



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

July 18, 2011

**DEPUTATION
TO THE CITY OF TORONTO PUBLIC WORKS AND INFRASTRUCTURE
COMMITTEE ON
KPMG - CITY OF TORONTO CORE SERVICES REVIEW**

Introduction

The Canadian Environmental Law Association (CELA) was established in 1970 to use existing laws to protect the environment and to advocate environmental law reforms. CELA is a clinic in the Ontario Legal Aid system.

We appear today before the standing committee to comment on matters the KPMG report addresses with respect to certain City of Toronto environment programs.

City of Toronto Environment Programs Referred to in KPMG Report

There are three environment programs referred to in the KPMG report:

- Toxic Tax;
- Community Environment Days;
- Waste Diversion.

The KPMG report discusses the possibility of eliminating the first two programs and reducing the diversion rate with respect to the third.

Recommendations

For the reasons set out below, CELA urges the committee to:

- maintain the first two programs and not reduce the diversion rate of the third; and/or
- seek the advice of both the City Legal Department and the Medical Officer of Health, prior to having City Council consider the KPMG recommendations, on the implications of eliminating the first two programs and reducing the diversion rate of the third, including potential liabilities for the City, implications for City by-laws, as well as risks and long-term costs to environment and human health.

The remainder of this deputation will comment on each of these programs.

Toxic Taxi and Community Environment Days

The Toxic Taxi program provides free pick-up of household hazardous waste (10-50 litres) from Toronto residents. Community Environment Days, held by councilors annually across Toronto, provide residents with opportunities to drop off household hazardous wastes, electronic wastes, paint, batteries, cleaning supplies, old medicines, as well as pick up free backyard composters, etc.

With respect to these programs, the KPMG report states:

"Within Solid Waste there are two small programs that could be eliminated, the Toxic Taxi and the Community Environment Days, requiring residents to deliver toxic goods to permanent drop off sites. The risk is that more toxic goods may be improperly disposed".¹

There are three admissions in the KPMG review of these programs:

- (1) funding for them does not rely on the property tax base;²
- (2) potential savings from eliminating the programs would be low;³ and
- (3) eliminating or replacing the programs "could result in more toxic materials being disposed of improperly".⁴

In the respectful submission of CELA, these programs were designed to help reduce the potential disease burden of the Toronto public from exposure to improperly managed toxic wastes in the home and their community. The potential costs to the environment and human health of eliminating these programs could include:

- More air and water pollution as people without access to these programs or the ability to recycle these toxic waste materials, instead dump them into the sewers and release hazardous substances to the air;
- Long standing efforts over decades could be set back, such as the Remedial Action Cleanup of Toronto's harbour and river systems;
- The 25 substances that are health concerns in Toronto's air that are now beginning to be addressed by Toronto's Environmental Reporting and Disclosure By-Law may grow in volume rather than diminish; and
- Toronto's Sewer Use by-law, which is not designed to deter new inputs of household hazardous waste, may diminish in effectiveness over time.

¹ KPMG - City of Toronto, Core Services Review: Standing Committee Summary, at 3. < Online: <http://www.toronto.ca/legdocs/mmis/2011/pw/bgrd/backgroundfile-39506.pdf> >; ("Consider eliminating community environment days" and "Consider replacing Toxic Taxi with drop off"). *Ibid.* at 5.

² *Ibid.* at 13 ("External funding covers the costs" of Community Environment Days, at a total cost of \$470,000).

³ *Ibid.* at 14.

⁴ *Ibid.* Community Environment Days, for example, "is the primary program for collection and safe disposal of [household] hazardous wastes". *Ibid.* at 13.

In the circumstances, it would be "penny wise but pound foolish" to eliminate these programs. Moreover, eliminating these programs may also undermine the spirit, if not the letter, of provincial waste diversion legislation discussed below.

