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February 27, 2009

Ms. Glenda Gies
Waste Diversion Ontario
45 Sheppard Avenue East
Suite 920
North York, Ontario
M2N 5W9

Submitted by electronic mail

Dear Ms. Gies,

Re: Comments on Waste Diversion Ontario's *Draft Preliminary Report for Consultation – Blue Box Program Plan Review*

I am writing on behalf of the Canadian Institute for Environmental Law and Policy (CIELAP) to provide comments on Waste Diversion Ontario's (WDO's) *Draft Preliminary Report for Consultation – Blue Box Program Plan Review*. CIELAP was founded in 1970, with the mission to provide leadership in the research and development of environmental law and policy that promotes the public interest and sustainability. CIELAP has been involved in research and policy development on both solid and hazardous waste management since the 1980s and has released reports addressing incineration, hazardous waste and electronic waste in recent years. Most recently, CIELAP published *An Options Paper on Ontario's Review of the Waste Diversion Act* in February 2008. All of our reports are available on our website at www.cielap.org.

CIELAP strongly supports the introduction of full Extended Producer Responsibility (EPR) into the Blue Box Program Plan (BBPP) and commends WDO for the extensive consultation it has undertaken in response to the Minister of Environment's review request. CIELAP supports many of the proposed recommendations included in WDO's *Draft Preliminary Report*. However, CIELAP has significant concerns about the proposal that certain materials be directed to "dirty" material recycling facilities (MRFs) to be processed as refuse derived fuel pellets for energy recovery, and count towards BBPP recovery targets. I will expand on these concerns below.

Extended Producer Responsibility

In the *Draft Preliminary Report*, WDO highlights the different perspectives it heard during its initial consultation process. CIELAP agrees with a number of the important points summarized in that section of the report, including the following:

Advancing the Environmental Agenda

- A producer's responsibility under EPR should not be limited to financial responsibility for the management of products and packaging but should further extend to physical responsibility for the management of products and packaging, including responsibility for achieving program performance objectives, in accordance with a full responsibility model.
- A producer's responsibility under EPR should go beyond responsibility for recycling products or packaging, to responsibility for: reduction in the quantity of primary or secondary materials (weight and/or volume) used to manufacture a product or package, and/or the toxicity or other characteristics that affect the environmental impact of the product or package; and reuse of the product or package.
- In a full EPR regime, it is important to ensure that industry operates within provincial regulations and policy directions and does not simply seek the lowest cost system design, which may not bring the desired environmental objectives.
- Under full EPR, industry must be required to operate within defined program performance and policy objectives, including material specific and accessibility targets and defined service levels.
- Producers should be responsible for all products and packaging put into marketplace including items that are not properly separated, and remain in garbage and litter.
- Industry should be able to effectively market diversion to residential generators, given its success in marketing products and packages to consumers.
- High diversion targets set by the Minister of the Environment, with penalties for non-performance, will prompt industry to move to: ensure consistency in materials collected; educate residents; and find cost-effective ways to handle problematic wastes, as well as cost-effective collection systems to increase diversion.

Environmentally Responsible Management of Blue Box Wastes

CIELAP supports WDO's proposed actions to that Blue Box wastes are managed in an environmentally responsible manner through material tracking systems and the promotion of Ontario processing and end markets. CIELAP is concerned that some Blue Box wastes currently are shipped to countries such as China and South Korea where there is evidence of poor occupational health and safety conditions that have led to worker injuries and deaths. Shipping Blue Box wastes to foreign markets also results in additional greenhouse gas emissions that contribute to climate change.

Energy Recovery from Dirty MRF Materials

As noted above, CIELAP is very concerned about the recommendations in WDO's Draft Preliminary Report that certain materials be directed to "dirty" MRFs be processed as refuse derived fuel pellets to be used for energy recovery, and that this count towards BBPP recovery targets (raised in Draft Recommendations #1, 11, 18, 19, and 20). CIELAP is opposed to this proposal on the basis of concerns that remain about the potential health impacts of waste-to-energy technologies, and the fact that the use of incineration is not compatible with Ontario's waste diversion program, and should not be considered a form of waste recovery.

