

**ARBITRATION TO DETERMINE  
THE 2014 STEWARD OBLIGATION FOR THE BLUE BOX PROGRAM**

**BETWEEN:**

**ASSOCIATION OF MUNICIPALITIES OF ONTARIO and THE CITY OF  
TORONTO**

**Applicants**

**- and -**

**STEWARDSHIP ONTARIO**

**Respondent**

**AFFIDAVIT OF DAVID GORDON**

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## **Introduction**

1. My name is David Gordon. I am currently employed by the Regional Municipality of York (York Region) as the Manager of Sustainable Waste and have held this position since 2010. One of my roles in this position is the management of the Region's Blue Box (BB) program. I have also been a member of the Municipal-Industry Program Committee (MIPC) from 2009- present. My CV is attached.
2. I will be a witness at this arbitration because I have been compelled to do so by summons.
3. As the manager of BB program which receives funds from stewards, and a municipal member of the MIPC, I am not neutral in this arbitration.

## **Background and expertise**

4. I am the Manager of the Sustainable Waste Group. I have worked in the field of waste management since 1996, and for much of that time I was employed by various Ontario municipalities. From 1996 to 2001, I worked for what is now the City of Markham as the coordinator and manager of their waste management system. From 2001 to 2004, I worked for the Clorox Company of Canada in the area of business development for bag-based composting and recycling systems. From 2004 to 2010, I was the Manager of Waste Policy and Planning for the Region of Peel. I have been in my current position since 2010.
5. As the Manager of the Sustainable Waste Group, and as a member of the Municipal-Industry Program Committee, I work on the BB Program at the policy level. This work requires an understanding of the whole system and how it works in order to understand how proposed changes might affect the Program.
6. I work closely with the Operations Group. For example, I consulted with the engineer that oversees the MRF and transfer station to put together a proposal to the Continuous Improvement Fund (CIF) to install more optical sorters to improve quality of fibres from MRF.

## **The Region of York's Blue Box Program**

7. The Region of York is home to just over 1 million people. It is primarily urban and we are in the "Large Urban" cost band. The Region is made up of 9 local municipalities: Town of Aurora; Town of East Gwillimbury; Town of Georgina; Township of King; City of Markham; Town of Newmarket; Town of Richmond Hill; City of Vaughan; and Town of Whitchurch-Stouffville.

8. We operate a BB program as a public service, and because we are required to do so by O. Reg. 101/94. Our BB program must balance several competing objectives, including:
  - a. Efficiency (minimizing gross cost and maximizing revenue); and
  - b. Effectiveness (maximizing waste diversion, which tends to increase cost).
9. BB program responsibilities are shared between the local municipalities and the Region. Each local municipality is responsible for collection in their area and operates their own customer call centres.
10. The southern municipalities (Markham, Vaughan, and Richmond Hill) have contracted with Miller Waste Systems (Miller) for the pickup of BB material, and transportation to a transfer station that is owned and operated by Miller under contract to the Region. Miller consolidates the material and transports it to the Material Recovery Facility (MRF) in East Gwillimbury. All three municipalities have their own contracts but happen to have all selected Miller.
11. The six northern municipalities have a joint collection contract with GFL Environmental (GFL) for the collection and transport of BB materials directly to the same MRF.
12. The MRF is owned by York Region and operated by Miller. It is a single stream facility, meaning that the BB material has not been sorted before it arrives. Miller also markets the recyclable material recovered at the MRF on behalf of the Region.
13. Both the Region and the local municipalities undertake public education initiatives.
14. At the Region, several groups share responsibilities related to the BB Program.
15. The Sustainable Waste Group is responsible for developing long-term policy, new programs, and making any changes to existing programs. It completes research and develops the business case to determine if changes make sense and, if so, recommends an implementation plan.
16. The Waste Operations Group is responsible for the contract administration for the MRF and the transfer station.

## **Datacall report accuracy – Issue 2**

17. Like other municipal BB programs, we report to the WDO Datacall every year the tonnage of BB materials that we diverted from landfill through our BB program, and the net costs that we incurred as a result of that program.
18. Our municipality puts a great deal of effort into ensuring that our annual Datacall reports (tonnage and financial) are accurate and reliable. The same numbers are also used for other municipal purposes.

