



Resource Recovery and Circular Economy Act, 2016

S.O. 2016, CHAPTER 12

SCHEDULE 1

Historical version for the period June 9, 2016 to November 29, 2016.

No amendments.

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PART I
GENERAL

DEFINITIONS

Note: Sections 1 to 32 come into force on November 30, 2016, the day named by proclamation of the Lieutenant Governor.

Definitions

1. In this Act,

“Authority” means the Resource Productivity and Recovery Authority continued under Part III; (“Office”)

“circular economy” means an economy in which participants strive,

- (a) to minimize the use of raw materials,
- (b) to maximize the useful life of materials and other resources through resource recovery, and
- (c) to minimize waste generated at the end of life of products and packaging; (“économie circulaire”)

“Minister” means the Minister of the Environment and Climate Change or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“recovered resources” means material recovered from collected products and packaging or from other sources; (“ressources récupérées”)

“Registry” means, except where the context requires otherwise, the Registry described in section 50; (“Registre”)

“regulations” means the regulations made under this Act; (“règlements”)

“resource recovery” means the extraction of useful materials or other resources from things that might otherwise be waste, including through reuse, recycling, reintegration, regeneration or other activities; (“récupération des ressources”)

“Strategy” means the document developed under section 3, including any amendments made to it under that section; (“Stratégie”)

“Tribunal” means the Environmental Review Tribunal. (“Tribunal”)

“waste reduction” means the minimization of waste generated at the end of life of products or packaging, including through activities related to design, manufacturing and material use; (“réduction des déchets”)

PROVINCIAL INTEREST

Provincial interest

2. It is in the provincial interest that Ontario have a system of resource recovery and waste reduction that aims to,
- (a) protect the natural environment and human health;
 - (b) foster the continued growth and development of the circular economy;
 - (c) minimize greenhouse gas emissions resulting from resource recovery activities and waste reduction activities;
 - (d) minimize the generation of waste, including waste from products and packaging;
 - (e) increase the durability, reusability and recyclability of products and packaging;
 - (f) hold persons who are most responsible for the design of products and packaging responsible for the products and packaging at the end of life;
 - (g) decrease hazardous and toxic substances in products and packaging;
 - (h) minimize the need for waste disposal;
 - (i) minimize the environmental impacts that result from resource recovery activities and waste reduction activities, including from waste disposal;
 - (j) provide efficient, effective, convenient and reliable services related to resource recovery and waste reduction, including waste management services;
 - (k) increase the reuse and recycling of waste across all sectors of the economy;
 - (l) increase opportunities and markets for recovered resources;
 - (m) promote public education and awareness with respect to resource recovery and waste reduction;
 - (n) promote cooperation and coordination among various persons and entities involved in resource recovery activities and waste reduction activities;
 - (o) promote competition in the provision of resource recovery services and waste reduction services;
 - (p) foster fairness for consumers;
 - (q) do any other related thing that may be prescribed.

STRATEGY

Strategy

3. (1) In order to support the provincial interest, the Minister shall, no later than 90 days after the day this section comes into force,
- (a) develop a strategy entitled Strategy for a Waste-Free Ontario: Building the Circular Economy in English and Stratégie pour un Ontario sans déchets : Vers une économie circulaire in French; and
 - (b) publish it on a website of the Government of Ontario.

Same

- (2) The Minister shall maintain the Strategy that is developed under subsection (1) and shall ensure that it remains available to the public on a website of the Government of Ontario.

Review

- (3) Within 10 years after the Strategy is developed and at least every 10 years thereafter, the Minister shall cause a review of the Strategy to be undertaken.

Same

- (4) As part of a review of the Strategy, the Minister shall,
- (a) consult on the Strategy, in the manner the Minister considers appropriate, with any person or entity the Minister considers may have an interest in the Strategy, including the public; and
 - (b) based on the consultation, amend the Strategy, as he or she considers advisable.

Amendments

- (5) In addition to making amendments as part of a review described in subsection (4), the Minister may, as he or she considers advisable, make amendments to the Strategy from time to time in between reviews.

Contents

4. The Strategy shall set out the following:
- 1. The Strategy's goals.
 - 2. A summary of actions that may be taken under this Act or any other Act, and any non-legislative actions that may be taken, to support the Strategy's goals.
 - 3. The performance measures by which progress in achieving the Strategy's goals can be assessed.
 - 4. Such other matters as the Minister considers advisable.

Progress reports

5. At least once every five years, the Minister shall prepare a report setting out the following and publish it on a website of the Government of Ontario:
- 1. A description of actions that have been taken during the period covered by the report to address the Strategy's goals.
 - 2. A description of progress made in achieving the Strategy's goals, as assessed by the performance measures established under paragraph 3 of section 4.

Environmental Bill of Rights, 1993, “policy”

6. Section 15 of the *Environmental Bill of Rights, 1993*, and the other provisions of that Act that apply to proposals for a policy, apply with necessary modifications to the Strategy and, for that purpose, the Strategy is deemed to be a proposal for a policy under consideration in the Ministry.

Environmental Assessment Act, “undertaking”

7. The Strategy is not an undertaking for the purposes of the *Environmental Assessment Act*.

MISCELLANEOUS

Competition Act (Canada)

8. Nothing in this Act shall be construed as requiring or authorizing any person or entity to engage in an activity that would constitute a contravention of the *Competition Act (Canada)*.

Crown bound

9. This Act binds the Crown.

PART II APPLICATION OF PROVINCIAL INTEREST

Regard for provincial interest

10. (1) The following persons and entities shall have regard to the provincial interest described in section 2 when doing the following things:

1. A person or entity when exercising a power or performing a duty under this Act.
2. A person or entity when exercising a power or performing a duty under another Act, if the exercise of the power or the performance of the duty relates to resource recovery or waste reduction.
3. A person or entity retained to provide services in relation to another person’s responsibilities under section 67, 68, 69 or 70 when performing those services.
4. An owner or operator of a waste management system when engaging in waste management activities.
5. A prescribed person or entity when carrying out prescribed activities related to resource recovery or waste reduction.

Exception

(2) This section does not apply to the Lieutenant Governor in Council.

Same

(3) This section does not apply to a person or entity that is exempted under the regulations.

Same

(4) Paragraph 4 of subsection (1) does not apply to a person who is exempt from Part V of the *Environmental Protection Act* in respect of the storage or disposal of the person’s domestic wastes on the person’s own property.

Interpretation

(5) For the purposes of paragraph 4 of subsection (1),

“operator”, “owner” and “waste management system” have the same meaning as in Part V of the *Environmental Protection Act*.

Policy statements

11. (1) For the purpose of furthering the provincial interest described in section 2, the Minister, with the approval of the Lieutenant Governor in Council, may issue resource recovery and waste reduction policy statements.

Development of policy statements

(2) In developing a policy statement, the Minister shall consult, in the manner the Minister considers appropriate, with,

- (a) representatives of municipalities;
- (b) representatives of persons engaging in resource recovery activities and waste reduction activities;
- (c) representatives of environmental organizations;
- (d) the public; and
- (e) such other persons as the Minister considers advisable.

Timing requirement

(3) The Minister shall begin developing a policy statement and consulting on it in accordance with subsection (2) no later than the first anniversary of the day this section comes into force.

Amendments

(4) The Minister may amend a policy statement at any time and for any reason.

Review

(5) Within 10 years after a policy statement is issued, the Minister shall review it and consider whether it should be amended.

Consultation

(6) In considering whether to amend a policy statement, the Minister shall consult, in the manner the Minister considers appropriate, with the persons listed in subsection (2).

Publication

(7) The Minister shall publish each new or amended policy statement on a website of the Government of Ontario and in *The Ontario Gazette* and shall give further notice of it, in the manner the Minister considers appropriate,

- (a) to the members of the Legislative Assembly;
- (b) to the Authority; and
- (c) to any persons or entities that the Minister considers to have an interest in it.

Continued publication

(8) The Minister shall ensure that all policy statements are maintained on a website of the Government of Ontario.

Environmental Bill of Rights, 1993, "policy"

(9) Section 15 of the *Environmental Bill of Rights, 1993*, and the other provisions of that Act that apply to proposals for a policy, apply with necessary modifications to policy statements and, for that purpose, a policy statement is deemed to be a proposal for a policy under consideration in the Ministry.

Environmental Assessment Act, "undertaking"

(10) A policy statement issued under this section is not an undertaking for the purposes of the *Environmental Assessment Act*.

Non-application of *Legislation Act, 2006*, Part III

(11) Part III of the *Legislation Act, 2006* does not apply to a policy statement issued under this section.

Consistency with policy statements

12. (1) Subject to section 13, the following persons and entities shall, when doing the following things, ensure the things are done in a manner that is consistent with all applicable policy statements:

1. A person or entity when exercising a power or performing a duty under this Part or Part III, IV or V.
2. A person or entity when exercising a power or performing a duty under an Act mentioned in subsection (2) or a provision mentioned in subsection (3), if the exercise of the power or the performance of the duty relates to resource recovery or waste reduction.
3. A person or entity retained to provide services in relation to another person's responsibilities under section 67, 68, 69 or 70 when performing those services.
4. An owner or operator of a waste management system when engaging in waste management activities.
5. A prescribed person or entity when carrying out prescribed activities related to resource recovery or waste reduction.

List of Acts

(2) The following are the Acts referred to in paragraph 2 of subsection (1):

1. *City of Toronto Act, 2006*.
2. *Condominium Act, 1998*.
3. *Consumer Protection Act, 2002*.
4. *Environmental Assessment Act*.
5. *Environmental Protection Act*.
6. *Municipal Act, 2001*.
7. *Nutrient Management Act, 2002*.
8. *Ontario Water Resources Act*.
9. *Planning Act*.
10. Any prescribed Acts.

List of provisions

(3) The following are the provisions referred to in paragraph 2 of subsection (1):

1. Section 11.6 of the *City of Greater Sudbury Act, 1999*.
2. Section 11.7 of the *City of Hamilton Act, 1999*.
3. Section 12.13 of the *City of Ottawa Act, 1999*.
4. Section 13.6 of the *Town of Haldimand Act, 1999*.
5. Section 13.6 of the *Town of Norfolk Act, 1999*.
6. A prescribed provision of a prescribed Act.

Interpretation

(4) For the purposes of paragraph 4 of subsection (1),

"operator", "owner" and "waste management system" have the same meaning as in Part V of the *Environmental Protection Act*.

Application and exceptions

13. (1) Subject to subsections (3) to (5), a resource recovery and waste reduction policy statement is applicable in respect of all persons and entities listed in subsection 12 (1), unless,

- (a) the policy statement specifies that it is applicable only,
 - (i) to one or more persons or entities listed in subsection 12 (1), or
 - (ii) to a class of persons or entities listed in that subsection based on any attribute or combination of attributes;
- (b) the policy statement specifies that it is not applicable,
 - (i) to one or more persons or entities listed in subsection 12 (1), or
 - (ii) to a class of persons or entities listed in that subsection based on any attribute or combination of attributes; or
- (c) the person or entity is exempted by regulation.

Geographic areas

(2) A policy statement may specify that it applies differently in different geographic areas of Ontario.

Exception

(3) Section 12 does not apply to the Lieutenant Governor in Council.

Same

(4) Section 12 does not apply to a person or entity that is exempted under the regulations.

Same

(5) A policy statement does not apply to a person who is exempt from Part V of the *Environmental Protection Act* in respect of the storage or disposal of the person's domestic wastes on the person's own property.

