



March 12, 2012

Catherine Brooks  
Senior Policy Advisor  
Ministry of the Environment  
Integrated Environmental Policy Division  
Waste Management Policy Branch  
135 St Clair Avenue West, Floor 7  
Toronto ON M4V 1P5

Dear Ms. Brooks

**Re: Proposal for New Governance Structure for Waste Diversion Ontario**

1. The Canadian Wireless Telecommunications Association (CWTA) is the authority on wireless issues, developments and trends in Canada. It represents cellular, PCS, messaging, mobile radio, fixed wireless and mobile satellite carriers as well as companies that develop and produce products and services for the industry.
2. Since 2009, CWTA has operated Recycle My Cell (RMC), a full producer responsibility program for mobile handsets, accessories, peripheral items, and other materials designed to connect to a cellular network. The program operates completely free of charge to Ontarians, with absolutely no fees charged at either point-of-sale or drop-off. Over 1300 permanent drop-off locations in Ontario accept any device designed to connect to a cellular or paging network, regardless of brand, model, origin or age. Several mail-back options are also available. The following brands-owners and first importers are currently members of RMC: Bell, Solo, Virgin Mobile, Dell, LG, Mobilicity, Motorola, Nokia, Research in Motion, Samsung, Sony Ericsson, Rogers, FIDO, Chatr, TBay Tel, TELUS, Mike, Koodo, and Wind Mobile.
3. RMC has received regulatory approval from the provinces of Nova Scotia and British Columbia, and has been formally recognized in the provinces of Prince Edward Island, New Brunswick, Manitoba, Newfoundland and Labrador, Alberta and Saskatchewan. It has been operating in Ontario and Quebec on a voluntary basis since 2009. RMC uses only ISO certified and OES-approved processors, and has collected –on a voluntary basis– over 580,000 devices in Ontario since 2005. It donated over \$411,000 to charity in 2010 (the last year for which complete data is available).
4. As you know, in 2009 the Province of Ontario designated Ontario Electronic Stewardship (OES) as the Industry Stewardship Program (ISP) for recovery and recycling of electronics in Ontario, including cell phones. In the consultation process that led up to the approval of OES's cell phone program, CWTA noted numerous discrepancies and blatant mathematical errors in various versions of OES's program plan (including OES's

prediction in one version of the plan that the population of Ontario would drop by 500,000 people in one year of its program, only to miraculously rebound the following year). These discrepancies and errors were never formally addressed by MOE, WDO or OES before approval was given to OES to begin charging a point-of-sale fee on every cell phone sold in Ontario – a fee based on obviously-flawed projections and calculations.

5. Since that time, OES has been unable to account for the number of cell phones it has recovered and recycled in Ontario, yet has reduced the advance handling surcharge for cell phones from ten cents to one penny – suggesting that OES overestimated the cost of operating its cell phone recycling program by a factor of ten, at the time WDO and MOE approved the program.
6. CWTA cites the above example as one sign that a fundamental overhaul of Ontario's waste diversion framework is long overdue. The fact that we are now into the fourth year of a ministerial review of the Waste Diversion Act is a further sign that the proposed changes to WDO's governance structure, which may represent some streamlining and new efficiencies here and there, would only scratch the surface on the problems that stakeholders have been flagging for years, to no avail.
7. Along those lines, CWTA notes that the proposed WDO governance changes should perhaps be set aside pending a more fundamental review of whether Ontario requires an organization like WDO in the first place, or whether the objectives of the WDA could better be served by the elimination of WDO altogether. To that end, CWTA respectfully submits that at this stage of implementation of EPR programs in Ontario, the legislature would be better equipped to assess the efficiency and the structure of the waste diversion regime than the Minister and eventually realign the province EPR policy towards more realistic goals.
8. Since 2009, CWTA has dedicated hundreds of hours to navigating a never-ending process of meetings, filings, revisions and re-filings, and conference calls, all of which have left RMC at precisely the same point that it began over three years ago: a voluntary program recognized and approved in eight provinces, but continuing to operate on a voluntary basis in Ontario, because of a flawed system that values process over results:

#### **2009**

1. January 15, CWTA comments on the review of the Waste Diversion Act;
2. February 13, CWTA submits questions on OES Phase II materials designation;
3. August 14, CWTA comments on review of OES WEEE program;
4. October 7, CWTA provides notification to WDO of its intent to file an Industry Stewardship Program (ISP) proposal;
5. December 3, WDO provides its first set of questions on CWTA's ISP proposal;

#### **2010**

6. January 11, WDO Public Affairs Committee meets to review CWTA ISP proposal;
7. January 25, CWTA formally files its ISP with WDO;
8. February 2, WDO provides its second set of questions on CWTA's ISP;
9. February 4, CWTA comments on OES's Phase II plan, citing numerous errors and discrepancies, which are never formally addressed prior to the program receiving approval by WDO and MOE; OES's

program plan is approved by way of a letter from MOE, drafted one day after the close of comments on its program plan;

10. February 8, CWTA response to WDO's second set of questions;
11. February 16, WDO provides its third set of questions on CWTA's ISP;
12. February 18, CWTA response to WDO's third set of questions;
13. March 16, OES responds to CWTA Feb 13 2009 questions on its program plan, over thirteen months after the questions were submitted and the program was approved by WDO and MOE;
14. March 16, CWTA initiates an application process for recognition as a Steward Self-Managed Program (SSM) – on the suggestion of WDO, and as an interim process while the RMC ISP is reviewed – under OES's Phase II program;
15. March 23, WDO notifies CWTA that it must sign a non-disclosure agreement preventing CWTA from disclosing WDO's comments on its ISP to the companies that operate the actual program;
16. March 23, CWTA refuses to sign the NDA;
17. March 24, CWTA presents its ISP program proposal to WDO Board of Directors, not having been informed of WDO staff's comments on the ISP (because we refused to sign the NDA);
18. March 26, CWTA formally submits first SSM application to OES;
19. March 30, WDO provides its fourth set of questions on CWTA's ISP;
20. April 9, Meeting with WDO and OES to discuss common data methodology for reporting collection and recycling of cell phones;
21. May 21, CWTA responds to WDO's fourth set of questions;
22. June 1, CWTA submits its second SSM application to OES; OES provides additional comments CWTA's first SSM application;
23. June 2, CWTA submits its third SSM application to OES;
24. June 21, CWTA withdraws its ISP proposal from WDO, citing the never-ending and circuitous process that had produced no tangible results by that time;
25. June 25, WDO acknowledges CWTA's withdrawal of its ISP, suggesting that CWTA's lack of understanding of the process was to blame;
26. September 27, CWTA submits its fourth SSM application to OES;
27. October 13, OES provides CWTA with a draft SSM Agreement, suggesting that most of the issues have been worked out and SSM-approval is imminent;
28. October 21, CWTA submits its fifth SSM application to OES;

## **2011**

29. February 9, OES informs CWTA that it is unclear how CWTA's SSM will work under current OES framework;
30. June 15, OES provides CWTA with a revised SSM Agreement;
31. August 2, CWTA provides revised SSM Agreement to OES;

## **2012**

32. January , OES informs CWTA that the current OES SSM framework will not facilitate the development of an acceptable SSM Agreement and suggest that Remitter's Agreements might provide a better base option.

