



Ontario
Home Builders'
Association

Ministry of the Environment & Climate Change

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Waste-Free Ontario: Building the Circular Economy Proposal Waste Free Ontario Act, Bill 151

OHBA Submission

**Submitted to: Ministry of the Environment and Climate Change
February 29, 2016**

Executive Summary

The Ontario Home Builders' Association (OHBA) appreciates the opportunity to provide comments on the proposed *Waste Free Ontario Act, Bill 151* (EBR 012-5832) and the Draft Strategy for a Waste-Free Ontario: Building the Circular Economy (EBR 012-5834). OHBA previously participated in consultations on Ontario's waste diversion framework and provided the Ministry with a submission responding to *The Role of Waste Diversion in the Green Economy* (EBR 010-8164) in February 2010. OHBA also participated in consultations in 2013 for both the *Waste Reduction Strategy* (EBR 011-9262) and proposed *Waste Reduction Act* (EBR 011-9260). These as well as the newly proposed strategy and legislation are generally guided by the Canadian Council of Ministers of the Environment (CCME) endorsement of an outcome based producer responsibility framework for waste diversion for which OHBA is generally supportive. OHBA appreciates the opportunity to once again provide our comments and recommendations to government.

OHBA notes that developing new waste diversion systems for construction and demolition waste 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 actually producing materials, OHBA recommends that the ministry engage with industry stakeholders representing the new home construction and home renovation sectors, to identify and analyze waste diversion options. OHBA specifically notes that for the purposes of an extended producer responsibility framework for a circular economy that neither home builders, nor developers or professional renovators should be considered "producers" of products in a circular economy waste stream, but rather our members are generators of waste in which we assemble products that are each "produced" by other companies.

OHBA is generally supportive of the direction that the provincial government is moving to advance public policies that will promote a circular economy. OHBA does however note that built structures should not be captured under an extended producer responsibility framework similar to consumer products and 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 proposed draft strategy for a *Waste Free Ontario: Building the Circular Economy*. OHBA looks forward to consulting with the government and requests to be on a stakeholder working group as proposed in the Draft Strategy to review and modernize the regulations that directly impact the new housing, land development and professional renovation sector.

About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 30 local associations across the province. 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. The residential construction industry employed over 313,000 people and contributed over \$44 billion to the province's economy in 2014.

Background

On November 26th the government introduced Bill 151, a proposed omnibus legislation titled the *Waste-Free Ontario Act* that if passed, would enact both the *Resource Recovery and Circular Economy Act* and the *Waste Diversion Transition Act*. The proposed legislation is intended to enable a shift to a circular economy which would increase resource recovery and waste reduction in Ontario. In addition to the proposed legislation, the government has also introduced a draft *Strategy for a Waste-Free Ontario: Building the Circular Economy* which outlines a resource recovery and waste reduction road map.

A *Resource Recovery and Circular Economy Act* would:

1. Establish the provincial interest in resource recovery and waste reduction and enable the government to issue policy statements to provide further direction on the provincial interest.
2. Establish a new outcomes-based producer responsibility regime that holds responsible persons accountable for recovering resources and reducing waste associated with their products/packaging.
3. Overhaul *Waste Diversion Ontario*, the existing oversight body under the *Waste Diversion Act, 2002*, as the new *Resource Productivity and Recovery Authority* with responsibility to oversee the new producer responsibility regime and existing waste diversion programs and their transition.
4. Establish the *Strategy for a Waste-Free Ontario: Building the Circular Economy*, which will outline a vision and goals for resource recovery and waste reduction and identify actions under the proposed *Resource Recovery and Circular Economy Act*.

The government's vision would be fulfilled by the draft Strategy's two goals: a zero waste Ontario and zero greenhouse gas emissions from the waste sector. To achieve these goals Ontario would work towards systematically avoiding and eliminating waste, while conserving and recovering all resources. Three objectives are outlined in the draft Strategy as critical to achieving these goals.

1. Increase Resource Productivity and Reduce Waste;
2. Enable an Efficient and Effective Recycling System;
3. Create Conditions to Support Sustainable End-Markets.

