



Ontario
Home Builders'
Association

Ministry of the Environment & Climate Change

EBR Registry Number: 012-9356

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**Proposed Strategy for a Waste-Free Ontario:
Building the Circular Economy**

2017

OHBA Submission

**Submitted to: Ministry of the Environment and Climate Change
January 30, 2017**

Executive Summary

The Ontario Home Builders' Association (OHBA) appreciates the opportunity to provide comments on the *Proposed Strategy for a Waste-Free Ontario: Building the Circular Economy* (012-9356). OHBA previously participated in consultations on Ontario's waste diversion framework and provided a submission responding to *The Role of Waste Diversion in the Green Economy* (EBR 010-8164) in February 2010. OHBA also participated in consultations in 2013 for both the *Waste Reduction Strategy* (EBR 011-9262) and proposed *Waste Reduction Act* (EBR 011-9260). OHBA also previously submitted recommendations in 2016 regarding the *Waste Free Ontario Act, Bill 151* (EBR 012-5832) and the *Draft Strategy for a Waste-Free Ontario: Building the Circular Economy* (EBR 012-5834). These as well as the newly proposed strategy and legislation are generally guided by the Canadian Council of Ministers of the Environment (CCME) endorsement of an outcome based producer responsibility framework for waste diversion for which OHBA is generally supportive.

In previous submissions, OHBA noted that developing new waste diversion systems for construction and demolition waste is a complex process, and OHBA continues to note that considerable work is needed to identify effective and cost-efficient options. As an aggregator and assembler of materials on construction sites, rather than actually producing materials, OHBA continues to recommend that the ministry engage with industry stakeholders representing the new home construction and home renovation sectors, to identify and analyze waste diversion options. The proposed strategy embraces a vision for Ontario "where waste is seen as a resource that can be recovered, reused and reintegrated into the economy to achieve a circular economy," – OHBA is in general agreement with this statement and notes that there are opportunities for many (but not all) components of construction and demolition waste to be recovered, reused and reintegrated back into the economy and more specifically back into the construction sector.

OHBA is generally supportive of public policies that will reduce waste and promote a circular economy. OHBA however notes that built structures should not be captured under an extended producer responsibility framework similar to consumer products and that our industry should continue to be managed under generator requirements defined by the 3R's Regulations (specifically O.Reg 102/94 and O.Reg 103/94 under the *Environmental Protection Act*). OHBA recognizes that these regulations require modernization to meet the governments waste diversion goals as set out in the draft strategy for a *Waste Free Ontario: Building the Circular Economy*. OHBA requests to be on the stakeholder working group as proposed in the Draft Strategy to steer a comprehensive review of the 3Rs regulations that directly impact the new housing, land development and professional renovation sector.

About OHBA

OHBA is the voice of the land development, new housing and professional renovation industries in Ontario. OHBA represents over 4,000 member companies, organized through a network of 29 local associations across the province. Our membership is made up of all disciplines involved in land development and residential construction including: builders, professional renovators, trade contractors, manufacturers, consultants and suppliers. The residential construction industry employed over 330,000 people and contributed over \$451 billion to the province's economy in 2015.

Background

On December 16, 2016 the government released a proposed strategy that embraces a vision for Ontario “where waste is seen as a resource that can be recovered, reused and reintegrated into the economy to achieve a circular economy.” Four objectives are outlined in the proposed strategy as critical to achieving these goals.

1. Enhance Provincial Direction and Oversight
2. Enable Efficient and Effective Recovery Systems
3. Increase Waste Reduction and Resource Productivity
4. Create Conditions to Support Sustainable End-Markets

To meet these objectives, Ontario commits to the following actions under the proposed strategy:

1. Empower the Resource Productivity and Recovery Authority
2. Issue policy statements to provide clear direction on the provincial interest
3. Establish a data clearinghouse and build data capacity to provide for evidence based decisions
4. Transition existing waste diversion programs smoothly to new producer responsibility framework without disruption of services
5. Amend the 3Rs regulations to increase resource recovery across all sectors
6. Establish service provider requirements to protect the environment while promoting resource recovery
7. Ensure landfills are well planned and well managed to minimize their need and reduce greenhouse gas emissions
8. Establish promotion and education requirements to support public participation in resource recovery
9. Designate new materials to ensure producers are fully responsible for recovering more materials associated with their products and packaging
10. Implement a framework to reduce the volume of food and organic waste going into landfill
11. Implement an excess soil management framework to increase the re-use of excess soil, while protecting human health and the environment
12. Adopt and implement modern regulatory approaches to build on and promote innovative best practices
13. Improve and establish environmental standards to provide for a level playing field and a strong foundation for markets
14. Use green procurement practices to build market demand for recovered materials
15. Implement disposal bans to direct materials to end-markets

Current Provincial Waste Regulations

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

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

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

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

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

OHBA Commentary (EBR 012-9356)

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

The construction, renovation and demolition sectors account for a significant amount of solid waste going to landfills across Ontario (Ontario's proposed 2013 *Waste Reduction Strategy* suggests 10%). OHBA recognizes that there is always room for sectors to improve their performance. OHBA suggests that for the purposes of a discussion on extended producer responsibility and a circular

economy that construction and demolition waste should be addressed separately by modernizing the generator requirements defined in the 3R's Regulations (specifically 102/94 and 103/94). Action #5 in the proposed strategy notes that the province plans to “amend the 3Rs regulations to increase resource recovery across all sectors.” This would provide greater clarity of our sector regarding responsibility for the waste streams being aggregated from producers of various products to be assembled on a construction site by a home builder or professional renovator. Furthermore Ministry policy must be clear as to *whom* is ultimately responsible for waste streams of various products (i.e. the builder/renovator generating waste assembling products on a construction site or our supply chain partners under an extended producer responsibility framework).

