

PRIMER on Bill 91 (The Waste Reduction Act) and The Waste Reduction Strategy

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1

INTRODUCTION TO BILL 91

4

Presentation Outline

- Introduction to Bill 91
- Key sections of the Bill (referred to as five “buckets” of major interest and importance to municipalities)
- MOE's Waste Reduction Strategy
- Stewards' Perspectives on the Draft Act
- Summary – Questions, Answers and Discussion

2

Bill 91 – The Waste Reduction Act

- Bill 91 – An Act To establish a new regime for the reduction, reuse and recycling of waste and to repeal the Waste Diversion Act (2002)
- Stewards (who will be “producers” in the new Bill), municipalities and NGOs (the main stakeholders for the Bill) support some aspects but not all aspects of the Bill
- All stakeholders have concerns with the Bill
 - Some concerns are common to all stakeholders;
 - Some concerns different/opposite views on the same issue
- A few key sections are getting the most attention (Section 7,39-45, 84, etc)
- Bill is open to interpretation
 - Stakeholders interpret the bill differently

5

Process to Make Bill 91 Law

- Bill 91 (the Waste Reduction Act) received first reading 6th June, 2013 (day Parliament recessed for summer)
- Bill and companion Waste Reduction Strategy are posted on EBR with comments due to MOE by Sept 4th
- Second reading with Committee Hearings likely
- Committee hearings are a very important forum in which proposed changes to the Act will be presented, discussed and decided upon

3

Bill 91 Contents

- Part I - General – Sections 1-4
- Part II – Waste Reduction Authority – Sections 5-38
- Part III – Producers and Intermediaries Sect 39-50 (page 20-25)
- Part IV Integrated Pricing S 51-55 (P 25-27)
- Part V Enforcement S 56-79 (page 28-42)
- Part VI Regulations S 80 P 42
- Part VII – Existing Waste Diversion Programs S 86 P 47 to 65
- Part VIII – Amendments to this Act, Repeal, Commencement And Short Title S 130-133

6

The Act and MOE Strategy are presented in Five Major “Buckets”

- Bucket #1 - Roles and Responsibilities
- Bucket #2 - System Costs and Getting Paid
- Bucket #3 - Waste Diversion Targets, Standards and Enforcement
- Bucket #4 - Waste Reduction Authority
- Bucket #5 - Waste Reduction Strategy (Incl. IC&I, Organics, Reg. 101/94, etc.)

7

Section 41 - Registration

- Register will be managed by the new Waste Reduction Authority (Bucket #4)
- Section 41 (registration):
 - Producers - (1) Every producer shall register in the Registry
 - Intermediaries - (2) Every producer's intermediary shall register in respect of the producer and in respect of the designated waste
 - Municipalities (3) Every municipality that collects a designated waste may register
 - Same, choice (4) if a municipality that registers under subsection (3) chooses not to make the producer responsible for collection under sub-section 44 (2), the municipality shall indicate the fact in the registration.

10

• BUCKET #1 – ROLES AND RESPONSIBILITIES

8

Section 42 – Duties of Producers and Intermediaries

- 42 (1) The producer and producer's intermediary shall ensure that:
 - 42 (1).1 Each waste reduction standard and service standard is complied with
 - 42 (1).2 Waste reduction services are in accordance with service agreement 43(1)
 - 42 (1).3 Persons or entities other than producer and intermediary who provide waste reduction services meet waste reduction standards and service standards

11

Bill 91 Part III – Responsibility of Producers and Intermediaries

- Sections 39, 40, 41 and 44 have received considerable attention;
- Section 39 (p 20) – Purpose
 - producers are responsible for waste derived from their products
- Section 40 - Who Is Producer's Intermediary
 - A producer's intermediary with respect to a designated waste derived from a producer's product:

(1) A producer obtains waste reduction services from a person who brokers, arranges for or facilitates the service
 (2) The person or entity is owned, operated, controlled or managed, directly or indirectly by the producer, or by the producer together with one or more other producers

9

Section 43 – Service Agreement

- 43 (1) Producer and producer's intermediary shall enter into a service agreement that
 - (a) contains a detailed description of waste reduction services that intermediary agrees to broker
 - (b) Sets out responsibilities
 - (c) specifies waste reduction standards and service standards that intermediary will meet

