



CANADIAN PAINT
AND COATINGS
ASSOCIATION

ASSOCIATION CANADIENNE
DE L'INDUSTRIE DE LA PEINTURE
ET DU REVÊTEMENT

Submission to the Ministry of Environment, Conservation and Parks

Changing the Mandate of the Resource Productivity and Recovery Authority
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Canadian Paint and Coatings Association
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Introduction

The paint and coatings industry agrees with the overall intent of the current Government's desire not to have taxpayers pay for the waste generated by manufacturers. At the end of the day there is only one payer whether we call it taxpayers or consumers. That is just a fact in a free market system, which Ontario is supposed to be. This proposed amendment and others similar to it and the actions of the RPRA will add costs to be borne by both industry and Ontarians, without clearly enunciated outcomes for waste recovery.

More Powers for RPRA?

Those considering the expansion of RPRA's powers might wish to consider the views by a respected lawyer as to the powers already conferred on the Authority by the RRCEA:

*"What their predecessors (Government) did when creating the RPRA is analogous to replacing the old, discredited police department with a private company, then putting the old police commissioner in charge of that company and giving it the powers of **taxation, local lawmaking, the traffic court, and hiring of personnel**. They gave it the power to determine its own budget, an incentive to increase its budget, and the ability to fund its budget by raising taxes and charging fines for traffic and parking violations (per the local rules it creates). In the law, they kept some very thin threads of accountability, but took several steps to remove the normally available channels of redress and define away the government's ultimate responsibility for the private police Department's actions. This is alarming and why the Act itself might have been a major political scandal if people fully understood everything that is buried in the legalese and also why it could be questioned as to its constitutionality."*

Background

CPCA represents manufacturers, suppliers and distributors of paint and coatings products in Canada. The manufacturer members represent 90 percent of the volume of paint and coatings sold in Canada, **and 99.9 percent of the volume and related recovery fees under relevant Acts in Ontario**. Manufacturer members have been committed to paint recycling dating back 25 years with the first program launched in British Columbia and now with paint recovery programs in all ten Provinces, eight of which are operated successfully under Product Care. This includes the one in Ontario under the Paint ISP also operated by Product Care independently and funded by industry as an IFO. The paint industry collected more than 28 million kilograms in 2018 in Canada, enough to paint 560,000 average size homes. By any measure this is a success story, but there are serious concerns with the current situation in Ontario already expressed by many in industry.

Manufacturing in the paint and coatings industry in Canada has declined substantially over the past 15 years, down from 65 percent to approximately 50 percent today. While manufacturing has declined the volume has remained the same with our members shipping products to Canada from plants in the United States. There have been some declines in that volume as well in recent years, in the range of 2-4%. As expected, 60 percent of paint and coatings manufacturing occurs in the GTA and thus the GTA has felt the greatest impact in lost manufacturing jobs. **What this means is that high paying jobs have been lost in Ontario for senior management, chemists, plant managers, plant workers, etc. No amount of jobs created for waste recovery in the waste supply chain will ever replace those lost jobs.**

Costs of recycling are under the MHSW program a fully paid for by the manufacturers, or brand owners, who are the 'obligated stewards' designated under Ontario legislation. Those costs when added to the price of products precipitate the shift of production to lower cost jurisdictions in the United States, as we have already seen. Those



environmental fees seem to have reached a tipping point in Ontario and increasing costs, wherever they come from in the Province, will lead to more manufacturing job losses. Paint recycling fees will continue to be paid for by industry stewards in the Province under MHSW, and the increasing fees for the Oversight Authority over the past few years have added to this. In fact, they have already increased by 350% since 2016 due to excessive administrative costs. This is clearly unsubstantiated regulatory burden on industry, which will only grow over time, not lessen. The paint industry wants to continue to support waste recovery and recycling, but it does not want to see excessive administrative costs continue to grow and more jobs lost in the province due to this red tape.

