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A Brief History of Waste Diversion in Ontario

A background paper on the review of the *Waste Diversion Act*

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When Ontario residents think about waste diversion, they probably think about the Blue Box. For many years now, most of us have been putting our pop cans, glass jars and old newspapers into a Blue Box for curbside recycling. Although the materials put into the box vary from municipality to municipality, we all do it. Yet we rarely ask ourselves why we do it. Why do we use a Blue Box? Why do we recycle pop cans and bottles instead of returning them and collecting a deposit as we do with wine and beer bottles? Why do we recycle some materials and not others?

These questions were the subject of an ongoing debate in Ontario for many years that culminated in the creation of the *Waste Diversion Act* and established how we recycle today. As Ontario considers making changes to its *Waste Diversion Act* during the current review, it is useful to consider the Act's history. This background paper is intended to provide readers with a better understanding of the history of how Ontario's *Waste Diversion Act* came into effect.

Additional background materials can be downloaded from www.cielap.org.

From Refillables to Recyclables

There was a time when refillable glass bottles were the only soft drink containers used in Ontario. During the 1960s, soft drink brand owners introduced soft drinks in non-refillable cans, claiming that they were safer and more convenient for customers because they would not break. Non-refillable containers also saved money for the soft drink industry and retail stores since they no longer had to collect and process the refillable containers. Not surprisingly, the number of refillable bottles in the market decreased steadily from that time on, to 55 percent of total sales in Ontario by 1971.¹

This new trend in packaging resulted in a lot more garbage. Waste management became a top priority for the Ministry of the Environment (MOE), which had been established in 1971. Environmental groups pressured the government for a deposit-return refillable system to protect the environment by reducing litter and to promote local bottling.² MOE responded by amending the *Environmental Protection Act* to require the phase-out of non-refillable containers over five years, beginning July 1977.³ Industry launched significant opposition, however, predicting that there would be job losses and the closure of capital facilities if the regulations were implemented.⁴ The government broke its election promise to approve implementation regulations by the end of 1977. Instead, it made an informal agreement with the soft drink industry that at least 75% of their products by volume would be sold in refillable bottles. Industry never met the terms of this agreement,⁵ but it did set a precedent for a waste policy regime in Ontario that was based on voluntary compliance rather than regulation.⁶

Birth of the Blue Box

By the early 1980s, Ontario faced a looming crisis in landfill capacity. The number of refillables on the market continued to decrease as the number of non-refillable containers increased. A number of companies joined together to form the Recycling Support Council, which offered to contribute \$1 million to the province to launch a publicly-funded curbside system if the soft drink regulations were changed.⁷ This model was supported at the time by a few environmental groups, but most opposed it and continued to advocate for a deposit-return system.⁸

After convening multi-stakeholder discussions in the mid-1980s, the provincial government made Regulations 340 and 357 under the *Environmental Protection Act* to promote recycling while trying to ensure that refillable soft drink containers would continue to be sold. The regulations initially required soft drink distributors and brand name owners to bottle only 40 % (and later 30%) of soft drinks in refillable container.⁹ The remainder could be bottled in any recyclable container, but there was also a requirement that 50% of those recyclable containers would be being recycled by December 1988.¹⁰ In order to achieve this, many suggested that curbside recycling programs were needed.

In response, the Ontario Soft Drink Association established the Ontario Multi-Materials Recycling Incorporated (OMMRI), an industry-funded organization, in 1986.¹¹ OMMRI initially promised \$1.5 million in funding to develop a Blue Box system, but in February 1987 this was increased to \$20 million over four years.¹² The provincial government and municipalities provided matching funds for Blue Box program implementation.¹³

Despite the regulatory requirement that the industry continue to use refillable containers, refillable soft drink sales in Ontario continued to decline from a 40% market share in 1986 to 3% by 1993.¹⁴ At the same time, the popular Blue Box program grew and expanded across the province.¹⁵