19. We carefully track the amount (tonnage) of material that goes through the BB system.
20. Local municipalities pay all collection costs; they track these costs and report them to York Region. The Region is responsible for transfer and haulage costs for BB material from 3 southern municipalities from transfer station to MRF.
21. As material comes into the transfer station and the MRF it crosses a scale to determine the weight of incoming material. The weight is what determines the processing fee that we pay to Miller, pursuant to the terms of their contract. This also determines the amount we report in the tonnage for the Datacall report.
22. Revenue is tracked through the tonnes of recovered material sold by Miller.
23. We also track the amount of waste that leaves the MRF. Approximately 5% of the recyclable material in the system is not captured and becomes "residue" - the Region's contract with Miller requires that they capture at least 95% of the recyclable materials. There is also a certain amount of contamination of the recyclable materials; this is mostly unrecyclable garbage that cannot be reclaimed.
24. We conduct regular waste audits of the inbound waste, and we completed MRF processing efficiency audits in 2012. The audits allow us to make sure that Miller is meeting their target and find out if we need more public education about what can and cannot go in the BB if we are getting a lot of inappropriate materials.
25. In 2010, we created a Waste Audit Officer position to assist us in measuring system performance. Much of this person's time is dedicated to completing the waste audits which monitor the quality of the BB materials received at the MRF, and the quality after it has been sorted.
26. In the quarterly MRF processing and efficiency audits, the MRF lines are cleaned and a specific amount of waste is collected on the tip floor and run through the sorting process. We measure the time required to process the selected waste, the residue produced, and bale output. Miller participates in the audits to ensure they understand where operating efficiencies could be implemented. Working with Miller we have used this information to determine system improvements in both operations/staffing and capital improvements.
27. Direct Region staffing costs are allocated to the BB Program, and reported to the financial Datacall, following the allocation rules from the Datacall.
28. Three staff people in the Finance Group are dedicated to waste management, including preparing the Datacall. They go to many of the sessions offered by WDO to learn about the correct reporting procedures for data submission and especially to gain insight into best practice question requirements. The Datacall is not their only responsibility; they also look at budgeting, business planning, and weigh scale administration (reconciling invoices and tonnages). The program manager is in charge of all data and auditing. She oversees pulling together the Datacall.

29. Finance and waste management staff meet quarterly to reconcile weigh scale data and invoice data gathered throughout the year. At the end of the year, 2 months (January and February) are spent compiling and double checking these reconciliations to ensure all diversion and disposal information is captured accurately in preparation for the Datacall. The process of preparing the Datacall usually begins in February
30. York Region must also gather information from our nine local municipalities, and it takes about 6 weeks to obtain both tonnage and financial information related to the BB program from the local municipalities as well as verify that we understand their submitted information.
31. Each local municipality prepares their budget documents and tracks invoices differently so verification of submitted data and record keeping is strictly required. Each of the local municipalities obtains sign off on their specific submission from their respective Treasurer and the Region must receive a signed WDO Certification Document before we enter their data into our system in preparation for the Datacall.
32. At the same time, the Region is also preparing its own data regarding the Region's processing and disposal costs for York Region Treasurer sign off. The York Region submission is just as complicated, if not more so, than the local municipalities because we are required to insert information on all of our processors for blue box, organics, yard waste, electronics, municipal hazardous or special waste, tires, scrap metal and other small diversion programs to get credit from WDO.
33. Once all 10 submissions have been completed and approved, it takes Regional staff approximately 2 weeks to enter all 10 submissions into the WDO Datacall software. The entered data is checked by at least 2 staff members before a hard copy is printed for review and signoff by Laura Fiore (Program Manager), me (Manager), as well as the Director of Environmental Promotion and Protection, Director of Strategy and Business Planning, and the Commissioner of Environmental Services.
34. Copies of the final Datacall are also sent to each of our nine local municipal partners to ensure they are satisfied with the submission. Once the final draft has been signed off by York Region senior management and any local municipal concerns have been addressed, it goes to the York Region Treasurer who ultimately signs off before the Datacall is submitted to WDO.
35. It's very important to understand that since 2005 York Region has collated and completed the WDO Datacall on behalf of our nine local municipal partners. They do not have access the WDO Datacall system so York Region collects information from each partner and then completes the entry on their behalf for a total York Region diversion number that can be compared to other municipalities in the Large Urban category.