It is clear that with the current objects noted in the RRCEA and the approach taken by the MECP, adding more objects for the Oversight Authority, will mean the already highest costs in Canada for paint recycling will increase significantly. This seems to be a foregone conclusion despite the Government's commitment to red tape reduction and an open for business policy approach. Currently, the cost per tonne for paint waste recovery in Ontario is \$1,588/tonne compared to \$1,310/tonne in British Columbia and \$856/tonne in Quebec. Effectively, the Province closest in size to Ontario is approximately half the cost.

EPR Works for Paint Waste in Ontario

The paint and coatings industry already pays 100 percent of the cost of managing waste paint under Extended Producer Responsibility programs in Ontario. It is operated effectively under the Industry Stewardship Organization (ISO), Product Care, meeting and exceeding program targets. The ISO is independent of Stewardship Ontario, but still under the oversight of RPRA. **It is crystal clear that industry will pay more for recycling in Ontario, but it is also clear that 100 percent in real terms can grow exponentially under misguided policy direction driving up costs for industry and thus consumers in Ontario, as we have seen.** As with everything, the cost of doing business is in the price of finished goods no matter how you look at it.

The paint and coatings industry agrees with the overall intent of the current Government's desire not to have taxpayers pay for the waste generated by manufacturers. At the end of the day there is only one payer whether we call it taxpayers or consumers. That is just a fact in a free market system, which Ontario is supposed to be.

The paint industry has covered the cost for paint recycling to date in Ontario by internalizing and thus absorbing the full cost of managing leftover paint with no fees charged taxpayers/consumers since the beginning of the MHSW program in 2009. **We support this approach for the future and we support any government policy, which seeks to improve waste recovery while minimizing the regulatory burden and cost for industry to do so.** Unfortunately, that has not been the experience since the new Resource Recovery and Circular Economy Act (RRCEA) came into effect under the oversight of the Resource Recovery and Productivity Authority (RPRA).

RPRA costs have been growing at a rapid pace with its expenses increasing by 377% since replacing its predecessor in 2016, a fourfold increase. As well, the projected year-over-year budget increase is 18.8%, along with generous compensation packages for staff at an 'average' of over \$128,000/year, with staff growing during that time from 9 to 40, with more to come. Industry believes that changes must be made to increase accountability, improve transparency and to foster more effective board governance for RPRA, which includes more direct consultations with the 'obligated stewards' who are obligated to pay the full costs of waste recovery on the MHSW program and by other IFOs. **It does not mean increasing the powers of RPRA.**

Recommendation 1: We recommend that the Ministry cease increasing powers of RPRA as proposed under this amendment and other amendments such as those contained in Bill 132; and seek to ensure that the Authority operates within its means, focused on the original intent of the Authority, oversight and compliance, nothing more.



This proposed amendment states that it, “is consistent with **the recent discussion paper by the Ministry, “Reducing Litter and Waste in Our Communities”** that proposes using RPRA to collect waste information.” How so? This proposal is not as per the statement in that paper, which clearly states the Government’s intent is, “**Consistent with its open for business agenda, and the province will cut regulatory red tape to support innovative and low risk waste management approaches.**” This is not aligned with this stated intent, or overall government policy, given that no costs or impact information is provided related to this proposal or any other. To now suggest that such information will be provided ‘after the fact’ has nothing to do with established business practices in modern free market economies or for that matter sound public management and budgeting practices. The Ministry’s discussion paper goes on to note that, “**Any initiative to collect information must be flexible, nimble, and reduce burden on businesses.**” This proposed amendment does not support such a principle in any way.

Recommendation 2: We urge the Government to align with its stated policy of ‘being open for business and cut regulatory red tape’ and not proceed with this proposal that is widely viewed as an effort that will not only duplicate information being currently gathered by industry and submitted to RPRA, but it will also duplicate costs.

