

Waste Diversion Transition Act, 2016

S.O. 2016, CHAPTER 12
SCHEDULE 2

Consolidation Period: From November 30, 2016 to the e-Laws currency date.

Note: This Act is repealed on a day to be named by proclamation of the Lieutenant Governor. (See: 2016, c. 12, Sched. 2, s. 76)

No amendments.

CONTENTS

General

1.

Purposes

2.

Interpretation

3.

Application

4.

No new approvals, etc.

Resource Productivity and Recovery Authority

5.

Authority's duties

6.

Annual report

7.

Operating agreement

8.

No personal liability

Waste Diversion Programs

9.

Waste diversion programs continued

10.

Contents of waste diversion program

11.

Blue box program payments to municipalities

12.

Material change to waste diversion program

13.

Change required by Minister

14.

Winding up

Industry Funding Organizations — Corporate Matters

15.

Continuation of industry funding organizations, designations

16.

Composition

17.

Management

18.

Chair

19.

Quorum

20.

Voting

21.

By-laws

22.

Remuneration and expenses

24.

Capacity and powers

25.

Not a Crown agent

26.

Protection from liability: Crown

27.

Protection from liability: directors, etc.

28.

Fiscal year

29.

Auditor

30.

Annual report, industry funding organization

31.

Information to Authority

Operation of Waste Diversion Programs

32.

Program operation

33.

Rules relating to stewards

34.

Payment of stewardship fees

35.

Existing funds continued

Industry Stewardship Plans

36.

Existing industry stewardship plans continued

37.

Industry stewardship plan approvals

38.

List of plans

39.

Exemption from stewardship fees, records, etc.

40.

Annual report, person responsible for industry stewardship plan

41.

Fees

Crown's Costs

42.

Contribution to defray cost

Appointment of Administrator

43.

Administrator

44.

Appointment of administrator, effect on board

Compliance and Enforcement

45.

Inspectors

46.

Who may be appointed

47.

Use of writing

48.

Inspection

49.

Power to require response to inquiries

50.

Identification

51.

Order for entry or inspection

52.

Detention of copies

53.

Calling for assistance of member of police force

54.

Seizure during inspection

55.

Report to justice, things seized

56.

Administrative penalties

57.

Failure to pay administrative penalty when required

58.

Appeal of order

59.

Extension of time for requiring hearing

60.

Contents of notice requiring hearing

61.

Stay on appeal

62.

Parties

63.

Powers of Tribunal

64.

Appeals from Tribunal

65.

Offences

66.

Obstruction, etc.

Miscellaneous

67.

Serving a document

68.

Proof

69.

Brewers Retail Inc.

70.

Confidentiality of information

71.

Liability, administrator under Resource Recovery and Circular Economy Act, 2016

72.

Act binds Crown

Regulations

73.

Regulations, Lieutenant Governor in Council

74.

Regulations under old Act continued

76.

Repeal of this Act

General

Purposes

1. The purposes of this Act are,

(a) to promote the reduction, reuse and recycling of waste;

(b) to provide for the operation of waste diversion programs; and

(c) to promote the orderly winding up of waste diversion programs and industry funding organizations in order to allow responsibility for waste to be governed under the Resource Recovery and Circular Economy Act, 2016 or otherwise.

Interpretation

2. In this Act,

“Authority” means the Resource Productivity and Recovery Authority continued under Part III of the Resource Recovery and Circular Economy Act, 2016; (“Office”)

“blue box waste” means material prescribed as blue box waste by the regulations; (“déchets destinés à la boîte bleue”)

“Deputy Registrar” means a Deputy Registrar of the Authority appointed under the Resource Recovery and Circular Economy Act, 2016; (“registrateur adjoint”)

“designated waste” means blue box waste or material prescribed as a designated waste by the regulations; (“déchets désignés”)

“industry funding organization” means a corporation continued under section 15 as an industry funding organization that is designated for a waste diversion program; (“organisme de financement industriel”)

“industry stewardship plan” means a plan for the management of a designated waste operated by, or for the benefit of, one or more stewards who are designated in respect of that waste; (“plan de gérance industrielle”)

“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”)

“old Act” means the Waste Diversion Act, 2002; (“ancienne loi”)

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

“Registrar” means the Authority’s Registrar appointed under the Resource Recovery and Circular Economy Act, 2016; (“registrateur”)

“Registry” means, except where the context requires otherwise, the Resource Productivity and Recovery Registry established under the Resource Recovery and Circular Economy Act, 2016; (“Registre”)

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

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

“waste diversion program” means a program continued under section 9. (“programme de réacheminement des déchets”)

Application

3. This Act applies with respect to waste diversion programs on and after the day the Waste Diversion Act, 2002 is repealed under section 75.

No new approvals, etc.

4. (1) For greater certainty, on and after the day section 75 comes into force,

- (a) no new industry funding organizations shall be established;
- (b) no new waste diversion programs shall be approved; and
- (c) no new industry stewardship plans shall be approved other than in accordance with section 37.

In-progress applications discontinued

(2) On the day section 75 comes into force,

- (a) any applications to approve an industry stewardship plan that have been submitted but not yet decided under section 34 of the old Act are discontinued, subject to subsection (3); and
- (b) any waste diversion programs or amendments to waste diversion programs that have been submitted to the Minister but not yet decided under section 26 of the old Act are deemed not to have been approved.

Exception

(3) Clause (2) (a) does not apply to an application in respect of a plan that relates to a designated waste in respect of which an industry stewardship plan is continued under section 36 and remains in effect.

Resource Productivity and Recovery Authority

Authority's duties

5. The Authority shall,

- (a) oversee the operation by industry funding organizations of waste diversion programs for designated wastes in accordance with this Act, and monitor the effectiveness and efficiency of those programs;
- (b) monitor the effectiveness of industry stewardship plans continued under section 36 or approved under section 37;
- (c) exercise powers and perform duties in relation to compliance with and enforcement of this Act;
- (d) oversee the orderly winding up of industry funding organizations and the winding up of waste diversion programs, in full or in respect of a designated waste, in accordance with this Act;
- (e) exercise the powers and perform the duties that, as of the day before section 21 of the Resource Recovery and Circular Economy Act, 2016 comes into force, were exercised and performed by

Waste Diversion Ontario with respect to a waste diversion program approved by the Minister under the old Act;

(f) exercise the powers and perform the duties given to the Authority with respect to a waste diversion program under this Act;

(g) seek to enhance public awareness of and participation in waste diversion programs;

(h) seek to ensure that waste diversion programs operated under this Act affect Ontario's marketplace in a fair manner;

(i) determine the amount of money required by the industry funding organizations to carry out their responsibilities under this Act; and

(j) establish a dispute resolution process for,

(i) disputes between an industry funding organization and a municipality with respect to payments to the municipality under a waste diversion program, and

(ii) disputes between an industry funding organization and a person in respect of the application of rules made by the industry funding organization under section 33 or regulations made by the Lieutenant Governor in Council under subsection 73 (3).