Amendments to ensure consistency with policy statements

Official plans

14. (1) A council of a municipality or a municipal planning authority shall ensure that its official plan is consistent with the resource recovery and waste reduction policy statements that apply to the municipality or the authority and shall amend its official plan if necessary to achieve consistency.

Same, timing

- (2) Any amendments required under subsection (1) shall be made before the earlier of,
 - (a) the date specified in the applicable policy statement, if any; and
 - (b) the end of the period determined under subsection 26 (1) of the *Planning Act*.

Zoning by-laws

(3) No later than three years after an amendment required under subsection (1) comes into effect, the council of the municipality or the municipal planning authority shall amend the zoning by-laws that are in effect in the municipality that relate to resource recovery or waste reduction if necessary to ensure conformity with the amendment to the official plan.

By-law under listed Acts

(4) If a by-law that is in effect under an Act mentioned in subsection 12 (2) or a provision of an Act prescribed under paragraph 6 of subsection 12 (3) relates to resource recovery or waste reduction, the person or entity that made the by-law shall ensure that it is consistent with the policy statements that apply to the person or entity and shall amend the by-law if necessary to achieve consistency.

Prescribed instruments

(5) If an instrument prescribed in the regulations, other than an instrument mentioned in subsection (1), (3) or (4), relates to resource recovery or waste reduction, the person or entity that made the prescribed instrument shall ensure that it is consistent with the policy statements that apply to the person or entity and shall amend the instrument if necessary to achieve consistency.

Timing

(6) Any amendments required under subsection (4) or (5) shall be made before the date specified in the applicable policy statement.

Minister's request

(7) If the Minister is of the opinion that an official plan, by-law or other instrument mentioned in this section is inconsistent with an applicable policy statement, he or she may, at any time, request that the person or entity that made the official plan, by-law or instrument amend it to achieve consistency.

Conflicts

15. (1) Despite any Act, if there is a conflict between a resource recovery and waste reduction policy statement issued under section 11 and a provision in an instrument described in subsection (2), the following rules apply:

1. The policy statement or provision that provides the greatest protection to the natural environment and human health governs, to the extent of the conflict.
2. If the policy statement and the provision provide equal protection to the natural environment and human health, the policy that best promotes the provincial interest described in section 2 governs, to the extent of the conflict.

Instruments

- (2) The instruments referred to in subsection (1) are,
 - (a) a policy statement issued under subsection 3 (1) of the *Planning Act*; and

(b) any prescribed instruments.

Clarification guidelines

(3) The Minister, jointly with a member of the Executive Council to whom responsibility for the administration of an Act under which a plan mentioned in subsection (4) is issued, may prepare guidelines to clarify the relationship between a policy statement and a policy in a plan.

List of provincial plans

(4) The plans referred to in subsection (3) are,

- (a) the Greenbelt Plan established under section 3 of the *Greenbelt Act, 2005*;
- (b) the Niagara Escarpment Plan continued under section 3 of the *Niagara Escarpment Planning and Development Act*;
- (c) the Oak Ridges Moraine Conservation Plan established under section 3 of the *Oak Ridges Moraine Conservation Act, 2001*;
- (d) a growth plan approved under section 7 of the *Places to Grow Act, 2005*; or
- (e) a plan or provisions of a plan prescribed by the regulations that is made or approved by the Lieutenant Governor in Council, a minister, or a board, commission or agency of the government.

Appointment of Directors

16. (1) The Minister may appoint as Directors such public servants employed under Part III of the *Public Service of Ontario Act, 2006* who work in the Ministry as the Minister considers necessary for the purposes of section 17.

Limitation of authority

(2) In an appointment under subsection (1), the Minister may limit a Director's authority in such manner as the Minister considers necessary or advisable.

Reviews

17. (1) When directed to do so by a Director appointed under section 16, a person or entity described in subsection (2) shall review the person's or entity's activities to determine the extent to which the person or entity is performing duties and carrying out activities in a manner that is consistent with all applicable policy statements.

Application

(2) This section applies to the following persons in respect of the following activities:

- 1. A person mentioned in section 61 or 62 of this Act carrying out the person's responsibilities under section 67, 68, 69 or 70.
- 2. A person or entity retained to provide services in relation to another person's responsibilities under section 67, 68, 69 or 70 performing those services.
- 3. A prescribed person or entity carrying out prescribed activities related to resource recovery or waste reduction.

Manner

(3) The review shall be conducted in accordance with the Director's directions and any prescribed requirements.

Reporting and publication

(4) The person or entity shall,

- (a) report the results of the review in the manner and within the time the Director directs and, if a target has been established under the policy statement, shall include information on the extent to which the target is being achieved; and
- (b) make the results of the review available to the public in the manner and within the time the Director directs.

Failure to ensure consistency

(5) If, in the Director's opinion, a person or entity described in subsection (2) fails to act in accordance with the person's or entity's obligation under section 12 to ensure that it performs its duties and carries out its activities in a manner that is consistent with all applicable resource recovery and waste reduction policy statements, the Director may do one or both of the following:

- 1. Require the person or entity to provide information the Director specifies with respect to the person's or entity's efforts to meet the obligation and the reasons for the failure to do so.
- 2. Require the person or entity to prepare and submit to the Director a report describing the proposed steps to be taken to meet the obligation and the proposed timelines for doing so.

Manner

(6) The person or entity shall comply with a requirement under subsection (5) in accordance with the Director's directions and any prescribed requirements.

Opportunity for comment

(7) Before taking any action under subsection (5), the Director shall give the person or entity an opportunity to provide the Director with comments on the performance of their duties and the carrying out of their activities.

Limitation

(8) Subsection (7) does not apply to the extent that the person or entity has provided a report on the duties and activities in question in response to a Director's direction under subsection (1).

Public disclosure

18. The Director may publicly disclose any of the information provided under subsection 17 (5) in such manner and format as the Director considers appropriate.

Form or format

19. The Director may specify that information to be provided under section 17 must be submitted in a form or format acceptable to the Director.

Minister's declaration

20. (1) If the Minister is of the opinion that the provincial interest described in section 2 is or is likely to be adversely affected by the outcome of a proceeding under this Act or any other Act before the Tribunal, the Ontario Municipal Board or a joint board under the *Consolidated Hearings Act*, the Minister may declare his or her opinion in writing to the secretary of the Tribunal or the registrar of the board.

Contents

(2) The declaration shall identify the issues in the proceeding that, in the Minister's opinion, adversely affect or are likely to adversely affect the provincial interest and shall describe the anticipated adverse effects.

No notice or hearing required

(3) The Minister is not required to give notice or to hold a hearing before issuing a declaration.

Effect of declaration

(4) If the Tribunal or board receives a declaration under this section at least 30 days before the hearing begins, the Tribunal's or board's decision is not final or binding with respect to the issues identified in the declaration.

Power of Lieutenant Governor in Council

(5) The Lieutenant Governor in Council may confirm, vary or rescind the decision of the Tribunal or board in respect of an issue identified in a declaration.

Where Lieutenant Governor in Council does not act

(6) If the Lieutenant Governor in Council does not act under subsection (5) within the prescribed period after the Tribunal's or board's decision is issued, the Tribunal's or board's decision is final and binding as of the date determined in accordance with the regulations.

Limitation

(7) This section does not apply,

- (a) to a proceeding that is an application for leave to appeal under subsection 38 (1) of the *Environmental Bill of Rights, 1993*; or
- (b) to a proceeding before a joint board to which the Minister is a party under subsection 8 (2) of the *Consolidated Hearings Act*.

Effect on appeal process under various Acts

(8) Despite the following provisions, no appeal lies to the Minister if a declaration has been issued under this section:

1. Clause 20.16 (1) (b) of the *Environmental Protection Act*.
2. Subsection 100.1 (17) of the *Environmental Protection Act*.
3. Subsection 145.6 (2) of the *Environmental Protection Act*.
4. Subsection 11 (3) of the *Nutrient Management Act, 2002*.
5. Subsection 47 (12) of the *Ontario Water Resources Act*.
6. Subsection 102.3 (2) of the *Ontario Water Resources Act*.
7. Subsection 15 (4) of the *Pesticides Act*.

PART III

RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY

CORPORATION CONTINUED

Corporation continued

21. (1) The corporation without share capital established under section 3 of the *Waste Diversion Act, 2002* under the name Waste Diversion Ontario in English and Réacheminement des déchets Ontario in French is continued as a corporation without share capital under the name Resource Productivity and Recovery Authority in English and Office de la productivité et de la récupération des ressources in French.

Same, references

(2) A reference to Waste Diversion Ontario in any by-law, resolution, agreement or other document shall be read as if it were a reference to the Authority.

Waste Diversion Ontario board

22. On the day this section comes into force, the terms of office of the individuals who were members of the board of directors of Waste Diversion Ontario immediately before this section comes into force are terminated.

AUTHORITY AND ITS OBJECTS

Composition

23. (1) The Authority is composed of the members of its board of directors.

Ceasing to be member

(2) A person ceases to be a member of the Authority when he or she ceases to be a member of the board of directors.

Authority's objects

24. The Authority's objects are,

- (a) to perform the duties and exercise the powers given to the Authority under this Act or any other Act; and
- (b) to provide information to persons involved in activities that relate to resource recovery or waste reduction in Ontario and to the public about this Act, the regulations, and activities carried out under this Act or any other Act under which the Authority has powers or duties.

Board of directors

25. (1) The board of directors shall manage or supervise the management of the Authority's affairs.

Members

(2) The board shall consist of the following members:

1. Members appointed by the Minister.
2. Members elected by the board in accordance with any procedures that may be prescribed by the regulations.

Maximum number

(3) The maximum number of members appointed under paragraph 1 of subsection (2) shall be as prescribed by the regulations or, if no maximum number is prescribed, the maximum number shall be five.

Same

(4) The maximum number of members elected under paragraph 2 of subsection (2) shall be as prescribed by the regulations or, if no maximum number is prescribed, the maximum number shall be six.

Composition

(5) When appointing members under paragraph 1 of subsection (2), the Minister shall ensure that those members do not constitute a majority of the board.

Prescribed qualifications, criteria

(6) The Minister may make a regulation prescribing qualifications or eligibility criteria for persons appointed or elected under subsection (2), and if the Minister makes such a regulation only persons meeting those qualifications or eligibility criteria may be appointed or elected.

Length of terms, etc.

(7) The Minister may make a regulation prescribing restrictions on the length of a member's term or on a member's reappointment or re-election, and if the Minister makes such a regulation an appointment or election must comply with those restrictions, but if there is no such regulation,

- (a) the term of an appointed member is the term specified in the appointment; and
- (b) the term of an elected member is the term, not to exceed three years, determined by the board of directors at the time of the election.

Chair and vice-chair

(8) The board shall elect a chair and one or more vice-chairs from among the members of the board.

Same, transition

(9) The first elections under subsection (8) shall take place within 30 days after the day the sixth individual is elected under subsection 26 (3).

Same

(10) The chair and any vice-chairs of the initial board under section 26 continue in their respective roles until the first elections under subsection (8) are held.

Acting chair

(11) If the chair is absent or unable to act, or if the office of the chair is vacant, a vice-chair shall act as chair.

Same

(12) If the chair and vice-chairs are absent, the members present shall appoint an acting chair from among themselves to act as chair.

Quorum

(13) Six members of the board constitutes a quorum for the purposes of transacting business, unless a different number is prescribed by the regulations.

Voting

(14) Decisions of the board shall be determined by majority vote.

One vote per member

(15) Each member of the board is entitled to one vote.

Transition, initial board of directors

26. (1) Despite section 25, promptly after section 21 comes into force, the Minister shall ensure that five individuals are appointed as members of the Authority's initial board of directors.