1. “Change RPRA’s mandate to include digital reporting services, fee setting, and cost recovery for other programs beyond producer responsibility”

The ‘proposal summary’ suggests that the Ministry is adding to the scope creep of the Resource Recovery and Productivity Authority (RPRA) when it states that it wants to change RPRA’s mandate, “to include digital reporting services through its registry for a wider range of waste and resource recovery programs ...(and that) ... combining these services would save businesses time and money as a larger group of users would share costs and benefit from a modern registry.” **This is being done despite the fact that RPRA has already spent millions on an IT system for purposes of the registry, which presumably means ‘digital reporting services’ as well, not manual reporting. Why does it now need to add more costs to what has already been purchased at substantial costs to industry?**

It is not clear at all how combining these services, “would save businesses time and money” as there is no relevant cost estimates, forecasts or actual outcomes related to taking such action. How much time would it save? How much money would it save? What benefit would it provide? It also notes that the proposal would “leverage their (RPRA) existing assets and knowledge.” It needs to be noted that RPRA’s existing assets and knowledge is paid for by the ‘obligated stewards’ under the Act, the manufacturers of products in Ontario, who have already paid for the existing IT assets (\$6 million) and will pay for all future assets and actions related to this proposed amendment. **Why is industry expected to pay a second time for the same objective?**

It is clear that Ontario manufacturers will pay, but it is NOT clear as to what it will actually cost or what the full benefit will be, if any. Will the manufacturers, the brand owners, benefit from such a change? Will there be better outcomes related to waste recovery for Ontarians? Why can’t the current, expensive IT system already purchased by RPRA be used for those exact same purposes? What will the future costs be for industry if this proposal is accepted? One service provider group indicated support for the proposal, but these service providers deliver services to the ‘obligated stewards’ and are not required to pay for the system being proposed per se, but wish to use the system to secure more business. However, it is not even clear if they will in fact be able to earn more and/or increase waste recovery as a result. **Many unanswered questions still remain.**

With no or little perceived benefit, this proposal should not be accepted and further cost-benefit analysis must be conducted to determine the cost and potential outcomes as they relate to better waste recovery in Ontario. **While it is clear the current programs operated by the Ontario Government may be taken over by RPRA, it is not clear why such downloaded and unnecessary costs for industry will lead to improvement in waste recovery.** Ontario already has the highest costs in Canada for paint waste recovery, so more costs have not delivered on a per capita



cost basis. In effect, this may amount to what some have suggested is 'outsourced red tape' to an independent Agency with much less accountability for actions related to this or other objects, all to be paid for by Ontario manufacturers in increased product prices. **This is inconsistent with the open for business policy and red tape reduction approach of the current Government.**

Recommendation 3: With no or little perceived benefit, this proposal should not be accepted and further cost-benefit analysis must be conducted to determine the cost and potential outcomes as they relate to better waste recovery in Ontario.

The proposal also states that the effect of the proposed change, "Would include having RPRA carry out the registration of programs and overseeing reporting, data management and fee collection for duties related to waste, beyond waste reduction, or resource recovery. This would save all businesses money as a larger group of system users would be sharing common costs." First and foremost, RPRA's mandate is oversight and compliance, nothing more. There is no mention of how much it costs, who will pay for it, how much will it cost manufacturers already under the oversight of RPRA and paying for the privilege? How will this impact the cost to taxpayer aka consumers? Manufacturers are already seeing cost of operations under RPRA grow exponentially and the transition to the new Act is not yet complete. **This proposal will see industry and thus Ontarians incur more costs without any assurance of better waste outcomes.**

Many seem to forget that the 'revenues' of RPRA, based on policy and powers conferred on it by policies of the MECP and thus the Government, are actually industry's 'costs.' There revenue or industry's costs. This indisputable fact seems to be lost on the RPRA board, which has no industry representation, nor does RPRA consult with industry in a prudent and forthright manner before taking decisions that impact industry, even when that impact is negative. Ultimately, this is the result of MECP policy direction taken without proactive and fulsome consultation with industry. It is not appropriate to only consult with those whose feedback is used to support an initiative.

There was an 'Industry Advisory Group' established to interface with RPRA, but the current proposed amendment was 'never' raised in any context with this group for feedback, suggestions, support or otherwise. Why is that? The industry Group has decided that to continue in this manner is a disservice to industry and the Boards they represent, despite the fact that industry has proven that it does support waste recovery and recycling, but that is changing fast.

Recommendation 4: The Minister of MECP establish an Industry Advisory Council for a fulsome discussion and advise to the Minister on all matters related to impacts on the 'obligated stewards' – the manufacturers or brand owners – rather than those discussions occurring with the Authority who has admitted they only 'implement' and cannot discuss any matter of policy, current or proposed.