Annual report

6. (1) The Authority's annual report required under Part III of the Resource Recovery and Circular Economy Act, 2016 shall include information with respect to the Authority's activities under this Act.

Contents

(2) The information mentioned in subsection (1) shall include the following:

1. A description of any consultations undertaken during the previous fiscal year by the Authority under this Act or otherwise, and a summary of the results of the consultations.

2. Information about waste diversion programs operated under this Act during the previous fiscal year, including information about any changes to the programs.

3. Information about any plans the Authority has approved during the previous fiscal year to wind up a waste diversion program in full or in respect of a designated waste, and information about their implementation.

4. Information about any plans the Authority has approved during the previous fiscal year to wind up an industry funding organization, and information about their implementation.

5. A summary of compliance and enforcement activities carried out under this Act during the previous fiscal year.

6. A copy of every report an industry funding organization has provided to the Authority under section 30 in respect of the previous fiscal year.

7. A copy of every report a person responsible for the operation of an industry stewardship plan has provided to the Authority under section 40 in respect of the previous fiscal year.

8. A copy of the report submitted by Brewers Retail Inc. under subsection 69 (3) in respect of the previous year.

Transition, first report

(3) Despite subsection (2), the first report made by the Authority after section 75 comes into force shall include the following:

1. Information about waste diversion programs developed, implemented and operated under the old Act during the fiscal year before section 75 comes into force.

2. The information and reports described in subsection (2), with the following modifications:

i. Paragraph 6 of subsection (2) shall be read as including a reference to reports provided under section 33 of the old Act.

ii. Paragraph 7 of subsection (2) shall be read as including a reference to reports provided under subsection 34 (5) of the old Act.

iii. Paragraph 8 of subsection (2) shall be read as referring to the report submitted by Brewers Retail Inc. under subsection 35 (3) of the old Act.

Operating agreement

7. The operating agreement between the Minister and the Authority required under the Resource Recovery and Circular Economy Act, 2016 shall include matters that the Minister considers advisable in the public interest relating to carrying out the Authority's duties under this Act.

No personal liability

8. (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.

Waste Diversion Programs

Waste diversion programs continued

9. (1) The following waste diversion programs, which were approved under section 26 of the old Act, are continued until they are wound up under this Act:

1. The waste diversion program for blue box waste.

2. The waste diversion program for municipal hazardous or special waste.

3. The waste diversion program for used tires.

4. The waste diversion program for waste electrical and electronic equipment.

Agreements and rules

(2) For greater certainty,

(a) the agreements between Waste Diversion Ontario and the industry funding organizations that were required by subsection 25 (3) of the old Act and that form part of the waste diversion programs mentioned in subsection (1) are continued if they were in effect immediately before the day this section comes into force; and

(b) the rules made under section 30 of the old Act that were set out in an agreement referred to in subsection 25 (3) of the old Act are continued if they were in effect immediately before the day this section comes into force.

Availability to public

(3) The Authority shall ensure that the agreements are made available to the public on the Registry.

Contents of waste diversion program

10. (1) A waste diversion program shall continue to meet the requirements of this section and, subject to section 14, no change shall be made that is inconsistent with these requirements.

Same

(2) A waste diversion program may deal with the following:

1. Activities to reduce, reuse and recycle the waste.
2. Research and development activities relating to the management of the waste.
3. Activities to develop and promote products that result from the waste diversion program.
4. Educational and public awareness activities to support the waste diversion program.

Same

(3) A waste diversion program shall not promote any of the following:

1. Burning the waste.
2. Landfilling the waste.
3. The application of the waste to land.
4. Any activity prescribed by the regulations for the purposes of this paragraph.

Program agreements

(4) A waste diversion program must include an agreement between the Authority and the industry funding

organization that is designated for the waste diversion program governing the role of the industry funding organization in the operation of the program and governing the exercise of the industry funding organization's powers under this Act.

Blue box program payments to municipalities

11. (1) The waste diversion program for blue box waste must provide for payments to municipalities to be determined in a manner that results in the total amount paid to all municipalities under the program being equal to the applicable percentage of the total net costs incurred by those municipalities as a result of the program.

Same

(2) For the purposes of subsection (1), the applicable percentage is 50 per cent or such greater percentage as is prescribed by the regulations for the purposes of this subsection.

Change by Minister

(3) The Minister may, if he or she considers it advisable in the public interest for the purposes of this Act, change the waste diversion program for blue box waste to determine the total annual amount that shall be paid to municipalities under the program in respect of the period specified in the change.

Consultation

(4) Before making a change described in subsection (3), the Minister shall consult with Stewardship Ontario and representatives of municipalities.

Application of Environmental Bill of Rights, 1993

(5) 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 a change under subsection (3) and, for that purpose, the change is deemed to be a proposal under consideration in the Ministry for a regulation under a prescribed Act.

Effect of change under subs. (3)

(6) A change described in subsection (3) has the same effect as a change approved by the Minister under section 12 or 13.

Retroactive effect

(7) A change to the waste diversion program for blue box waste under subsection (3) may be retroactive to a date that is no earlier than January 1 in the year before the change is made, but in no case shall the change be retroactive to a date that is earlier than January 1, 2016.

Conflict

(8) If there is a conflict between a change made by the Minister to the waste diversion program for blue box waste under subsection (3) and a change resulting from a wind-up plan approved under section 14 in respect of the program, the Minister's change prevails.

Material change to waste diversion program

12. (1) A material change may be made to a waste diversion program only after the material change is approved by the Minister under subsection (5).