Appointees' qualifications

(2) In appointing individuals under subsection (1), the Minister shall, to the extent possible, ensure that the initial board is composed of individuals who collectively have experience and expertise in the following areas:

1. Resource recovery and waste reduction.
2. Corporate governance and management.
3. Finance.
4. Business management.
5. Compliance and enforcement.

Election of members under para. 2 of subs. 25 (2)

(3) Within one year after this section comes into force, or before a later date that may be prescribed, the initial board shall hold one or more elections in order to elect six individuals as the board members mentioned in paragraph 2 of subsection 25 (2).

Status of elected members

(4) An individual elected under subsection (3) is a member of the initial board on and after the day of his or her election.

Chair

(5) The Minister shall designate one of the members appointed under subsection (1) to be the chair of the initial board.

Vice-chair

(6) The initial board shall elect one or more vice-chairs from among the members of the initial board.

Quorum

(7) A majority of the members of the initial board constitutes a quorum for the purposes of transacting business.

Application of s. 25

(8) Subsections 25 (1), (11), (12), (14) and (15) apply with respect to the initial board.

Vacancies

(9) If, for any reason, a member of the initial board appointed by the Minister becomes unable to act, the Minister may appoint another member to take his or her place, and if, for any reason, a member of the initial board elected by the initial board becomes unable to act, the initial board may elect another member to take his or her place.

End date for initial board

(10) On the day the maximum number of members under paragraph 2 of subsection 25 (2) is elected under subsection (3),

- (a) the board is duly constituted for the purposes of section 25;
- (b) the members of the initial board appointed by the Minister under subsection (1) or (9) continue as the board members mentioned in paragraph 1 of subsection 25 (2); and
- (c) the members of the initial board elected under subsection (3) or (9) continue as the board members mentioned in paragraph 2 of subsection 25 (2).

By-laws

27. (1) The board of directors may pass by-laws,

- (a) regulating the board's proceedings, specifying the powers and duties of the officers and employees of the Authority and generally for the management of the Authority's affairs;
- (b) respecting the appointment of officers and employees of the Authority and providing for payment of their remuneration and reimbursement of their expenses;
- (c) providing for payment of the remuneration and reimbursement of the expenses of members of the board;
- (d) establishing requirements with respect to conflict of interest for members of the board and for the Authority's officers and employees.

Subcommittees

(2) The by-laws may authorize the establishment of subcommittees of the board and may authorize a subcommittee to include persons who are not members of the board.

Availability to public

(3) The Authority shall make each of its by-laws available to the public on the Registry within 30 days after the by-law is made.

Transition

(4) Any by-law made by the board of directors of Waste Diversion Ontario that is in force immediately before this section comes into force continues in force as a by-law of the Authority until revoked by a by-law made by the Authority's board.

Operating agreement

28. (1) The Minister and the Authority shall enter into an operating agreement with respect to the Authority's activities in accordance with this section.

Same, transition

(2) The operating agreement between the Minister and Waste Diversion Ontario that is in force under the *Waste Diversion Act, 2002* immediately before this section comes into force continues in force as the operating agreement between the Minister and the Authority until replaced under subsection (4).

Contents

(3) The operating agreement shall deal with matters that the Minister considers advisable in the public interest relating to carrying out the Authority's objects under this Act, including, without limitation,

- (a) matters relating to its governance and operations; and
- (b) any matters required to be included in it under any other Act.

Replacement agreement

(4) Within 120 days after the members of the Authority's initial board are appointed under subsection 26 (1), the Minister and the initial board shall enter into a transitional operating agreement.

Reconsideration of replacement agreement

(5) Within one year after the day mentioned in subsection 26 (10) as the day the Authority's board is duly constituted for the purposes of section 25, the Minister and the board shall review the transitional operating agreement entered into under subsection (4) and shall determine whether any amendments are required.

Amendment

(6) The Minister may, at any time, serve notice on the Authority that an amendment to the operating agreement is required.

Same

(7) An amendment shall be agreed on by the Minister and the Authority within 180 days after notice is served under subsection (6), or within a longer period that the Minister, before or after the expiry of the 180-day period, may in writing allow.

Availability to public

(8) The Authority shall make the operating agreement available to the public on the Registry.

Application of *Environmental Bill of Rights, 1993*

(9) Section 16 of the *Environmental Bill of Rights, 1993*, and the other provisions of that Act that apply to proposals for regulations, apply with necessary modifications to an operating agreement under consideration by the Minister under this section and, for that purpose, the operating agreement is deemed to be a proposal under consideration in the Ministry for a regulation under a prescribed Act.

Implementation

(10) The Authority shall carry out its objects in a manner that is consistent with the operating agreement.

Policy directions

29. (1) If the Minister considers it advisable in the public interest to do so, the Minister may issue policy directions to the Authority relating to the Authority's carrying out of its objects.

Notice

(2) The Minister shall give the Authority the notice that the Minister considers reasonable in the circumstances before issuing a policy direction.

Implementation

(3) The Authority shall carry out its objects in a manner that is consistent with any policy directions issued by the Minister.

Policies under *Waste Diversion Act, 2002*

(4) A policy established under section 7 of the *Waste Diversion Act, 2002* that was in effect immediately before this section comes into force continues in effect as a policy direction under this section until it is revoked.

Consultations, etc.

30. The Minister may require the Authority to do any of the following:

1. Conduct consultations with the public, or with persons or entities that have relevant experience or knowledge, on any matter that the Minister specifies related to resource recovery, waste reduction or the circular economy.
2. Advise or report to the Minister on any matter related to,
 - i. resource recovery, waste reduction or the circular economy, or
 - ii. the Authority's objects.
3. Establish one or more advisory councils to provide advice to the Authority on matters related to carrying out its objects.

Review

31. (1) The Minister may require that reviews be carried out of the Authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial matters.

Manner

(2) The Minister may specify that the review be carried out,

- (a) by or on behalf of the Authority; or
- (b) by a person specified by the Minister.

Access to records and information

(3) When a review is carried out by a person specified by the Minister, the Authority shall give the person and the person's employees or agents access to all records and other information required to conduct the review.

Fiscal year

32. The Authority's fiscal year is the period from January 1 to December 31 in each year.

Note: Section 33 comes into force on January 1, 2017, the day named by proclamation of the Lieutenant Governor.

Annual business plan

33. (1) At least 90 days before the beginning of the fiscal year, the Authority shall adopt and submit to the Minister a business plan for the implementation of its objects during that fiscal year.

Contents

(2) The business plan shall include,

- (a) a description of the Authority's major activities and objectives for the fiscal year and for the following two fiscal years;
- (b) a description of the Authority's plan to achieve the objectives mentioned in clause (a);
- (c) a performance measures report for the Authority that,
 - (i) establishes targets for the fiscal year, and
 - (ii) explains any significant variances between the targets for the preceding fiscal year and the actual results for that fiscal year;
- (d) a description of any measures the Authority intends to take in the fiscal year with respect to the efficient management of the Authority; and
- (e) any other information that is required by the operating agreement.

Availability to public

- (3) The Authority shall make each business plan available to the public on the Registry promptly after submitting it to the Minister.

First business plan

- (4) In the first year that this section is in force, the Minister may require the Authority to adopt and submit to the Minister a business plan for the implementation of its objects for the remainder of the year and the business plan shall contain the information specified by the Minister.

POWERS, FINANCES AND ADMINISTRATION

Note: Sections 34 to 108 come into force on November 30, 2016, the day named by proclamation of the Lieutenant Governor.

Powers of a natural person

- 34.** (1) The Authority has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects, except as limited under this Act.

Subsidiary corporation

- (2) The Authority shall not establish a subsidiary corporation, except as permitted by the regulations.

Commercial activity

- (3) The Authority shall not engage in commercial activity through an individual, corporation or other entity that is related to the Authority, to a member of its board of directors or to any of its officers, except as permitted by the regulations.

Corporations Act and Corporations Information Act

- 35.** The *Corporations Act* and the *Corporations Information Act* do not apply to the Authority, except as provided by the regulations.

Note: On the later of the day section 35 comes into force and the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, section 35 is amended by striking out "*Corporations Act*" and substituting "*Not-for-Profit Corporations Act, 2010*". (See: 2016, c. 12, Sched. 1, s. 109 (1))

No personal liability

- 36.** (1) No action or other proceeding shall be instituted against a member of the board of directors or an officer, employee or agent of the Authority for any act done in good faith and in a reasonable manner in the execution or intended execution of any duty imposed or power conferred by this Act, the regulations or the by-laws, or for any alleged omission in the execution in good faith of that duty or power.

Authority's liability

- (2) Subsection (1) does not relieve the Authority of any liability to which it would otherwise be subject in respect of an act or omission of a person mentioned in that subsection.

Not Crown agents

- 37.** The Authority and its members, officers, employees and agents are not agents of the Crown in right of Ontario and shall not hold themselves out as such.

No Crown liability

- 38.** No action or other proceeding shall be instituted against the Minister, the Crown in right of Ontario, or any employee of the Crown for any act or omission of the Authority or of a member, officer, employee or agent of the Authority.

Indemnification

- 39.** The Authority shall indemnify the Crown in right of Ontario in respect of damages and costs incurred by the Crown for any act or omission of the Authority or its members, officers, employees or agents.

Contribution to defray cost

- 40.** (1) The Lieutenant Governor in Council may from time to time, by order, fix an amount to be paid by the Authority to defray the Crown's costs in administering this Act and the regulations.

Costs

- (2) The amount fixed under subsection (1) may include costs that are attributable to the oversight of the Authority under this Act, including costs associated with appeals to the Tribunal of orders issued under Part V.

Payment

- (3) The Authority shall pay the amount to the Minister of Finance in accordance with the terms of the order.

Fees

- 41.** (1) For the purpose of recovering its costs, the Authority may,

- (a) set and collect fees, costs or other charges due to the Authority related to the performance of its duties and exercise of its powers under this Act or any other Act in accordance with processes and criteria established by the Authority;
- (b) require persons to pay the fees, costs and charges described in clause (a); and
- (c) provide for the refund or credit of all or part of a fee, cost or charge described in clause (a).

Setting fees

- (2) In setting the fees, costs and charges described in clause (1) (a), the Authority may specify their amounts or the method for determining them.

Limitations, requirements

- (3) Subsection (2) is subject to any limitations or requirements that may be prescribed in connection with fees, costs or charges, or the portions thereof, that are related to amounts payable under section 40.

Establishment and publication of fees, etc.

- (4) The following rules apply with respect to the establishment and publication of the fees, costs and charges described in clause (1) (a), the processes and criteria described in that clause and the requirements described in clause (1) (b):

1. Before establishing, amending or replacing a fee, cost, charge, process, criterion or requirement, the Authority shall engage in public consultation and shall post the proposed new or amended fee, cost, charge, process, criterion or requirement on the Registry for public comment for at least 45 days.
2. After public consultation and posting under paragraph 1, the Authority shall publish the final version of the new or amended fee, cost, charge, process, criterion or requirement on the Registry and a description of how the Authority considered public comments in determining the final version.
3. The fee, cost, charge, process, criterion or requirement is not effective until the later of,
 - i. 30 days after its publication under paragraph 2, and
 - ii. the day specified by the Authority.
4. The Authority shall ensure that every fee, cost, charge, process, criterion or requirement that has been replaced by a new or amended one remains available to the public on the Registry.

Payment of fees

- (5) A person who is required under clause (1) (b) to pay a fee, cost or other charge shall pay it to the Authority, at the times specified by the Authority.