Ontario's Waste Reduction Action Plan and the 3Rs Regulations

During the late 1980s and early 1990s, the Ontario government introduced new policy programs aimed at waste diversion. In March 1989, MOE announced new diversion targets of at least 25% of Ontario's solid waste from disposal facilities by 1992, and at least 50% by the year 2000.¹⁶ Two years later, following the election of a New Democratic Party (NDP) government in 1990, the Minister of the Environment launched the Waste Reduction Action Plan (WRAP) in February 1991. WRAP included a number of initiatives to promote waste diversion and the 3Rs: regulatory measures; financial and technical support; public education; and the development of markets for recyclable materials.¹⁷

MOE introduced new regulations in 1994: the 3Rs (Reduction, Reuse and Recycling) Regulations under the *Environmental Protection Act* were intended to be an integral means of achieving the objectives of WRAP. They consisted of four regulations applying to non-hazardous waste:

- Recycling and Composting of Municipal Waste (O. Reg. 101/94)
- Waste Audits and Waste Reduction Work Plans (O. Reg. 102/94)
- Industrial, Commercial and Institutional Source Separation Programs (O. Reg. 103/94)
- Packaging Audit and Packaging Reduction Work Plans (O. Reg 104/94)

O. Reg 101/94, which remains in effect, requires every municipality with a population of at least 5,000 residents to operate a Blue Box waste management system accepting at least five mandatory materials, as well as two other materials that could be selected from a schedule by each municipality. The mandatory materials set out in the regulation are aluminum containers, glass containers, newsprint, polyethylene terephthalate (PET) plastic bottles and steel containers.¹⁸ The regulation also included requirements for the establishment of leaf and yard waste composting systems.¹⁹ Figures suggest that this regulation made some initial progress on

diversion rates.²⁰ However, while Ontario successfully met its first goal of diverting at least 25% of waste by 1992, the overall diversion of solid waste (including residential and industrial, commercial and institutional) remained stalled at about 28% in 2002.²¹

Funding the Blue Box Program

While the Blue Box program expanded to more municipalities in Ontario, funding for the program remained a significant problem as the revenues of the recycled materials failed to reach expected levels but the provincial subsidies were due to expire by 1990.²² It was apparent that industry funding would be needed to continue running the Blue Box Program. This was reinforced by industry's perception that the new NDP government was considering the introduction of some form of "product stewardship" that would make manufacturers financially or physically responsible their products at the end of their useful life.²³

In response, a number of industry associations began to lobby for a Canadian Industry Packaging Stewardship Initiative (CIPSI) as an alternative to an expanded deposit return system proposed by the Government of Ontario in December 1992.²⁴ The CIPSI coalition recommended the creation of an industry-managed fund to help municipalities with up to two-thirds of the costs of recycling packaging as well as provide support for market development.²⁵ It also proposed that provincial legislation be passed to require that all relevant industries participate in the funding program.²⁶

Although the Ontario Ministry of Environment and Energy eventually endorsed the CIPSI proposal in 1994 and started to develop backdrop regulations, the Association of Municipalities of Ontario (AMO) opposed it due to concerns that newspapers and magazine (which made up over 50% by weight of the Blue Box materials) were not included in the program, and that glass (which had low market value and was difficult to recycle) was included.²⁷ AMO believed that a deposit refund system would be a better option for glass, and felt that the proposal did not provide enough grants for the municipal recycling costs. AMO eventually accepted the proposal in 1995 in order to move forward but it faced further opposition from a number of industry associations.²⁸ The newly elected Progressive Conservative government indefinitely deferred any decision to accept the CIPSI proposal or impose regulations to support it.²⁹ As a result, the proposal for this voluntary initiative died. Industry was also no longer concerned that a deposit return system would be imposed.³⁰

However, funding the Blue Box remained a problem for municipalities. Municipalities were not able to afford the rising costs of the program and became dependent on the provincial government for financial support. One study suggested that between 1985 and 1996, industry paid \$41 million into the Blue Box program, while municipal and provincial governments contributed \$2.33 billion (including landfill costs of \$1.75 billion) over that period.³¹ The attempts of some municipalities to use alternate funding, such as user fees on beverage and newspaper, were rejected as a violation of their constitutional authority.³²