12

Section 44 – Producers Responsibilities To Municipalities

- Section 44 (1) applies to:
 - (a) A producer
 - (b) A municipality that has registered in the Registry with respect to a designated waste
- Section 44 (2) - Producer will collect the designated waste from the municipality unless one of the following applies:
 - 1. producer and municipality agree otherwise
 - 2. municipality decides not to make producer responsible for collection and has indicated this in Section 41(4)
 - 3. An act or regulation requires the municipality to collect and process the waste (e.g. Reg. 101/94 mandating Blue Box would apply)

13

Section 44 (4) – Reimbursement

- 44 (4) The producer shall pay the municipality the re-imbursable part of the municipal cost related to:
 - Collection, handling, storage and transportation of designated waste and
 - Its processing and disposal of the designated waste, if an act or regulation requires the municipality to collect and process the designated waste
 - confirmed with MOE this refers to Blue Box

16

Bucket #1 – Roles/Responsibilities Feedback from pre-workshop Participant survey

- Recognizes that municipalities can continue to have a role in waste diversion
- Municipal role beyond Blue Box not clear
- Lack of clarity on roles and responsibilities of producers, intermediaries and municipalities
- Unclear regarding stranded assets (this is a cost and transition issue also)

14

Section 44 (5) – Determination of Amount

- Section 44 (5) The following rules govern the amount of payment (producers to municipalities):
 - 1. Agreement between producer and the municipality;
 - 2. If no agreement, compensation formula established by Waste Reduction Authority in accordance with Section 45
 - 3. If regulated under Section 84, (which lists areas which future regulations may cover) payment will be in regulation
- Either party can ask Authority to facilitate

17

• BUCKET #2 – SYSTEM COSTS AND HOW TO GET PAID

15

Section 45 – Compensation Formula – Rules, Establishment and Publication

- Compensation Formula is established by Waste Reduction Authority if municipality and producer request (they can't agree otherwise)
- 45 (1) public consultation on formula
- 45 (2).3 Compensation formula shall consider reasonable costs of the municipality (or class of municipalities) relating to collection, handling and storage, but not of processing or disposal
- 45 (2).4 if an Act or reg. requires the munic. to collect and process the designated waste (refers to Blue Box), the compensation formula includes reasonable costs of processing and disposal

18

Sections Related to Transition

- Part VII (1)

- Section 90: Existing Waste Diversion programs (Blue Box, MHSW; Tires and WEEE)
- Section 92: MOE may require Authority to change existing programs
- Section 93: Most important section relates to payments to municipalities for Blue Box programs
- Section 94: Existing IFOs may be continued
- Section 110: Rules relating to stewards..
- Section 112: Payment of stewardship fees (including provision for voluntary payments)
- Section 115: Industry Stewardship Plans – Authority may approve; if rejected, Minister may approve
- Section 116: Existing ISPs continue

19

BUCKET #3 – WASTE DIVERSION TARGETS, STANDARDS AND ENFORCEMENT

22

Sections Related to Transition Part VII (2)

- Section 117: Winding Up of Existing Waste Diversion programs and IFOs
- Section 119: Existing Blue Box should not provide for Brewers Retail packaging waste
- Section 125: Part VII Regulations
- Lieutenant Governor in Council may make regulations:
 - (a) prescribing > 50%
 - (b) transfer of assets of existing IFOs
 - (c) winding up existing IFOs

20

Bucket #3 - Waste Reduction Targets and Standards

- All of the detail on standards and targets will be contained in the regulations...
 - Service standards
 - Accessibility standards
 - Processing standards (will be under EPA)
- Part VI - Regulations Under Bill 91 – Devil Is In The Details
- We do not know yet what the Regulations will look like or contain
 - There will be a consultation opportunity on draft regulations...
- Waste Reduction Authority will be responsible for Enforcement

23

Bucket #2 –System Costs and Getting Paid- Feedback from pre-workshop Participant Survey

- Recovering municipal costs – how do municipalities get paid when IFOs disappear; who do they send the bill to?
- Concern about compensation for 400 municipalities from 3,000 stewards
- No compensation for designated materials in litter or landfill
- Need clear definition of “reasonable costs”
- Talk about 50% too vague
- Blue box should be removed from WRA and addressed separately
- Impacts of Bill 91 on integrated waste management
- Stranded assets – municipalities with large investment in MRFs....

