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PRESENTATION TO THE STANDING COMMITTEE ON GENERAL GOVERNMENT

on Bill 7

**An Act to Amend Certain Acts Related to
Municipalities Concerning Waste Management**

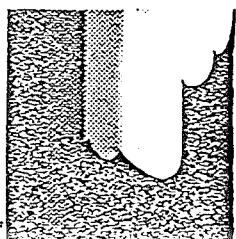
By

Canadian Institute for Environmental Law and Policy

Canadian Environmental Law Association

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Presentation to the Standing Committee on General Government,
Bill 7, An Act to amend certain Acts related to Municipalities
concerning Waste Management (hereinafter "Bill 7"), July 8, 1993.

Introduction

Both the Canadian Institute for Environmental Law and Policy (CIELAP) and the Canadian Environmental Law Association (CELA) have been actively involved in the development of waste management policy at all three levels of government in Canada. In this regard, we have also written many papers and even sponsored provincial conferences and workshops. Of particular interest to us is the modernisation of waste management planning in order to promote waste diversion from landfills through the implementation of the 3Rs hierarchy at provincial and municipal levels of government.

The present provincial Government's commitment to 3Rs programmes is unequalled by comparison to past provincial governments. The introduction of Bill 7 serves as further evidence of this commitment. For some time now municipalities have indicated a strong interest in improving their waste management approaches only to find that they are severely constrained by the absence of any statute based jurisdiction to implement and enforce 3Rs waste management strategies. As you are aware, Bill 7 begins to cope with this problem.

Our assessment of the proposed legislation is that it takes several important steps towards the coordination of municipal waste management decision-making with that of the Province. However, it appears that the legislation takes a step back from the more comprehensive approach proposed by the Province in its Discussion Paper of May, 1992, entitled "Municipal Waste Management Powers in Ontario" (hereinafter referred to as "Initiatives Paper No. 2"). As a result, this presentation offers several additions which are designed to improve upon Bill 7 in its present form.

It is our intention to participate in the clause-by-clause evaluation of the Bill in order to ensure that these additions will find their way into the legislated version. The next portion of our presentation comments specifically on the provisions which are of direct concern to our organisations.

"Waste Management System"

The definitions section of the Bill contains a definition of "waste management system" which is essentially identical to the definition found in Part V of the Environmental Protection Act. We would suggest an amendment to the definition which corrects the apparent oversight that a waste management system can include more than one waste disposal site. Therefore, at the end of the definition we would suggest the deletion of the period (.) and the addition of the words "and may include one or more waste disposal sites."

We understand that there has been great debate over whether the definition should be amended to exclude private waste management systems thereby removing the application of the proposed legislation to their waste management activities. The Ontario Waste Management Association has been the chief proponent of this amendment. It is our considered opinion that this amendment should not receive your support. If this amendment were allowed then it would not permit municipalities to have adequate flow control powers.

Flow Control Powers

There is a role for both private and public sector interests in the development of Ontario's 3Rs infrastructure. The existing state of affairs already indicates this reality. We recognise that municipalities are facing formidable challenges in developing waste management plans and their accompanying infrastructure. We also accept the fact that private firms have already made an important contribution towards the resolution of the waste management crisis through their implementation of some successful 3Rs programmes.

But, some mention needs to be made of the problems with the present system. Counties have waste disposal powers that allow them to direct residential waste to designated waste disposal sites. This is not the case for regional municipalities and lower tier municipalities.

The IC&I sector accounts for some sixty per cent of municipal solid waste in Ontario. Most of it is collected by private firms and disposed of in municipally owned waste disposal facilities. This trend will become even more prevalent as fewer private waste disposal sites are approved by the province.

What is more, with the 25 per cent (1992) and 50 per cent (2000) waste reduction targets set by the province, municipalities will be required to meet these targets for their respective jurisdictions. This is expected of them, leaving municipalities with the responsibility to successfully implement waste reduction plans for the residential and ICI sectors when they have little control over the flow of waste. This would appear to be an insurmountable task.

There are other reasons why municipal flow control powers must cover the private sector. What if municipalities desired to set high tipping fees or landfill bans for recyclable materials in order to encourage waste generators to reduce, reuse or divert secondary materials to their appropriate markets? If tipping fees are not the same at both private and public landfills then materials will end up at the private facilities, thereby undermining 3Rs and landfill diversion goals.

A similar dynamic explains the large scale export of garbage by private haulers beyond municipal borders and as far as the United States. The lost tipping fees are astounding, lying somewhere in

the \$1.2 billion range for 1992 in the Greater Toronto Area alone. This is lost revenue which could have been directly applied to the construction of municipal 3Rs infrastructure.

It has already been established elsewhere that flow control is an important tool for municipal waste management. In fact, several States have included flow control powers in their waste management statutes, while providing specific authority to municipalities to use this power in implementing their waste management plans. Flow control can also facilitate the movement of recoverable materials to recycling facilities. One method of achieving secure supplies between recyclers and generators is to have municipalities enter into contractual arrangements with recyclers in which municipalities guarantee to supply defined volumes of recyclable materials on a regular basis.

