

The future is finally here

Ontario votes to make Bill 151 Waste Free Ontario law

by / Usman Valiante

On June 1, 2016 *Bill 151 Waste Free Ontario* (WFO) passed third reading in the Ontario legislature. It will likely be given royal assent in the late fall.

As described in *SWR* December 2015/January 2016, WFO comprises two pieces of legislation: *Resource Recovery and Circular Economy Act* (RRCEA) and the *Waste Diversion Transition Act* (WDTA).

Bill 151 was vigorously debated in committee and a number of key amendments were made to both component pieces of legislation before it returned to the legislature for third reading.

Firstly, a number of key definitions under the RRCEA were established or clarified.

Circular economy has been defined in the RRCEA as: an economy in which participants strive, (a) to minimize the use of raw materials, (b) to maximize the useful life of materials and other resources through resource recovery, and (c) to minimize waste generated at the end of life of products and packaging.

A definition of resource recovery is also now provided: the extraction of useful materials or other resources from things that might otherwise be waste, including through reuse, recycling, reintegration, regeneration, or other activities.

Finally, a definition of waste reduction has been added: the minimization of waste generated at the end of life of products or packaging, including through activities related to design, manufacturing, and material use.

The amended RRCEA clarifies rules on registration and reporting of parties subject to the Act. Entities required to register with and report to the new Resource Productivity and Recovery Authority include those who arrange for recycling services for producers (producer responsibility organizations) and those who actually provide recycling services (collectors and processors).

The RRCEA now allows a maximum of 90 days following proclamation for the government to publish the Strategy for a Waste-Free Ontario: Building the Circular Economy.

The WDTA was also amended. It now clearly states its purpose to wind up existing industry funding organizations (IFO) (e.g. for used tires, electronics, municipal household and special wastes, and the Blue Box program for paper and packaging).

The WDTA also prohibits IFO from using money or assets other than in a way that is consistent with the purpose of an IFO and the government may now make regulations governing the Authority's requests for information from IFOs.

The most contentious amendment to the WDTA is the provision governing producer payments to municipalities under the existing Blue Box program (prior to that program being wound down in order to transition producers to the RRCEA).

In addition to allowing the Minister to change the current 50 per cent portion of total net Blue Box program costs incurred by municipalities to be paid by Stewardship Ontario (the Blue Box IFO), the amended WDTA also allows the Minister to "... change the waste

diversion program for blue box waste to determine the total annual amount that shall be paid to municipalities under the program.”

The WDTA requires the Minister to “... consult with Stewardship Ontario and representatives of municipalities” before any changes are made. Any proposed changes to the Blue Box program that arise from this provision are also subject to public consultation under Ontario’s Environmental Bill of Rights.

The provision allowing the Minister to fundamentally alter the existing Blue Box program will be of great interest to both producers and municipalities as it may afford the opportunity to address a longstanding impasse regarding producer payments to municipalities for recycling.

At the heart of the dispute is the question of how the 50 per cent is calculated—

is it 50 per cent of the actual costs incurred by municipalities in delivering the Blue Box program or, is it 50 per cent of reasonable costs they incurred?

The dispute on what is 50 per cent led to arbitration on November 25, 2014 and the result of the arbitration was that the total net costs incurred by municipalities is limited by the requirement that those costs be reasonable. A year and a half later and there is still no agreed upon formula for determining what is “reasonable.”

The opportunity to amend the Blue Box program could avoid tinkering with cost sharing formulae by changing the actual roles and responsibilities of producers and municipalities with regard to Blue Box delivery to Ontario residents.

Under a revised Blue Box plan producers could assume an operational

role for some paper and packaging recycling activities (perhaps post-collection consolidation, recycling and marketing of paper and packaging materials) and work in collaboration with municipalities on others (e.g. collection of materials from households and promotion and education).

A change in operational roles under the blue box program under the WDTA could offer a measured stepping-stone to the transition to producer delivered EPR for paper and packaging under the RRCEA.

The principled legislative framework for EPR so many have hoped for has finally arrived. Discussions between producers and municipalities to chart a path to evolving Ontario’s residential recycling system towards full EPR should begin in earnest. The future is finally here. ●●