21

Part V – Enforcement – Waste Reduction Authority Responsible

- Waste Reduction Authority responsible for enforcement (Sections 56-79; Pages 27-47)
- Section 65: An inspector may issue an order against:
 - A producer
 - A producer's intermediary
 - The seller of a product of which Part IV (integrated pricing) applies
- The order may require (a) achieving compliance with a waste reduction standard or a service standard
- ...submitting a plan, etc.
- Section 67: Administrative penalties

24

Part VI - Regulations Under Bill 91

- Regulations made by Lieutenant Governor in Council (bumped up from MOE)
- Section 82 – Regs. related to the Authority
- Section 84 – Regs. related to producers and intermediaries (designated waste; compensation formula)
- Section 85 – Regs. related to Part V (enforcement)

25

Waste Reduction Authority Powers and Responsibilities (1)

- WDO transitions to Waste Reduction Authority
- Powers described in:
 - Section 7 – lays out powers and responsibilities of Authority
 - Section 11 (Page 10) – Minister may issue policy directions to Authority if he/she considers it is in the public interest to do so
 - Section 12 – establish Advisory Councils
 - Section 88 (Part VII responsibilities and powers related to existing IFOs and programs)
 - Others...see later slides

28

Bucket #3 –Waste Diversion Targets, Standards and Enforcement – Feedback from pre-workshop Participant Survey

- Threat of decline in service levels with competing producer-led schemes
- Concern re transfer of responsibility to producers
- Resident confusion and thus less waste diverted

26

Part II –Waste Reduction Authority Powers and Responsibilities (2)

- Section 7 (page 6): WDO transitions to Waste Reduction Authority whose “objects” are:
 - (a) Ensure waste reduction is carried out according to the Waste Reduction Act;
 - (b) Educate producers, intermediaries, providers of waste reduction services, consumers and the public about the Waste Reduction Act;
 - (c) Establish a Compensation Formula for each designated waste;
 - (d) facilitate disputes between producers and municipalities

29

• **BUCKET # 4 – WASTE REDUCTION AUTHORITY...**

27

Waste Reduction Authority Powers and Responsibilities (3)

- e) public consultation
- f) advise the Minister
- g) engage in activities set out in the operating agreement between the Authority and the MOE
- h) determine the amount of money needed by the Authority
- i) other actions identified through regulations

30

Waste Reduction Authority Powers and Responsibilities (4)

- Section 32 (Page 15) – establish and maintain the Waste Reduction Registry (public, electronic)
 - Producers register per Section 41 (1)
 - Intermediaries register per Section 41 (2)
 - Municipalities register per Section 41 (3)
- Public notices of orders issued
- Public access to compensation formulas established under Section 45

31

• BUCKET #5 - WASTE REDUCTION STRATEGY

34

Waste Reduction Authority Powers and Responsibilities (5)

- Section 88 – Part VII (Existing Waste Diversion Programs and IFOs) Objects Of the Authority
- The Authority shall:
 - Operate existing waste diversion programs
 - Enhance public awareness
 - Seek to ensure fairness in marketplace
 - Determine \$ needed by Authority and existing IFOs
 - Establish a dispute resolution process
 - Maintain plans approved under Section 115 of existing WDA (ISP)
 - Monitor effectiveness of ISPs under Section 115 of existing WDA

32

Bill 91 and the Waste Reduction Strategy are closely linked

- The Strategy and proposed Act set out the province's roadmap for overcoming identified barriers to waste diversion and to harness the economic and environmental value of waste
- The Strategy describes the Vision, sets results and provides a blueprint of how we can get there through concrete actions, including the implementation of the Waste Reduction Act

Bucket #4 – Waste Reduction Authority – Feedback from pre-workshop Participant Survey

Support role as enforcement agency

- Concern re significant powers
- Concern re significant resourcing required
- Concern re conflict of interest – e.g. setting compensation formula with municipalities and producers, BUT also paying WRA operating costs
- Governance of Authority – no representation of municipal interests?