We refer WDO to CIELAP's 2007 report, *Ontario's Waste Management Challenge: Is Incineration an Option?*, available on our website. In this report, CIELAP found that while proponents of new incineration technologies argue that they have become cleaner and safer, evidence of environmental and human health concerns continue to exist. CIELAP urged the Ontario Government to fund an independent, fair and impartial study of the true costs of incineration and a scientific assessment of the risks and benefits of incineration technologies currently available in order to raise public awareness and inform decision-making. As far as CIELAP is aware, this has not yet been done. CIELAP also urged the Government to evaluate incineration technology primarily on the basis of whether or not it is an appropriate means of waste disposal, rather than as a means to provide energy.

In the 2007 report, CIELAP also recommended that the provincial Government establish a strong, effective and comprehensive provincial waste management policy that focuses on waste diversion and includes enforceable reduction targets and timetables, and develops provincial regulations and coordinated regional approaches to using the best available technology for dealing with residuals. This waste management policy planning process should be completed prior to any consideration of the use of waste for energy recovery in the BBPP. In developing waste management policy, the Ontario Government should make use of life cycle analysis methods to consider all of the environmental, economic and social costs implicit in the various options for managing waste.

Due to the fact that an independent assessment of the true costs of incineration has not yet been conducted, and provincial waste management policy planning has not yet been completed, CIELAP does not support WDO's recommendations that materials be directed to "dirty" MRFs be processed as refuse derived fuel pellets to be used for energy recovery, and that this count towards BBPP recovery targets.

Support for Specific WDO Recommendations

In summary, CIELAP supports many of the recommendations proposed by WDO in its *Draft Preliminary Report for Consultation – Blue Box Program Plan Review*, with the exception noted above of recommendations aimed at energy recovery from materials in dirty MRFs. CIELAP is particularly supportive of the following recommendations:

- Draft Recommendation # 6 – to support the material specific recycling targets with a financial penalty that is set at a value that is higher than the cost of achieving the increased target with the penalty to be utilized to support waste diversion.
- Draft Recommendation # 8 – to minimize the introduction of problematic Blue Box products or packaging into the Ontario marketplace by implementing an advisory service to respond to steward inquiries about compatibility of new Blue Box products or packages with the Blue Box collection and processing system.
- Draft Recommendation # 9 – to address management of problematic Blue Box products or packaging once introduced into the Ontario marketplace by:
 - implementing a regulatory mechanism to prevent moving a product or package from one collection system to another collection system unless the diversion rate for that item will be increased; and
 - authorizing WDO to identify problematic materials, evaluate options for collecting and managing the materials in co-operation with Stewardship Ontario and provide direction to Stewardship Ontario on the management of problematic materials.