36. Annually, the average amount of time required to obtain data from local municipalities, verify data from local municipalities, prepare the Regional submission and complete all 10 submissions for the final Datacall is 200 hours. For the 2013 Datacall, more time was spent testing the upgraded system in December 2013 and also preparing a new simplified Datacall collection sheet for local municipalities when WDO upgrades did not result in simplified entry form for their use. For the 2013 datacall, the estimated time spent is closer to 300 hours. Simplified excel sheet may reduce our time commitment to under 200 hours in future years *if* best practices questions are kept at the current level of complexity.
37. Over the past few years, the best practice questions have increased complexity which, when reporting on behalf of 10 partners, requires significant time to communicate and complete accurately.
38. York Region staff work extremely closely with WDO to ensure that we understand the requirements of the Datacall each year. The rules and submission requirements change annually and the first step staff take is to review all requirements and communicate those requirements to our nine local municipalities.
39. Since the local municipalities do not have access to the WDO Datacall system, York Region has in the past created PDF copies of the datacall and from Adobe Writer inserted comments within the PDF to provide instructions for completion to the local municipalities. Local municipalities would handwrite their information onto the hardcopy PDF documents and then mail this document to the Region for verification and data entry. This is a very labour intensive process for York Region staff and due to the complexity of the WDO datacall, there were several areas for duplication within the WDO Datacall PDF.
40. In an effort to reduce duplication of information, improve the Region's ability to read and collate the information, an excel data collection sheet was created in 2014 for the collection of 2013 Datacall information. This new tool required two dedicated weeks of time from two York Region staff members to ensure that all required information was being collected. This new tool simplified the process immensely, however, York Region staff are still required to complete 10 Datacall entries for the total York Region value.
41. In late 2013, WDO invited York Region to participate in a review of their new datacall software system. Region staff dedicated 3 staff members to 2 full days of testing and provided 4 pages of written feedback on how to improve the Datacall system to ensure accurate information and reduce duplication of data entry and potential data entry errors. Very few suggestions were accepted and the system is still cumbersome to work with.
42. As described above, we go to great lengths to ensure that the information contained in our Datacall submission is accurate.

## Efficiency, effectiveness and cost containment - Issue 1

43. In 2012, our BB program collected 89,488 tonnes. The program cost the Region and local municipalities \$25M in gross costs. After revenue of \$9M our net cost for 2012 was \$16M. In 2012 we received \$7.3M in cost reimbursement from Stewardship Ontario.
44. In 2012, York Region did everything in our power to operate our BB program as efficiently and effectively as we could. To the best of my knowledge, we did not spend any money unnecessarily.
45. It is important to municipalities to contain our costs to minimize increases on the tax levy. York Region's annual base budget targets in 2012, 2013 and 2014 have been a 2% increase with intense pressure to find reductions in cost wherever possible. The budget for our BB program is presented as part of our Solid Waste Management budget and is presented at a Departmental level to Committee and Council.
46. Throughout the time that I have been on staff, I have seen that York Region is committed to continuously improving the efficiency and effectiveness of our waste management systems, including the BB program.
47. For example, we recently completed a long-term waste management strategy that included a full review of the BB system at the local and regional levels, resulting in a report called the *Sm4rt Living Plan: Integrated Waste Management Master Plan*, published September 2013. Part of this review was to find ways to decrease the cost and increase the efficiency of the system. We have held off on investing in significant changes to the BB program on the recommendation of the consultants that prepared the Plan because of the uncertainty caused by Bill 91 and the changes it may bring.
48. Since 2005, and the release of the Cost Containment Plan we have undertaken a number of initiatives to improve the efficiency and effectiveness of the BB program including a wide range of material audits and processing efficiency tests that helped us to identify the areas that needed improvement.
49. We ensure that the contracts for the operation of the transfer site and the MRF are competitive. Staff in both the Financial and Operations Groups are responsible for managing waste contracts, and they make suggestions for improvements or changes.
50. York has an Engineer who is assigned to oversee Miller's operation of the Waste Management Centre. Together with the contractor he looks for ways to improve MRF efficiency. In 2014 he recommended the installation of a ballistic separator and optical sorter to reduce contaminants in the fibre stream, thus assuring market retention and increased recovery of aluminum, steel and plastics that were contaminating the fibre stream. These types of efficiencies are looked for on an ongoing basis.

