



Ontario
Home Builders'
Association

Ministry of the Environment, Conservation & Parks

ERO Registry Number: 013-4689

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Discussion paper on reducing litter and waste in our communities

2019

OHBA Submission

**Submitted to: Ministry of the Environment, Conservation and Parks
April 20, 2019**



Executive Summary

The land development, new housing and professional renovation industry has an important role to play to protect and conserve our air, land and water and to address litter and reduce waste. OHBA is pleased to provide the Ministry of the Environment, Conservation and Parks (MECP) with our recommendations responding to the *Reducing Litter and Waste in Our Communities Discussion Paper* (ERO 013-4689). Under the previous government OHBA responded to a number of consultations with our recommendations focused on waste reduction, including:

- *The Role of Waste Diversion in the Green Economy* (EBR 010-8164);
- *Waste Reduction Act* (EBR 011-9260);
- *Waste Reduction Strategy* (EBR 011-9262);
- *Draft Strategy for a Waste-Free Ontario: Building the Circular Economy* (EBR 012-5834);
- *Proposed Strategy for a Waste-Free Ontario: Building the Circular Economy* (012-9356);
- *Waste Free Ontario Act, Bill 151*.

The newly proposed strategy outlined in the *Discussion Paper* is generally guided by the commitment to make producers responsible for the waste generated from their products and packaging and to outline actions to explore how to recover the value of resources in waste. OHBA is generally supportive of public policies that will reduce waste and recover materials back into the economy. It is important that the new government recognize the progress our sector has made in recent years.

Developing new waste diversion systems for construction and demolition waste is a complex process, and OHBA notes that considerable work is needed to identify effective and cost-efficient options. As an aggregator and assembler of materials on construction sites, rather than actually producing materials, built structures should not be captured under an extended producer responsibility framework similar to consumer products. The residential construction industry should continue to be managed under generator requirements defined by the 3R's Regulations (specifically O.Reg 102/94 and O.Reg 103/94 under the *Environmental Protection Act*). OHBA recognizes that these regulations require modernization to meet the governments waste diversion goals as set out in the *Made-in-Ontario Environment Plan*.

There are opportunities for many (but not all) components of construction and demolition waste to be recovered, reused and reintegrated back into the economy and more specifically back into the construction sector. That being said, Ontario's regulatory framework is outdated with cumbersome regulations focused on process rather than outcomes.

OHBA members have an important role to play in protecting and preserving our environment. Through environmental stewardship, building energy efficient new housing, upgrading aging homes, creating transit efficient complete communities and cleaning up brownfields sites, our members are important partners to the government in delivering upon a *Made-in-Ontario Environment Plan*. In this submission, OHBA outlines areas that our industry can play a leading role in reducing waste, providing clarity on excess soil movements to balance a healthy environment with a healthy economy. OHBA is generally supportive of the *Made-in-Ontario Environment Plan* and looks forward to working with the government to address the complex issues impacting the housing system and our members ability to deliver the new energy efficient housing supply.



About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. Our association includes over 4,000 member companies organized into a network of 29 local associations across the province, contributing \$62.3 billion to Ontario's economy and generating 513,000 jobs. Our membership is made up of all disciplines involved in land development and residential construction including: builders, professional renovators, trade contractors, manufacturers, consultants and suppliers.

Background

The provincial government launched a consultation in the fall of 2018 seeking feedback from Ontario citizens and businesses on a *Made-in-Ontario Climate Change Plan*. The government had stated at the time, that this would be the first part of a broader approach that will protect clean air and water, encourage conservation and do more to address urban litter and waste. OHBA responded to the *Made-in-Ontario Climate Change Plan* consultation with a submission in November 2018. The Ministry of the Environment, Conservation and Parks (MECP) subsequently released a proposed *Made-in-Ontario Environment Plan* (ERO 013-4208) to which OHBA responded in January 2019.

Currently, Ontario generates nearly a tonne of waste per person every year and our overall diversion rate has stalled below 30% over the last 15 years. The MECP notes that Ontario needs to reduce the amount of waste we generate and divert more waste from landfill through proven methods like Ontario's curbside Blue Box Program, existing and emerging municipal green bin programs and other waste recovery options. The MECP Discussion paper provides more details on the actions and commitments related to waste that were outlined in the *Made-in-Ontario Environment Plan*. The discussion paper sets out goals, actions and performance measures and outlines how the government will decrease the amount of waste going to landfill and increase the province's overall diversion rate.