- Draft Recommendation # 10 – to assure that Blue Box wastes are managed in an environmentally responsible manner by:
 - establishing a material tracking system from collection to final disposition; and
 - promoting Ontario processing and end markets as part of Ontario’s green economy.
- Draft Recommendation # 11 – (support only for elements of this recommendation that do not urge the introduction of energy recovery from dirty MRF materials) to revise the Blue Box Program Plan steward fee structure to increase waste diversion by:
 - incorporating penalties for materials that do not achieve material-specific targets into the fee setting methodology; and
 - incorporating any costs incurred to operate or provide incentives to non-municipal collection systems.
- Draft Recommendation # 12 – to request that the Minister establish a clear policy framework, including program performance, accessibility and service standard objectives, for the Blue Box Program Plan under full EPR within which stewards will develop operational objectives and establish program metrics.
- Draft Recommendation # 13 – to move the municipal delivery of Blue Box services under the Blue Box Program Plan towards full EPR funding over a five year period in the following phases:
 - Phase 1: Planning
 - The IFO will develop a detailed operations plan that addresses the transition process.
 - Phase 2: Financial EPR
 - The IFO will assume full financial responsibility for the Blue Box system at a date specified during the five year transition period by contracting for collection and processing services directly with service providers where municipal contracts have expired and, where municipal contracts continue to operate during Phase 2, by offering to contract with municipalities on a fee-for-service basis.
 - Phase 3: Physical EPR
 - The IFO will assume physical responsibility as existing municipal service provider contracts expire and would be responsible for establishing new contracts.
 - The IFO will continue to contract with municipalities on a fee-for-service basis where contracts extend beyond the five year transition period on an exception basis until the entire system has been shifted to the management of stewards.
- Draft Recommendation # 15 – to establish a system to compile data on IC&I sector diversion activities and determine an IC&I recycling rate by compiling:
 - the denominator from:
 - stewards’ sales into the marketplace through reports to an IFO (if determined to be feasible); or generators’ quantity of Blue Box materials purchased under an amended Regulation 103 or an IFO’s material tracking system; and
 - the numerator from:
 - generators’ quantity recycled under an amended Regulation 103 or an IFO’s material tracking system; or

- service providers' quantity recycled under an amended Regulation 103 or an IFO's material tracking system.
- Draft Recommendation # 16 – to assess if, and how, the Blue Box Program Plan could be extended to include Blue Box wastes generated by the IC&I sector under full EPR by:
 - assessing whether stewards can identify sales into the IC&I sector for purposes of reporting sales to Stewardship Ontario;
 - assessing, within one year after baseline data has been compiled, whether an incentive model or a fee-for-service model could be utilized by stewards to increase collection and recycling of Blue Box wastes generated by the IC&I sector.
- Draft Recommendation # 17 – to increase collection of Blue Box waste by:
 - educating the public to reduce the generation of printed paper and package waste, use collection systems (to improve capture rate) and to use these systems correctly (to reduce contamination);
 - encouraging municipalities to utilize the full range of available tools to restrict disposal (e.g. disposal bans, bag limits, clear bags, bi-weekly garbage collection, etc.) and increase the cost of disposal (e.g. garbage fees); and
 - considering other collection options (e.g. private depots, return-to-retail, etc.) taking into account the effect of parallel systems on system inefficiencies and consumers.
- Draft Recommendation # 20 – (support only for elements of this recommendation that do not urge the introduction of energy recovery from dirty MRF materials) to address Blue Box wastes that are collected beyond municipal curbside and depot or disposed as waste or litter through steward responsibility by incorporating the following costs in the calculation of the BBPP cost and stewards' fees:
 - public education to use Blue Box material collection systems correctly; and
 - other collection systems (e.g. private depots, return-to-retail, etc.).
- Draft Recommendation # 22 - to expand the Blue Box Program Plan to include additional wastes already designated by the Blue Box Waste regulation but excluded from the BBPP definition of printed papers and packaging by establishing a process to evaluate whether specific products and/or packages should be added to the Blue Box Plan using criteria including but not limited to:
 - sufficient collection capacity;
 - compatibility with collection systems;
 - sufficient processing capacity;
 - compatibility with processing systems;
 - available end market capacity;
 - clarity for the consumer;
 - ability to track the material from collection to final disposition; and
 - ability of the IFO to levy a steward's fee that meets the nexus test.
- Draft Recommendation # 23 – to refer products and packages that may fall under the Blue Box Wastes Regulation deemed unacceptable for inclusion in the Blue Box Program Plan for consideration as a separate diversion program plan.

Thank you for the opportunity to comment on WDO's draft preliminary report and proposed recommendations. Please contact me or Maureen Carter-Whitney, CIELAP's Research Director, if you wish to discuss any of these comments further.

Yours sincerely,

A handwritten signature in black ink that reads "Anne Mitchell". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Anne Mitchell
Executive Director

Cc: Hon. John Gerretsen, Minister of the Environment