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## MEMORANDUM

**PWC-C 42-2020**

**Subject:** Stewardship Ontario's Proposed Plan to Windup the Residential Blue Box Program and Transition to the New Producer Responsibility Framework

**Date:** Tuesday, November 10, 2020

**To:** Public Works Committee

**From:** Sherri Tait, Program Manager, Policy, Planning and Engagement

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This memorandum provides Public Works Committee with Waste Management staff comments (attached as Appendix A) to the Resource Productivity and Recovery Authority (RPRA) regarding Stewardship Ontario (SO) proposed plan to windup the residential Blue Box program and transition it to the new individual producer responsibility framework.

### Background

In the summer of 2019, the Minister of Environment, Conservation and Parks issued direction to SO to develop a plan to transition the current Blue Box program which is a shared cost model (50% funded by producers and 50% funded by municipalities) to the new individual producer responsibility framework (funded 100% by producers). The plan was to be submitted to RPRA by the August 31, 2020 deadline, which was extended from June 30, 2020 due to the COVID-19 pandemic. SO is currently the Industry Funding Organization (IFO) for the current Blue Box program and is funded by stewards of designated Blue Box materials.

SO submitted the [Blue Box Program Transition and Stewardship Ontario Windup Plan](#) (the Plan) to RPRA and as per the Ministers direction, RPRA is required to review, consult and approve the plan. The Plan is found in Appendix B. RPRA has consulted with stakeholders via a series of webinars and group discussions that were held from October 13 to 23, 2020. Stakeholder comments on the Plan were required by November 10, 2020.

## SO Blue Box Transition and Windup Plan

Highlights of the Plan including the Minister's specific direction where applicable are outlined below.

### 1. Communication

Minister's Direction: *"Parties affected by the transition should be consulted and have opportunities for meaningful engagement during the development and implementation of the plan."*

*"The public, Indigenous peoples and affected stakeholders, including stewards, municipalities and service providers (e.g. collectors, haulers, processors, recycled product manufactures) will receive transparent and clear communication from SO on a regular basis during the development and implementation of the plan."*

The Plan outlines communication activities that will occur between 2020-2026, the objectives, stakeholders and communication methods. A detailed communication timeline for each year of the transition is provided in Appendix B of the Plan.

### 2. Conflict of Interest

Minister's Direction: *"SO shall take all necessary steps to ensure there is no real, potential or apparent conflict of interest when developing and implementation the plan."*

*"[...]the plan should address:*

*Any real, potential or apparent conflict of interest in respect to SO's relationship with the Canadian Stewardship Services Alliance (CSSA)*

*Any necessary steps to ensure that the CSSA does not receive preferential treatment over other markets that may be created under the RRCEA (Resource Recovery and Circular Economy Act)."*

Prior to the development of the Plan, there were several changes made at the Board and management level to ensure compliance with the above direction. At the board level, changes included no cross appointment of directors between SO and CSSA, no director or director's company is permitted to participate in an organization designed to deliver compliance services under the RRCEA, while serving on the board of SO and a revised code of conduct. At the management level, there was a new independent

management team for the development of the Plan and day-to-day management of SO responsibility and obligations, all managers working on the Plan are restricted from providing services to CSSA or any other potential market participants that may be created under RRCEA and all material management and policy decisions will be made by the independent management team and subject to oversight by the Board.

### 3. Data Management

Minister's Direction: *"A description of all data and information that is within SO's custody or control and that is related to the operation of the SO Program since the Minister's program request letter of September 23, 2002, and a proposal for transferring all data and information to the Resource Productivity and Recovery Authority (the Authority)"*

*"A proposal for identifying confidential or personal data and information and indicating how such data and information will be supplied in confidence when transferring it to the Authority, which will assist the Authority in determining its treatment of such data and information based on applicable law and policies."*

*"The plan shall support competition, in, and not adversely affect, Ontario's current and future marketplace for the collection and recovery of paper products and packaging. The plan shall not provide for unfair or preferential treatment of the public or any affected parties, or barrier to competition during or following the windup of the program."*