The MECP *Discussion Paper* also outlines eight key areas for action:

1. prevent and reduce litter in our neighbourhoods and parks;
2. increase opportunities for Ontarians to reduce and divert waste at home, at work and on the go;
3. make producers responsible for the waste generated from their products and packaging;
4. reduce and divert food and organic waste from households and businesses;
5. reduce plastic waste going into landfills and waterways;
6. provide clear rules for compostable products and packaging;
7. recover the value of resources in waste;
8. support competitive and sustainable end-markets for Ontario's waste.

These eight areas of action are the steps the province intends to take to make waste reduction, reuse, and recycling easier for the people of Ontario. For the purposes of this OHBA submission responding to the discussion paper, OHBA will only be commenting on and making recommendations for the following subject areas:

1. Reducing litter and waste through an extended producer responsibility framework;
2. Updating O/Reg's 102/94 & 103/94 (waste audits + source separation programs);
3. Making it easier and safer to reuse excess soils;



Reducing Litter and Waste through Extended Producer Responsibility

OHBA is in principle, supportive of the provincial objective to maximize value and minimize waste by keeping products within the economy when a product has reached the end of its life. The new housing, land development and professional renovation industry certainly have a role to play in partnership with the province to achieve long-term waste reduction objectives. Residential construction is an extremely complex and heavily regulated industry that utilizes a wide variety of products and materials assembled on-site in an outdoor environment to ultimately deliver a final product to consumers. OHBA urges the province to be cautious in its approach to modernize regulations and to seek out solutions and incentives that balance practical realities and logistical challenges with the objective to reduce and ultimately eliminate waste by-products.

The construction, renovation and demolition sectors account for a significant amount of solid waste going to landfills across Ontario. OHBA recognizes that there is always room for sectors to improve their performance. OHBA is generally supportive of public policies as described in the *Made-in-Ontario Environment Plan* that: “producers should be responsible for managing the waste they produce”. Developing new waste diversion systems for construction and demolition waste, however, is a complex process, and considerable work is needed to identify effective and cost-efficient options. As an aggregator and assembler of materials on construction sites, rather than an actual material producer, OHBA recommends that MECP engage with industry stakeholders, to identify and analyze waste diversion options.

There are opportunities for many (but not all) components of construction and demolition waste to be recovered, reused and reintegrated back into the economy and more specifically back into the construction sector. However, built structures should not be captured under an extended producer responsibility framework similar to consumer products. OHBA continues to recommend that our industry should continue to be managed under generator requirements defined by the 3R's Regulations (specifically O.Reg 102/94 and O.Reg 103/94 under the *Environmental Protection Act*). OHBA recognizes that these regulations require modernization to meet the governments waste diversion goals as set out in the *Made-in-Ontario Environment Plan*.

Such an approach to modernize the existing regulatory framework would provide greater clarity of our sector regarding responsibility for the waste streams being aggregated from producers of various products to be assembled on a construction site by a home builder or professional renovator. MECP policy must be clear as to *whom* is ultimately responsible for waste streams of various products (i.e. the builder/renovator generating waste assembling products on a construction site or our supply chain partners under an extended producer responsibility framework).

The first rule of the three 'R's is to reduce waste. Waste reduction is a priority for home builders as it promotes environmental sustainability while reducing construction material, labour and disposal costs. Builders are continually adopting new construction management practices to reduce waste through design and engineering, and ensuring remaining wastes are recycled and/or reused on-site wherever possible. Value engineering and the reduction of inputs resulting in less downstream waste simply makes good business sense. In terms of best practices, from a builders' perspective, construction material waste is a waste of money on construction sites. Many builders measure waste bin usage as a performance indicator and where a particular site is tracking a higher waste volume than others, that is a strong indication that the supervisor is allowing excess variances and generating unnecessary costs. In this way, there is an element of self-regulation to minimize costs that occurs in residential construction.



It should also be noted that construction practices are constantly evolving and that greater use of modulization can further reduce waste. Through innovations in the sector, there is an emerging trend of 'off-site construction' and panelization, which is a practice that will lead to less waste on construction sites. Furthermore planning policies that support intensification and compact development are resulting in average housing units becoming smaller and a shift towards multi-family housing, thus producing less waste on average per new unit.

With respect to the construction sector, OHBA remains unclear as to the impacts of the potential adoption of an extended producer responsibility framework. As builders are both producers of a product (new homes and upgraded homes through renovations) and aggregators of products and materials at the end of a supply chain that utilizes both domestic and imported products; the application of EPR principles for our industry is not straightforward. OHBA is generally supportive of a framework in which those putting products and packaging into the marketplace accept the responsibility for managing the waste associated with them. However, as generators of waste rather than producers of waste, home builders and professional renovators should remain within the Regulations 102/94 and 103/94 framework. Given that these regulations are two decades old, OHBA recognizes that modernization to update these regulations is required.

