMA would support landfill bans for specific designated materials to encourage markets and development of processing infrastructure for the IC&I sector. Monitoring of waste generated and diverted by IC&I establishment and waste carriers that serve IC&I establishments, as put forward in Bill 105, would demystify waste flow in this sector. Open continuous enforcement of waste reduction work plan and recycling targets and the monitoring of reporting by carriers, processors and final disposal destinations would encourage in this sector.

Possible Approaches

29. How could roles and responsibilities be articulated to clarify mandates?

AMO/WMA does not immediately see a need for the clarification of mandates. Waste Diversion Ontario clearly explains their mandate on their website and the Ministry’s own discussion paper provides an excellent synopsis of the various mandates of the major players and their roles and responsibilities. Once the WDO board is changed – as outlined below – perhaps there could be some limited Province-wide advertising about its functions.

30. What should be the responsibilities of:

(a) The Minister?

The Minister is first and foremost responsible for the public interest and the stable availability of waste recovery and management infrastructure across Ontario. The Minister is responsible for ensuring the Provincial waste policy principles are enshrined and enforced by Ministry staff and Waste Diversion Ontario in the new waste management legislation. The Minister should develop and apply policy principles that may vary according to geographic area and population density. In addition, the Minister and the Ministry are responsible for working with other Ministries and levels of government to develop Ontario's
infrastructure and ensure the enactment of zero waste and other complementary policies by other Provinces and the Federal Government.

As outlined in the AMO/AMRC July 2007 Discussion Paper, we support modification of the Minister's powers to approve, reject and modify waste diversion program plans

AMO/WMA supports the concept of having Ministry waste management enforcement resources supported by stewards' fees, paid by the appropriate IFO.

(b) Waste Diversion Ontario?

WDO is unique, in that in other Canadian jurisdictions, a combination of Provincial Ministry staff and industry funding organizations perform most of WDO's functions. However, this is simply a different method of service delivery, chosen by the Provincial Government.

AMO/WMA agrees with the current role of WDO as the developer of waste reduction and diversion programs. As will be discussed below, AMO/WMA support governance changes and enhanced public consultation in program development to support this role.

WDO is limited because the IFOs, through the collection of stewards' fees, fund all of its activities. WDO is often motivated to develop diversion programs – irregardless of quality or prescriptive program request letter wording – so that it can recover its costs. WDO is also hampered by a lack of resources and its current need to maintain harmonious relations with its IFOs and industry stewards. WDO needs separate and secure funding to allow it to develop programs (if necessary), properly criticize and independently modify the programs in development to ensure program targets can be met, and ensure adequate resources are assigned to monitor and direct continuous program improvement.

WDO needs to spend renewed effort and focus on the monitoring and evaluating programs and acting to encourage and direct continuous improvement in re-use, reduction and recycling of materials. So long as the WDO Board moves towards a more balanced representation, reflective of the public interest, this should remove the previous conflicts in Board member interest in maintaining program status quo and assist in more effective scrutiny of programs (see comments under question 31).

If there are other major concerns with the working of that organization, this can be addressed in five years in the next review of the legislation.

(c) Industry Funding Organizations and Industry Stewards

We appreciate that each IFO should be managed by its board of directors to be selected from stewards of the designated waste or groups of waste materials. This improves accountability and ensures appropriate oversight. It is also appropriate that these boards have public interest representation on them as their decisions ultimately affect the public.
However, IFOs are creatures of the WDO and their sole purpose is to develop and implement the program plans. If their members block continuous improvement of program plans, subvert re-use and diversion targets by switching packaging material, WDO must have options available to direct change. WDO is delivering the Minister’s direction, which is first and foremost a reflection of Provincial policy and public interest.

AMO and WMA support a prominent role for IFOs in the development and implementation of province-wide promotion and education. As with our submission on the review of the Blue Box Program Plan, once Stewardship Ontario transitions to and has the responsibility for one hundred percent (100%) funding responsibility for all product packaging and printed paper, it makes sense to have it responsible for promotion and education – a key implementation of the Blue Box Program Plan.

Industry stewards are able to develop individual product plans under the Act, however, without being financially responsible for final waste disposal costs such as at present, there is little financial incentive for them to be pro-active. Making industry stewards responsible for the costs of litter, waste disposal and recycling infrastructure will definitely tip that balance. However, once a material is designated, the stewards may be forced into participating in a collective IFO. They can only opt-out after the IFO program has been approved, to meet the Minister’s requirements on an individual basis. AMO/WMA understands that this measure is in the Act to ensure that there is not “hollow” participation in the development of the program plan, but if there is insufficient lead time on possible waste or packaging designations by the Ministry, this stymies or discourages development of individual industry steward plans. AMO/WMA supports the need to designate materials as far in advance of issuing program request letters as possible and the need to give heads-up for stewards on potential landfill bans or surtaxes. This could encourage industry stewards to develop their individual plans, and/or develop their IFO in advance. Imposition of an IFO structure, by WDO, would then only be required as a last resort.

(d) Ontario’s municipalities?

AMO and WMA have added in this subcategory in response to the questions posed in this Discussion Paper. Ontario’s municipalities have played vital roles in waste collection, processing and waste disposal as well as planning and monitoring of local waste management. As the Blue Box Program Plan transitions to 100% steward funding, the IFOs, namely Stewardship Ontario and other product stewards, can decide whether or not they wish to continue using municipal collection and processing infrastructure and assumption of current municipal contracts. IFOs should open waste collection and processing contracts to bids from the municipal sector.