*"Demonstrate and documentation that any party currently having access to SO data and information only retain data that is equivalent to the information that will be shared through a fair, open and transparent process."*

SO outlined in their Plan how they will ensure security and privacy of Blue Box data which includes storage on a shared SAP (Systems, Applications and Products) enterprise and resource planning system that is hosted in a Tier 3 data centre and data security and privacy maintained through access industry standard control process and protocols. SO will identify all data required to be stored in relation to statutory and regulatory requirements and will store data in a secure manner. SO will continue to publish an annual report but are not proposing to release additional data on program performance publically other than what is included in their Plan, annual reports and annual RPRA filings on program performance.

All confidential information will be marked as such and will continue to be protected following the termination of the current Blue Box program and eventually destroyed as

per their Plan. SO will provide RPRA with an attestation that destruction has taken place for data that need destroying (i.e. no longer required for legal or regulatory reasons).

SO will transfer Blue Box program data to RPRA mostly in a digital format. Once Blue Box program data has been transferred, only Blue Box program data that is retained for tax and legal purposes will not be accessible and access will require authorization from SO's CFO and approval of RPRA.

SO has market intelligence generated through market development initiatives and SO will compile an inventory of this knowledge and transfer the inventory to RPRA by end of 2021.

The legal ownership rights of the SO trademark and website domain name will transfer to RPRA following the end of the current Blue Box program.

The Plan contemplates data and intellectual property owned by CSSA but used by SO as part of its arrangement with CSSA would be retained by CSSA including the new proposed Material Cost Differentiation (MCD) methodology for setting steward fees.

#### 4. Maintaining Program Performance

Minister's Direction: *"There shall be no disruption in payments made by SO to a municipality or First Nation community under the SO Program until the time when that municipality or First Nation community is no longer eligible to receive funding based on criteria established in the plan."*

*"Ontarians' access to and experience with the Blue Box program shall not be negatively impacted. It is my expectation that, while allowing for natural growth of Blue Box services to new residential development or redevelopment, municipalities and First Nation communities shall not reduce or expand existing levels of Blue Box services that are eligible for funding under the SO Program."*

SO consulted with RPRA on how to best address the Ministers direction on maintaining business as usual. RPRA developed an updated Datacall User Guide to reflect new conditions for cost eligibility where Blue Box program changes made after January 1, 2020 led to cost increases. RPRA developed a process whereby a municipality could get confirmation of cost eligibility prior to making changes to the Blue Box program. Also, RPRA is monitoring changes to service levels that do not generate cost increases but impact resident's access to and experience with the Blue Box program (e.g. a

decision to discontinue collection of a material). As reported by SO *“such changes would be tracked provincially and reported annually by both RPRA and Stewardship Ontario to determine whether such changes represented a systemic change to Ontario’s residents’ experience with Blue Box recycling and what remedial action maybe required”*.

#### 5. Market Development and Promotion and Education (P&E)

There are no active market development projects being undertaken at this time and SO is recommending that no new projects be undertaken during the transition period. Funds that currently exist for market development would be reimbursed to stewards through their 2021 fees.

SO proposes to continue to educate residents on recycling during the transition period and will only target municipal areas that have not transitioned. SO’s Plan outlined their P&E objectives, planning progress and budget of \$400,000.

#### 6. Municipal Funding and Datacall

Municipalities will submit their final Datacall report in the year prior to the year they are scheduled to transition out of the Blue Box program. If a municipality transitions part way through a year, the payments will be pro-rated based on the number of days in the year the municipality was part of the current Blue Box program. The Plan outlines requirements and payment calculations.

SO is proposing a change to the steward fee setting methodology from the current Activity Based Cost (ABC) to the four step MCD methodology. In summary the ABC methodology is dependent on field data (i.e. from recycling facilities) where the MCD methodology does not rely on field data but lab measurements and system and costing information. As stated earlier the MCD methodology is proprietary to CSSA.