Consultation

(2) The Authority and the industry funding organization designated for the waste diversion program shall consult about any proposed material change with,

(a) representatives of municipalities;

(b) representatives of persons who are designated under rules made by an industry funding organization under section 33 or regulations made under subsection 73 (3) as stewards in respect of the designated waste to which the waste diversion program applies; and

(c) any other persons the Authority and the industry funding organization consider to be affected by the proposed material change.

Submission to Minister

(3) If the Authority approves the proposed material change, it shall submit it to the Minister for his or her consideration.

Same

(4) If the Minister requests further information with respect to the proposed material change, the Authority shall provide it within the time specified by the Minister.

Minister's decision

(5) After reviewing the Authority's submission, the Minister may approve the proposed change if he or she considers it advisable to do so in the public interest for the purposes of this Act, and the Minister shall give the decision in writing.

Application of Environmental Bill of Rights, 1993

(6) 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 a proposal for a material change submitted to the Minister under subsection (3) and, for that purpose, the proposed material change is deemed to be a proposal under consideration in the Ministry for a regulation under a prescribed Act.

Change required by Minister

13. (1) The Minister may require the Authority and an industry funding organization to develop a proposal for a change to a waste diversion program.

Consultation

(2) The Authority and the industry funding organization designated for the waste diversion program shall consult about any proposed change with,

(a) representatives of municipalities;

(b) representatives of persons who are designated under rules made by an industry funding organization under section 33 or regulations made under subsection 73 (3) as stewards in respect of the designated waste to which the waste diversion program applies; and

(c) any other persons the Authority and the industry funding organization consider to be affected by the proposed change.

Timeline

(3) The Minister may specify a date by which the proposed change must be submitted to him or her for approval.

Submission to Minister

(4) If the Authority approves the proposed change, it shall submit the change to the Minister for his or her consideration and shall include particulars of any matters that are unresolved at the time of the submission.

Minister's powers

(5) After reviewing the Authority's submission, the Minister may approve the proposed change or make such changes to the program as he or she considers advisable in the public interest for the purposes of this Act and shall give the decision in writing.

Same

(6) If no submission is received under subsection (4), the Minister may make such changes to the program as he or she considers advisable in the public interest for the purposes of this Act.

Application of Environmental Bill of Rights, 1993

(7) 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 a proposal for a change submitted to the Minister under subsection (4) and, for that purpose, the proposed change is deemed to be a proposal under consideration in the Ministry for a regulation under a prescribed Act.

Winding up

14. (1) An industry funding organization that receives a written direction from the Minister under this section to wind up a waste diversion program in full or in respect of a designated waste shall develop a plan in accordance with this section and shall submit it to the Authority for approval.

Direction re winding up industry funding organization

(2) A direction under this section to wind up a waste diversion program in full may also require the industry funding organization to develop a plan for winding itself up in accordance with any provisions of the Corporations Act that are prescribed to apply to it.

Note: On the later of the day subsection 14 (2) comes into force and the day subsection 4 (1) of the Not-for-Profit Corporations Act, 2010 comes into force, subsection 14 (2) of this Act is amended by striking out "Corporations Act" and substituting "Not-for-Profit Corporations Act, 2010". (See: 2016, c. 12, Sched. 2, s. 77 (1))

Discretionary direction

(3) The Minister may, at any time, direct an industry funding organization to wind up a waste diversion program in full or in respect of a designated waste, subject to subsection (4).

Mandatory direction

(4) The Minister shall direct an industry funding organization to wind up a waste diversion program in full if,

(a) material prescribed as a designated waste to which the program applies is also prescribed under the Resource Recovery and Circular Economy Act, 2016 as material in a designated class within the meaning of that Act; and

(b) a regulation under the Resource Recovery and Circular Economy Act, 2016 imposes one or more of the responsibilities mentioned in Part IV of that Act in respect of the material.

Same, timing

(5) A direction under subsection (4) shall be made within 90 days after a regulation described in clause (4) (b) is filed with the Registrar of Regulations in accordance with Part III (Regulations) of the Legislation Act, 2006.

Same

(6) Subsection (5) applies regardless of whether any provision of the regulation described in clause (4) (b) that imposes a responsibility in respect of the material is in force.

Application of subs. (4)

(7) Subsection (4) applies with respect to,

(a) the waste diversion program for municipal hazardous or special waste;

(b) the waste diversion program for used tires; and

(c) the waste diversion program for waste electrical and electronic equipment.

Non-application of subs. (4), ss. 12 and 13

(8) On and after the day the Minister makes a direction to wind up a program in full, subsection (4) and sections 12 and 13 do not apply to the program.

Same

(9) On and after the day the Minister makes a direction to wind up the program in respect of a designated waste, sections 12 and 13 do not apply in respect of the program's application to that designated waste.

Timeline

(10) In a direction the Minister may specify a date by which the plan must be submitted to the Authority and may specify a timeline for the implementation of the plan, including a timeline for the program, or a part of it, to cease operation.

Same

(11) The Minister may, in writing, extend the timelines referred to in subsection (10).

Contents of plan

(12) The plan shall include the following:

1. A description of the designated waste that will no longer be included in the program.
2. A description of how the program will be operated while the plan is being implemented.
3. A proposed timeline according to which key aspects of the plan will be implemented.
4. A proposal for dealing with the affected assets, liabilities, rights and obligations of any affected industry funding organization.
5. A proposal for transferring or sharing data that is within the industry funding organization's custody or control and that relates to the waste that will no longer be included in the program.
6. A description of changes to the program that are anticipated to be necessary to implement the plan.

7. Any other information the Minister specifies.

Consultation

(13) In developing the plan, the industry funding organization shall consult with,

(a) representatives of municipalities;

(b) representatives of persons who are designated as stewards under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) in respect of the designated waste to which the waste diversion program applies; and

(c) any other persons the industry funding organization considers to be affected by the winding up.

Consultation

(14) In assessing the plan, the Authority shall consult with,

(a) representatives of municipalities;

(b) representatives of persons who are designated as stewards under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) in respect of the designated waste to which the waste diversion program applies; and

(c) any other persons the Authority considers to be affected by the winding up.

Approval

(15) After reviewing the industry funding organization's submission, the Authority may approve the plan, but the plan shall not be approved unless it is consistent with the Minister's direction.

Same

(16) An approval under subsection (15) shall be in writing and may include the conditions the Authority determines are appropriate.