Legislation Act, 2006, Part III

- (6) Part III of the *Legislation Act, 2006* does not apply to powers exercised by the Authority under this section.

Auditor

- 42.** (1) The Authority shall appoint an independent auditor who is licensed or holds a certificate of authorization under the *Public Accounting Act, 2004*.

Annual audit

- (2) The auditor shall audit the Authority's accounts and financial transactions for each fiscal year and shall prepare a report on each audit.

Availability to public

- (3) The Authority shall make the auditor's report available to the public on the Registry not later than June 1 following the end of the fiscal year.

Audit by Auditor General

- 43.** (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the Authority.

Contents of audit

- (2) When the Auditor General conducts an audit under subsection (1), he or she shall examine,
- (a) whether the Authority expended money for a purpose that is not within its objects;
 - (b) whether the Authority expended money without due regard to economy and efficiency; and
 - (c) where procedures could be used to measure and report on the effectiveness of the Authority's activities, whether the procedures were not established or the established procedures were not satisfactory.

Access to information and records

- (3) Sections 10, 11, 11.1, 11.2, 27.1 and 27.2 of the *Auditor General Act* apply, with necessary modifications, with respect to the Auditor General's audit.

Report to Minister

- (4) The Auditor General shall report to the Minister on and make public any matter arising out of the audit that, in the opinion of the Auditor General, should be brought to the attention of the Minister.

Annual report

- 44.** (1) The Authority shall, not later than June 1 in each year,
- (a) prepare a report in accordance with this section on its activities during the previous fiscal year; and
 - (b) provide a copy of the report to the Minister and make the report available to the public on the Registry.

Tabling of report

- (2) The Minister shall lay a copy of the report before the Legislative Assembly as soon as reasonably possible after receiving a copy from the Authority.

Contents

- (3) The report shall include the following:

1. Information about activities engaged in by persons required to carry out responsibilities under Part IV.
2. A summary of compliance and enforcement activities carried out under this Act during the previous fiscal year.
3. Audited financial statements for the Authority and a copy of the auditor's report under subsection 42 (2).
4. Information specified in the operating agreement.
5. Information requested in writing by the Minister.
6. Information required to be included under any other Act.

Signature

(4) The report shall be signed by the chair of the board of directors.

REGISTRAR AND OTHER STAFF

Registrar

45. The Authority shall appoint a Registrar who shall perform the duties assigned to him or her under this Act or any other Act and by the Authority.

Deputy Registrars

46. (1) The Registrar may appoint one or more Deputy Registrars who shall perform the duties assigned to them under this Act or any other Act and by the Registrar.

Limitation on authority

(2) The Registrar may, in the appointment of a Deputy Registrar, limit the Deputy Registrar's authority in such manner as he or she considers necessary or advisable.

Inspectors

47. (1) The Registrar may appoint inspectors as are necessary for the purpose of enforcing this Act.

Registrar and Deputy Registrars are inspectors

(2) The Registrar and the Deputy Registrars are inspectors by virtue of their office.

Certificate of appointment

(3) The Registrar shall issue to every inspector a certificate of appointment.

Limitation on authority

(4) The Registrar may, in the appointment of an inspector, limit the inspector's authority in such manner as he or she considers necessary or advisable.

Who may be appointed

48. A person shall not be appointed under section 45, 46 or 47 unless he or she is an officer or employee of the Authority.

Appointments in writing

49. Appointments under sections 45, 46 and 47 shall be made in writing.

INFORMATION

Registry

50. (1) The Registrar shall, in accordance with any prescribed requirements, establish, maintain and operate an electronic public registry known in English as the Resource Productivity and Recovery Registry and in French as *Registre de la productivité et de la récupération des ressources*.

Purposes

(2) The purposes of the Registry are the following:

1. To receive information submitted to the Authority,
 - i. by or on behalf of a person who is responsible for registering under section 66,
 - ii. by or on behalf of a person who is responsible for reporting under section 72, and
 - iii. under any other Act.
2. Subject to the regulations, to provide public access to information submitted under paragraph 1.
3. To provide public notice of,
 - i. information relating to fees set under section 41, and
 - ii. other information required to be made available on the Registry under this Act or any other Act.
4. Any prescribed purposes.

Organization, form

(3) The Registry shall be organized in the manner and kept in the form that the Registrar may determine.

Complete and accurate information, etc.

(4) If the Registrar is of the opinion that any information, reports, records or documents submitted through the Registry are incomplete or inaccurate, the Registrar may require the person to file information, reports, records or documents that are complete and accurate and the person shall comply with the requirement.

Same

(5) The Registrar shall ensure that material submitted under subsection (4) is included in the Registry.

Refusal

(6) The Registrar may refuse to accept information submitted to the Authority through the Registry if the information does not comply with the requirements of this Act or the regulations.

Posting of orders

51. (1) The Registrar shall ensure that the Registry includes a copy of every order issued under this Act or any other Act by the Registrar, a Deputy Registrar or an inspector.

Orders under appeal

(2) If an order is appealed, the Registrar shall ensure that the Registry includes a notation that the order is under appeal until the appeal is finally disposed of.

Procedures

52. (1) The Registrar may establish procedures with respect to submitting information through the Registry or to the Authority, subject to any limitations or requirements in the regulations.

Publication

(2) The procedures shall be made available on the Registry.

Non-application of *Legislation Act, 2006*, Part III

(3) Part III of the *Legislation Act, 2006* does not apply to a procedure established under this section.

Information to Minister

53. (1) The Authority shall provide the Minister with such information as the Minister may require from time to time including information collected under this Act or under any other Act.

Manner

(2) The information must be provided in accordance with any prescribed requirements.

ADMINISTRATOR

Administrator

54. (1) Subject to subsection (2), the Minister may, by order, appoint an individual as the administrator of the Authority for the purposes of assuming control of it and responsibility for its activities.

Condition precedent

(2) The Minister may appoint an administrator under subsection (1) only if he or she considers it advisable in the public interest to do so because at least one of the following conditions is satisfied:

1. The Authority has failed to comply with a provision of this Act, the regulations, the operating agreement, the by-laws or a provision of any other Act or regulation, and the consequences of the breach put the Authority's ability to carry out its objects at risk.
2. The Authority has,
 - i. expended money for a purpose that is not within its objects or diverted money to another person or entity for an improper purpose, or
 - ii. expended money without due regard to economy and efficiency.
3. The Authority is insolvent or insolvency is imminent.
4. There are not enough members on the Authority's board of directors to form a quorum for the transaction of business.

Notice of appointment

(3) The Minister shall give the Authority's board of directors the notice that he or she considers reasonable in the circumstances before appointing the administrator.

Immediate appointment

(4) Subsection (3) does not apply if there are not enough members on the board to form a quorum.

Term of appointment

(5) The appointment of the administrator continues until the Minister makes an order terminating it.

Powers and duties of administrator

(6) Unless the order appointing the administrator provides otherwise, the administrator has the exclusive right to exercise all the powers and perform all the duties of the members of the board and the officers of the Authority.

Same

(7) In the order appointing the administrator, the Minister may specify the administrator's powers and duties and the conditions governing them.

Rights with respect to information

(8) The administrator has the same rights as the members of the board and the officers of the Authority in respect of the Authority's documents, records and information.

Report to Minister

(9) The administrator shall report to the Minister as the Minister requires.

Minister's directions

(10) The Minister may issue directions to the administrator with regard to any matter within the administrator's jurisdiction, and the administrator shall carry them out.

No personal liability

(11) No action or other proceeding shall be instituted against the administrator for an act done in good faith and in a reasonable manner in the execution or intended execution of a duty or power under this Act, under an appointment under subsection (1) or under any direction issued under subsection (10), or for an alleged neglect or default in the execution in good faith of that duty or power.

Crown liability

(12) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (11) does not relieve the Crown of liability to which it would otherwise be subject.

Authority's liability

(13) Subsection (11) does not relieve the Authority of liability to which it would otherwise be subject.

Appointment of administrator, effect on board

55. (1) On the appointment of an administrator under section 54, the members of the Authority's board of directors cease to hold office, unless the order provides otherwise.

Same

(2) During the term of the administrator's appointment, the powers of any member of the board who continues to hold office are suspended, unless the order provides otherwise.

Same

(3) Subsection (2) also applies to the powers of members of the board who are appointed or elected during the term of the administrator's appointment.

No personal liability

(4) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the administrator or the Authority after the member's removal under subsection (1) or while the member's powers are suspended under subsection (2) or (3).

Authority's liability

(5) Subsection (4) does not relieve the Authority of liability to which it would otherwise be subject.

MISCELLANEOUS

Right to use French

56. (1) A person has the right to communicate in French with, and to receive available services in French from, the Authority.

Definition

(2) In subsection (1),

"service" means any service or procedure that is provided to the public by the Authority in carrying out its powers and performing its duties under this Act or any other Act and includes,

- (a) responding to inquiries from members of the public, and
- (b) any other communications for the purpose of providing the service or procedure.

Authority's duty

(3) The Authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

Limitation

(4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

Confidentiality of information

57. (1) In this section,

"law enforcement proceeding" means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed; ("procédure d'exécution de la loi")

"peace officer" means a person or a member of a class of persons set out in the definition of "peace officer" in section 2 of the *Criminal Code* (Canada).
("agent de la paix")

Secrecy and permissible disclosure

(2) The persons and entities mentioned in subsection (3) shall preserve secrecy with respect to any information obtained in performing a duty or exercising a power under this Act and shall not communicate the information to any person or entity except,

- (a) as may be required in connection with a proceeding under this Act or in connection with the administration of this Act and the regulations under this Act;
- (b) to the Minister, the Ministry or an employee or agent of the Ministry;

- (c) to a peace officer, as required under a warrant, to aid an inspection, investigation or similar proceeding undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (d) with the consent of the person to whom the information relates;
- (e) to the counsel of the person to whom the information relates;
- (f) to the extent that the information is required or permitted to be made available to the public under this Act or any other Act; or
- (g) under further circumstances that are prescribed.

Same

- (3) The persons and entities referred to in subsection (2) are,
- (a) the Authority, the members of its board of directors and its officers, employees and agents, including the Registrar, a Deputy Registrar and an inspector, and any other person who performs the duties and exercises the powers of those persons;
 - (b) any person carrying out a review under section 31;
 - (c) an administrator appointed under section 54; and
 - (d) a provincial offences officer designated under the *Provincial Offences Act* for the purposes of section 98 or 99 of this Act.

Testimony in civil proceeding

- (4) No person shall be compelled to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or performing a duty under this Act, other than,
- (a) a proceeding under this Act; or
 - (b) an appeal or a judicial review relating to a proceeding described in clause (a).

Conflict

58. In the event of conflict, this Act, the regulations, and any other Act under which the Authority has powers or duties and the regulations under such Acts prevail over the operating agreement and over the Authority's by-laws and resolutions.

