

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

B E T W E E N:

ASSOCIATION OF MUNICIPALITIES OF ONTARIO and THE CITY OF TORONTO

Applicants

- and -

STEWARDSHIP ONTARIO

Respondent

Reply Affidavit of ALEC SCOTT

Introduction	1
In response to Alex Chan	1
In response to Sherry Arcaro.....	4
In response to Guy Perry	7
Conclusion.....	8
Appendix A	10
Appendix B.....	11

Introduction

1. My name is Alec Scott. This affidavit is further to my affidavit of April 6, 2014, and is prepared in reply to the affidavits filed by Stewardship Ontario (SO).

In response to Alex Chan

2. Paragraphs 4 to 6: Mr. Chan was not present during the 2012 or 2013 negotiations.
3. During the 2012 negotiations for the 2013 Stewards Obligation (based on the 2011 Program Year), a version of the Baseline Cost Model was created, but then discarded by both parties. I refer to this version as the “2012 Baseline Cost Model”.

Reply affidavit of Alec Scott

4. As discussed in my first affidavit at paragraph 60, work began on an earlier version of the Baseline Cost Model in 2009.
5. None of the versions of the Baseline Cost Model is a best practices cost model. None of them is an update of the original KPMG model that follows the updating methodology recommended by KPMG in their 2007 report, tab 53 of the Applicants' Document Book. No version of the KPMG "Best Practices Cost Model" was run in 2012 or 2013.
6. The 2012 Baseline Cost Model was not designed to determine the total net costs incurred by municipal Blue Box (BB) programs. This model generally compares municipalities to the cheapest members of their peer group in any particular year, regardless of why some programs are cheaper and whether the lower price is sustainable. It generally accepts only cheaper costs as legitimate.
7. The 2012 Baseline Cost Model was not designed to estimate the costs that would have been incurred under the Cost Containment Plan. To do so, such a model would have to consider the additional costs imposed on municipalities by stewards who use difficult to recycle materials, fail to develop easier to recycle packaging or fail to select materials that can be cost effectively managed in Blue Box programs. Such a model would also have to estimate the costs associated with the failure of the MOE to meet their obligations, such as enforcing recycling in multi-family units and to regulate the use of recyclable materials in packaging.
8. The 2012 Baseline Cost Model was particularly futile because it had been 'force fit' until the model spat out the gross cost number that had been reached in the 2011 negotiations, i.e. 2010 program year (2012 funding). The 2012 Baseline Cost Model was repeatedly re-jigged by plugging in numbers for transportation, revising Blue Box amortization and lifespan, restricting the theoretical capital cost curve for Materials Recovery Facilities (MRFs) to the 40,000 to 50,000 tonne per year range (although no MRFs in this range exist in Ontario) and, finally, adjusting the Promotion and Education (P&E) rate (more than once). This illustrates how the model can be made to produce any desired number.
9. Paragraphs 7 and 11 to 16: During the negotiation in 2013, Will Mueller of Waste Diversion Ontario (WDO) asked me to run the 2012 Baseline Cost Model for him with 2013 Datacall numbers such as gross cost and tonnage. He wanted these results in case they would be helpful during the negotiation that WDO was trying to facilitate between stewards and municipalities over the 2014 Stewards' Obligation.
10. Mr. Mueller asked me to run the model for him on a without-prejudice basis, because no one else had access to the Excel workbook. I did run that model, but only

Reply affidavit of Alec Scott

as a favour to Mr. Mueller, and only for the purpose of the negotiation. I did not warrant or support the outcome of the model.

11. The results of the model were not accepted, the negotiations failed, and no agreement was reached.
12. The model that I ran for Mr. Mueller, and which was discussed at the meeting on May 30, 2013, was not a "Best Practices Cost Model". As mentioned in Mr. Chan's paragraph 12, it was a variation of the "Baseline Cost Model" that I worked on with Mustan Lalani and Calvin Lakhan in 2010. These are two very different types of models.
13. The 2012 Baseline Cost Model that I ran for Mr. Mueller does not produce useful information and should be discarded. I told Mr. Mueller that municipalities did not wish to run the model; did not support its use; and did not believe that it represented anything meaningful.
14. The 2012 Baseline Cost Model can produce a range of numbers. The number I provided to Mr. Mueller was one possible output, but that output did not illustrate either:
 - a. the total costs incurred by municipalities in 2012 to divert Blue Box wastes from landfill; or
 - b. "best practice system costs", in the sense that term was used in the KPMG report.
15. Paragraph 14: I do not understand Mr. Chan's reference to the Consumer Price Index (CPI). CPI was not used in, and does not appear in, the 2012 Baseline Cost Model that I provided to Mr. Mueller.
16. Paragraph 17 is incorrect. Nothing associated with the 2012 Baseline Cost Model is a municipal methodology or a municipal gross cost number. Municipalities did not request or adopt the result of the model.
17. Paragraph 19 is incorrect. There is no double counting in the municipalities' calculation. The prior year adjustments for 2014 represent costs actually incurred in previous years to divert waste from landfill. These costs have not yet been accounted for in prior years' "verified net costs" and stewards have not yet paid their 50% share of them. I know of no principled or agreed basis for cutting these prior year costs in half *before* calculating the stewards 2014 Obligation.
18. A different approach was taken in some previous years, by agreement, as part of a multi-step threshold variance factor. It has no application to 2014. For the 2014

Reply affidavit of Alec Scott

Steward Obligation, the stewards have not proposed a threshold variance factor, and the municipalities have not agreed to one.