Amendments

(17) The Minister may, in writing, direct the industry funding organization to develop amendments to a plan approved under subsection (15), and subsections (10) to (16) apply with necessary modifications in respect of the amendment.

Implementation of plan

(18) On receiving the Authority's approval of the wind up plan or the amended wind up plan, the industry funding organization shall implement it in accordance with,

(a) the timeline specified by the Minister, if any; and

(b) any conditions specified by the Authority in the approval.

Deemed changes to program

(19) On the day the Authority approves the wind up plan or the amended wind up plan, the waste diversion program is deemed to be changed as necessary to implement the plan.

Final report, full wind up plan

(20) An industry funding organization that has implemented an approved plan to wind up a program in full shall prepare a final report to the Authority and the Minister setting out the steps that were taken to implement the plan and confirming that the plan has been implemented.

Notice of termination, plan to wind up in full

(21) When a plan to wind up a program in full has been implemented and the Minister has received the final report described in subsection (20), the Minister shall issue a notice terminating the program as of the date set out in the notice.

Same, plan to wind up in part

(22) When a plan to wind up a program in respect of a designated waste has been implemented, the Minister shall issue a notice terminating the part of the program affected by the plan as of the date set out in the notice.

Publication

(23) The Minister shall publish each notice issued under subsections (21) and (22) on the registry under the Environmental Bill of Rights, 1993.

Publication

(24) The Authority shall publish on the Registry each approval given under subsection (15) and each notice issued under subsections (21) and (22).

Industry Funding Organizations — Corporate Matters

Continuation of industry funding organizations, designations Stewardship Ontario

15. (1) Stewardship Ontario is continued under the name Stewardship Ontario and is designated as the industry funding organization for,

- (a) the waste diversion program for blue box waste; and
- (b) the waste diversion program for municipal hazardous or special waste.

Ontario Tire Stewardship

(2) Ontario Tire Stewardship is continued under the name Ontario Tire Stewardship in English and Société de gestion des pneus usagés de l'Ontario in French and is designated as the industry funding organization for the waste diversion program for used tires.

Ontario Electronic Stewardship

(3) Ontario Electronic Stewardship is continued under the name Ontario Electronic Stewardship and is designated as the industry funding organization for the waste diversion program for waste electrical and electronic equipment.

Limitation

(4) An organization described in this section is continued until the day the organization is wound up.

Purpose

(5) The sole purpose of an industry funding organization is to perform the duties of an industry funding organization under this Act.

Prohibition re: use of money, other assets

(6) An industry funding organization shall not deal with money or any other asset other than in a way that is consistent with the purpose of an industry funding organization described in subsection (5).

Composition

16. (1) An industry funding organization is composed of the members of its board of directors, as set out in the regulations.

Ceasing to be member

(2) A person ceases to be a member of an industry funding organization when he or she ceases to be a member of its board of directors.

Transition

(3) The persons who are members of the board of directors of an industry funding organization immediately before the day this section comes into force continue as members of the board on and after that day in accordance with their appointments.

Management

17. An industry funding organization shall be managed by its board of directors.

Chair

18. (1) The chair of the board of directors shall be designated by the board of directors from among its members.

Transition

(2) The chair who is in office immediately before the day this section comes into force continues as chair in accordance with his or her designation.

Quorum

19. (1) Two-thirds of the members of the board of directors constitutes a quorum for the transaction of business.

Vacancy on board

(2) If there are one or more vacancies on the board of directors, the remaining directors may exercise all the powers of the board if they would constitute a quorum of the fully constituted board.

Voting

20. (1) Decisions of the board of directors shall be determined by majority vote.

One vote per member

(2) Subject to subsection (3), each member of the board of directors is entitled to one vote.

Tie vote

(3) In the event of a tie vote, the chair is entitled to cast a second vote.

By-laws

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

(a) regulating its proceedings, specifying the powers and duties of the officers and employees of the industry funding organization and generally for the conduct and management of the organization;

(b) respecting the appointment of officers and employees of the industry funding organization and providing for payment of their remuneration and reimbursement of their expenses; and

(c) providing for reimbursement of the expenses of the members of the board of directors.

Subcommittees

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

Existing by-laws continued

(3) A by-law that was made under the old Act by an industry funding organization and that was in force immediately before this section comes into force continues in force as a by-law of the organization until repealed or replaced by a by-law made by the board of directors.

Remuneration and expenses

22. The members of the board of directors are not entitled to any remuneration, but may be reimbursed for expenses in accordance with the by-laws made under section 21.

Corporations Act and Corporations Information Act

23. The Corporations Act and the Corporations Information Act do not apply to an industry funding organization, except as provided by the regulations.

Note: On the later of the day section 23 comes into force and the day subsection 4 (1) of the Not-for-Profit Corporations Act, 2010 comes into force, section 23 of this Act is amended by striking out “Corporations Act” and substituting “Not-for-Profit Corporations Act, 2010”. (See: 2016, c. 12, Sched. 2, s. 77 (2))

Capacity and powers

24. (1) An industry funding organization has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its responsibilities, except as limited by this Act or the regulations.

Subsidiary corporation

(2) An industry funding organization shall not establish a subsidiary corporation, except as permitted by the regulations.

Commercial activity

(3) An industry funding organization shall not engage in commercial activity through an individual, corporation or other entity that is related to the organization, to a member of its board of directors or to an officer of the organization, except as permitted by the regulations.

Not a Crown agent

25. An industry funding organization is not an agent of the Crown in right of Ontario for any purpose, despite the Crown Agency Act, and shall not hold itself out as such.

Protection from liability: Crown

26. No action or other proceeding shall be commenced against the Crown in right of Ontario in respect of any act or omission of an industry funding organization, any member of its board of directors, or any of its officers, employees or agents.

Protection from liability: directors, etc.

27. (1) No action or other proceeding shall be commenced against a member of the board of directors of an industry funding organization or any officer or employee of an industry funding organization for any act done in good faith and in a reasonable manner in the performance or intended performance of his or her duties or for any neglect or default in the performance in good faith of his or her duties.

Same

(2) Subsection (1) does not relieve an industry funding organization of any liability to which it would otherwise be subject.