PART IV RESOURCE RECOVERY AND WASTE REDUCTION RESPONSIBILITIES

GENERAL

Interpretation

59. In this Part,

"brand" means any mark, word, name, symbol, design, device or graphical element, or a combination thereof, including a registered or unregistered trade-mark, which identifies a product and distinguishes it from other products; ("marque")

"brand holder" means a person who owns or licences a brand or who otherwise has rights to market a product under the brand; ("titulaire de marque")

"consumer", in respect of a product and its primary packaging, and in respect of convenience packaging, means a person who obtains the product for the person's own use; ("consommateur")

"convenience packaging" means material used in addition to primary packaging to facilitate consumers' handling or transportation of one or more products, such as boxes and bags; ("emballage pratique")

"designated class" means a class described in section 60; ("catégorie désignée")

"market", in respect of a product, includes,

- (a) to offer the product for sale, expose it for sale or possess it for sale,
- (b) to distribute the product, whether for consideration or not, and
- (c) to lease the product, offer it for lease, expose it for lease or have it in possession for lease; ("commercialiser")

"primary packaging" means material that is used for the containment, protection, handling, delivery and presentation of a product that is provided to a consumer at the point of sale, and includes packaging designed to group one or more products for the purposes of sale, but does not include convenience packaging or transport packaging; ("emballage primaire")

"product" means a thing, part of a thing, or combination of things intended for use by a consumer; ("produit")

"transport packaging" means material used in addition to primary packaging to facilitate the handling or transportation of one or more products by persons other than consumers, such as pallets, bail wrap and boxes, but does not include shipping containers designed for transporting things by road, ship, rail or air. ("emballage de transport")

Designated classes

60. (1) A regulation may designate classes of materials in respect of which brand holders or others may be required to carry out responsibilities under this Part.

Same

(2) The materials designated under subsection (1) shall be one of the following:

1. Products.
2. Types of primary packaging associated with a product.
3. Types of convenience packaging.

4. Types of transport packaging.

PERSONS WHO MAY HAVE RESPONSIBILITIES

Product and its primary packaging

Brand holders

61. (1) Under this Part, a person who is the holder of a brand associated with a product in a designated class may be required to carry out any of the following responsibilities with respect to the product and its primary packaging:

1. Registration, as described in section 66.
2. Waste reduction, as described in section 67.
3. Collection, as described in section 68.
4. Management, as described in section 69.
5. Promotion and education, as described in section 70.
6. Reporting, auditing and record keeping, as described in section 72.

Alternate or additional person

(2) A person who has a commercial connection to a product in a designated class may be required to carry out responsibilities under this Part instead of, or in addition to, a brand holder described in subsection (1).

Commercial connection

- (3) For the purposes of subsection (2), a person who has a commercial connection to a product in a designated class means a person who,
- (a) imports, wholesales, leases or retails the product, or is otherwise involved in the product's distribution; or
 - (b) meets the prescribed conditions.

Same, determination

(4) For the purposes of subsections (1) and (2), the regulations may specify a person or may set out a method for determining who the person is.

Exclusion, person providing services

(5) A person does not have a commercial connection to a product by virtue only of the fact that the person provides services to someone who is required to carry out responsibilities under this Part in respect of the product.

Limitation

(6) A regulation shall not require a person mentioned in subsection (1) or (2) to carry out responsibilities under this Part in respect of material in a designated class unless,

- (a) the person is the brand holder of a product in the class that is marketed to a consumer in Ontario, including through the Internet, using a catalogue order system, using a telephone order system, or by a similar remote sales method;
- (b) the person markets a product in the class to a consumer in Ontario, including through the Internet, using a catalogue order system, using a telephone order system, or by a similar remote sales method; or
- (c) the person satisfies the prescribed criteria.

Convenience packaging and transport packaging

62. (1) Under this Part, a person may be required to carry out any one or more of the responsibilities mentioned in subsection 61 (1) with respect to convenience packaging or transport packaging in a designated class if,

- (a) the person is the brand holder of a product that is or was contained in, on or under the packaging;
- (b) in the case of convenience packaging, the person supplies convenience packaging in the class to a consumer in Ontario;
- (c) in the case of transport packaging, the person first causes transport packaging in the class to be used in the handling or transportation of a product marketed to a consumer in Ontario, if the final destination of the packaging is in Ontario; or
- (d) the person satisfies the prescribed criteria.

Same, determination

(2) For the purposes of subsection (1), the regulations may specify a person or may set out a method for determining who the person is.

Interpretation

63. For the purposes of sections 61 and 62,

- (a) a brand holder includes,
 - (i) a person who has been a brand holder but who no longer is, and
 - (ii) a person who was a brand holder before the day this section comes into force;
- (b) a person who has a commercial connection to a product includes,
 - (i) a person who had a commercial connection to the product but who no longer does, and
 - (ii) a person who had a commercial connection to the product before the day this section comes into force;
- (c) a person who supplies convenience packaging includes a person who has supplied the packaging but who no longer does; and

(d) a person who markets a product includes,

- (i) a person who has marketed the product but who no longer does, and
- (ii) a person who marketed the product before the day this section comes into force.

Other persons performing activity related to resource recovery or waste reduction

64. Under this Part, persons who are not described in section 61 or 62 but who perform an activity that relates to resource recovery or waste reduction in Ontario may be required to carry out responsibilities in any one or more of the following categories:

1. Registration, as described in section 66.
2. Promotion and education, as described in section 70.
3. Reporting, auditing and record keeping, as described in section 72.

More than one responsible person

65. For greater certainty, more than one person may be required to carry out responsibilities under this Part in respect of the same product and its primary packaging or in respect of the same convenience packaging or transport packaging.

RESPONSIBILITIES

Responsibility to register

66. (1) A regulation may provide that a person mentioned in section 61 or 62 is responsible for registering with the Authority through the Registry, in accordance with the regulations and with any procedures established by the Registrar under Part III, and for ensuring that the registration is kept up to date in accordance with the regulations.

Requirements

(2) Without limiting the generality of subsection (1), a regulation may require that a person include the following information in a registration:

1. A list or description of products and packaging in respect of which the person is required to carry out a responsibility under a regulation under section 67, 68, 69, or 70.
2. A description of how the person is fulfilling or plans to fulfil the person's responsibilities under this Part.
3. The name of anyone the person retains to arrange for the establishment or operation of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to the person's responsibilities under this Part and a description of the arrangements that person is retained to provide.
4. The name of anyone the person retains to operate a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to the person's responsibilities under this Part and a description of the services that person is retained to provide.
5. Other information in respect of activities the person engages in that affect resource recovery or waste reduction in Ontario.

Other persons performing activity relating to resource recovery or waste reduction

(3) A regulation may provide that persons described in section 64 are responsible for registering with the Authority through the Registry, in accordance with the regulations and with any procedures established by the Registrar under Part III, and for ensuring that the registration is kept up to date in accordance with the regulations.

Requirements

(4) Without limiting the generality of subsection (3), a regulation may require that a person include the following information in a registration:

1. Information in respect of activities the person engages in that affect resource recovery or waste reduction in Ontario.
2. A description of how the person is fulfilling or plans to fulfil the person's responsibilities under this Part.
3. The name of anyone the person retains to arrange for the establishment or operation of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to another person's responsibilities under this Part and a description of the arrangements that person is retained to provide.
4. The name of anyone the person retains to operate a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to another person's responsibilities under this Part and a description of the services that person is retained to provide.
5. The name of anyone who retains the person in respect of responsibilities under this Part and a description of the services the person is retained to provide.

Responsibility to reduce waste

67. (1) A regulation may provide that a person mentioned in section 61 or 62 is responsible for reducing the amount of waste generated in connection with prescribed material in a designated class at the end of the material's life in accordance with the prescribed requirements.

Limitation

(2) The following limitations apply to a regulation under subsection (1):

1. A person's responsibility for reducing waste applies only in respect of the material with which the person is associated within a designated class.
2. A person shall not be prescribed as being responsible for reducing waste unless the person,
 - i. is a brand holder of a product,
 - ii. supplies convenience packaging that displays a brand the person holds, or
 - iii. causes the use of transport packaging that displays a brand the person holds.

Design of product and packaging

(3) Without limiting the generality of subsection (1), a regulation may require that a person with a waste reduction responsibility in respect of a designated class take steps to design material in the class so as to,

- (a) increase the material's reusability and recyclability;
- (b) reduce or eliminate any impact the material may have on the recyclability of other materials in the class;
- (c) reduce the amount of waste generated at the end of the product's or packaging's life;
- (d) reduce or eliminate the use of any substance in the material; or
- (e) increase the use of recovered resources in the making of the material.

Responsibility for collection system

68. (1) A regulation may provide that a person mentioned in section 61 or 62 is responsible for establishing and operating a collection system for prescribed material in a designated class in accordance with the prescribed requirements.

Requirements

- (2) Without limiting the generality of subsection (1), a regulation may require that a person responsible for establishing and operating a collection system,
- (a) must collect prescribed material in the designated class in accordance with the prescribed requirements;
 - (b) must collect the person's own product, collect the packaging associated with the person's own product, collect any product in the designated class, or collect any packaging in the designated class;
 - (c) must ensure that the collection system is operated for the prescribed period of time;
 - (d) must ensure that the prescribed services, facilities and activities for the collection of the material are provided in accordance with the prescribed requirements;
 - (e) must ensure that services, facilities and activities for the collection of the material that are prohibited under the regulations are not provided;
 - (f) must ensure that the material is collected in the prescribed quantities;
 - (g) must collect the material from a person who offers the material for collection or from another prescribed person; or
 - (h) must not engage in methods of collection that are prohibited under the regulations.

No charge

(3) A person responsible for establishing and operating a collection system shall ensure that no charge is imposed at the time of the collection.

Part V of the *Environmental Protection Act*

(4) Products and packaging collected through a collection system required to be established and operated under this section are waste within the meaning of Part V of the *Environmental Protection Act*.

Same

(5) A collection system required to be established and operated under this section is a waste management system within the meaning of Part V of the *Environmental Protection Act*.

Responsibility to manage collected material

69. (1) A regulation may provide that a person mentioned in section 61 or 62 who is prescribed under section 68 as being responsible for collecting material in a designated class is also responsible for establishing and operating a system, in accordance with the prescribed requirements, for managing the material collected in respect of that class.

Requirements

- (2) Without limiting the generality of subsection (1), a regulation may provide that a person responsible for managing material shall handle, reuse, recycle, recover resources from, and dispose of the material in accordance with the prescribed requirements, and may provide that a person,
- (a) must allow for the material or part of the material to be,
 - (i) reused,
 - (ii) used in the making of new products, packaging or other things, or
 - (iii) used as a nutrient for improving the quality of soil, agriculture or landscaping; or
 - (b) must not engage in methods of handling, reusing, recycling, recovering resources from, or disposing of the material that are prohibited under the regulations.

Part V of the *Environmental Protection Act*

(3) A system required to be established and operated under this section is a waste management system within the meaning of Part V of the *Environmental Protection Act*.

Responsibility for promotion and education

70. (1) For the purpose of increasing the collection, reuse, recycling or recovery of material in a designated class, a regulation may provide that a person mentioned in section 61 or 62 is responsible for implementing a promotion and education program in respect of the collection system or management system for that class in accordance with the prescribed requirements.

Same

(2) For the purpose of increasing the collection, reuse, recycling or recovery of material in a designated class, a regulation may provide that persons performing an activity that relates to resource recovery or waste reduction in Ontario other than a person described in subsection (1) are responsible for implementing a promotion and education program in respect of the collection of material in a designated class in accordance with the regulations.

Contents of regulation

71. For the purposes of section 68 or 69 or subsection 70 (1), and without limiting the generality of those provisions, a regulation may provide that reduced or alternate responsibilities in respect of collection, management or promotion and education apply in respect of a person in circumstances where a material's design satisfies prescribed requirements.

Responsibility for reporting, auditing and record keeping

Record keeping

72. (1) A regulation may require that a person who is required to carry out a responsibility under section 67, 68, 69, or 70 shall create, maintain and store documents and data and shall submit the documents or data to the Authority.

Other persons performing activity relating to resource recovery or waste reduction

(2) A regulation may require a person performing an activity that relates to resource recovery or waste reduction in Ontario other than a person described in subsection (1) to create, maintain and store documents and data and to submit the documents or data to the Authority.