33

Five “highlights” of the Act are identified in the background strategy paper

- Makes individual producers responsible for products and packaging
- Kick starts waste diversion/recycling in the ICI sector (by designating ICI PPP as a start)
- Recognizes the important role played by municipalities – e.g. by lifting the producer cap on 50% Blue Box Funding
- Protect consumers from “surprise eco-fees”
- Transforms WDO into the Waste Reduction Authority

The strategy identifies specific steps to increase recycling in Ontario

- Building on Blue Box success, designate ICI PPP as the next waste to target
- Developing recycling standards for end-of-life vehicles
- Develop a strategy to increase organics diversion
- Ban designated waste from landfill
- Transition the existing waste diversion programs to the new IPR framework

Short Term Actions in Strategy (1-2 Years)

- Consult on Blue Box funding model and roles and responsibilities
- Consult and complete transition of WEEE
- Begin transition of MHSW
- Consult on designating ICI paper and packaging
- Begin review of 3Rs Regs.
- Consult on and implement new ELV recycling standards
- Consult on designating additional wastes (e.g. organics)
- Consult on use of disposal bans
- Consult on a strategy for organics diversion put into 4 years and beyond timeline....

“Increase municipal support for recycling” from the Strategy Two “tools” to do this are described in the Strategy:

- Define municipal role on collecting designated wastes and ensure their reasonable costs are reimbursed
- Ensure effective dispute resolution processes

Waste Reduction Strategy – Medium Term (2-4 Years) Actions

- Continued consultation on Blue Box
- First steps to increase funding and responsibility; begin transition
- Complete MHSW transition
- Begin transition of used tires
- Designate a subset of ICI paper and packaging under proposed Act
- Continue implementation of ELV standards
- Designate additional wastes – possibly carpets and additional WEEE products
- Ban WEEE from disposal once transition is complete
- Continue to consult on a strategy for organics diversion

“Producers, municipalities and service providers will (also) need to address key issues”, such as:

- Roles and responsibilities for collection and post-collection management of Blue Box material
- Opportunities to harmonize types of materials & type of collection activities
- How to address municipal infrastructure investments to support the BB program and the status of existing collection/post collection contracts
- Opportunities to lower overall costs through greater harmonization of Packaging and Printed Paper (PPP) management

Waste Reduction Strategy Long Term Actions (4 Years +)

- Continue transition of Blue Box program
- Complete transition of used tires
- Continue phase in of additional ICI paper and packaging
- Continue to consult on ELV additional measures
- Continue to designate wastes, possibly non-food organics and bulky items
- Ban MHSW from disposal once transition is complete
- Continue to consult on a strategy for organics diversion

Strategy Summary

- The Strategy and the Act are linked: the Strategy presents a vision and blueprint; the Act represents the concrete implementation actions
- BUT, the devil is in the details of the Act and subsequent Regulations – open to a fair degree of interpretation
- As noted, the Strategy presents opportunities/issues for municipalities to consider

EPR & IPR

- EPR is “an environmental protection strategy to reach the objective of decreased environmental impact of a product by making the manufacturer responsible for its life cycle (including take-back, recycling & disposal)”
- Under IPR, producers are individually responsible (financially, physically and/or legally) for their own products at end of life

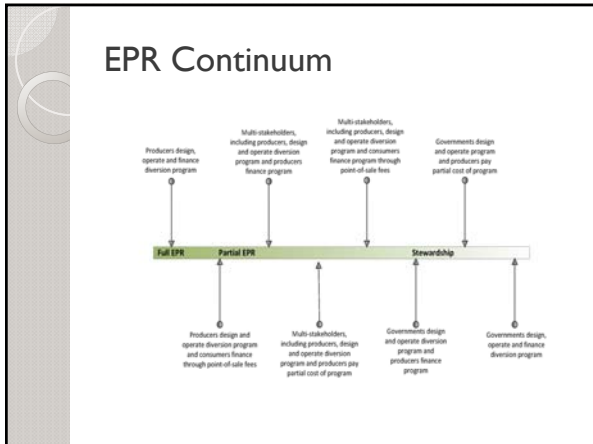
Bucket #5 – Waste Reduction Strategy – Feedback from pre-workshop Participant Survey