51. On June 26, 2003, Regional Council awarded a contract to Miller Waste Systems to design, build and operate the Region's Waste Management Centre in East Gwillimbury. From historical York Region reports, it appears that Miller was the only company (from a short list of 4 firms) that submitted a proposal in response to the RFP to design, build and operate a waste transfer station, MRF and household organic waste processing facility. This was in August 2000.
52. The initial 5-year contract expired in 2010 at which time Council authorized a 10 year extension based on negotiated pricing which was compared to current market pricing.
53. Miller retains 5% of the revenue from the sale of recovered material; this amount is benchmarked against market indices to make sure that we receive a competitive value for these materials. It is cost effective to use Miller's marketing service because they are able to market a much larger volume of material from the MRFs they operate across Ontario, giving them economies of scale.
54. We have put in place significant upgrades at the MRF to make sure that it remains a state of the art facility. The MRF was constructed in 2005 and went through a \$8,000,000 upgrade in 2010 to install new equipment such as optical sorters and additional conveyers.
55. The overall MRF upgrade project required approximately two years to complete beginning in April of 2009 when the Region issued a Request for Proposal (RFP) to retain a consultant for the detailed design, contract administration and site inspection for the MRF upgrade. The proposal was awarded to Conestoga-Rovers & Associates in June 2009.
56. In June 2010, Miller began the capital upgrade project and Machinex Industries was selected as the equipment supplier. The first piece of equipment for the MRF upgrade was installed in December 2010. The entire upgrade system was commissioned and became operational around May 2011.
57. The upgrades increased the throughput capacity of the MRF, from 90,000 tonnes per year to 140,000 tonnes per year, as well as making the MRF more efficient and effective. The optical sorters, as compared to staff people, are better at sorting different materials faster and more accurately. They are also less expensive to operate. With the increased capacity, we have room for future growth in the tonnage that arrives at the MRF.
58. As a result of the upgrades, we renegotiated with Miller and were able to reduce the processing cost (at the current annual receiving rate of around 90,000 tonnes per year) from \$65.58 per tonne to \$64.88 per tonne because of cost savings associated with the new equipment.
59. We have received some funding from CIF to make improvements to the BB Program. For example, CIF funding helped us to prepare the portion of the Sm4rt



Living Plan that related to the BB Program and paid for part of the MRF upgrades.

60. In 2013, we successfully applied for funding for improvements to the MRF to improve the removal of contaminants from the paper (fibre) stream. By improving the paper stream, our goal is to maintain the current revenue from paper end markets. The Project will also allow us to recover more containers which will increase revenue from container end markets

## Best practices

61. We work to operate at best practices whenever possible. This includes our BB program.
62. We operate our program using private sector contractors to maximize efficiency and effectiveness. We oversee these contractors to ensure expected performance is realized. We compare our system costs and recovery rates to other municipalities in the GTA to evaluate performance and identify improvements we should consider. For example, we have invested \$8M in our MRF in 2010 to improve its effectiveness and increase its capacity. We are planning to invest a further \$4-5M in capital upgrades to improve the quality of our fibre material.
63. In Fall 2013 CIF offered, for the first time, a Benchmarking Course to show municipalities how they can use the WDO data online to measure/compare their programs to others. We have looked at this data in the past to better understand why other Large Urban Municipalities achieved lower costs than York and concluded that the transfer costs required to move blue box material from the south of York Region to the north contributes significantly to our costs. We have also compared our MRF processing contract to others – while our contract provides 5% revenue to the operator, Halton’s contract provides significantly more revenue percentage to their operator and as a result has significantly lower operating costs than York Region. The sharing of this information amongst municipalities is critical to understanding and implementing improvement initiatives. The Benchmarking course provided by CIF was extremely useful to instruct municipalities how to use this type of data.