The draft strategy states that the 3Rs regulations no longer adequately drive waste regulation and that the province is proposing to convene a stakeholder working group to steer a comprehensive review of the 3Rs regulation. The draft strategy notes a range of potential amendments that consider a range of different matters. OHBA is supportive of a review of the regulations, but is cautious regarding any outcome that implements a “one size fits all” approach that does not recognize the diversity of the industry or potential constraints in rural or northern communities.

The first rule of the three ‘R’s is to reduce waste. Waste reduction is a priority for home builders as it promotes environmental sustainability while reducing raw construction material, labour and disposal costs. Builders are continually adopting new construction management practices to reduce waste through design and engineering, and ensuring remaining wastes are recycled and/or reused on-site wherever possible. Value engineering and the reduction of inputs resulting in less downstream waste simply makes good business sense. It should also be noted that construction practices are constantly evolving and that greater use of modulization can reduce waste. Through innovations in the sector, there is an emerging trend of ‘off-site construction’ and panelization, which is a practice that will lead to less waste on construction sites. Furthermore “smart growth” planning policies that support compact development are resulting in average housing units becoming smaller and a paradigm shift towards smaller multi-family housing prototypes, thus producing less waste on average per new unit.

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

OHBA notes that the proposed strategy includes Action #11, “implement an Excess Soil Management Policy Framework to increase the re-use of excess soil, while protecting human health and the environment.” OHBA has provided the Ministry with two submissions, EBR-012-6065 in March 2016 and EBR-011-7523 in January 2013. The excess soil management framework would seek to shift more responsibility for “clean” excess construction soil onto the generators of it (often OHBA builder/developer members) called “source sites”. New regulatory requirements would be placed on source sites that meet an as-of-yet undefined size and/or level of risk threshold to prepare and implement *Excess Soil Management Plans*, certified by a Qualified Person. OHBA’s comments to the Ministry in previous excess soil management submissions noted our support for Ontario’s objective to protect human health and the environment from the inappropriate relocation of excess

soils while enhancing opportunities for the beneficial reuse of excess soil. However, OHBA expressed concern that the overall package of reforms potentially brings in a range of new regulations and responsibilities onto source sites without addressing the transfer of liability as excess soils move through the chain of custody. Furthermore, OHBA recommended that the Ministry recognize that the proposed additional processes and requirements would increase both timing and costs for development proponents.

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

With respect to the construction sector, OHBA remains unclear as to the impacts of the adoption of an extended producer responsibility framework within a circular economy. As builders are both producers of a product (new homes and upgraded homes through renovations) and aggregators of products and materials at the end of a supply chain that utilizes both domestic and imported products; the application of EPR principles for our industry is not straightforward. OHBA is generally supportive of a framework in which those putting products and packaging into the marketplace accept the responsibility for managing the waste associated with them. However, as generators of waste rather than producers of waste, home builders and professional renovators should remain within the Regulations 102/94 and 103/94 framework. Given that these regulations are two decades old, OHBA recognizes that it may be appropriate to review and update these regulations and that the draft strategy includes a timelines to develop and consult on amendments to the 3Rs regulations in 2017/18 with a target for implementation in 2019. OHBA requests to be directly consulted and to participate with the Ministry in a formal process on the proposed stakeholder working group to steer a comprehensive review of the 3R Regulations.

Dealing with construction waste is a complex issue as there are many materials involved and there will be key decisions required with respect to who is defined as the producer and therefore carries the disposal obligation. OHBA cautions that some problematic materials (i.e. OSB, carpet cut-offs, shingles, ceramic tile cut-offs etc) as well as contaminated materials (i.e. mixed materials such as nails and metals in concrete, wood or drywall) will likely continue to pose challenges in terms of landfill diversion. OHBA continues to express concern that some materials already under the source separation regulation (103/94) have economies of scale constraints in northern, rural and smaller communities where recycling companies either don't exist or won't accept certain materials. OHBA further notes that contamination of already separated materials is a practical issue on a construction site as compliance from sub-trades who are not direct employees is a practical challenge. Furthermore, illegal dumping from external person/entities into separated bins is another practical reality that occurs after-hours on construction sites. Other materials can be a challenge to deal with as there currently isn't a market for some recovered supplies and/or the economies of scale are too small

in terms of total materials recoverable on most construction sites. It is important that as the Ministry advances public policy to modernize the regulatory framework that real world logistical and practical considerations are a component of any long-term strategy.

OHBA has previously and continues to recommend that the Ministry consider a different geographic approach for Northern Ontario and rural communities. There are significant challenges in dealing with waste when the economies of scale and transportation networks are lacking on construction sites in remote communities. It makes little practical or environmental sense for small quantities of waste materials to be separated and transported vast distances to be handled by appropriate disposal stations. OHBA strongly recommends a different approach to waste diversion on construction and demolition sites in specific geographic areas.

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

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

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

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

- OHBA is unclear as to the regulated community registration requirements with the proposed Authority if the construction industry continues to operate under the 3R's Regulations rather than under an extended producer responsibility framework.

Conclusion

OHBA continues to have limited advice in providing specific recommendations or direction to the provincial government as the draft strategy does not address the unique nature of the new housing, land development and professional renovation industry. OHBA's objective through this submission is to assist the province in the development of clear, cost-efficient policies that will assist the province in achieving its waste diversion goals and objectives.

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

OHBA encourages the province to continue to engage in discussions with a wide range of stakeholders including manufacturers and suppliers involved in residential construction. Our industry is extremely complex with many materials from a range of domestic and international sources and different stakeholders involved. OHBA looks forward to working with the province to ultimately reduce, reuse and recycle waste generated from residential construction sites and encourages the provincial government to review the regulatory framework for construction and demolition waste under a separate more focused consultation.