Fiscal year

28. An industry funding organization's fiscal year is the period from January 1 to December 31 in each year.

Auditor

29. (1) Each industry funding organization 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, for each fiscal year, audit the accounts and financial transactions of the industry funding organization and shall prepare a report on each audit.

Annual report, industry funding organization

30. (1) Each industry funding organization shall, not later than April 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 Authority and make the report available to the public.

Contents

(2) The report shall include the following:

1. Information about each waste diversion program operated during the previous fiscal year.

2. Information about,

i. material changes to a waste diversion program that were developed and implemented under this Act during the previous fiscal year, and

ii. steps taken to develop and implement a plan approved under section 14.

3. Audited financial statements for the industry funding organization and a copy of the auditor's report on the organization under subsection 29 (2).

4. A description of any consultations undertaken by the industry funding organization during the previous fiscal year under this Act and a summary of the results of the consultations.

Signature

(3) The report shall be signed by the chair of the industry funding organization's board of directors.

Information to Authority

31. (1) The Authority may request, in accordance with any prescribed requirements, that an industry funding organization provide the Authority with information, and the industry funding organization shall provide the information.

Conflict

(2) The requirement to provide information under subsection (1) prevails over a provision in a program agreement mentioned in subsection 10 (4) with which it conflicts.

Operation of Waste Diversion Programs

Program operation

32. (1) An industry funding organization shall, in accordance with this Act, operate the waste diversion program for which it is designated until such time as the program is wound up under this Act.

Consultation

(2) In operating the program, the industry funding organization shall consult with,

- (a) representatives of municipalities;
- (b) representatives of persons who are designated under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) as stewards in respect of the designated waste to which the waste diversion program applies; and
- (c) any other persons the industry funding organization considers to be affected by the operation of the program.

Rules relating to stewards

33. (1) The industry funding organization designated for a waste diversion program may make rules,

- (a) designating persons or classes of persons as stewards in respect of the designated waste to which the waste diversion program applies;
- (b) setting the amount of the fees to be paid by stewards under section 34 or prescribing methods for determining the amount of the fees;
- (c) specifying the times when fees are payable under section 34;
- (d) requiring the payment of interest or penalties on fees that are not paid in accordance with section 34;
- (e) exempting stewards or classes of stewards from section 34, subject to such conditions and restrictions as may be prescribed by the rules;
- (f) requiring stewards to keep records prescribed by the rules and governing the submission of those records to persons specified by the rules and the inspection of those records by persons specified by the rules;

(g) requiring stewards to provide reports and other information to persons specified by the rules.

Same

(2) For greater certainty, the power to make rules under subsection (1) includes the power to amend the rules continued under clause 9 (2) (b).

Consultation

(3) In making rules, the industry funding organization shall consult with persons it considers to be affected by the rules, including members of the public.

Limitation

(4) A rule made under clause (1) (a) shall not designate a person as a steward in respect of a designated waste unless the person has a commercial connection to the designated waste or to a product from which the designated waste is derived.

Fees

(5) In making rules under clause (1) (b), the industry funding organization shall have regard to the following principles:

1. The total amount of fees paid by stewards under section 34 in respect of a waste diversion program for a designated waste should not exceed the sum of the following amounts:

- i. The costs of operating the program.
- ii. The costs of developing and implementing changes to the program.
- iii. The costs of developing and implementing a plan to wind up all or part of the program.
- iv. The costs incurred by the organization or the Authority to wind up all or part of the program.
- v. The costs incurred by the organization or the Authority to wind up the organization.
- vi. Costs incurred by the Authority in exercising its powers and carrying out its duties as they relate to the industry funding organization.
- vii. Costs incurred by the Crown in administering this Act and the regulations, as the costs relate to the industry funding organization and the Authority's oversight of it, including costs associated with appeals to the Tribunal of the Authority's orders.

2. The fee paid by a steward should fairly reflect the proportion of the sum referred to in paragraph 1 that is attributable to the steward.

Rule must be set out in program agreement

(6) A rule made under this section is not valid unless the wording of the rule is set out in the agreement mentioned in subsection 10 (4).

General or particular

(7) A rule made under this section may be general or particular in its application.

Publication

(8) The industry funding organization shall ensure that every rule made under this section is available to the public without charge on the Internet.

Limitation

(9) A rule made under this section is not effective against a person before the earlier of the following times:

1. When the person has actual notice of it.
2. The last instant of the day on which it is first available to the public on the Internet under subsection (8).

Legislation Act, 2006, Part III

(10) Part III of the Legislation Act, 2006 does not apply to the rules made under this section.

Terms used in rules

(11) Paragraph 5 of section 49 and section 86 of the Legislation Act, 2006 do not apply to the rules made under this section.

Payment of stewardship fees

34. (1) A person who is designated as a steward in respect of a designated waste under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) shall pay to the organization the fees determined in accordance with the rules or the regulations under that subsection at the times specified by the rules or the regulations under that subsection.

Voluntary contributions

(2) The industry funding organization may, with the Authority's approval, reduce the amount of fees payable by a person under subsection (1), or exempt a person from subsection (1), if the person has made voluntary contributions of money, goods or services to the organization.

Conditions and restrictions

(3) A reduction in fees or an exemption under subsection (2) may be subject to such conditions or restrictions as are specified in writing, with the Authority's approval, by the industry funding organization.

Existing funds continued

35. (1) Each fund that was established under subsection 32 (1) of the old Act by an industry funding organization in respect of a waste diversion program and that was being maintained immediately before the day this subsection comes into force shall continue to be maintained by the organization after that day in accordance with this section.

Purposes of fund

(2) The fund shall be held in trust by the industry funding organization and shall only be used for the following purposes:

1. To pay the costs of operating the program.
2. To pay the costs of developing and implementing changes to the program.
3. To pay the costs of developing and implementing a plan to wind up all or part of the program.

4. To pay the costs incurred by the organization or the Authority to wind up all or part of the program.
5. To pay the costs incurred by the organization or the Authority to wind up the organization.
6. To pay the costs incurred by the Authority in exercising its powers and carrying out its duties as they relate to the industry funding organization.
7. To pay the costs incurred by the Crown in administering this Act and the regulations, as the costs relate to the industry funding organization and the Authority's oversight of it, including costs associated with appeals to the Tribunal of the Authority's orders.