In 1998, the Recycling Council of Ontario (RCO) facilitated a multi-stakeholder consultation to address the issue of blue box funding at the request of the provincial government. The consultation resulted in the Recycling Roles and Responsibilities Final Report,³³ which outlined different options but did not make any recommendations.³⁴ Key municipal actors and environmental groups preferred a deposit-refund system that would transfer the financial burden

from government and taxpayers to private industry and product consumers. The report did observe that changing to a deposit-refund system would have a negative impact on the existing blue box system due to the reduced tonnage in the blue box and the economies of scale.³⁵

By 1999, the Blue Box system was close to financial collapse. In 2000, a number of organizations, including industry associations, AMO and RCO, signed a Memorandum of Understanding with the Ontario Ministry of the Environment to establish the interim Waste Diversion Organization in order to work together to achieve sustainable municipal recycling.³⁶ The Organization produced a report, entitled *Achieving Sustainable Municipal Waste Diversion Programs in Ontario*,³⁷ which led to the creation of the *Waste Diversion Act*.

Waste Diversion Act, 2002

The *Waste Diversion Act, 2002* became law on June 27, 2002 in order to promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs.³⁸ The Act created Waste Diversion Ontario to replace the Interim Waste Diversion Organization and be the primary mechanism for achieving the purposes of the Act.³⁹

On September 23, 2002, Blue Box Waste (consisting of glass, metal, paper, plastics and textiles) became the first waste to be designated under the *WDA*. Stewardship Ontario was named as the Industry Funding Organization for the Blue Box Program.⁴⁰ The Blue Box Program Plan was approved by the Minister of the Environment on December 22, 2003 and went into operation on February 1, 2004. The program requires industry stewards to contribute 50% of the program fees, supplementing the cost to municipalities.⁴¹

For more than four years after it commenced, the Blue Box Program was the only program operating under the *WDA*. This changed in 2008 with the approval of two additional programs, the Municipal Hazardous or Special Waste Program and the Waste Electrical and Electronic Equipment Program.

While the scope of diversion programs under the *WDA* has recently begun to expand, it was primarily introduced to deal with Blue Box wastes, in Ontario's specific political context of the time. It is important to keep this in mind when considering how to broaden and strengthen the Act. Looking beyond the recycling of municipal household wastes, there are clear opportunities to achieve greater waste diversion through provisions aimed at reducing and reusing wastes, advancing Extended Producer Responsibility and targeting industrial, commercial and institutional wastes.

