



September 4, 2013

Wendy Ren  
Assistant Director  
Ministry of the Environment  
Integrated Environmental Policy Division  
Waste Management Policy Branch  
135 St Clair Avenue West, Floor 7  
Toronto, Ontario M4V 1P5

Submitted Electronically

Dear Ms. Ren,

**Re: Bill 91, Waste Reduction Act, 2013**

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, including handset and equipment manufacturers, content and application creators and business-to-business service providers.
2. CWTA is pleased to file its comments with respect to Ontario's proposed Waste Reduction Act. CWTA and its participating members support the sustainable and responsible use of wireless devices. We have been operating Recycle My Cell (RMC) – Canada's national recycling program for mobile devices – on a voluntary basis in Ontario since 2009. During that time, more than 1.4 million devices were diverted from Ontario landfills as a result of RMC and member initiatives.
3. CWTA understands and appreciates the province's efforts to update and improve upon its 2002 Waste Diversion Act. However, we have concerns with certain aspects of the legislation as currently written. Specifically, the expanded role of municipalities, the provisions addressing Absolute Liability and Administrative Penalties, and the absence of processors from the legislation.
4. CWTA acknowledges the expanded role of municipalities within the legislation. However, it should be noted that requiring producers to collect and/or pay municipalities for material that they choose to voluntarily collect is contrary to the notion of Extended Producer Responsibility and hinders the ability of producers to effectively negotiate aspects of their programs with stakeholders.
5. In order to allow producers to manage their products and their programs in a competitive and efficient manner, there must be flexibility afforded them concerning how material is collected and what entities they engage within the course of this activity.
6. In addition, the Act seeks to impose strict requirements concerning liability not seen in any other jurisdiction, while at the same time excluding one of the most important members of the recycling value chain – processors.

7. As such, the proposed legislation does not currently fully reflect the realities of the electronics recycling ecosystem. Without the appropriate amendments the legislation would create significant loopholes in the market and could be open to abuse. We are pleased to address our concerns in more detail below.

### **Producers' Responsibilities to Municipalities**

8. Sections 44 and 45 detail the requirements that must be in place between the producer of a designated material and municipalities. In the event that a municipality voluntarily decides to collect material it is the producer's responsibility to collect that material from the municipality unless both have agreed otherwise. Furthermore, the producer must pay "the reimbursable part of the municipality's costs related to, (a) its collection, handling, transportation and storage of the designated waste". The payment in this instance can be either mutually agreed to, or if that is not possible will be determined using a compensation formula devised by the Waste Reduction Authority.
9. Programs that operate voluntarily within the province currently may have existing collection mechanisms and processes. Recycle My Cell, for instance, uses a return-to-retail model as its primary recovery vehicle but augments that with third-parties interested in joining the program. Third-parties are provided with collection boxes, promotional materials and free shipping, but are not reimbursed in any other manner. The additional requirement to, in effect, pay for the participation of municipalities will inadvertently become the expectation for all and would have detrimental impacts to the program and our ability to deliver it.

### **Absolute Liability and Administrative Penalties**

10. Section 67(9) of the proposed legislation states:

#### **Absolute Liability**

A requirement that a person pay an administrative penalty applies even if,

- a) the person took all reasonable steps to prevent the contravention; or
- b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

11. The clause clearly purports to make companies liable (and open to penalties) for contraventions beyond their control, but the need for or perceived benefit of this provision is unclear. On the contrary, companies will have to significantly consider the potential ramifications for the actions of a third party when making any determination with respect to waste reduction. Without being able to identify its benefit, and in light of its significant impairment, CWTA recommends the Absolute Liability clause be removed from the regulation.
12. Further, CWTA has concerns with the Administrative Penalties component of the legislation overall. The requirement to meet certain target objectives to avoid administrative penalties from the province does not appropriately promote the objectives of waste reduction legislation. Rather, as with the absolute liability clause, it may result in companies attempting to work outside of the legislation altogether to avoid the possibility of facing penalties for not achieving required targets. Therefore, CWTA also recommends that target objectives linked to administrative penalties also be removed from the legislation.

## **The absence of processors from the legislation creates a significant loophole**

13. Nowhere in the proposed legislation are used electronics processors considered. These organizations are the most hands-on with respect to wireless device recycling. It should be noted that for certain material streams, there are numerous initiatives for recovery that fall outside of the control of obligated stakeholders. Processors may often be the only part of the chain that would have access to data concerning these initiatives, as well as the volume this represents. For example, charities are able to establish cell phone recovery programs that are used for fundraising purposes.
14. Not including processors therefore represents a significant loophole in the legislation. If processors are not included, the legislation would fail to fully assess responsibility and liability to the appropriate parties. The legislation would be open to abuse and legal challenges. As such, CWTA recommends that all relevant parties in the electronics recycling ecosystem – including processors – be captured by the legislation.

## **Conclusion**

15. CWTA appreciates the opportunity to comment on Ontario's proposed Waste Reduction Act and fully supports the sustainable use of wireless devices. We also welcome the province's efforts to update and improve upon its 2002 Waste Diversion Act. However, if the proposed legislation is not amended to reflect the realities of electronics recycling, and to remove existing loopholes, it could be subject to abuse and would fail to achieve its objectives. In particular, the provisions addressing the Producer's Responsibilities to Municipalities, Absolute Liability and Administrative Penalties, and the absence of processors from the legislation must be amended.
16. We would be pleased to discuss our concerns with the proposed legislation further and look forward to continuing our dialogue with the province.

---End of Document---