Current Provincial Waste Regulations

For the construction sector, current provincial regulations (102/94 and 103/94) apply based on a site threshold greater than 2,000 square metres as identified in the *Environmental Protection Act*. Under regulation 102/94, companies are required to conduct a waste audit addressing:

- The amount, nature and composition of the waste;
- The manner by which the waste gets produced, including management decisions and policies that relate to the production of waste;
- The way in which waste is managed (recycled and disposed); and
- The extent to which materials or products used in the project consist of recycled or reused materials or products.

Companies are also required to prepare a waste reduction work plan that must:

- Identify the steps that will reduce the amount of material to be disposed of as waste and increase the amount of material destined for recycling;
- Set out who (i.e: individuals, employees, and/or sub-contractors) will implement each part of the plan, when each part of the plan will be implemented and what the expected results are;
- Include measures for communicating the plan to the workers on the site;
- Be posted in a place where most employees can view it; and
- Be implemented.

Under regulation 103/94, companies are mandated to have a source separation program. The construction and demolition sector must source separate the following materials: brick & portland cement concrete, unpainted drywall, steel, wood (not including painted, treated or laminated wood), and corrugated cardboard. Many companies voluntarily go beyond these regulations through their commitment to reducing construction



impacts on the environment. OHBA however agrees with the comment in the *Discussion Paper*, “that the regulations are cumbersome and focused on process rather than progress.”

OHBA is supportive of a review of the regulations, but is cautious regarding any outcome that implements a “one size fits all” approach that does not recognize the diversity of the industry or potential constraints in rural or northern communities. Dealing with construction waste is a complex issue as there are many materials involved. OHBA cautions that some problematic materials (i.e. OSB, carpet cut-offs, shingles, ceramic tile cut-offs etc) as well as contaminated materials (i.e. mixed materials such as nails and metals in concrete, wood or drywall) will likely continue to pose challenges in terms of landfill diversion. OHBA continues to express concern that some materials already under the source separation regulation (103/94), have economies of scale constraints in northern, rural and smaller communities where recycling companies either don’t exist or won’t accept certain materials. Our members have expressed concern that there is a significant disconnect between theoretical waste reduction plans and reality. OHBA members have expressed frustration that they diligently separated construction recycling materials into numerous different bins on construction sites, only to learn later, in many cases that the bins were mixed together at the waste transfer stations.

OHBA further notes that contamination of already separated materials is a practical issue on a construction site as compliance from sub-trades who are not direct employees is a practical challenge. Furthermore, illegal dumping from external person/entities into separated bins is another practical reality that occurs after-hours on construction sites. Other materials can be a challenge to deal with as there currently isn’t a market for some recovered supplies and/or the economies of scale are too small in terms of total materials recoverable on most construction sites. It is important that as the MECP advances public policy to modernize the regulatory framework that real world logistical and practical considerations are a component of any long-term strategy.

OHBA has previously and continues to recommend that the Ministry consider a different geographic approach for Northern Ontario, rural and smaller communities. There are significant challenges in dealing with waste when the economies of scale and transportation networks are lacking on construction sites in remote communities. It makes little practical or environmental sense for small quantities of waste materials to be separated and transported vast distances contributing to GHG emissions to be handled by appropriate disposal stations. The MECP must balance practical realities with recycling objectives and ensure that facilities exist within reasonable distances to appropriately process the materials collected. OHBA strongly recommends a different approach to waste diversion on construction and demolition sites that does not apply a “one size fits all” approach and furthermore recognizes different geographic areas.

Excess Soils

OHBA notes that the displacement of soil from construction projects is a major environmental and economic activity in the Province resulting in millions of truckloads of soil movement per year. The opportunity to improve the safe, proper and efficient reuse of excess soil from construction projects will result in significant environmental benefits and reduction of GHG emissions. The need for improved outcomes in excess soil management processes and regulations has been recognized by industry stakeholders, all levels of government, environmental advocates and the public at large. The industry has the tools to both implement and lead the modernization of excess soil management with proper government oversight if given the opportunity to do so. OHBA is supportive of the *Made-in-Ontario Environment Plan* commitment to: “recognize that excess soil is often a resource that can be reused. Set clear rules to allow industry to reduce construction



costs, limit soil being sent to landfill and lower greenhouse gas emissions from trucking by supporting beneficial reuses of safe soils.” OHBA specifically recommends that the MECP:

- The MECP can better address the need for innovation through industry-driven solutions and private sector service delivery options in the *Excess Soil Management Framework*.
- Recognize that the current fractured legislative environment concerning excess soil management contributes to significant and increasing costs of residential construction. Thus, MECP should proceed with implementation of regulations to facilitate outcomes acceptable to all stakeholders.
- Continue to provide province-wide leadership regarding excess soil management and curtail the ability of municipalities to refuse accepting excess soil from beyond their boundaries, provided that measures ensuring the soil’s quality and provenance are in place and that the receiving site is properly licensed and by-lawed to accept such soil.
- Foster the growth of innovative, industry-driven solutions to excess soil management and partner, as the regulator, with private sector service providers to achieve improved environmental, community and industry outcomes.
- Improved excess soil management outcomes can be achieved by establishing an arms-length excess soil management agency that is operated by the industry but regulated by and accountable to the Ministry.
- Through the introduction of digital soil movement tracking systems, concerns regarding soil provenance are greatly reduced which allows for far greater local reuse of excess soils for community benefit.
- Address the transfer of liability as excess soils move through the chain of custody.
- Do not treat or categorize excess soil as a “waste”.
- Set a higher threshold for the minimum cubic meter site size compliance with a new *Excess Soils Management Framework* to ensure that smaller infill housing sites are not captured by a new complex, and potentially expensive, regulatory regime.

OHBA is supportive of the language in the *Discussion Paper* that addresses increasing the re-use of excess soil, while protecting human health and the environment. Under the previous government, OHBA provided the Ministry with three submissions EBR 013-0299 in June 2017, EBR-012-6065 in March 2016 and EBR-011-7523 in January 2013. The excess soil management framework proposed under the previous government would seek to shift more responsibility for “clean” excess construction soil onto the generators of it (often OHBA builder/developer members) called “source sites”. New regulatory requirements would be placed on source sites to prepare and implement *Excess Soil Management Plans*, certified by a Qualified Person. OHBA’s comments to the Ministry in previous excess soil management submissions noted our support for Ontario’s objective to protect human health and the environment from the inappropriate relocation of excess soils while enhancing opportunities for the beneficial reuse of excess soil. However, OHBA expressed concern that the overall package of reforms proposed by the previous government potentially brings in a range of new regulations and responsibilities onto source sites without addressing the transfer of liability as excess soils move through the chain of custody. Furthermore, OHBA recommended that the Ministry recognize that the proposed additional processes and requirements would increase both timing and costs for development proponents.



Other Issues

OHBA is concerned with respect (but not necessarily opposed to) to potential bans of specific materials for disposal. Banning materials could encourage illegal dumping (sometimes by third parties at night on our members' construction sites) and discourage businesses from appropriately dealing with some waste materials. Furthermore, while some materials may have readily available recycling or reuse facilities in larger urban centres, the province needs to recognize Ontario's diverse geography and that recycling and reuse facilities that accept specific banned or regulated materials may not be located in northern, rural or smaller communities. OHBA requests additional consultation with the regulated community prior to any specific material disposal bans.

OHBA continues to call on the government to review the regulatory regime governing Brownfields to support adaptive reuse of existing properties, support environmental clean-up of contaminated sites and enhance the economic viability on sustainable infill and intensification. OHBA notes that brownfield redevelopment has been identified in the *Made in Ontario Environment Plan* and by the building and development industry as a strategic opportunity to utilize existing infrastructure and build complete communities while also cleaning up contaminants left behind from historic industrial sites.

A brownfields regulatory framework, with codified standards that are not achievable, or a risk assessment process that is not functional, undermines the economic viability of some brownfield opportunities and sterilizes land in municipally strategic locations. OHBA is therefore supportive of the *Made-in-Ontario Environment Plan* commitment to: "revise the brownfields regulation and the record of site condition guide to reduce barriers to redevelop and revitalize historically contaminated lands, putting vacant prime land back to good use." OHBA would in particular like to highlight the need for MECP to modernize the threshold for salt-related parameters, as many potential sites are experiencing significant delays and costly mitigation programs for trace quantities of road salt. The MECP needs to address growing concerns with implementing an unnecessarily overly rigorous standard. OHBA looks forward to working with the MECP to re-evaluate not only salt standards, but the entire brownfields framework.

Conclusion

OHBA encourages the province to continue to engage in discussions with a wide range of stakeholders including manufacturers and suppliers involved in residential construction. Our industry is extremely complex with many materials from a range of domestic and international sources and different stakeholders involved. OHBA looks forward to working with the province to ultimately reduce, reuse and recycle waste generated from residential construction sites and encourages the provincial government to review, streamline and modernize the regulatory framework while also considering incentives to encourage innovation in the sector.