Audit

(3) A regulation may require a person who is required to carry out a responsibility under section 67, 68, 69, or 70 to cause an audit to be undertaken of the practices and procedures the person has implemented or will implement in order to comply with the applicable section, and the audit shall comply with any prescribed requirements.

Same, report to Authority

(4) A person who is required to cause an audit to be undertaken under subsection (3) shall, if the regulations require, prepare a report on the audit in accordance with the regulations and submit it to the Authority.

Contents of report

(5) The report referred to in subsection (4) shall set out the steps the person has taken to meet the requirements in this Part for which the person is responsible under this Part and any other prescribed information.

Opinion re accuracy

(6) The regulations may require that data, documents or reports required under this section be accompanied by the opinion of a prescribed person respecting the accuracy of the data, document or reports.

Other persons performing activity relating to resource recovery or waste reduction

(7) A regulation may require a person performing an activity that relates to resource recovery or waste reduction in Ontario other than a person described in subsection (1) to prepare an annual report in respect of the activity in accordance with the regulations and submit it to the Authority.

Manner of creation, etc.

(8) A person who is required to create, maintain or store documents or data under this section shall do so in accordance with any prescribed requirements.

Availability

(9) A person who is required to create, maintain or store documents and data under this section shall ensure the documents and data are made available in accordance with any prescribed requirements.

Manner of submission

(10) A person who is required to submit documents or data to the Authority under this section shall do so in accordance with any prescribed requirements and with any procedures established by the Registrar under Part III for submitting information through the Registry.

Compliance

73. A person who is required by a regulation made under this Part to carry out a responsibility shall do so and a person who is required by a regulation made under this Part to refrain from doing a thing shall refrain from doing it.

DISPUTE RESOLUTION

Requirement for agreements

74. (1) This section applies to the following persons:

1. A person mentioned in section 61 or 62 who is required to carry out responsibilities under section 68 or 69.
2. A person who arranges for the establishment or operation of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to another person's responsibilities under this Part.
3. A person who operates a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* and provides services in relation to another person's responsibilities under this Part.

Same

(2) A person to whom this section applies shall ensure that any agreement to which the person is a party related to the provision of services by a person described in paragraph 2 or 3 of subsection (1) contains provisions requiring the parties to submit to arbitration any dispute that has arisen or may arise between them that cannot be or has not been resolved through mediation.

PROHIBITION ON MARKETING PRESCRIBED MATERIAL

Prohibition on marketing prescribed material

75. (1) No person shall market material in a designated class to a person in Ontario if the material has been prescribed for the purposes of this section.

Same

(2) The Lieutenant Governor in Council may prescribe material for the purpose of subsection (1) if,

- (a) a collection system is required to be established and operated under section 68 in respect of the designated class to which the material belongs and a person obligated by the regulations to establish and operate the collection system has failed to establish it or has ceased to operate it; or
- (b) a person who is required to carry out one or more responsibilities under this Part in respect of the material has habitually failed to carry out any of the responsibilities.

PART V ENFORCEMENT

GENERAL

Definitions

76. In this Part,

“Part IV regulations” means the regulations made under Part IV (Resource Recovery and Waste Reduction Responsibilities); (“règlements de la partie IV”)

“place” includes a building, structure, machine, vehicle or vessel. (“lieu”)

Authority’s role

77. The Authority shall exercise powers and perform duties in relation to compliance with and enforcement of this Act.

Inspection

78. (1) An inspector may, at any reasonable time, enter any place described in subsection (2) and conduct an inspection for the purpose of determining any person’s compliance with this Act or the regulations if the inspector reasonably believes that,

- (a) the place contains documents or data relating to the person’s compliance; or
- (b) an activity relating to the person’s compliance is occurring or has occurred at the place.

Same

(2) Subsection (1) authorizes an inspector to enter a place only if it is owned or occupied by,

- (a) a person required under Part IV to carry out a responsibility under that Part;
- (b) a person who arranges for the establishment or operation of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to another person’s responsibilities under this Part; or
- (c) the owner or operator of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act*.

Entry to dwellings

(3) A person shall not exercise a power conferred by this section to enter, without the occupier’s consent, a room that is actually used as a dwelling, except under the authority of an order made under section 81.

Powers during inspection

(4) An inspector may do any one or more of the following in the course of entering a place and conducting an inspection:

1. Examine, record or copy any document or data, in any form, by any method.
2. Make a record of anything by any method.
3. Require the production of any document or data, in any form, required to be kept under this Act and of any form of other document or data related to the purpose of the inspection.
4. Remove from the place, for the purpose of making copies, documents or data produced under paragraph 3.
5. Make reasonable inquiries of any person, orally or in writing.
6. Take samples for analysis.
7. Conduct tests or take measurements.

Limitation

(5) A record made under paragraph 2 of subsection (4) must be made in a manner that does not intercept any private communication and that accords with reasonable expectations of privacy.

Records in electronic form

(6) If a record is retained in electronic form, an inspector may require that a copy of it be provided to him or her on paper or electronically, or both.

Limitation re removal of documents

(7) An inspector shall not remove documents or data under paragraph 4 of subsection (4) without giving a receipt for them and shall promptly return them to the person who produced them.

Power to exclude persons

(8) An inspector who exercises the power set out in paragraph 5 of subsection (4) may exclude any person from the questioning, except counsel for the individual being questioned.

Power to require response to inquiries

79. (1) For the purpose of determining a person's compliance with this Act or the regulations, an inspector may, at any reasonable time and with any reasonable assistance, require any of the following persons to respond to reasonable inquiries:

1. A person required under Part IV to carry out a responsibility under that Part.
2. A person who arranges for the establishment or operation of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act* in relation to another person's responsibilities under this Part.
3. The owner or operator of a waste disposal site or waste management system within the meaning of Part V of the *Environmental Protection Act*.
4. A person required to pay a fee under subsection 41 (5).
5. A director, officer, employee or agent of a person described in paragraphs 1 to 4.

Same

(2) For the purposes of subsection (1), an inspector may make inquiries by any means of communication.

Production of document

(3) In requiring a person to respond to an inquiry under subsection (1), an inspector may require the production of any document or data, in any form, required to be kept under this Act and of any other document or data, in any form, related to the purpose of the inquiry.

Records in electronic form

(4) If a record is retained in electronic form, an inspector may require that a copy of it be provided to him or her on paper or electronically, or both.

Identification

80. On request, an inspector who exercises a power under this Act shall identify himself or herself as an inspector, either by the production of a copy of the certificate of appointment or in some other manner, and shall explain the purpose of the exercise of the power.

Order for entry or inspection

81. (1) A justice may issue an order authorizing an inspector to do anything set out in subsection 78 (1) or (4) or section 79 if the justice is satisfied, on evidence under oath by an inspector, that there are reasonable grounds to believe that,

- (a) it is appropriate for the inspector to do anything set out in subsection 78 (1) or (4) or section 79 for the purpose of determining any person's compliance with this Act or the regulations;
- (b) the inspector may not be able to carry out his or her duties effectively without an order under this section because,
 - (i) no occupier is present to grant access to a place that is locked or otherwise inaccessible,
 - (ii) a person has prevented or may prevent the inspector from doing anything set out in subsection 78 (1) or (4) or section 79,
 - (iii) it is impractical, because of the remoteness of the place to be inspected or for any other reason, for an inspector to obtain an order under this section without delay if access is denied, or
 - (iv) an attempt by an inspector to do anything set out in subsection 78 (1) or (4) or section 79 might not achieve its purpose without the order; or
- (c) a person is refusing or is likely to refuse to respond to reasonable inquiries.

Same

(2) Subsections 78 (5) to (8) apply to an inspection carried out under an order issued under this section.

Expiry

(3) Unless renewed, an order under this section expires on the earlier of the day specified for the purpose in the order and the day that is 30 days after the date on which the order is made.

Renewal

(4) An order under this section may be renewed in the circumstances in which an order may be made under subsection (1), before or after expiry, for one or more periods, each of which is not more than 30 days.

When to be executed

(5) Unless the order provides otherwise, everything that an order under this section authorizes must be done between 6 a.m. and 9 p.m.

Application without notice

(6) An order under this section may be issued or renewed on application without notice.

Application for dwelling

(7) An application for an order under this section authorizing entry to a dwelling shall specifically indicate that the application relates to a dwelling.

Detention of copies, samples

82. An inspector may detain copies or samples obtained under section 78 or 81 for any period and for any purpose relating to enforcing this Act and the regulations.

Calling for assistance of member of police force

83. An inspector who is authorized by an order under section 81 to do anything set out in subsection 78 (1) or (4) or section 79 may take such steps and employ such assistance as is necessary to accomplish what is required, and may, when obstructed in so doing, call for the assistance of any member of the Ontario Provincial Police Force or the police force in the area where the assistance is required, and it is the duty of every member of a police force to render the assistance.

SEIZURE

Seizure during inspection

84. (1) During an inspection under section 78 or 81, an inspector may, without a warrant or court order, seize anything that is produced to the inspector or that is in plain view, if the inspector reasonably believes that the thing will afford evidence of an offence under this Act.

Detention or removal, things seized

(2) An inspector who seizes anything under this section may remove the thing or may detain it in the place where it is seized.

Reasons and receipt

(3) If possible, the inspector shall inform the person from whom a thing is seized under this section as to the reasons for the seizure and shall give the person a receipt for the thing seized.

Report to justice, things seized

85. (1) An inspector who seizes anything under section 84 shall bring the thing before a justice or, if that is not reasonably possible, shall report the seizure to a justice.

Application of *Provincial Offences Act*

(2) Section 159 of the *Provincial Offences Act* applies with necessary modifications in respect of a thing seized under section 84 of this Act.

COMPLIANCE ORDERS

Order by inspector: contraventions of Act and regulations

86. (1) If an inspector reasonably believes any of the following persons is contravening or has contravened this Act or the regulations, the inspector may issue an order to the person, subject to the regulations:

1. A person required under Part IV to carry out a responsibility under that Part.
2. A person required to pay a fee under subsection 41 (5).

Information to be included in order

- (2) The order shall,
- (a) specify the provision of this Act or the regulations that the inspector believes is being or has been contravened;
 - (b) briefly describe the nature and, where applicable, the location of the contravention; and
 - (c) state that a review of the order may be requested in accordance with section 87.

What order may require

- (3) The order may require the person to whom it is directed to comply with any directions set out in the order within the time specified, relating to,
- (a) remedying a contravention of Part III or IV of this Act or the regulations made in respect of those Parts;
 - (b) preventing the continuation or repetition of the contravention;
 - (c) submitting a plan prepared by or on behalf of the person for achieving compliance with a provision of this Act or the regulations to the inspector's satisfaction;
 - (d) engaging contractors or consultants satisfactory to an inspector to prepare a plan or carry out work required by the order;
 - (e) sampling, testing, measuring, monitoring and reporting with respect to material in a class designated under the Part IV regulations; or
 - (f) posting notice of the order.

Consequential authority

(4) The authority to make an order under this section includes the authority to require the person to whom the order is directed to take such intermediate action or such procedural steps, or both, as are related to the action required or prohibited by the order and as are specified in the order.

Request for review, orders under s. 86

87. (1) A person to whom an order under section 86 is directed may, within seven days after being served with a copy of the order, request that a Deputy Registrar review the order.

Exception

(2) If the order under section 86 was made by an inspector who is also the Registrar or a Deputy Registrar, subsection (1) does not apply and section 91 applies instead.

Manner of making request

(3) The request may be made orally, with written confirmation served on the Registrar within the time specified in subsection (1), or in writing.