Private Versus Public

In the end the controversy over the definition of "waste management system" should not be a zero-sum game between the private and public sectors. Both sectors must be encouraged to integrate their processes in the service of the public interest. With this goal in mind, it is logical to give municipalities waste management powers which achieve the environmentally sound and efficient collection, diversion and disposal of waste. Without an inclusive definition of "waste management system" our municipal representatives will be

without the power to do so in a comprehensive fashion. They simply will not be able to adequately plan for the management of all the waste generated in their jurisdiction.

Municipal Approvals for Recycling Sites

The same holds true for the OWMA proposal which calls for the introduction of a new section removing municipal consent to ensure that 3Rs infrastructure development proceeds in a manner which is consistent with overall municipal waste management plans. We support municipal facilities approval out of a concern that regulation of 3Rs sites has already been eroded with the replacement of the provincial Certificate of Approvals process by a permit-by-rule system.

This form of de-regulation already weakens our regulatory power to guarantee a high environmental standard concerning the operation of these sites. The diminished opportunities for community involvement in the approval of these facilities also give us reason to question the further de-regulation of these sites which is being requested by the OWMA. In view of the above, we strongly discourage its inclusion.

Municipal 3Rs Powers - Positive Aspects

We consider the new sub-sections which comprise sections 208.2 to

208.6 of the new Municipal Act to be positive aspects of Bill 7. Of special importance are those which include the power to:

1. establish, maintain and operate a waste management system including services and facilities for the reduction, reuse and recycling of waste;
2. establish fees for the use of any part of a waste management system;
3. provide all or any part of the waste management system in a local municipality;
4. permit upper tier municipalities to charge lower tier municipalities for waste management services; and,
5. prohibit or regulate the dumping, treatment and discharge of wastes at a waste management facility.

Areas of Specific Concern

With respect to sub-section 208.3-(4), the notice period of ten days before a public hearing takes place is insufficient to allow the parties to prepare for an OMB hearing. For this reason the usual thirty day notice period for OMB hearings is recommended. This would appear to be a small concession when the administrative law principles of natural justice and procedural fairness are otherwise at stake.

Clarification is required as to whether subsection 208.6-(2)(a)

includes household hazardous waste. We would support inclusion of this waste as a class under this section.

A review of the "Inspection" provisions raises the following concerns: Does the province intend to send its own inspectors on every occasion in which an inspection takes place under this proposed legislation? The question is a rhetorical one since it is clearly the intent of the legislation to give these powers to municipalities. However, the powers which provincial inspectors are broader than those to be given to municipal inspectors. Municipal inspectors must have the same powers as provincial inspectors save those powers which might constitute a violation of the Canadian

Charter of Rights and Freedoms.

For instance, municipal inspectors should have a right of entry into buildings where waste management activities are taking place in order to ensure compliance with their by-laws. They should also be able to stop vehicles which they reasonably believe to be in contravention of municipal laws passed pursuant to the proposed legislation. The same holds true concerning an inspector's power to:

1. make necessary excavations;
2. require that anything be operated, used or set in motion under conditions specified by the municipal inspector;
3. make inquiries of any person, orally or in writing; and,

4. require the production of any document related to the purposes of the inspection.

There is the further problem that municipalities are not given the power to implement bans at landfills for recyclable materials or household hazardous waste. Both the City of Toronto and Peel Region have used this mechanism to encourage waste diversion through recycling. It is uncertain whether all forms of municipal government presently have this power. For this reason, it is submitted that, the ability to implement landfill bans in a municipality's own jurisdiction be inserted as a separate subsection under section 208.6-(2) of Bill 7.

In responding to Initiatives Paper No. 2 environmental groups made the point that municipal legislation ought to be amended to include municipal permissive authority to set tipping fees at both public and private landfills. We recommend that this issue be addressed. High tipping fees encourage waste diversion. Privately owned and operated landfills must not be permitted to undermine this policy by undercutting tipping fees at municipal landfill facilities with whom they are in direct competition.

We would take the recommendation of a uniform tipping fee for private and publicly owned landfills a step further by having the province legislate a formula for setting tipping fees in each municipality on the basis of the full costs of disposal. This would

include a percentage of the costs associated with establishing municipal 3Rs infrastructure. No landfill, either private public, could charge below the calculated fee. Disputes over this fee could be heard at the OMB. Such a fee structure would assist municipalities in coping with the longer term costs of their waste management systems while promoting 3Rs and diversion of waste from landfills.

As we understand the amendments to the Regional Municipalities Act regional councils may pass a by-law related to their assumption of control over any aspect of the waste management powers defined in the Bill. As well, regional councils may delegate this control to area municipalities if they are already exercising this power or if the regional municipality is not exercising a particular waste management power. We support this approach because it allows for the continuance of existing responsibilities taken on by regional and area municipalities and permits flexibility among the parties in negotiating solutions over the efficient apportionment of responsibilities for the new waste management powers being endowed to municipalities under this Bill.