2. "Maintain government oversight for the programs that will transition to RPRA"

The proposal seeks to "allow the ministry to set guidance on fee structures for the programs on which RPRA will be providing digital reporting services." That is understandable as most of the recent policies and ministerial directions imposed on industry have come from the Ministry. However, there must be an Industry Advisory Council to advise the Minister. We understand why that would continue, as there has been nothing but confusion expressed by many in industry when seeking answers to simple questions from RPRA as they are told to go to the Ministry and then in turn told by the Ministry to go to RPRA. Here again there will be more red tape created and challenges in decision-making. This would have been prevented now and in future if the Ministry would take action as per Section 30 of the RRCEA to address important matters current and proposed 'before' seeking wider support from stakeholders. Clearly, this must include all of industry, especially those designated under the Act as 'obligated stewards', the Ontario manufacturing sector. Ultimately ALL producers must be engaged and at the table to ensure



any waste recovery program works properly and is fully funded under existing programs by industry as is the case in the MHSW program and under other IFOs such as electronics and tires, and ISOs like paint and coatings. We recommend the following as noted under Section 30. (1) of the Act:

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

*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.*

One would assume that 'relevant experience or knowledge' would at least include those 'obligated stewards' – the manufacturers – under the Act who are implicated and must ensure they fully understand the implications and make every effort necessary to ensure compliance. This has never been done. Why were they not widely consulted on the current proposed amendments?

3. "Make other associated changes"

The proposal to allow the Ministry, "to recover all ministry costs more efficiently through a Minister's Order" as opposed to an Order in Council could be problematic as it further dilutes the transparency and accountability of RPRA, which already exists without transparency related to its operations and salaries and is now seeking to shift the responsibility and accountability to the Minister via a Minister's Order.

An Order in Council has 'government order' recommended by the Executive Council and signed by the Lieutenant Governor and as such has greater oversight and more scrutiny of costs from a whole of government perspective. Those might include other objects that have been overlooked in the waste sector to date such as 'red tape reduction' and 'open for business' policies.

Furthermore, this will very likely lead to increasing challenges for the Minister with respect to the objects and related costs of the Authority. The Minister already has the powers needed for oversight of RPRA business plans and annual reporting, both must be approved by the Minister before it is made public. However, it is unclear if this has been the case to date. Further, Industry groups have strongly recommended that this oversight be exercised by the Minister in consultation with industry as the 'obligated stewards' and source funds. This is addressed in the Act and the Transitional Operating Agreement as follows:

*"Pursuant to Section 9.3 of the Agreement, the Authority shall enable the Minister to review and comment on the **Authority's annual report** by providing the annual report at least six weeks prior to final approval by the Board."*

"Pursuant to Section 9.1 of the Agreement the Authority shall enable the Minister to review and comment on the Authority's business plan by providing the Minister a copy of the business plan at least four weeks prior to final approval by the Board."

Given the contents of the latter and the growing concern with the increasing costs of RPRA, both operating expenses and salaries, both having increased by almost 400 percent in less than three years, this remains a grave concern for all.



Recommendation 5: The Minister take action immediately and review his responsibilities under Section 6.1 (b) of the Operating Agreement and include address some of the questions raised herein:

The Minister is responsible for overseeing the performance of the Authority with respect to its mandate as articulated in Section 4 of this Agreement and for administering Acts under which the Authority has duties and powers. For this purpose, the Minister requires timely access to information from the Authority as set out in the Information Sharing Protocol in Schedule "A".

Residual Fees

The proposal also seeks "to amend the WDTA to allow the transfer of residual surplus funds left at the end of transition, from an IFO to RPRA. While most funds are spent during program transition, some funds may still remain at the end of the transition. This change would allow those residual funds to go to RPRA, where they would be used to reduce fees and financially benefit the regulated community related to the program being transitioned." In the ongoing discussions on the MHSW Wind Up Plan it has been already been stated that any residual funds will be handed over to RPRA. This now suggest that RPRA does not have the authority to access those residual funds at the expense of those industry stewards under the Act. **These obligated stewards were required to pay them from internalized fees that could not be passed on to consumers in the MHSW program.** Further, it is unclear what those 'residual' funds will be and it is highly dependent on how the Wind Up Plan is executed and the statement right in that Plan that even the forecasted budget for wind up could change for any reason at any time, which means the residual fund could be in the millions.