Waste Reduction Opportunities within Existing Green Building Programs

The residential sector has demonstrated leadership in areas of energy efficiency and greenhouse gas emission reduction. Within the industry there are a variety of practices for dealing with waste and a number of voluntary industry-driven green programs through which many private businesses have demonstrated strong leadership in reducing construction waste. Three of the more significant programs with waste reduction components include:

- GreenHouseTM: involves having a waste management plan that details the recycle and reuse facilities, municipal solid waste landfills, etc.; the materials that cannot be recycled/reused; and the quantity of waste generated, diverted, and disposed by landfill/incineration.
- LEED: Under Materials and Resources (MR 3.2), the LEED program awards credits for reducing construction waste OR diverting 25% or more of the total materials taken off the site from landfills/incinerators. Builders can receive up to three points in this credit to help receive a LEED Silver, Gold or Platinum designation.
- Building Canada: teaches builders and designers how to use less material and to design spaces to dimensions that will maximize standard sized construction materials and therefore reduce the creation of waste.

These kinds of voluntary, industry-driven programs demonstrate leadership in the residential construction sector. This leadership has contributed to significant reductions in greenhouse gas emissions in Ontario and across Canada.

Current Provincial Waste Regulations

For construction, 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 Commentary (EBR 012-5832 and 012-5834)

OHBA is in principle, supportive of the provincial objective to aggressively divert more waste from landfills and the aspirational target to have a waste-free Ontario. The new housing, land development and professional renovation industry certainly have a key 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 consult with the industry to seek out solutions 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 (Ontario's proposed 2013 *Waste Reduction Strategy* suggests 10%). OHBA recognizes that there is always room for sectors to improve their performance. OHBA suggests that for the purposes of a discussion on extended producer responsibility and a circular economy that construction and demolition waste should be addressed separately by modernizing the generator requirements defined in the 3R's Regulations (specifically 102/94 and 103/94). This would provide greater clarity on the implications of the waste streams being aggregated from producers of various products to be assembled on a construction site by a home builder or professional renovator. Furthermore Ministry 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 reused wherever possible. Value engineering and the reduction of inputs resulting in less downstream waste simply makes good business sense. It should also be noted that construction techniques are advancing and greater use of modulization can reduce waste. Furthermore "smart growth" planning principles are resulting in average housing units becoming smaller and a paradigm shift towards smaller multi-family housing prototypes, thus producing less waste on average per new unit.

Many builders have significantly reduced the waste they produce, yet of that remaining waste, some is still diverted to landfills. Those builders are concerned that they could be penalized for perhaps not making gains on the ratio of waste being recycled versus going to landfills, yet the overall amount of on-site construction waste is being reduced through improved design and engineering efforts to find greater efficiencies in the materials being utilized.

OHBA generally supports an outcome-based producer responsibility framework that builds a circular economy. However, the industry is concerned about potential provisions for legally binding waste reduction outcomes. OHBA has concerns with respect to the overhaul of *Waste Diversion Ontario* to become the *Resource Productivity and Recovery Authority*. This proposed piece of legislation will create yet another large and costly arms-length provincial bureaucracy. A new larger entity that would be a non-crown body with new objects, new powers, with compliance and enforcement tools as well as enhanced oversight powers must be fully accountable and transparent to the regulated community and Ontario citizens. Furthermore, potential additional reporting requirements to the new *Resource Productivity and Recovery Authority* and financial penalties for non-compliance are of concern for an industry that while aggregating products, does not actually produce the products or packing instead, our members assemble these products into structures on construction sites.

OHBA is concerned with respect (but not necessarily opposed to) to potential bans of specific materials for disposal. Banning materials could encourage illegal dumping 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. The proposals are currently vague in terms of the role for the new home, renovation and land development industry. As such, OHBA requests additional consultation with the regulated community prior to any specific material disposal bans.

With respect to the construction sector, OHBA is unclear as to the impacts of the adoption of an extended producer responsibility framework within a circular economy. 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 in our industry is not straightforward. Additionally, neither the proposed legislation nor the draft strategy articulated how the construction sector as generators of waste fits into such a framework. 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 approximately two decades old, OHBA recognizes that it may be appropriate to review these regulations. OHBA would be pleased to participate with the Ministry in a formal process with other construction sector stakeholders on the proposed stakeholder working group to steer a comprehensive review of the 3R Regulations.

Dealing with construction waste is a complex issue as there are many materials involved and there will be key decisions required with respect to who is defined as the producer and therefore carries the disposal obligation. 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. Even some materials already under source separation regulation (103/94) have market capacity constraints in northern, rural and smaller communities where recycling companies either don't exist or won't accept certain materials. 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 Ministry advances public policy to modernize the regulatory framework that real world logistical and practical considerations are a component of any long-term strategy.