## Why have costs gone up

64. Despite cost containment, net BB program costs have gone up since 2007. The major causes of the increase in cost since then are:
  - a. Increased quantities of light-weight materials (“light weighting”, including complex, multi-layer paper and plastic packaging, which are much more expensive to handle and process;
  - b. Inflation, fuel & electricity prices;
  - c. Increased households served and tonnage collected; and

d. Market price fluctuations for recovered materials.

65. To illustrate, if the weight of material had stayed constant, our tonnage would likely have increased to more than 100,000 tonnes sooner, which would have pushed us into the lower contract cost band. Also if the new lighter weight mixed materials cannot be separated with the equipment currently being used in MRF operations, more manual sorting is required which increases our operational costs.
66. We have held off on investing in significant changes to the BB program because of the uncertainty caused by Bill 91 and the changes it may bring. For example, we have considered contracting with other municipalities to bring their BB waste to the East Gwillimbury MRF because we have extra capacity. However, we have not investigated a business case for this idea yet because of the uncertainty related to the future of the BB program that impacts how long a contract we could commit to.

## WDO / KPMG best practices score

67. Because of the way the pay-out model is calculated, maximizing our WDO “best practice” score is important to ensure we receive the maximum amount of funding. Our WDO Best practice score was 94% in 2011.
68. The Best Practice questions and requirements from WDO change on annual basis and the final questions are not released until February. As a result, it would not make sense to design our programs around maximizing this score. Our municipal budget and work planning is generally complete by December and if we can maximize our efficiency we will and adjust our plans if we can once the Best Practice questions are released. We try to fit in as much training as possible to score high in that area since this is something that we feel we can control and has been beneficial in the past.
69. Each year we receive a report from WDO comparing the Region to its peers in the “Large Urban” cost band. The Waste Management Branch which includes both policy and operations carefully reviews this report to see where we can improve.
70. York is either first or second in the cost band grouping in terms of diversion, depending on the year. For the 2012 datacall we were first. In terms of cost, we had a lower cost per tonne than others in our band to manage the BB materials. The region is in long-term contracts so, until we tender our services again, our costs will remain relatively low. Many of our GTA neighbours have seen recent increases in costs due to new contracts.
71. Our staff, particularly the financial staff that manage the Datacall, participate in workshops and sessions to learn about the WDO version of “best practices”.
72. For example, in 2011 York Region staff attended a Best Practices workshop offered by MWA to gain insight into completing the 2011 best practice questions. In 2011, staff requested clarification on best practice questions from WDO and

received assistance upon request (specifically on how to record staff training). Staff communicated with the City of Toronto also in 2011 to confirm methods of Datacall preparation.

73. Staff regularly attend the sessions held by CIF to discuss the Datacall and best practices questions and have provided feedback on several occasions on how to improve the system. This past fall, several municipalities took the Benchmarking course and York regularly spoke with and shared information with City of Toronto, Peel, Hamilton and Halton to complete the course assignments.
74. York Region also shares this type of information with our local municipalities. Throughout the GTA, I have found that the BB system managers frequently share information and advice.
75. We have been able to implement the majority of the KPMG “best practices”. However, we cannot implement all of them.
76. For example, one of the “best practices” is to provide training, however there are only so many municipal staff to train so after a certain point there are no more courses left for municipal staff to take for additional best practice points. Also if municipal staff move between municipalities, their previous training cannot be counted towards the new municipality and they also cannot take the course again so the best practice value for that training is lost when staff move within the municipal sector.
77. The Region is, however, committed to supporting its staff development through participation in the courses, which are a significant time commitment for staff.
78. We do not have the funds to undertake all the improvements we would like to. For example, there are optimizations we would like to put in place at the MRF to further expand its capacity and efficiency such as expanding the tip floor (where the material is tipped before it is pushed into processing plant). We have not been able to get the capital investment approved by Council because there are other, higher priorities.