Contents of request for review

(4) A written request for review under subsection (1) or a written confirmation of an oral request under subsection (3) shall include,

- (a) the portions of the order in respect of which the review is requested;
- (b) any submissions that the person requesting the review wishes the Deputy Registrar to consider; and
- (c) for the purpose of subsection (8), an address that may be used for service.

No automatic stay

(5) The request for review does not stay the order, unless the Deputy Registrar orders otherwise in writing.

Decision of Deputy Registrar

(6) After reviewing the request, the Deputy Registrar may,

- (a) revoke the inspector's order; or
- (b) by order directed to the person requesting the review, confirm or amend the inspector's order.

Same

(7) For the purposes of subsection (6), the Deputy Registrar may substitute his or her own opinion for that of the inspector.

Notice of decision

(8) The Deputy Registrar shall serve the person requesting the review with a copy of,

- (a) a decision to revoke the inspector's order; or
- (b) an order to confirm or amend the inspector's order, together with reasons.

Automatic confirmation of order

(9) If, within seven days after receiving a written request for review or a written confirmation of an oral request for review, the Deputy Registrar does not deal with the matter under subsection (6) and give notice under subsection (8), the order in respect of which the review is sought is deemed to have been confirmed by order of the Deputy Registrar.

Same

(10) For the purpose of section 91 and a hearing required under that section, a confirming order deemed to have been made by the Deputy Registrar under subsection (9),

- (a) is deemed to be directed to each person to whom the inspector's order was directed; and
- (b) is deemed to have been served, on each person to whom the inspector's order was directed, at the expiry of the time period referred to in subsection (9).

Additional time

(11) Subsections (9) and (10) do not apply if, within seven days after receiving the request for review, the Deputy Registrar stays the order under subsection (5) and serves written notice on the person requesting the review specifying,

- (a) that the Deputy Registrar requires additional time to make a decision under subsection (6); and
- (b) the date by which the decision will be made.

Renewal

(12) A notice under subsection (11) may be renewed one or more times.

90 day limitation

(13) The Deputy Registrar's decision shall be made, in any event, no later than 90 days after the day the written request for review or written confirmation of an oral request for review was received.

Compliance with order

88. A person to whom an order is directed shall comply with the order or with the order as amended under clause 87 (6) (b) or varied under section 96, as the case may be.

ADMINISTRATIVE PENALTIES

Administrative penalties

89. (1) An administrative penalty may be imposed under this section for one or more of the following purposes:

1. To ensure compliance with this Act and the regulations.
2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or of the regulations.

Order by Registrar or Deputy Registrar

(2) The Registrar or a Deputy Registrar may, subject to the regulations, issue an order requiring a person described in subsection (3) to pay an administrative penalty to the Authority if the Registrar or Deputy Registrar is of the opinion that the person has contravened,

- (a) subsection 41 (5);
- (b) a requirement under subsection 50 (4) to file information, reports, records or documents that are complete and accurate;
- (c) subsection 68 (3);
- (d) subsection 75 (1);
- (e) section 79; or
- (f) a provision of this Act or of the regulations that is prescribed for the purposes of this section.

Same

- (3) An order may be issued under subsection (2),
- (a) to a person required to pay a fee under subsection 41 (5);
 - (b) to a person required under Part IV to carry out a responsibility under that Part;
 - (c) to a person who fails to respond to an inquiry made under section 79;
 - (d) to a person prohibited from marketing a product under subsection 75 (1); or
 - (e) to a prescribed person.

Limitation

- (4) An order under subsection (2) shall be served not later than one year after the day on which evidence of the contravention first came to an inspector's attention.

Orders not to be issued to directors, officers, employees or agents

- (5) If a person who is required to comply with a provision of this Act or of the regulations is a corporation, an order under subsection (2) shall be issued to the corporation and not to a director, officer, employee or agent of the corporation.

Amount of penalty

- (6) The amount of the administrative penalty for each day or part of a day on which a contravention occurred or continues to occur shall be determined by the Registrar or a Deputy Registrar in accordance with the regulations.

Contents

- (7) An order under subsection (2) shall be served on the person who is required to pay the administrative penalty and shall,
- (a) contain a description of the contravention to which the order relates, including, if appropriate, the date of the contravention;
 - (b) specify the amount of the penalty;
 - (c) give particulars respecting the time for paying the penalty and the manner of payment; and
 - (d) provide details of the person's right to require a hearing under section 91.

Absolute liability

- (8) A requirement that a person pay an administrative penalty applies even if,
- (a) the person took all reasonable steps to prevent the contravention; or
 - (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

Same

- (9) For greater certainty, nothing in subsection (8) affects the prosecution of an offence.

Payment prevents conviction

- (10) A person who pays an administrative penalty in respect of a contravention and has remedied the contravention shall not be convicted of an offence under this Act in respect of the same contravention.

Failure to pay administrative penalty when required

- 90.** (1) If a person who is required to pay an administrative penalty fails to comply with the requirement, the Authority may file the order that requires payment with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.

Same

- (2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed under subsection (1) and, for that purpose, the date on which the order is filed is deemed to be the date of the order that is referred to in that section.

APPEALS

Appeal of order

- 91.** (1) A person to whom any of the following orders is directed may require a hearing by the Tribunal in accordance with subsection (2):
1. An order made under subsection 86 (1) by an inspector who is also the Registrar or a Deputy Registrar.
 2. An order made under clause 87 (6) (b) by a Deputy Registrar.
 3. An order deemed to have been confirmed by order of a Deputy Registrar under subsection 87 (9).
 4. An order made under subsection 89 (2) by the Registrar or a Deputy Registrar.

Same

- (2) The person may require the hearing by written notice served on the Registrar or Deputy Registrar who made the order, and on the Tribunal, within 15 days after the person is served with the order.

Failure or refusal to issue, etc., order

- (3) Failure or refusal to issue, amend, vary or revoke an order is not itself an order.

Extension of time for requiring hearing

92. The Tribunal shall extend the time in which a person may give a notice under section 91 requiring a hearing on an order if, in the Tribunal's opinion, it is just to do so because service of the order was not effective, for a reason described in subsection 100 (4), to bring the order to the person's attention.

Contents of notice requiring hearing

93. (1) An applicant for a hearing by the Tribunal shall state in the notice requiring the hearing,

- (a) the portions of the order in respect of which the hearing is required; and
- (b) the grounds on which the applicant intends to rely at the hearing.

Effect of contents of notice

(2) Except with leave of the Tribunal, at a hearing by the Tribunal, an applicant is not entitled to appeal a portion of the order, or to rely on a ground, that is not stated in the applicant's notice requiring the hearing.

Leave by Tribunal

(3) The Tribunal may grant the leave referred to in subsection (2) if the Tribunal is of the opinion that to do so is proper in the circumstances, and it may give such directions as it considers proper consequent on the granting of the leave.

Stay on appeal

94. (1) The commencement of a proceeding before the Tribunal stays the operation of an order under section 89.

Exception

(2) Despite subsection (1), the commencement of a proceeding before the Tribunal does not stay the operation of an order that meets the prescribed criteria.

Tribunal may grant stay

(3) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of an order described in subsection (2).

Right to apply to remove stay: new circumstances

(4) A party to a proceeding may apply for the removal of a stay that was granted under subsection (3) if relevant circumstances have changed or have become known to the party since the stay was granted, and the Tribunal may grant the application.

Right to apply to remove stay: new party

(5) A person who is made a party to a proceeding after a stay is granted under subsection (3) may, at the time the person is made a party, apply for the removal of the stay, and the Tribunal may grant the application.

Parties

95. The following persons are parties to the proceeding:

1. The person requiring the hearing.
2. The Registrar, if he or she made the order being appealed.
3. A Deputy Registrar, if he or she made the order being appealed.
4. Any other person specified by the Tribunal.

Powers of Tribunal

96. (1) A hearing by the Tribunal shall be a new hearing and the Tribunal may confirm, vary or revoke the order that is the subject matter of the hearing.

Limitation

(2) If the hearing relates to an order to pay a penalty imposed under section 89, the Tribunal shall not vary the amount of the penalty unless it considers the amount to be unreasonable.

Appeals from Tribunal

97. (1) Any party to a hearing before the Tribunal under this Act may appeal from its decision on a question of law to the Divisional Court, with leave of the Divisional Court, in accordance with the rules of court.

Decision of Tribunal not automatically stayed on appeal

(2) An appeal of a decision of the Tribunal to the Divisional Court under this section does not stay the operation of the decision, unless the Tribunal orders otherwise.

Divisional Court may grant or set aside stay

(3) If a decision of the Tribunal is appealed to the Divisional Court under this section, the Divisional Court may,

- (a) stay the operation of the decision; or
- (b) set aside a stay ordered by the Tribunal under subsection (2).

OFFENCES

Offences

98. (1) A person who contravenes a provision of this Act that is listed in subsection (2) or a provision of the regulations is guilty of an offence.

List

(2) The following provisions are listed for the purposes of subsection (1):

1. Subsection 41 (5).
2. Subsection 68 (3).
3. Section 73.
4. Section 74.
5. Subsection 75 (1).
6. Section 88.

Failure to comply with Director's direction under section 17

(3) A person or entity that contravenes section 17 is guilty of an offence.

Authority

(4) If the Authority knowingly contravenes this Act or the regulations, it is guilty of an offence.

Individuals

(5) A director, officer, employee or agent of the Authority who knowingly contravenes section 11.2 of the *Auditor General Act*, as incorporated with necessary modifications by subsection 43 (3), is guilty of an offence.

Directors, officers, employees and agents

(6) If a corporation commits an offence under this section, a director, officer, employee or agent of the corporation who directed, authorized, assented to, acquiesced in or failed to take all reasonable care to prevent the commission of the offence, or who participated in the commission of the offence, is also guilty of the offence, whether the corporation has been prosecuted for the offence or not.

Penalty, individual

(7) An individual who is guilty of an offence under this section is liable, on conviction,

- (a) in the case of a first conviction, to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues; and
- (b) in the case of a subsequent conviction, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

Same, corporation

(8) A corporation that is guilty of an offence under this section is liable, on conviction,

- (a) in the case of a first conviction, to a fine of not more than \$250,000 for each day or part of a day on which the offence occurs or continues; and
- (b) in the case of a subsequent conviction, to a fine of not more than \$500,000 for each day or part of a day on which the offence occurs or continues.

Penalty re monetary benefit

(9) The court that convicts a person of an offence under this section may, in addition to any other penalty imposed by the court, increase a fine imposed on the person by an amount equal to the amount of the monetary benefit that was acquired by or that accrued to the person as a result of the commission of the offence, despite the maximum fine provided in subsection (7) or (8).

Additional orders

(10) The court that convicts a person of an offence under this section may, on its own initiative or on the motion of counsel for the prosecutor, make one or more of the following orders:

1. An order requiring the person, within the period or periods specified in the order, to do or refrain from doing anything specified in the order.
2. An order imposing requirements that the court considers appropriate to prevent similar unlawful conduct or to contribute to the person's rehabilitation.
3. An order prohibiting the continuation or repetition of the offence by the person.

Other remedies and penalties preserved

(11) Subsection (10) is in addition to any other remedy or penalty provided by law.

Limitation

(12) A proceeding under this section shall not be commenced more than two years after the day on which evidence of the offence first came to the attention of a provincial offences officer designated under the *Provincial Offences Act*.

Obstruction, etc.

99. (1) No person shall hinder or obstruct an officer, employee or agent of the Authority in the performance of his or her duties under this Act.