Money to be paid into fund

(3) All money received by the industry funding organization, including the following amounts, shall be paid into the fund:

1. All fees paid to the organization under section 34 and all interest and penalties paid in respect of those fees.
2. All voluntary contributions of money to the organization.
3. All investment income earned by the fund.

Payment of Authority's costs

(4) The Authority may, from time to time, determine the amount to be paid by the industry funding organization that reflects the costs incurred by the Authority in exercising its powers and carrying out its duties as they relate to the industry funding organization, and the industry funding organization shall pay the amount out of the fund.

Industry Stewardship Plans

Existing industry stewardship plans continued

36. Each industry stewardship plan approved under section 34 of the old Act that was in force immediately before the day this section comes into force is continued until the earliest of the following days:

1. The date specified in the approval or a later date approved under section 37.
2. If a waste diversion program is wound up in full, the date set out in the Minister's notice under subsection 14 (21) terminating the program to which the plan relates.
3. If a waste diversion program is wound up in respect of a designated waste to which the plan relates, the date set out in the Minister's notice under subsection 14 (22) terminating the part of the program that relates to that designated waste.

Industry stewardship plan approvals

37. (1) On application, the Authority may approve an additional industry stewardship plan, a change to an industry stewardship plan continued under section 36, or a change to an additional plan approved under this section if,

(a) in the case of an additional industry stewardship plan, the plan relates to a designated waste in respect of which an industry stewardship plan was continued under section 36;

(b) the plan relates to material that continues to be a designated waste under this Act; and

(c) the Authority is satisfied that the plan or the change will achieve similar or improved results as compared to the waste diversion program approved under section 26 of the old Act.

Approval in writing

(2) An approval under this section is not valid unless it is in writing.

Time limit

(3) An approval under this section is valid until the latest of the following days:

1. The date specified in the approval.

2. If the person responsible for the plan's operation applies for an extension before the date specified in the approval and the Authority grants the extension in writing, the new date specified in the document granting the extension.

3. If a waste diversion program is wound up in full, the date set out in the Minister's notice under subsection 14 (21) terminating the program to which the plan relates.

4. If a waste diversion program is wound up in respect of a designated waste to which the industry stewardship plan relates, the date set out in the Minister's notice under subsection 14 (22) terminating the part of the program that relates to that designated waste.

List of plans

38. The Authority shall ensure that a list of industry stewardship plans continued under section 36 or approved under section 37 is made available on the Registry.

Exemption from stewardship fees, records, etc.

39. (1) Section 34, the rules made under clauses 33 (1) (f) and (g), and the regulations made under subsection 73 (3) in respect of the matters mentioned in clauses 33 (1) (f) and (g) do not apply to a person who is designated under the rules made by an industry funding organization under section 33 or the regulations made under subsection 73 (3) as a steward in respect of a designated waste if,

(a) an industry stewardship plan that relates to the designated waste was approved under section 34 of the old Act or section 37 of this Act; and

(b) the person is required by a contract to participate in the plan and is a member of a class of persons described in the plan as participants of the plan.

Same

(2) Subsection (1) does not relieve the person from the requirement,

(a) to pay a fee that was due before the effective date;

(b) to keep or submit a record that the person was required to keep or submit before the effective date;

(c) to permit inspection of a record described in clause (b); or

(d) to provide a report or other information that the person was required to provide before the effective date.

Effective date

(3) For the purposes of subsection (2), the effective date is the first date on which the person,

(a) was required by a contract to participate in the plan; and

(b) was a member of a class of persons described in the plan as participants of the plan.

Annual report, person responsible for industry stewardship plan

40. The person responsible for the operation of an industry stewardship plan approved under section 34 of the old Act or under section 37 of this Act shall, not later than April 1 in each year,

(a) prepare a report on the operation of the plan during the previous year; and

(b) provide a copy of the report to the Authority and make the report available to the public.

Fees

41. (1) The Authority may establish fees and charge them to the person responsible for the operation of an industry stewardship plan approved under section 34 of the old Act or under section 37 of this Act for,

(a) monitoring the effectiveness of the plan; and

(b) performing other functions related to the plan.

Payment

(2) A person to whom a fee is charged under subsection (1) shall pay the fee.

Same

(3) A fee established under subsection (1) must reasonably reflect the costs incurred by the Authority in performing the function for which the fee is established.

Legislation Act, 2006, Part III

(4) Part III of the Legislation Act, 2006 does not apply to an instrument made by the Authority to establish a fee under subsection (1).

Crown's Costs

Contribution to defray cost

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

(a) by the Authority; and

(b) by each industry funding organization in respect of costs associated with the waste diversion program for which the industry funding organization is designated.

Costs

(2) The amounts fixed under subsection (1) may include costs that are attributable to the oversight of the Authority and the industry funding organizations under this Act, including costs associated with appeals to the Tribunal of the Authority's orders.

Payment, industry funding organization

(3) An industry funding organization shall pay the amount fixed for it under subsection (1) to the Authority in accordance with the terms of the order.

Same, Authority

(4) The Authority shall pay to the Minister of Finance, in accordance with the terms of the order,

(a) the amount fixed for the Authority under subsection (1); and

(b) the amount paid to the Authority by each industry funding organization under subsection (3).

Appointment of Administrator

Administrator

43. (1) Subject to subsection (2), the Authority's board of directors may, by resolution, appoint an individual as the administrator of an industry funding organization for the purposes of assuming control of it and responsibility for its activities.

Condition precedent

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

1. The appointment is necessary to facilitate winding up the industry funding organization.
2. The appointment is necessary to facilitate winding up a waste diversion program.
3. There are not enough members on the board of directors of the industry funding organization to form a quorum for the transaction of business.
4. The industry funding organization has dealt with money or another asset in any way other than in accordance with subsection 15 (6).

Notice of appointment

(3) The Authority's board shall give the organization's board the notice that it 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 organization's board to form a quorum.

Term of appointment

(5) The appointment of the administrator is valid until the Authority's board passes a resolution terminating it.

Powers and duties of administrator

(6) Unless the resolution 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 industry funding organization.

Same

(7) In the resolution appointing the administrator, the Authority's board may specify the administrator's powers and duties and the conditions governing them, subject to subsection (8).

Same

(8) The administrator is a member of the board for the purposes of any provision of Part VI of the Corporations Act that is prescribed to apply to the industry funding organization under section 23.