## MIPC

79. I have represented municipalities on MIPC since January 2009. I am currently an alternate member for municipal MIPC. I volunteered to take on this responsibility on top of my regular duties. In this capacity, I have participated in the negotiations over the Stewards’ obligation from 2009 to present
80. In these negotiations, the municipalities have sought 50% but were never able to achieve this. In some years, the negotiations were much more protracted. In my experience, these were in years when revenue from the sale of recycled products was down and stewards were concerned about the absolute dollar amount of their obligation.

81. I do not recall a statement at the negotiations explaining whether they were with or without prejudice. I assume, however, that the negotiations were without prejudice as many options, facts, and proposals were exchanged during the course of the negotiations. Approaches used to settle the negotiations varied from year to year. The resolution we came to one year was not intended to be binding on the negotiations in following years.
82. MIPC never agreed to accept less than 50% of the verified reported 2012 costs, to be paid through the 2014 Stewards Obligation, and I believe that the municipalities should receive the full 50% of verified costs. This is simply a reimbursement for services already delivered and paid for by municipalities.

### **In kind – Issue 3**

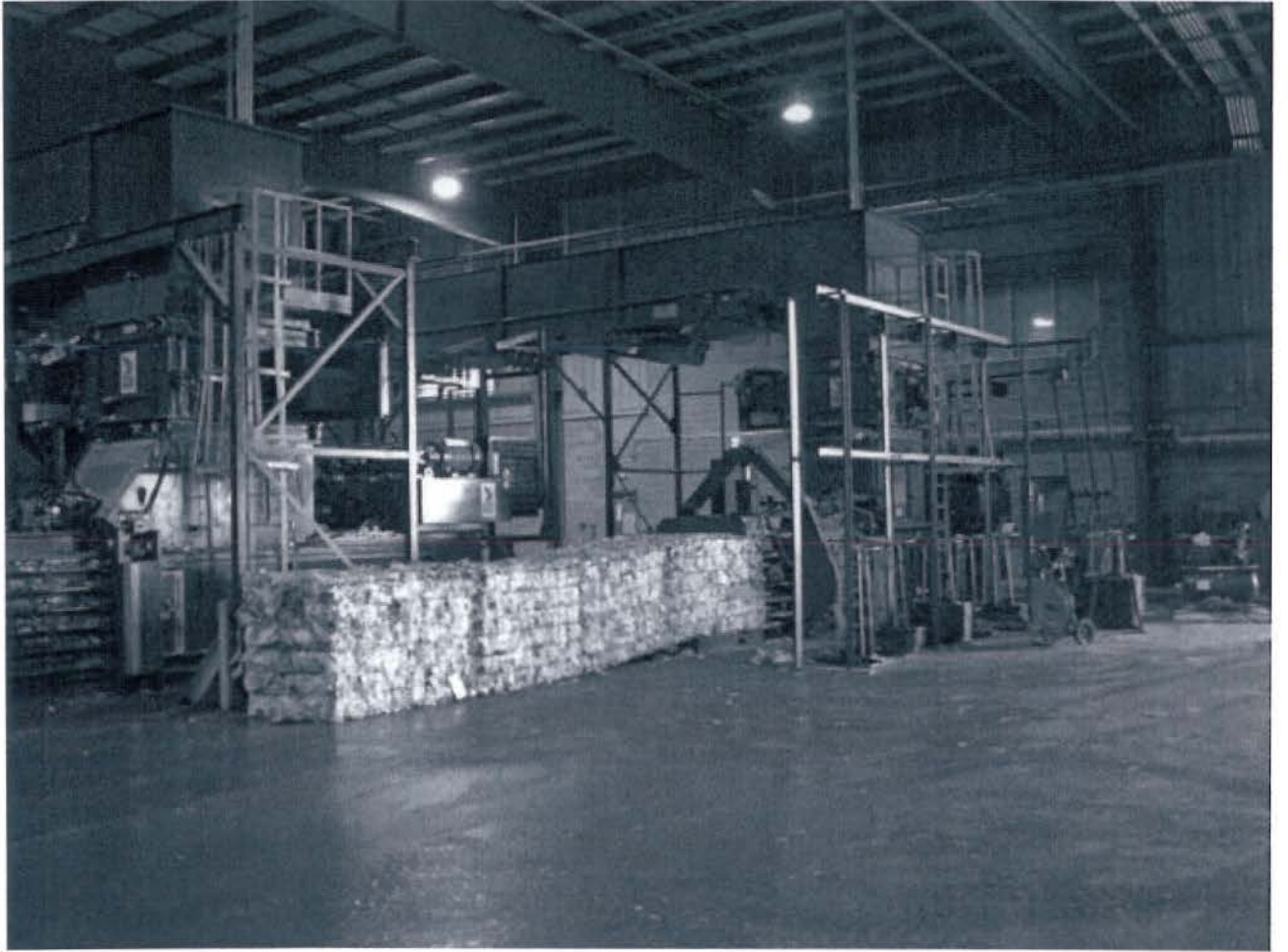
83. There is a Communications Group that manages environmental communication across all branches. There are two coordinators dedicated to waste management. They spend only a minimal amount of their time placing in-kind ads, it is not tracked specifically. Their other responsibilities include coordinating waste related campaigns (reuse, reduction, HHW, Blue Box, Green Bin), special events, in school waste education and facility tours.