However, what remains unclear is who must assume responsibility for hazardous and liquid waste connected to the solid waste stream. The proposed legislative amendments need to be more clear on this issue.

Financial Issues

We are concerned over the absence of a sound financial plan for the implementation of 3Rs at the municipal level. The Municipal Recycling Support Programme only has a five year funding window and private sector support is uncertain. Little in the way of financial resources, is being devoted to reduction and reuse programmes at both the provincial and municipal levels.

As well we are badly in need of a product stewardship model to serve 3Rs goals and ensure that polluters pay for waste management systems. We are encouraged by statements from the Minister of Environment and Energy concerning the priority being given to a product stewardship model, but, would also encourage the rapid development of a financial plan to assist municipalities in implementing 3Rs programmes.

Penalties

We are concerned that under this Bill municipalities will be without sufficient means to enforce their new waste management powers. For this reason we are requesting amendments to municipal legislation which involve increased penalties for breaches of municipal by-laws related to solid waste management. This should include increased fines and the provision of criminal sanctions in extreme cases.

Other Initiatives For Consideration

a. Phase-in user-pay systems

Amend the proposed Bill to allow regional municipalities to implement a user-pay system with respect to area municipalities and local boards as follows. Assign user-pay costs to 100% of the waste generated by area municipalities according to the following schedule:

- to all waste generated in excess of 70% of the tonnage generated in the base year 1990 by August 30, 1993
- to all waste generated in excess of 60% of the tonnage generated in 1990 by June 30, 1994
- to all waste generated in excess of 50% of the tonnage generated in 1990 by June 30, 1996
- to all waste generated in excess of 40% of the tonnage generated in 1990 by June 30, 1998
- to all waste generated by June 30, 2000

b. Procurement

All municipal councils should be required to adopt the following procurement policy as part of a waste reduction by-law:

- i) In purchasing supplies and materials for use by municipal departments and agencies, whenever the price is reasonably competitive, products and materials should be purchased that

contain the highest percentage of recycled material, and that are suitable for the intended use.

- ii) For the purposes of this section reasonably competitive means
 - (a) for paper and paper products, a price within 20% of the price of paper or paper products made from virgin paper materials, and;
 - (b) for all other products a price within 10% of comparable products made from virgin materials.
- iii) The municipality may set price preferences for specific products at rates higher than the price preferences set out in (ii).
- iv) When the municipality requires printing of stationery, documents or other material on recycled paper, the printed material shall contain a statement or symbol indicating that it is printed on recycled paper.
- v) The municipality shall submit annual reports to council on the effectiveness of the procurement programme.
- vi) By December 1, 1993, all firms supplying or intending to supply goods or services to the municipality shall submit to the municipality a written statement certifying that a) it has conducted a solid waste audit, b) it has implemented a solid

waste reduction programme, and that c) it has adopted and implemented a procurement policy that substantially matches that set out by (i) through (iv) above.

c. Land use planning

(a) Waste reduction policies

Municipal official plans or their equivalents should be amended to:

- i) incorporate by reference the waste reduction policy set out in a municipality's waste reduction bylaw, and;
- ii) provide that the use and development of land within the municipality occur in a manner that promotes the realization of all practical waste reduction opportunities;
- iii) to set appropriate policies to guide the development and selection of sites for various types of recycling facilities.

The further amendment to official plans or their equivalents should provide that:

- i) in any development proposal for the construction of a) 25 or more units of multi-unit residential building; b) commercial or industrial buildings with more than 10,000 square feet of

floor area; the developer must submit a solid-waste reduction plan that shall include:

- 1) a description of the character and quantity of the wastes that it is expected the development will generate;
 - 2) a description of the source separation programme that will be implemented to segregate fractions of the waste stream that can be recovered, reused or recycled;
 - 3) a description of the storage, processing and other equipment that will be used to manage materials and products that will be diverted from the waste stream, and;
 - 4) a projection of the volumes or weight of wastes that will be disposed of and diverted respectively.
- ii) no development shall be approved unless it will include a practical and effective system for diverting materials and goods from the waste stream that is consistent with the principles of waste reduction set out in this plan.
- iii) performance agreements, with suitable penalties, should specify minimum waste diversion performance levels.

d. Regulation of packaging

Perhaps the Bill should allow for municipal regulation to restrict

the use or sale of packaging materials and containers for waste management purposes. In view of the 50% figure which attaches to the amount of the waste stream that packaging comprises, it is high time that municipalities be empowered to pass by-laws for the purpose of dealing with diversion of packaging from landfill.

Conclusion

We would like to thank the members of the Committee for the opportunity to express our views concerning Bill 7. As you are now aware, our intention was to offer qualified support for the legislation while indicating a desire to see the Bill address additional policy areas some of which were raised in Discussion Paper No. 2. It is our intention to write a follow-up letter providing further answers to any question that you may have and to oversee the clause-by-clause review of this important environmental legislation.

This concludes our presentation for today.