False information

(2) No person shall give or submit false or misleading information, orally, in writing or electronically, in any statement, document or data in respect of any matter related to this Act or the regulations to,

- (a) the Authority, an inspector, the Registrar, a Deputy Registrar, or any other officer, employee or agent of the Authority;
- (b) a person required to carry out a review under clause 31 (2) (b);
- (c) an administrator appointed under section 54; or
- (d) the Minister, the Ministry, or an employee or agent of the Ministry.

Same

(3) No person shall include false or misleading information in any document or data required to be created, stored or submitted under this Act.

Refusal to provide information

- (4) No person shall refuse to provide information required for the purpose of this Act or the regulations to,
- (a) the Authority, the Registrar, a Deputy Registrar, an inspector, or any other officer, employee or agent of the Authority;
 - (b) a person required to carry out a review under clause 31 (2) (b);
 - (c) an administrator appointed under section 54;
 - (d) a person appointed as a Director under section 16; or
 - (e) the Minister, the Ministry, or an employee or agent of the Ministry.

Offence

- (5) Any person who contravenes subsection (1), (2), (3) or (4) is guilty of an offence, and subsections 98 (6) to (12) apply with necessary modifications.

MISCELLANEOUS

Serving a document

- 100.** (1) Any notice, order or other document that is required to be served on a person under this Act is sufficiently served if it is,
- (a) delivered directly to the person;
 - (b) left at the person's last known address, in a place that appears to be for incoming mail or with an individual who appears to be 16 years old or older;
 - (c) sent by regular mail to the person's last known address;
 - (d) sent by commercial courier to the person's last known address;
 - (e) sent by email to the person's last known email address;
 - (f) sent by fax to the person's last known fax number; or
 - (g) given by other means specified by the regulations.

Deemed receipt

- (2) Subject to subsection (4),
- (a) a document left under clause (1) (b) is deemed to have been received on the first business day after the day it was left;
 - (b) a document sent under clause (1) (c) is deemed to have been received on the fifth business day after the day it was mailed;
 - (c) a document sent under clause (1) (d) is deemed to have been received on the second business day after the day the commercial courier received it;
 - (d) a document sent under clause (1) (e) or (f) is deemed to have been received on the first business day after the day it was sent; and
 - (e) a document given under clause (1) (g) is deemed to have been received on the day specified by the regulations.

Definition

- (3) In subsection (2),

"business day" means a day from Monday to Friday, other than a holiday as defined in section 87 of the *Legislation Act, 2006*.

Failure to receive document

- (4) Subsection (2) does not apply if the person establishes that he or she, acting in good faith, did not receive the document or received it on a later date because of a reason beyond the person's control, including absence, accident, disability or illness.

Exception

- (5) For greater certainty, subsection (1) does not apply to the service of documents on the Tribunal or the Authority.

Proof

Office and signature

- 101.** (1) A document that purports to be signed by the Registrar, a Deputy Registrar or an inspector, or a certified copy of a document that purports to be signed by any of them, is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document was signed by the Registrar, a Deputy Registrar or an inspector, as the case may be, without proof of the person's office or signature.

Same, statement

- (2) A statement that purports to be certified by the Registrar, a Deputy Registrar or an inspector is, without proof of the person's office or signature, admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it in relation to,
- (a) the receipt or non-receipt of any document required or permitted to be given to the Registrar, Deputy Registrar or inspector; and
 - (b) the day on which evidence of an offence under this Act first came to the attention of the Authority or an officer, employee or agent of the Authority.

PART VI
REGULATIONS

GENERAL

Regulations, Lieutenant Governor in Council

- 102.** The Lieutenant Governor in Council may make regulations,

- (a) respecting anything that may or must be prescribed, done or provided for by regulation, and for which a specific power is not otherwise provided in this Act;
- (b) exempting any person or entity from any provision of this Act or the regulations and prescribing conditions for the exemptions from this Act and the regulations;
- (c) defining any word or expression used in this Act that is not already defined;
- (d) prescribing related things for the purposes of the provincial interest described in section 2;
- (e) governing such transitional matters as the Lieutenant Governor in Council considers necessary or advisable to facilitate the implementation of this Act;
- (f) respecting any matter that the Lieutenant Governor in Council considers advisable to effectively carry out the purpose of this Act.

Regulations, general rules

103. (1) A regulation may be limited as to time or place, or both, and may exclude any place from the application of the regulation.

Same, geographic areas

(2) A regulation may provide that different responsibilities in respect of resource recovery or waste reduction apply in different geographic areas of Ontario.

Adoption by reference

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any document, including a code, formula, standard, protocol or procedure, and may require compliance with any document so adopted.

Rolling incorporation by reference

(4) The power to adopt by reference and require compliance with a document in subsection (3) includes the power to adopt a document as it may be amended from time to time.

When amendment effective

(5) The adoption of an amendment to a document that has been adopted by reference comes into effect upon the Ministry publishing notice of the amendment in *The Ontario Gazette* or in the registry under the *Environmental Bill of Rights, 1993*.

Regulations, Part II

104. The Lieutenant Governor in Council may make regulations,

- (a) prescribing persons and entities for the purpose of paragraph 5 of subsection 10 (1);
- (b) prescribing persons, entities and activities for the purpose of paragraph 5 of subsection 12 (1);
- (c) prescribing Acts for the purpose of paragraph 10 of subsection 12 (2);
- (d) prescribing provisions and Acts for the purpose of paragraph 6 of subsection 12 (3);
- (e) prescribing instruments for the purpose of subsection 14 (5);
- (f) prescribing instruments for the purpose of clause 15 (2) (b);
- (g) prescribing plans and provisions of plans for the purpose of clause 15 (4) (e);
- (h) prescribing persons, entities and activities for the purpose of paragraph 3 of subsection 17 (2);
- (i) governing reviews and reports and the provision of information and reports under section 17, including,
 - (i) governing their contents, and
 - (ii) requiring that specified parts of a report be certified in the specified way by a person with specified qualifications.

Regulations, Part III, Lieutenant Governor in Council

105. The Lieutenant Governor in Council may make regulations,

- (a) limiting the capacity, rights, powers or privileges of the Authority for the purposes of subsection 34 (1);
- (b) permitting and governing, for the purposes of subsection 34 (2), the establishment of subsidiary corporations of the Authority, including,
 - (i) specifying the objects, powers and duties of subsidiary corporations,
 - (ii) providing for their management,
 - (iii) prescribing provisions of this Act and the regulations that apply, with prescribed modifications, to subsidiary corporations, and
 - (iv) prescribing provisions of the *Corporations Act* and the *Corporations Information Act* that apply to subsidiary corporations;

Note: On the later of the day clause 105 (b) comes into force and the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, subclause 105 (b) (iv) is amended by striking out “*Corporations Act*” and substituting “*Not-for-Profit Corporations Act, 2010*”. (See: 2016, c. 12, Sched. 1, s. 109 (2))

- (c) governing commercial activities referred to in subsection 34 (3) that the Authority may engage in through an individual, corporation or other entity, including respecting the manner in which an entity may or may not be related to the Authority, to a member of its board of directors or to an officer of the Authority for the purposes of that subsection;
- (d) prescribing limitations or requirements for the purpose of subsection 41 (3);
- (e) governing the establishment, maintenance and operation of the Registry, including requiring electronic submissions;
- (f) governing or prohibiting the posting of information on the Registry;
- (g) governing procedures for submitting information through the Registry or to the Authority;

- (h) prescribing the timing and requirements relating to periodic updating of submissions;
- (i) respecting the manner in which the Authority must provide information to the Minister under section 53, including, without limitation, requiring the Authority to identify information the Authority is providing to the Minister in confidence before providing it to the Minister;
- (j) requiring the Authority to follow processes and procedures with respect to providing access to the public to records of the Authority or with respect to managing personal information contained in those records and governing those processes and procedures;
- (k) prescribing purposes for the Registry;
- (l) prescribing further circumstances, for the purposes of clause 57 (2) (g), under which disclosure is permitted;
- (m) requiring the Authority to disclose, to the public, information relating to compensation and any other payments that it makes or is required to make to members of the Authority's board of directors, officers or employees and governing the disclosure.

Regulations, Part III, Minister

106. (1) The Minister may make regulations,

- (a) prescribing the maximum number of board members to be appointed under paragraph 1 of subsection 25 (2);
- (b) prescribing the maximum number of board members to be elected under paragraph 2 of subsection 25 (2);
- (c) prescribing the procedures for the election of board members under paragraph 2 of subsection 25 (2);
- (d) prescribing qualifications of and eligibility criteria for board members;
- (e) prescribing restrictions on the length of terms of board members and on their reappointment or re-election;
- (f) prescribing the number of board members that constitutes a quorum for the purposes of subsection 25 (13);
- (g) prescribing a date for the purpose of subsection 26 (3);
- (h) prescribing provisions of the *Corporations Act* and the *Corporations Information Act* that apply to the Authority.

Note: On the later of the day clause 106 (1) (h) comes into force and the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, clause 106 (1) (h) is amended by striking out "*Corporations Act*" and substituting "*Not-for-Profit Corporations Act, 2010*". (See: 2016, c. 12, Sched. 1, s. 109 (3))

Restriction, maximum numbers of board members

- (2) The maximum number of board members prescribed under clause (1) (b) must always be greater than the maximum number prescribed under clause (1) (a).

Regulations, Part IV

107. The Lieutenant Governor in Council may make regulations,

- (a) respecting anything that, under Part IV, may or must be prescribed, done or provided for by regulation;
- (b) respecting convenience packaging, primary packaging and transport packaging, and what constitutes each type of packaging for the purposes of Part IV;
- (c) prescribing information, reports, records or documents to be included with a registration;
- (d) prescribing the location at which documents or data must be created, stored or made available;
- (e) providing for the preparation and signing of documents by electronic means, the filing of documents by direct electronic transmission and the printing of documents filed by direct electronic transmission;
- (f) governing reports required under section 72;
- (g) governing audits required under section 72, including governing standards for independent audits required under that section, qualifications for auditors and requirements for certification of audits.

Regulations, Part V

108. (1) The Lieutenant Governor in Council may make regulations,

- (a) specifying the form and content of orders under Part V;
- (b) governing the administrative penalties that may be imposed under section 89;
- (c) prescribing provisions of this Act or the regulations for the purposes of clause 89 (2) (f);
- (d) prescribing persons to whom an order may be issued for the purposes of clause 89 (3) (e);
- (e) prescribing criteria for the purposes of subsection 94 (2);
- (f) specifying other means of giving a document for the purposes of clause 100 (1) (g), and specifying the day on which a document given by those means is deemed to have been received.

Same, administrative penalties

- (2) Without limiting the generality of clause (1) (b), a regulation governing administrative penalties may,
 - (a) despite subsection 89 (2), prescribe circumstances in which an administrative penalty may not be imposed;
 - (b) prescribe criteria the Registrar or a Deputy Registrar is required or permitted to consider when imposing a penalty under section 89;
 - (c) governing the determination of the amount of administrative penalties for the purposes of subsection 89 (6);
 - (d) authorize a penalty to be imposed for each day or part of a day on which a contravention continues;

- (e) authorize higher penalties for a second or subsequent contravention;
- (f) require that the penalty be paid before a specified deadline or before a deadline specified by the Registrar or a Deputy Registrar;
- (g) authorize the imposition of late payment fees respecting penalties that are not paid before the deadline, including graduated late payment fees;
- (h) establish a maximum cumulative penalty payable in respect of a contravention or in respect of contraventions during a specified period.

PART VII (OMITTED)

109. OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

110. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

111. OMITTED (ENACTS SHORT TITLE OF THIS ACT).