84. Typically, we do not use all of the in-kind funding. For 2012, we estimate that 35% of the in kind funds were not spent. Generally, closer to 50% remains unspent.
85. Outside the in kind program, for paid ads, we receive a corporate rate negotiated by our Corporate Communications Department that is lower than the CARD rate. However, we do not receive preferred rates for in-kind ads.
86. Generally have not experienced any restrictions or rescheduling, but there has been confusion with invoicing from some publications in the past when placing ads with colour since the lineage allotment only covers black and white ads
87. We experienced challenges in 2013 working collectively with AMO and other municipalities to place ads – confusion over content and ability to use in-kind space. We also experienced issues in communication with WDO over the billing for the AMO ad placed last year. York Region lineage was used in the Regional plastics campaign last year where GTA municipalities partnered and pooled their lineage.
88. When we want to place an ad through the in kind program, we have to plan it well in advance with enough lead-time to contact OCNA and WDO. Ads must be sent at least 2 weeks in advance of the insertion order for ads before July; and to place an ad later in the year we have to submit the insertion order to WDO in July. It is not always feasible to have plans finalized that early on in the year. In contrast paid ads can be ordered and submitted the week before placement.
89. In some cases we struggle to use all of our lineage because of the timing restriction. Booking deadlines do not always match campaign needs.