The methodology results in a significant increased obligation to printed paper stewards who do not directly pay fees but contribute through the In-Kind program. This would have been a difference of \$3.5 million or a 70% increase in 2020. SO is proposing implementation of the new fee setting methodology in 2 stages. The 2021 fees would be calculated using 50% of the existing methodology and 50% new methodology and in 2022 fees would be calculated using 100% of the new methodology.

## 7. Financials and Steward Operations

Minister's Direction: *"The plan must include a proposal for dealing with the assets, liabilities, rights and obligations of SO in relation to the SO program must be dealt with in a fair, open and transparent process in accordance with applicable law."*

*All monies held in trust by SO related to the SO program shall be treated appropriately in accordance with the WDTA (Waste Diversion Transition Act) and its regulations."*

*A proposed timeline according to which key aspects of the plan will be implemented."*

SO will maintain sufficient operation capital during transition to bridge its cash flows and to ensure it has sufficient funds to meet its obligations (e.g. to municipalities and other creditors). Reserves should provide for windup costs without the need to levy additional fees and reserves in excess of what is necessary for cash flow and windup costs will be returned to stewards. The unused market development funds (approximately \$5.6 million) is to be returned to stewards via a fee reduction for the relevant materials.

SO has no capital or leased assets but has financial assets and non-financial assets (i.e. intellectual property). SO has budgeted for retention and other related costs associated with their two employees and potential legal fees associated with any future legal claims or actions during the windup period.

Details of the financial forecast are found within SO's Plan; however, SO's financial forecast includes \$131 million for stewards obligations in 2020, \$143 million in 2021, \$147 million in 2022 and then decreases each year during the transition period from 2023 to 2025.

The Plan also details the stewards' business cycle during transition.

## 8. Continuous Improvement Fund (CIF) Windup

Ministers Direction: *"The Continuous Improvement Fund shall receive no additional contributions and shall end as soon as practical prior to December 31, 2025."*

CIF is a partnership between the Association of Municipalities of Ontario (AMO), City of Toronto, SO and RPRA. As per CIF, its mandate is to improve the effectiveness and efficiency of Ontario's municipal Blue Box Programs and its mandate is fulfilled through the provision of funding, technical support and training to aid municipalities and program

stakeholders in the identification and development of best practices and technological and market based solutions that lead to program improvements.

A Draft Final CIF Windup Plan has been posted to the CIF website and contains the following key recommendations:

- CIF grants will cease as of September 30, 2020.
- Disburse surplus funds to municipalities in 2021 and 2022 and after all CIF obligations are discharged in 2024.
- Continue transition and CIF program support services with emphasis on transitional support until December 31, 2023.
- Terminate public operation of CIF program on December 31, 2023.
- Initiated windup of the CIF's operations in 2024 by no later June 30, 2024.

CIF has significant intellectual assets (e.g. research projects, pilot studies, training materials) and an inventory of these assets will be completed. A Request for Expression of Interest has been issued to solicit interest from parties who may wish to maintain these assets.

A new governance model is also being proposed once the Blue Box regulations are formally approved by the Province

### **Niagara Region Comments**

Appendix A contains Niagara Region's comments on the SO Plan which include:

- concerns related to a potential conflict of interest with the use of CSSA's propriety fee setting methodology;
- a suggestion to further reduce conflict of interest and ensure fair competition;
- concerns related to returning funds to stewards set aside for market development
- ensuring financial estimates and forecast take into consideration the significant increase in program costs related to collection and processing of Blue Box materials seen by municipalities; and
- not supporting SO's proposal to implement the MCD fee setting methodology during the wind up of the Blue Box program

## **Next Steps**

Niagara Region will submit the comments found in Appendix A to RPRA and will continue to participate in consultation sessions related to the transition of the Blue Box program to full producer responsibility.

Respectfully submitted and signed by

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