With a diverse range of products as components on a residential construction site there is a wide variety of logistical issues to be resolved for each type of product in terms of effective and cost-efficient diversion options and the appropriate division of responsibility for implementing such systems. OHBA suggests that the most significant challenge to achieving higher diversion rates is the transportation supply chain to handle diverted materials and the ultimate destination for those responsible to dispose of the materials. Opportunities and constraints exist for each type of material depending in part on the volumes of material collected. Despite the industry's best efforts, some diversion plans may not be economically viable in the short-term or ever in some rural and remote northern communities.

OHBA therefore recommends that the Ministry of the Environment and Climate Change consider a different geographic approach for Northern Ontario and some rural communities. There will be significant challenges in dealing with waste on construction sites in remote communities. There simply are not the economies of scale and transportation networks for various materials to adequately be diverted and disposed of. It makes little practical or environmental sense for small quantities of waste materials to be separated and transported vast distances to be handled by appropriate disposal stations. OHBA strongly recommends a different approach to waste diversion on construction and demolition sites in specific geographic areas.

In terms of the proposed *Waste Free Ontario Act*, OHBA encourages the Ministry of the Environment and Climate Change and the proposed *Resource Productivity and Recovery Authority* to be flexible in its approach to residential construction. Within the industry there is a wide variety of construction sites and practices that must be considered. These range from small independent businesses conducting small renovations or building just a few homes a year, to small infill projects, to the custom builders, to large scale tract builders and to developers constructing skyscrapers in a densely populated urban environment. It is critical to recognize diversity within the industry and to consider minimum thresholds for compliance which would limit unintended negative impacts on small business and small construction sites.

OHBA strongly supports a waste diversion framework that promotes strong accountability and transparent oversight mechanisms. The proposed legislation establishes Provincial Interests and provides further direction for these for Provincial Interests through the ability to issue Policy Statements. OHBA is supportive of the proposed process that Provincial Interest and Policy Statements be developed under the *Resource Recovery and Circular Economy Act*, in consultation with stakeholders and be posted to the Environmental Registry and would require Cabinet approval before being issued. For accountability purposes, OHBA also supports that the application of the Provincial Interest or Policy Statements could be appealed to existing tribunals (e.g. ECA appeal to the Environment Review Tribunal or the OMB). Lastly, OHBA has a number of concerns previously

articulated with the *Resource Productivity and Recovery Authority*, but OHBA is however supportive of the fact that the Auditor General will have oversight over the Authority and that annual public reporting of activities and financial statements from the Authority will be required.

Home builders and renovators purchase materials and supplies as products from a variety of sources and assemble those products on the building site. OHBA seeks clarification on the following items:

- If products are to be managed from a life cycle perspective, is the producer of those products responsible for disposal or does the builder who assembles those products on a building site and generates the waste assume responsibility?
- With respect to tracking materials from collection to final destination and registering those materials would this be considered an individual product producer responsibility or the responsibility of the generator (home builder / renovator)?
- If product producers are ultimately responsible for the life cycle of products, how will builders and renovators handle supply chains that utilize a mix of both domestic and imported materials?
- OHBA is unclear with respect to the role of the proposed *Resource Productivity and Recovery Authority* and its ability to set and collect fees/charges to recover its costs related to the administration of the Act, specifically within the construction sector.
- OHBA is unclear as to the regulated community registration requirements with the proposed Authority if the construction industry continues to operate under the 3R's Regulations rather than under an extended producer responsibility framework.

Conclusion

At this stage in the discussion and consultation process between the Ministry of the Environment and Climate Change and the new housing, land development and professional renovation industry, OHBA is limited in providing specific recommendations or direction to the provincial government. OHBA's objective at this time is to assist the province in the development of clear, cost-efficient policies that will assist the province in achieving its waste diversion goals and objectives.

The land development, new home construction and renovation industries aggregate and assemble products to create new or enhanced building structures rather than produce products; therefore as generators of waste under the 3R's Regulations the industry remains somewhat unclear as to our direct relationship and responsibility to the proposed *Resource Productivity and Recovery Authority*. Furthermore, the current consultation is focused on proposed legislation, the proposed Authority and the draft Strategy rather than the specific regulations (102/94 and 103/94) that regulate the construction industry. OHBA requests to be appointed to the proposed stakeholders working group when the 3R's Regulation Generator Requirements are reviewed by the Ministry.

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 the regulatory framework for construction and demolition waste under a separate more focused consultation.