For various reasons there have been historical challenges related to SO/CSSA's management of resources leading to the current \$53 Million surplus fund and this is exacerbated by the statement on page 42 in the proposal that: "Financial projections and forecasts included in this Wind Up Plan, including forecasts relating to surplus amounts that *may* be distributed to parties during the wind up of the MHSW Program, are based on assumptions about future events and conditions that are not ascertainable at this time ... Stewardship Ontario makes no representation, warranty or other assurance that any of the estimates, forecasts or projections will be achieved." How can CPCA, or industry funded organization, then rely on the proposed Wind Up Plan financial forecast of surplus fee reductions and thus report to their respective Boards, who represent the interests of stewards in Ontario, while there is no assurance that it will ever be delivered as proposed?

Industry has already expressed concern on this in yet another submission related to the proposed Wind Up Plan costs for two years of \$6 million retained in the General Reserve Fund, which represents an average cost per business day of \$12,000.00. By any measure this is excessive. Thus the ongoing challenges with costs and transparency, and thus oversight, related to waste recovery in Ontario. Also excessive is the red tape caused by the need to make countless submissions that are ignored as Government proceeds with implementing policies and proposed amendments to increasing powers without substantive consultation with those impacted.

Recommendation 6: It is strongly recommended, in keeping with the 'open for business' policy of this government, that those 'residual' funds be returned to industry stewards via a fee reduction as those fees will certainly be used for waste recovery and reduction and not administration.

Industry has made many recommendations to the MECP, Red Tape Reduction and others not to increase the powers of RPRA given the growing costs with limited impact on waste recovery. **Instead, the Ontario Government responds with a proposal to, "permit future regulations that could assign additional duties and powers to RPRA. The ministry would consult on any future regulations."** In the context of the growing concerns of industry and the



increasing costs of RPRA, paid for by industry, why would the Government now recommend 'more' powers? There is no specificity with respect to the new powers to be added or the future regulations. This is not an 'open for business' approach.

Recommendation 7: In the review of the proposed MHSW Wind Up Plan, as the oversight agency, RPRA must make every effort to ensure that the proposed Wind Up Plan can be delivered without further requirements imposed by RPRA, including the residual fee amount, and that the final proposed fee reduction for the Paint ISP in Ontario is indeed final and no less than as noted above (**\$14.934 Million**), which still leave \$2 million of the paint and coatings surplus in the General Reserve for Wind Up without any specifics on how it will be spent.

Conclusion

There is ongoing acrimony on the waste file in Ontario, all under the rubric of improving waste recovery in the Province. However, this is causing excessive red tape and increasing costs, and the program has not even been fully transitioned under the new RRCEA as yet. One can only imagine the excessive costs to come and the likely lack of outcomes with it, if the current approach continues in the Province. **Industry remains hopeful that someone will take the initiative and evaluate the Act brought in under a previous Government, not known for cost control or outcomes, and whether or not current policies, objects, amendments, and oversight is really headed in the right direction.** It will be too late in five years when costs are out of control and waste recovery targets are stagnant. This can only be addressed by a thorough review of where things stand today. It can only be done with an approach that is independent of all the stakeholders to ensure there is indeed value for money related to current policies and programs and, most importantly, ensure that it can meet waste recovery targets in future. There is nothing that currently exists that points to that understand or the relative outcomes expected. If not, then a review must be done forthwith as per Section 31. (1)(b) of the Act. Why would a government committed to red tape reduction and an open for business approach not do so? That is the least one can do, before its too late.

Recommendation 8: The Minister initiate an independent review of the RRCEA before imposing further costs on industry or further amendments to the Act increasing RPRA's powers and ability to inflict further unnecessary cost; such a review is supported under the Act per Section 31. (1) (b), and it is recommended that it be carried out by a "person specified by the Minister" independent of RPRA, whose powers and costs are in question.

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.

(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.