Waste Diversion

The KPMG review notes that with respect to the City's existing waste diversion goal:

"Toronto has established a very aggressive recycling target, seeking 70% diversion from land fill sites. This derives from the difficulty of finding and developing land fill sites, but is much more aggressive than the targets of other municipalities and will be very difficult (and expensive) to achieve, given the high proportion of apartments in Toronto. Despite the challenges of finding landfill sites, landfill is cheaper than diversion, and the gap will grow as the rate of diversion increases".⁵

The KPMG review suggests that the City should: "Consider reducing the target rate for diversion and / or setting target rates by category of waste producer".⁶ In terms of reducing the diversion rate, the KPMG report states the following:

"Reducing the diversion rate will reduce the lifespan of the landfill, and require the City to pursue other, potentially costly disposal options sooner. Cutting back on the diversion target may compromise the City's efforts to obtain a landfill expansion from the Ministry of Environment. However the current diversion rates (47%) are well below the target (70%), and much more intensive efforts will be required to achieve the target. Diversion already costs more per tonne than land filling. Single family diversion rates are currently 63% but those in apartments much lower, and apartment rates harder to increase. Expenditures will have to increase significantly if the target is to be achieved, or even approached. The financial impact of the options require careful business case analysis, and business case for the current target has not been established".⁷

There are at least four admissions in the KPMG review of this program:

- (1) reducing the diversion rate will reduce the lifespan of the City's landfill;
- (2) doing this will require the City to pursue other potentially costly disposal options sooner;
- (3) cutting back on the diversion target may compromise the City's efforts to obtain a landfill expansion approval from the Ministry of the Environment; and
- (4) it is generally difficult to find and develop landfill sites.

Furthermore, waste diversion is not simply a Toronto goal. Waste diversion, for both non-hazardous as well as hazardous waste, is informed by provincial policy goals and mandated by provincial law.

⁵ *Ibid.* at 3 and 15.

⁶ *Ibid.* at 17.

⁷ *Ibid.*

Provincial Policy

In 2004, the province proposed adoption of a province-wide goal of diverting 60% of Ontario's waste from disposal by the end of 2008, a goal that has not yet been met either province-wide or in Toronto. Moreover, as the Provincial Auditor noted in a 2010 report, Ontario recognized at the time that waste diversion has many economic benefits:

"Specifically, by reducing the need for landfills, waste diversion avoids the costs of siting and constructing landfills, as well as the long-term operating and maintenance costs associated with landfills. Also waste diversion contributes to economic development and job creation by creating or expanding businesses that collect, process, and broker recyclable materials, as well as companies that manufacture and distribute products made with recyclable materials".⁸

The KPMG review does not refer to the economic benefits of waste diversion in its conclusion that landfill is cheaper than diversion.

Provincial Law

The purpose of the *Waste Diversion Act, 2002*⁹ is "to promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs".¹⁰ The Act provides the legislative framework under which Waste Diversion Ontario (WDO) - a permanent, non-government corporation - operates. WDO is made up of industry, municipal, and non-governmental representatives and is operated by a board of directors. Under the Act, the Minister of the Environment designates waste materials for which programs may be required. Currently, these include: blue box waste; used tires; waste electrical and electronic equipment; and municipal hazardous or special waste. For each waste diversion program, WDO creates a sustainable funding method based on fees paid by industry funding organizations (IFOs or stewards) established by WDO under the Act. Each program must establish waste diversion targets. Cutting back on the City's targets for non-hazardous waste diversion may undermine or act at cross-purposes with provincial programs in the same area.

Appendix A to this deputation is a regulation promulgated under the Act that mandates development of a waste diversion program for municipal hazardous or special waste. Such a program has been in place since 2008. Eliminating the City's programs (Toxic Taxi and Community Environment Days) may similarly have the effect of undermining or acting at cross-purposes with the province's municipal hazardous waste objectives.

Conclusions

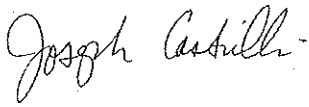
Arising from the foregoing, CELA submits that the City should adopt CELA's, and not KPMG's, recommendations.