90. In some years, we have received lineage in papers that did not fit our needs because their distribution includes the Toronto area, outside our jurisdiction. Also, in one year we received lineage in a paper that ceased operation mid-year – we did not receive any additional lineage to make up this loss.
91. Because of the way it is divided up between papers, the amount of lineage we receive can be difficult to use up. The lineage we receive does not necessarily match the lines required for ¼ page or ½ page ad. In some publications we may have too much for one add, but not enough for two - in others we do not have enough for even one ad. We are often left with some lineage that is unusable unless we were willing to pay extra to “top up” what’s necessary to reach a full add.
92. We have not explored whether we could use the lineage to place online ads mainly due to lack of staff resourcing in previous years to investigate options and to develop creative for this media. We share lineage with local municipalities. Not all will use their lineage. It’s not a convenient system for placing ads. Once ads are created the additional in-kind tag line is required to go on the ads for them to be used. In some cases this takes away from the ads, and may also require multiple versions of the same ad.

## **Conclusion**

93. I understand that this affidavit is sworn evidence to be offered to a legal tribunal deciding a question of great public importance. I have done my best to make this evidence as accurate and as truthful as I can. I intend to be bound by it.
94. To the best of my knowledge, I do not have any current records of any critical emails that document an agreement that is material to the issues set out in the pleadings.
95. I will identify the following photos of York Region's MRF:



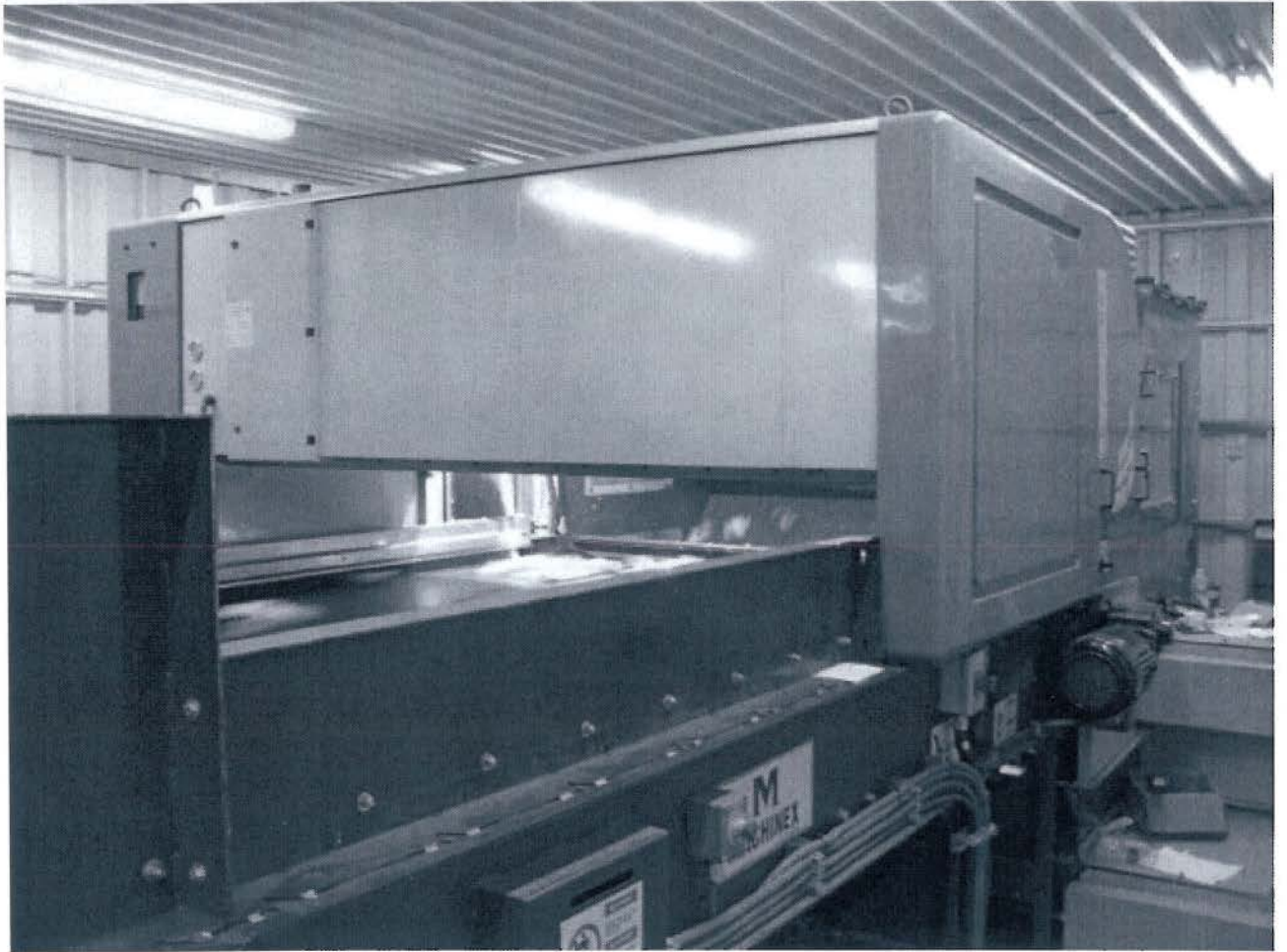

















  
\_\_\_\_\_  
Dave Gordon

Sworn or Affirmed before me

On April 4, 2014

at the Town of Newmarket

in the Province of Ontario

  
\_\_\_\_\_  
A Commissioner for taking affidavits  
SEAN LOVE