- Interest in collecting ICI from SME’s – i.e. there is a municipal role
- Economies of scale using MRFs for ICI
- Support ICI printed paper and packaging being designated
- Organics – varying opinions...
- Bill conflicts with Reg. 101/94

Key elements of IPR

- Producers are responsible for designing, establishing and ensuring the successful operation of diversion programs for obligated materials.
- Producers may choose to fulfill their obligations through some form of collective effort, but they remain ultimately responsible for their materials.
- The core concept is that a single entity – the obligated producer – is clearly and fully responsible for waste diversion outcomes

DEFINITION OF EPR AND IPR



ANTICIPATED STEWARD VIEWS ON BILL 91

49

Blue Box Cost Containment Plan

- Drafted co-operatively by municipal and steward representatives through MIPC
- Proposed to fund municipalities based on best practice costs by 2008
- Approved by Minister in July 2005
- Since 2005, concerted effort to define best practices, compile operating data, develop methodology to fund municipalities based on best practices
- Notwithstanding these efforts, payments from stewards to municipalities increasingly source of debate, dispute, acrimony, frustration

52

How did we get here (1)

- Mid 1980s to mid 1990s
 - MOE and stewards contributed funding to help establish municipal curbside recycling programs
 - MOE and stewards each contributed 1/3 of municipal costs for blue boxes, collection vehicles, processing equipment
 - MOE also contributed to municipal operating costs
 - MOE implemented Reg. 101 (1994) mandating municipal collection of Blue Box Waste
 - MOE ended funding of municipal Blue Box programs
 - With the result that, by mid 1990s, municipalities were responsible for delivering/paying for Blue Box programs

50

Where are we now?

- With the result that
 - Stewards and municipalities are at odds – not effective partners
 - Municipal frustration leading to
 - Requests for government intervention to set steward payments
 - Steward frustration leading to
 - Requests to move away from steward taxation – payment without ability to manage costs – to full producer responsibility
- Question - how to bridge this gap in a way that delivers
 - Good service to residents
 - Increased diversion
 - Producer responsibility benefits from 'closing the loop'
 - Costs accepted as best value by those responsible for paying them

53

How did we get here (2)

- Mid 1990s to early 2000s
 - Municipalities lobbied for reinstatement of Blue Box program funding
 - MOE responded with Waste Diversion Act which required stewards to fund 50% of net municipal system cost
 - When approving Blue Box Program Plan in December 2003, Minister asked WDO to develop plan to contain Blue Box program costs

51

Why Producer Responsibility?

- Producers have a unique ability to effect change through the entire life-cycle of a product or package
 - From design to utilization as secondary resources
- Producer responsibility represents the only approach that can address fundamental problem of 'waste'
 - Waste is symptom of an unsustainable society
 - Municipalities only able to manage at end-of-pipe
 - Producers can
 - Address product/packaging design
 - Close the loop by utilizing collected materials as input to their manufacturing processes

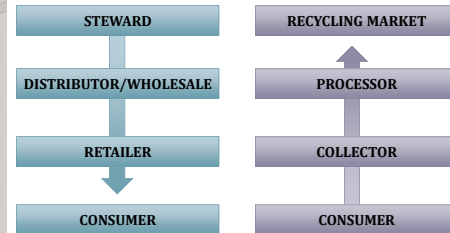
54

Overview of Steward Sector (1)

- ‘Steward sector’ includes
 - Manufacturers
 - That act only as manufacturers
 - That operate their own retail system e.g.
 - Telecom (Bell, etc.), local agricultural (Algoma, dairies, etc.)
 - Retailers
 - That act only as retailers
 - That manufacturer their own private label brands

55

Alignment of Supply Chains



58

Overview of Steward Sector (2)

- Challenges to stewards acting as cohesive unit
 - Dynamic tension between manufacturers and retailers
 - Some common interests but also distinct self-interests
 - Manufacturers need retailers to get their products to consumers but must negotiate access e.g. shelf space, visibility, etc.
 - Retailers use their position as conduit to negotiate price, transport packaging requirements etc.