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Endnotes

- ¹ McRobert, David. (1994). "Ontario's Blue Box System: A Case Study of Government's Role in the Technological Change Process, 1970-1991". Osgoode Hall Law School, York University.
- ² Ibid.
- ³ Pollution Probe. (1997). "We Recycle: We are the Creator of the Blue Box Programme". Retrieved from <http://www.pollutionprobe.org/Reports/we%20recycle.pdf> on May 20, 2008.
- ⁴ McRobert, David. (1994). "Ontario's Blue Box System: A Case Study of Government's Role in the Technological Change Process, 1970-1991". Osgoode Hall Law School, York University.
- ⁵ Ibid.
- ⁶ Ibid., Footnote 80.
- ⁷ Ibid.
- ⁸ Ibid.
- ⁹ Pollution Probe. (1997). "We Recycle: We are the Creator of the Blue Box Programme". Retrieved from <http://www.pollutionprobe.org/Reports/we%20recycle.pdf> on May 20, 2008.
- ¹⁰ Ibid.
- ¹¹ Chang, E., MacDonald, D. & Wolfson, J. (1998). "Who killed CIPSI?" in *Alternatives*, 24(2), pp. 21-25.
- ¹² McRobert, David. (1994). "Ontario's Blue Box System: A Case Study of Government's Role in the Technological Change Process, 1970-1991". Osgoode Hall Law School, York University.
- ¹³ Ibid.
- ¹⁴ Ferguson, Derek. (1993). "NDP record on refillables criticized". *The Toronto Star*, November 24 1993. P. A10.
- ¹⁵ Pollution Probe. (1997). "We Recycle: We are the Creator of the Blue Box Programme". Retrieved from <http://www.pollutionprobe.org/Reports/we%20recycle.pdf> on May 20, 2008.
- ¹⁶ Meadu, Vanessa Natalie. (2006). "Paths to a Waste-Free Society? Extended Producer Responsibility Policies in British Columbia and Ontario." Master of Arts thesis, UBC, at 38.
- ¹⁷ McRobert, David. (1992). "Reforming Legislation and Regulations to Promote the 3Rs: Some Observations on Ontario's Waste Management Act, 1992 and the Proposed 3Rs Regulations." Retrieved from http://www.lacieg2s.ca/law/wma-3r.htm#_ftn7 on November 11, 2008.
- ¹⁸ O. Reg. 101/94, s. 7-10, schedules 1-3.
- ¹⁹ O. Reg. 101/94, s. 11-15.
- ²⁰ In 1987 less than 0.5 million households in Ontario had access to multi-material recycling. After the implementation of the O. Reg 101/94, over 3.8 million households had access to the Blue Box and other waste diversion services in more than 500 municipalities in late 1990s. (Recycling Council of Ontario. "Recycling Trends in Ontario". March 2000.)
- ²¹ Ministry of the Environment, *Ontario's 60% Waste Diversion Goal - A Discussion Paper*, June 10, 2004 at 1. Retrieved from <http://www.ene.gov.on.ca/programs/4651e.pdf> on November 18, 2008.
- ²² Chang, E., MacDonald, D. & Wolfson, J. (1998). "Who killed CIPSI?" in *Alternatives*, 24(2), pp. 21-25.
- ²³ Ibid.
- ²⁴ Ibid.
- ²⁵ Ibid.
- ²⁶ Ibid.
- ²⁷ Ibid.

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- ²⁸ Ibid.
- ²⁹ Ibid.
- ³⁰ Ibid.
- ³¹ Menzies, David. (1997). "Waste Blues — Curbside Recycling Reassessed". *The Financial Post Magazine*. September, 1997. Retrieved from <http://www.web.net/~jjackson/wstblues.html> on May 20, 2008.
- ³² Simon, Judy & William, James.. "The Future of Ontario's Blue Box Program". *Municipal World Magazine*. October 1998. Retrieved from [http://indec.com/Files.nsf/Lookup/blueboxpdf/\\$file/Bluebox.pdf](http://indec.com/Files.nsf/Lookup/blueboxpdf/$file/Bluebox.pdf) on November 18, 2008.
- ³³ Recycling Council of Ontario. (1998). "Recycling Roles and Responsibilities Final Report". Retrieved from <http://www.rco.ca/Roles/Final%20Report/final1.htm> on May 20, 2008.
- ³⁴ Ibid.
- ³⁵ Ibid.
- ³⁶ Corporations Sharing Responsibility (CSR) website, Interim Waste Diversion Organization. Retrieved from <http://www.csr.org/archives/iwdo.htm> on November 18, 2008.
- ³⁷ Ontario Waste Diversion Organization, *Achieving Sustainable Municipal Waste Diversion Programs in Ontario*, September 1, 2000. Retrieved from http://www.csr.org/wdo/iwdo_reports/sept1report/sept1full.pdf on November 18, 2008.
- ³⁸ *Waste Diversion Act 2002*. S.O. 2002, c. 6, s. 1.
- ³⁹ *Waste Diversion Act 2002*. S.O. 2002, c. 6, s. 3-22.
- ⁴⁰ O. Reg. 273/02.
- ⁴¹ Waste Diversion Ontario website, Blue Box Program Plan. Retrieved from <http://www.wdo.ca/content/?path=page80+item34912> on November 19, 2008.