Local municipalities should have the ability to pass by-laws to impose landfill or energy recovery material-specific bans on all local facilities, to ensure that IFOs, individual product stewards or private waste disposal companies do not leapfrog or overstep the Provincial waste management hierarchy.
Municipalities should continue to play an important role in local promotion and education, at stewards’ cost, to ensure that IFOs’ promotion and education messages are reinforced. This promotion and education must remain complementary to where and how materials should and can be re-used, reduced and recycled – ensuring diversion wherever possible in Ontario.

31. What changes, if any, could be made to the board structures of Waste Diversion Ontario or industry funding organizations to provide more balanced representation?

The Act provides for specific composition of the WDO Board of Directors. It also allows for an operating agreement to specify an alternative structure of members of the Board of Directors and observers (section 6.01).

In 2006, there was recognition within WDO that it was time to move away from a representation governance model towards a more balanced structure of the WDO Board to reflect a broader membership at large and the public interest. In particular, WDO has recognized that its Board must be based on a process that mitigates allegiance to nominating organizations and encourages fiduciary responsibilities to WDO. WDO’s Governance Committee recommended that industry representation come from sources other than the IFOs, as WDO is required to monitor the effectiveness and efficiency of programs implemented by IFOs. After considerable debate, WDO’s governance committee brought forward 3 potential changes to Board structure, of which the following structure was approved by the Minister of the Environment earlier this year:

- 5 industry representatives jointly appointed by industry associations;
- 5 stakeholder representatives comprised of
  - 4 municipal representatives jointly appointed by municipal associations
  - 1 Environmental Non-Governmental Organization (ENGO) representative jointly appointed by the Ontario Environmental Network and the Recycling Council of Ontario; and
- 4 unrelated Directors appointed by the Minister.

AMO/WMA is in full support of this new governance structure. The balance of voting power on WDO decisions will move to the 4 public interest and 1 ENGO appointees. This will ensure that the Ministry’s interests and the public interest are furthered in all WDO decisions, decrease the amount of power allotted to representatives who have inherent conflicts of interests, and break former stalemates.

32. What additional authorities should each organization be given that would help ensure that the public interest is protected?

WDO needs to ensure that the costs of the delivery of programs are accurate to ensure that industry stewards are passing realistic costs onto consumers in the pricing of products. Therefore, WDO’s primary responsibilities - aside from plan development - include promoting and monitoring of continuous improvement towards waste reduction, re-use
targets and the corresponding fee-setting methodology. If additional resources are required in this area, then WDO staffing will need to be expanded accordingly. The AMO/AMRC July 2007 Discussion Paper went into specific detail about proposed changes to the Waste Diversion Act to embed continuous improvement and monitoring in the Act.

33. What tools might be needed to better resolve conflicts, particularly at the program development stage?

In the past, changes have been made to waste diversion plans without any consultation of those parties affected. AMO/WMA would like to remind the Minister of the changes to the funding contribution of newspaper stewards in 2005 to allow for in-kind contributions rather than actual financial contributions. This change was accomplished through lobbying of the Provincial government without input from Ontario’s municipalities. This change has resulted in substantive annual increases of the in-kind contribution which continues to jeopardize the sustainability of Blue Box funding due to fluctuations in values in recyclable markets. This has not worked since its inception and thus AMO/WMA recommend the deletion of subsection 31(2).

We wish to prevent such unfortunate incidents from occurring again and would therefore request to have all decision points within the WDA incorporate fairness, transparency and open accountability principles. One of the ways to ensure such procedural mechanisms are followed is to make sure that adequate consultation is undertaken so that all parties have a chance to put forward their views on program and plan development and changes thereto.

At present, section 7 of the Act allows the Minister the sole discretion to establish policies applicable to WDO. While AMO/WMA agree that this is an appropriate role for the Minister, due to the shared financial impacts of potential policy development, it would be easier to accept the potential plan impacts, if interested parties were consulted in advance of imposing policy changes. AMO/WMA recommend that consultation of such policies, in advance of their imposition would be more beneficial for all interested parties and ensure that there are no surprises for all concerned. This is also consistent with the consultation currently being undertaken on the implementation of Phases 2 and 3 of the Municipal Hazardous and Special Waste Plan.

In addition, AMO and WMA recommend that WDO’s approval of a proposed waste diversion program be made public and the details of the program be provided to the IFO and Ontario’s municipalities before the program is submitted for Ministerial approval. This is also essentially what occurred with Phase I of the Municipal Hazardous or Special Waste Plan and would give one last chance to ensure adequate consultation is done, particularly in situations where the timeline for development of such programs are extremely short. It also may alleviate potential problems in implementation later in the process or avoid potential disputes in the future.
34. **What changes are necessary to ensure timely program development and approval?**

It is not enough for the Ministry to specify program development within a set timeline. Each program development letter must specify that the program respond with material specific reuse and diversion targets as well as implementation schedules. If the Ministry is not satisfied with the proposed scheduling, then the Minister should have the discretion to amend the plan. At present, the Minister can only approve or turn down the plan – this leaves no room for the discretionary application of Provincial waste policy guidelines.

35. **Are penalties for non-compliance appropriate?**

There are very few charges for non-compliance under the Act. This would appear to indicate that the penalties are appropriate. However, the penalties levied in the recent past do not appear to represent a real financial hardship for most companies operating in Ontario.

The penalties should be commensurate with what the company would have paid under the Act for fee payments for the appropriate year, plus additional monies to serve as a deterrent to others (20% at the lowest). In addition, the victim fine surcharge should be remitted to WDO to offset their annual operating costs and should not be allotted to general provincial revenues.

Yours sincerely,

Peter Hume
President

cc: Hon. John Gerretsen, Minister of the Environment
Jamie MacDonald, Senior Special Adviser, Policy, Ministry of the Environment
John Vidan, Director, Waste Mgmt. Policy Branch, Ministry of the Environment
WDO