56

Steward Sector Views on Bill 91

- General alignment on some issues
 - Differing reactions on other issues
- Issues with general alignment
 - Role of Authority
 - Rights of municipalities
 - Responsibilities of producers
- Example of issue with differing reactions
 - Eco fees

59

Overview of Steward Sector (3)

- Challenges to stewards acting as cohesive unit (con't)
 - Some stewards have embraced producer responsibility
 - Seeking to integrate sustainability as a core business activity
 - Recognize customers' loyalty is affected by whether products/packaging are accepted in recycling collection systems
 - Other stewards resist taking on new responsibility/costs
 - Multitude of arguments – responsibility ends at sale to consumers; can't affect what consumers do; sector can't survive new costs; level playing field not possible; special status
 - Those embracing EPR are working to bring on resisters but it is a work-in-progress

57

Role of New Authority (1)

- Overview
 - Combines investigation, enforcement and adjudication in single entity
 - Government plans to 'transform' WDO into new entity which will have triple role during transition
 - Overseeing existing program plans
 - Winding down IFOs
 - Regulating new regime
 - View current entity as having history of bias and politically motivated action
 - Distrust promise of transformation

60

Role of Authority (2)

- 7(a) 27-33, Part V, Part Vi: Authority to require information, undertake inspections, seize information, issue orders, etc. re enforcement
 - Concerns that powers will be used to prescribe means rather than assess outcomes
 - Concerns Authority will be biased and politically motivated
- 7(d)(e)(f): Involves Authority in development of waste management policy, public consultation
 - Concerns about policy/enforcement overlap and lack of objectivity

61

Rights of Municipalities (2)

- Part VII: Because Reg. 101 includes collection and processing, compensation formula determined through Cabinet Regulation
 - Could migrate to Part III (under which Authority would determine compensation formula for collection services only) through repeal/changes to Reg. 101
- 32(2), 41(3): Provides municipalities with right to register in respect to designated waste to establish its right for compensation for collection costs in respect of that waste
 - Could be used if ICI printed paper and packaging designated

64

Role of Authority (3)

- 7(c): Authority can establish funding model and facilitate resolution of related disputes
 - Concerns about of lack of objectivity, bias, politically motivated action
- 117: Authority can appoint administrator to wind up existing program and IFO or can take over IFO in absence of IFO Board quorum; 125: Government control over transfer of assets, etc. of existing IFOs
 - Transition should be agreed
 - Through arbitration/mediation if necessary

62

Responsibilities of Producers (1)

- Overview
 - Built on assumption that local governments are responsible for designing, delivering and managing recycling services
 - Producer responsibility is defined as payment for their materials in municipal systems
 - Producers view this as taxation, not producer responsibility
- Contrary to stated purpose
 - Section 39: "The purpose of this part is to make producers responsible for waste derived from their products"

65

Rights of Municipalities (1)

- Overview
 - Producer responsibility being interpreted and implemented as responsibility to municipalities
 - Form of taxation rather than producer responsibility
 - Should be interpreted and applied as producer responsibility for end-of-life management

63

Responsibilities of Producers (2)

- 42: Requires producers to meet waste reduction and service standards for a designated material
 - Standards to be defined by regulation
 - Reinforces producers' view that payments to municipalities are form of taxation, not producer responsibility
- 42(3): Enables producer to meet requirement by managing any waste in the same class as the designated waste
 - Concerns will contribute to cherry picking
- 41(1), 32(2): Requires producers and intermediaries to register with Authority
 - Concerns over Authority (current WDO transitioned) having commercially sensitive steward data

66

Responsibilities of Producers (3)

- 42(1)(1): Both producers and intermediaries accountable for meeting standards
 - Concerns will lead to finger pointing, disputes, litigation
 - Under IPR, producers should have sole responsibility
- 43: Sets out requirements for intermediary agreements
 - Should be left to parties to establish commercial arrangements

67

Varying Views on Eco-Fees

- Not relevant issue for some manufacturers or most municipalities
 - Blue Box stewards incorporate fees into cost of product
- Some stewards likely to resist
 - WEEE and tires stewards particularly concerned
 - EPR costs can vary significantly by jurisdiction which presents problems for sectors that rely on national pricing; want to externalize EPR costs to maintain integrity of national pricing
- Retailers likely to resist
 - Want flexibility for large/small retailers to determine best approach for their business model

68

Summary of Bill 91

- Questions
- Answers
- Discussion

69