33. Through the entire SSM application process CWTA has been working in good faith with OES and has provided data concerning the number of cell phones that have been recovered by RMC, as well as facilitated discussions with obligated members.
  34. No substantive progress towards approval of RMC as either an ISP or SSM, despite three years, 5 versions of an ISP proposal, five versions of a SSM proposal, and three versions of a SSM Agreement.
9. The above timeline (which does not include the over 250-300 emails, meetings and conference calls between CWTA, WDO, MOE, OES throughout this process) indicates the complete failure of the current WDA framework to produce meaningful and rational results for Ontarians when it comes to electronic recycling generally, and cell phone recycling specifically.
  10. CWTA respectfully submits that under no rational governance model is a multi-year, 30+ step process that leads absolutely nowhere a responsible use of taxpayer dollars or a respectful treatment of industry and consumer expectations. Nor has it advanced the Government of Ontario's legislative expectations one iota.
  11. During this timeframe, RMC has been submitted, put out for public consultation, revised to conform to specific requirements, and ultimately approved in eight other provinces. It has demonstrated tangible and quantifiable results in Ontario, on a voluntary basis. Yet it remains in perpetual regulatory limbo in Ontario, despite (or, more accurately, as a direct result of), multiple avenues for application and bureaucratic analysis under the IFO/ISP/SSM framework.
  12. This is why CWTA, alongside 12 other national organizations, made the following recommendations in an October 2010 letter to MOE, with respect to what a revised *Waste Diversion Act* framework should strive to accomplish:
    1. *Clarify roles, responsibilities and rationale:* MOE, WDO, IFO, ISP, SSM, consumers . . . Who does what and why? Do we need these many layers? This many steps in the reporting and approvals process? What exactly is WDO? Is it a Crown Corporation? A special operating agency, a NGO? Do we even need WDO in the first place? The current framework leaves these questions unanswered.
    2. *Ensure an accountable decision making process:* WDO handles policy-setting, materials- designation, program-approval, and fee-setting. It is making decisions that impact millions of dollars in economic activity across Ontario—yet is not subject to freedom of information statutes, and has, to date, not demonstrated an adequate commitment to transparency or due process. 'Decisions' we have received from OES are often contradictory, and suggest that OES—as the IFO to which CWTA and its members are expected to report—is unclear about its own processes and responsibilities.
    3. *Emulate best-practices elsewhere:* Where an existing program already operates successfully in Ontario (not to mention other provinces), the program operators should be able to enter into a MOU directly with MOE. The MOU could set out requirements, incentives and consequences without spending years working through layers of costly and ineffective bureaucratic hurdles.

13. As an illustrative example relating to section 12.1, CWTA notes that at the time the MHSW came into force causing huge consumer backlash, electronic manufacturers in Ontario were in a position of having to comply with 3 different waste diversion programs. These 3 programs all report to WDO and have three different fees and three different reporting timelines.
14. CWTA maintains that these recommendations need to be addressed at the legislative and regulatory level, before any governance changes can be expected to resolve longstanding systemic problems of the type elaborated above.
15. Generally speaking, CWTA submits that the proposed changes to WDO's governance framework are a step in the right direction. In particular, CWTA is supportive of the proposal to establish "board advisory committees" to provide a forum for stakeholders to review and provide feedback on the definition of obligated materials and the development, implementation and operation of waste diversion programs, and the broad outlines with respect to how the WDO will be reconstituted.
16. At the same time, CWTA notes that the current proposal does not include MOE officials among the list of individuals ineligible to sit on the WDO Board. We respectfully submit that for the WDO Board to be truly independent, officials from MOE should not sit on the Board as voting members. The only avenue to appeal a WDO Board decision is a referral to the Minister. The Minister's decision will of course take into account departmental recommendations, prepared in part by the same MOE officials who would have been party to the WDO Board decision under appeal. MOE officials could continue to sit in on WDO Board meetings, as necessary, in an advisory capacity, but having both a Board vote, and a role in preparing recommendation to the Minister as part of the appeals process, raises the potential for conflict-of-interest and should be addressed as part of this process.
17. In conclusion, CWTA generally supports the proposed changes to WDO's governance structure. At the same time, CWTA considers that the proposed changes, while a small step in the right direction, would not address the deep-seated problems inherent in the maze of organizations and processes that currently exist to implement the requirements set out in the *Waste Diversion Act*. As demonstrated above, the current framework often produces little more than additional process, and has not resulted in a transparent and accountable execution of legislative requirements. It is time for the legislature to conduct a wholesale review of the *Waste Diversion Act* and support framework in Ontario.
18. CWTA respectfully submits that for Ontario to truly move forward with a streamlined, efficient and effective waste diversion framework, a fundamental rethink of the overall regulatory and decision-making structure around waste diversion in Ontario will be required.

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