⁸ Auditor General of Ontario, *Non-hazardous Waste Disposal and Diversion* (Toronto: AGO, 2010) at 217-218.


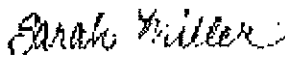
⁹ S.O. 2002, c. 6.

¹⁰ *Ibid.*, s. 1.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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APPENDIX A

Waste Diversion Act, 2002, S.O. 2002, c. 6.

ONTARIO REGULATION 542/06

MUNICIPAL HAZARDOUS OR SPECIAL WASTE

Interpretation

1. (1) In this Regulation,

“lubricating oil” means petroleum-derived or synthetic crankcase oil, engine oil, hydraulic fluid, transmission fluid, gear oil, heat transfer fluid, or other oil or fluid used for lubricating machinery or equipment;

“municipal hazardous or special waste” means, subject to subsection (2), waste that consists of municipal hazardous waste or municipal special waste, or any combination of them, whether or not the waste is owned, controlled or managed by a municipality;

“municipal hazardous waste” means waste that consists of any of the following materials, or any combination of them, whether or not the waste is owned, controlled or managed by a municipality:

(a) corrosive products, flammable products or toxic products, as those terms are defined in the Consumer Chemicals and Containers Regulations, 2001 made under the *Hazardous Products Act* (Canada), if the sale of the product is permitted only if the container of the product displays information required by those regulations,

(b) containers that display information that is required by the Consumer Chemicals and Containers Regulations, 2001 made under the *Hazardous Products Act* (Canada) for containers that contain corrosive products, flammable products or toxic products, as those terms are defined in those regulations,

(c) flammable hazards, corrosive hazards or toxicity hazards, as those terms are described in Clause 4 of CSA Standard Z752-03, “Definition of Household Hazardous Waste”, published in September 2003 by Canadian Standards Association, if the hazard is defined by Clause 7 of that Standard as a household waste that shall not be disposed of in one or more systems within the regular domestic waste stream because of significant risks posed to humans or the environment,

(d) corrosive waste, as defined in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*,

(e) ignitable waste, as defined in Regulation 347 of the Revised Regulations of Ontario, 1990,

(f) leachate toxic waste, as defined in Regulation 347 of the Revised Regulations of Ontario, 1990,

(g) reactive waste, as defined in Regulation 347 of the Revised Regulations of Ontario, 1990,

(h) containers that contain anything referred to in clause (c), (d), (e), (f) or (g);

“municipal special waste” means waste that consists of any of the following materials, or any combination of them, whether or not the waste is owned, controlled or managed by a municipality:

(a) batteries,

(b) pressurized containers,

(c) aerosol containers,

(d) portable fire extinguishers,

(e) fertilizers, fungicides, herbicides, insecticides or pesticides, and containers in which they are contained,

(f) paints and coatings, and containers in which they are contained,

(g) containers that have a capacity of 30 litres or less and that were manufactured and used for the purpose of containing lubricating oil,

(h) oil filters, after they have been used for their intended purpose,

(i) fluorescent light bulbs or tubes,

(j) pharmaceuticals,

(k) sharps, including syringes,

(l) switches that contain mercury,

(m) thermostats, thermometers, barometers or other measuring devices, if the thermostats, thermometers, barometers, or other measuring devices contain mercury,

(n) antifreeze, and containers in which it is contained,

(o) solvents, and containers in which they are contained;

“oil filter” means a spin-on filter or element-style filter that has been used to filter lubricating oil, but does not include a filter with no significant metal content. O. Reg. 542/06, s. 1 (1).

(2) For the purpose of this Regulation, used or unused lubricating oil is not municipal hazardous or special waste. O. Reg. 542/06, s. 1 (2).

Designation

2. Municipal hazardous or special waste is prescribed as a designated waste for the purposes of the Act. O. Reg. 542/06, s. 2.

Industry funding organization

3. Stewardship Ontario is designated as the industry funding organization for the waste diversion program for municipal hazardous or special waste approved by the Minister under section 26 of the Act. O. Reg. 28/08, s. 1.