Note: On the later of the day subsection 43 (8) comes into force and the day subsection 4 (1) of the Not-for-Profit Corporations Act, 2010 comes into force, subsection 43 (8) of this Act is amended by striking out "Part VI of the Corporations Act" and substituting "Not-for-Profit Corporations Act, 2010". (See: 2016, c. 12, Sched. 2, s. 77 (3))

Right re documents, etc.

(9) The administrator has the same rights as the organization's board of directors in respect of the organization's documents, records and information.

Report to Authority

(10) The administrator shall report to the Authority's board as that board requires.

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, the regulations or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

Liability of organization

(12) Subsection (11) does not relieve the industry funding organization of liability to which it would otherwise be subject.

Appointment of administrator, effect on board

44. (1) On the appointment of an administrator under section 43, the members of the industry funding organization's board of directors cease to hold office, unless the resolution provides otherwise.

Same

(2) During the term of the administrator's appointment, the powers of any member of the organization's board who continues to hold office are suspended, unless the resolution 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 organization's board for anything done by the administrator or the organization after the member's

removal under subsection (1) or while the member's powers are suspended under subsection (2) or (3).

Liability of organization

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

Compliance and Enforcement

Inspectors

45. (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 which the inspector shall produce, on request, when acting in the performance of his or her duties.

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

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

Use of writing

47. Appointments under section 45 shall be made in writing.

Inspection

48. (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 one of the following:

1. A person designated as a steward under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3).

2. An industry funding organization.

3. A person retained by an industry funding organization to operate all or part of an approved waste diversion program.

4. 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 Act.

5. The owner or operator of a waste disposal site or waste management system within the meaning of Part V of the Environmental Protection Act.

6. A person operating an industry stewardship plan.

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 51.

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 other document or data, in any form, 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.

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

49. (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 designated as a steward under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3).
2. An industry funding organization.
3. A person retained by an industry funding organization to operate all or part of an approved waste diversion program.
4. 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 Act.
5. The owner or operator of a waste disposal site or waste management system within the meaning of Part V of the Environmental Protection Act.
6. A person operating an industry stewardship plan.
7. A director, officer, employee or agent of a person described in paragraphs 1 to 6.

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, the inspector may require that a copy of it be provided to him or her on paper or electronically or both.

Identification

50. 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

51. (1) A justice may issue an order authorizing an inspector to do anything set out in subsection 48 (1) or (4) or section 49 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 48 (1) or (4) or section 49 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 48 (1) or (4) or section 49,

(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 48 (1) or (4) or section 49 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 48 (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

52. An inspector may detain copies obtained under section 48 or 51 for any period and for any purpose relating to enforcing this Act and the regulations.

Calling for assistance of member of police force

53. An inspector who is authorized by an order under section 51 to do anything set out in subsection 48 (1) or (4) or section 49 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 during inspection

54. (1) During an inspection under section 48 or 51, 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

55. (1) An inspector who seizes anything under section 54 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 54 of this Act.

Note: Sections 56 to 64 come into force on May 1, 2017, the day named by proclamation of the Lieutenant Governor.

Administrative penalties

56. (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 14 (1);
- (b) section 30;
- (c) section 31;
- (d) a rule made by an industry funding organization under section 33;
- (e) subsection 33 (8);
- (f) section 34;
- (g) subsection 35 (2);
- (h) subsection 35 (3);

- (i) section 40;
- (j) subsection 41 (2);
- (k) section 49;
- (l) subsection 69 (3); or
- (m) a provision of the regulations.

Same

- (3) An order may be issued under subsection (2),
 - (a) to an industry funding organization;
 - (b) to a person designated as a steward;
 - (c) to a person operating an industry stewardship plan; or
 - (d) to Brewers Retail Inc.

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 officers, employees, directors 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 an officer, employee, director 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 58.

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

57. (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.

Appeal of order

58. (1) A person to whom an order issued under subsection 56 (2) is directed may require a hearing by the Tribunal by serving written notice, within 15 days after the person is served with the order, on the Registrar or Deputy Registrar who made the order and on the Tribunal.

Failure or refusal to issue, etc., order

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

Extension of time for requiring hearing

59. The Tribunal shall extend the time in which a person may give a notice under section 58 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 67 (4), to bring the order to the person's attention.

Contents of notice requiring hearing

60. (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

61. (1) The commencement of a proceeding before the Tribunal stays the operation of an order under section 56.

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

62. 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

63. A hearing by the Tribunal shall be a new hearing and the Tribunal may,

- (a) confirm or revoke the order that is the subject matter of the hearing; or
- (b) vary the order, but it may only vary the amount of a penalty if it considers the amount to be unreasonable.

Appeals from Tribunal

64. (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

Industry funding organizations

65. (1) An industry funding organization is guilty of an offence if it contravenes one of the following provisions or a provision of the regulations:

1. Subsection 14 (1) or (18).
2. Subsection 15 (6).
3. Subsection 24 (2) or (3).
4. Section 31.
5. Subsection 35 (2).

6. Subsection 35 (3).

7. Subsection 35 (4).

8. Subsection 42 (3).

Stewards

(2) A person designated as a steward under the rules made by an industry funding organization under section 33 or a regulation made under subsection 73 (3) is guilty of an offence if the person contravenes one of the following provisions:

1. A rule made under section 33.

2. Section 34.

3. A provision of the regulations.

Industry stewardship plan operators

(3) A person responsible for the operation of an industry stewardship plan continued under section 36 or approved under section 37 is guilty of an offence if the person contravenes one of the following provisions:

1. Section 40.

2. Subsection 41 (2).

Authority

(4) If the Authority contravenes subsection 42 (4), it is guilty of an offence.

Penalty, individual

(5) An individual who is guilty of an offence under this section is liable, on conviction, to a fine of not more than \$20,000 for each day or part of a day on which the offence occurs or continues.

Same, corporation

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

Directors, officers, employees and agents

(7) 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 re monetary benefit

(8) 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 (5) or (6).

Additional orders

(9) 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

(10) Subsection (9) is in addition to any other remedy or penalty provided by law.

Limitation

(11) 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.

66. (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) an administrator appointed under section 43; or
- (c) 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 purposes 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) an administrator appointed under section 43; or
- (c) 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 65 (5) to (11) apply with necessary modifications.

Miscellaneous

Serving a document

67. (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

68. (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.

Brewers Retail Inc.

69. (1) Subject to the regulations, a program developed under section 23 of the old Act, or any changes to it made under this Act, shall not provide for the diversion of blue box waste that is packaging associated with products listed for sale by Brewers Retail Inc.

Brewers and importers of beer

(2) A program developed under section 23 of the old Act, or any changes to it made under this Act, shall not require the participation of or contribution by Brewers Retail Inc. or a brewer or importer of beer in respect of blue box waste that is packaging associated with products listed for sale by Brewers Retail Inc.

Annual report

(3) Brewers Retail Inc. shall, not later than April 1 in each year,

(a) prepare a report on the operation of its packaging return system during the 12-month period ending on the preceding December 31, including,

(i) a detailed description of the system, including information on how the system is operated, the objectives of the system and the methods used to measure whether the objectives are met,

(ii) specific measurements relating to the system's performance in meeting its objectives during the period,

(iii) the opinion of an auditor confirming the accuracy of the information referred to in subclauses (i) and (ii), and

(iv) information on educational and public awareness activities undertaken during the period to support the system; and

(b) provide a copy of the report to the Authority and make the report available to the public.

Signature

(4) The report prepared under subsection (3) shall be signed by the chair of the board of directors of Brewers Retail Inc.

Fees

(5) The Authority may establish and charge fees for administrative costs associated with reports provided under subsection (3).

Same

(6) A fee established under subsection (5) must reasonably reflect the costs incurred by the Authority in performing the function for which the fee is established.

Confidentiality of information

70. (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;

(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) an administrator appointed under section 43; and

(c) a provincial offences officer designated under the Provincial Offences Act for the purposes of section 65 or 66 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).

Liability, administrator under Resource Recovery and Circular Economy Act, 2016

71. If an administrator is appointed under section 54 of the Resource Recovery and Circular Economy Act, 2016, subsections 54 (11) to (13) of that Act apply with necessary modifications to the administrator's execution or intended execution of a duty or power under this Act.

Act binds Crown

72. This Act binds the Crown.

Regulations

Regulations, Lieutenant Governor in Council

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

(a) prescribing materials as blue box waste for the purposes of this Act;

(b) prescribing materials as designated wastes for the purposes of this Act;

(c) prescribing activities for the purpose of paragraph 4 of subsection 10 (3);

(d) prescribing a percentage greater than 50 per cent for the purposes of section 11;

(e) governing the composition and appointment of the board of directors of an industry funding organization;

(f) for the purposes of section 23, prescribing provisions of the Corporations Act or the Corporations Information Act that apply to an industry funding organization and prescribing modifications to those provisions;

Note: On the later of the day clause 73 (1) (f) comes into force and the day subsection 4 (1) of the Not-for-Profit Corporations Act, 2010 comes into force, clause 73 (1) (f) of this Act is amended by

striking out “Corporations Act” and substituting “Not-for-Profit Corporations Act, 2010”. (See: 2016, c. 12, Sched. 2, s. 77 (4))

(g) limiting the capacity, rights, powers or privileges of an industry funding organization for the purposes of subsection 24 (1);

(h) permitting and governing, for the purposes of subsection 24 (2), the establishment of subsidiary corporations of an industry funding organization, 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 73 (1) (h) comes into force and the day subsection 4 (1) of the Not-for-Profit Corporations Act, 2010 comes into force, subclause 73 (1) (h) (iv) of this Act is amended by striking out “Corporations Act” and substituting “Not-for-Profit Corporations Act, 2010”. (See: 2016, c. 12, Sched. 2, s. 77 (5))

(i) governing commercial activities referred to in subsection 24 (3) that the industry funding organization 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 organization, to a member of its board of directors or to an officer of the organization for the purposes of that subsection;

(j) governing the administrative penalties that may be imposed under section 56;

(k) prescribing criteria for the purposes of subsection 61 (2);

(l) governing the Authority’s requests for information from industry funding organizations;

(m) specifying other means of giving a document for the purposes of clause 67 (1) (g), and specifying the day on which a document given by those means is deemed to have been received;

(n) providing that section 69 does not apply if criteria specified by the regulations are satisfied;

(o) exempting any person or class of persons from any provision of this Act, the regulations or the rules made under section 33, subject to such conditions or restrictions as may be prescribed;

(p) defining any word or expression used in this Act that is not already defined;

(q) respecting any matter that the Lieutenant Governor in Council considers advisable to carry out the purposes of this Act;

(r) governing such transitional matters as the Lieutenant Governor in Council considers necessary or advisable to facilitate the implementation of this Act.

Administrative penalties

(2) Without limiting the generality of clause (1) (j), a regulation governing administrative penalties may,

(a) despite subsection 56 (2), prescribe circumstances in which an administrative penalty may not be imposed;

(b) prescribe criteria the Registrar or Deputy Registrar is required or permitted to consider when imposing a penalty under section 56;

(c) govern the determination of the amount of administrative penalties for the purposes of subsection 56 (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 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.

Regulations in respect of rule matters

(3) The Lieutenant Governor in Council may make regulations in respect of any matter in respect of which an industry funding organization may make rules under subsection 33 (1), and subsections 33 (3), (4) and (5) apply, with necessary modifications, for that purpose.

Same

(4) A regulation under subsection (3) may revoke or amend a rule.

Conflict

(5) If a regulation under subsection (3) conflicts with a rule, the regulation prevails.

Note: Section 74 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Regulations under old Act continued

74. The following regulations, made under the old Act, are deemed to have been made by the Lieutenant Governor in Council under this Act and may be revoked or amended by the Lieutenant Governor in Council:

1. Ontario Regulation 273/02 (Blue Box Waste).

2. Ontario Regulation 542/06 (Municipal Hazardous or Special Waste).

3. Ontario Regulation 33/08 (Stewardship Ontario).

4. Ontario Regulation 84/03 (Used Tires).

5. Ontario Regulation 393/04 (Waste Electrical and Electronic Equipment).

75. Omitted (amends, repeals or revokes other legislation).

Note: Section 76 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Repeal of this Act

76. On the day this section is proclaimed in force, this Act is repealed.

77. Omitted (provides for amendments to this Act).

78. Omitted (provides for coming into force of provisions of this Act).

79. Omitted (enacts short title of this Act).

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