19. Unless the 2013 Steward Obligation is being completely reopened in this arbitration, it is inappropriate to consider any one factor from a previous year's calculation in isolation. In the 2013 funding year, municipalities received approximately \$11 million less than 50% of the total net costs incurred in 2011.

In response to Sherry Arcaro

20. Paragraphs 14 to 16: Ms. Arcaro provides no numbers or studies to back up her claims of municipal inefficiencies. She ignores the constraints that municipalities operate under and compares them to an imaginary "truly open system without borders" that did not exist in Ontario in 2012 or today.
21. Municipalities have invested significantly in studies to improve efficiency and effectiveness, including regional cooperation. For instance:
 - a. In 2008 and 2009, municipalities invested Continuous Improvement Fund (CIF) funds in setting up Bluewater Recycling Association as a single stream program, providing a contingency backstop to the Toronto program;
 - b. In 2009 CIF funds were committed to establish a new MRF in London to serve London and adjacent areas;
 - c. In 2010, municipalities invested \$150,000 in an inventory of all municipal MRFs operating in the system;
 - d. Optimization / regionalization exercises are underway in Bancroft, Renfrew County, Hastings County and continue in Northwestern Ontario and the GTA.
22. On a larger scale, significant regionalization initiatives have taken place in the form of municipal amalgamations, such as Simcoe County, the City of Toronto, City of Ottawa, Regional Municipality of Waterloo and Dufferin County. Other regional initiatives include: Quinte Waste Solutions, Bluewater Recycling Association and the Essex Windsor Solid Waste Association.
23. Cost savings do not automatically result from larger or regional programs. Cost savings can be achieved in some situations but, to realize these savings, substantial investments need to be made in infrastructure, contracts need to be renegotiated, etc. Guarantees need to be in place to ensure that change to the current system

doesn't increase the overall system cost by reducing competition. Capital for new infrastructure has to come from somewhere.

24. Regional programs in remote areas may still be unattractive to competitive bidders because they have small populations, are located far from processing facilities, and often with other challenges unique to their location. Because of distances, combining small, remote programs would not necessarily save money; these programs will remain expensive. It's a simple fact that operating in Northwestern Ontario is an expensive proposition because of lengthy haul routes, price gouging at the Winnipeg MRFs and high labour and maintenance costs typical of remote areas (For example, see the affidavit of Karen Brown at paragraphs 17-18, found at tab 4 of the Applicants' Book of Witness Statements).
25. AMO / CIF have a Northwestern Ontario initiative that has looked hard for opportunities for program optimization in the north. Municipal funds were invested, through CIF, in optimizing transfer programs and entering into discussions with MRF operators and transfer opportunities in Winnipeg, Thunder Bay and even in Minnesota.
26. CIF worked with programs formerly in the Cochrane Temiskaming Waste Management Board area, setting up an arrangement for shipping materials to a MRF in Rouen Quebec. This venture ultimately failed. CIF is now exploring other optimization options.
27. Paragraph 17: WDO has recommended that municipal programs move towards a common basket of BB materials, including #3 to #7 plastics, as soon as these materials are processed at North American facilities or an audit of overseas processing facilities confirms operating environmental and labour standards similar to Ontario's. (See *Report on Greater Consistency of Recyclable Material Collection*, Tab 111 of Stewardship Ontario's Documents.) WDO also recommended that plastic film be collected at depots. At page 4, WDO predicted that consistent collection of materials would increase the gross cost by 11% to 25%.
28. While no common basket has been agreed upon, more municipal programs are accepting #3 to #7 plastics, and are accepting plastic film and expanded polystyrene at depots. As predicted by the WDO, this has increased costs, because such changes result in municipal programs accepting more of the very expensive lightweight plastic and complex laminated materials. SO has pushed municipalities hard to accept more of these very expensive materials, but has not been willing to pay the extra costs they create.

Reply affidavit of Alec Scott

29. Dramatic increases in lightweight materials would significantly increase volumes of collected materials and result in an increase in the number of container units per collected tonne. Increased volumes would require additional collection trucks, additional transfer operations, upgrading of MRF systems to handle the increased volume and increased labour costs to sort the increased number of container units
30. Paragraph 18: The overwhelming majority of municipal programs are operated by the private sector under contract. Private sector services are not always less expensive than municipal staff (For example, see the affidavit of Karen Brown at paragraphs 38-39, found at tab 4 of the Applicants' Book of Witness Statements). Location of MRFs in the larger programs is generally optimal. In many cases, it is the remote location of the municipality itself, not the location of its MRF, that drives costs.
31. Paragraph 19: Larger municipalities typically do contract Blue Box separately from garbage. I know of no evidence that bidding a smaller contract, only Blue Box, in a smaller municipality would result in better prices than co-bidding the Blue Box contract with garbage and other waste diversion. I do not believe this is true.
32. Paragraph 20: The primary objective of a municipal BB program is waste diversion, not minimizing costs. To meet and exceed the Minister's growing diversion targets, significant tonnages of high cost lightweight plastics and laminates must be recovered. SO has strongly encouraged this, including a P&E campaign attempting to increase the recovery of these materials through BB programs. At SO's urging, some programs now accept hot drink cups, which is not really a residential waste at all.
33. Paragraph 22: Municipal staff in the majority of municipal programs have participated in both CIF and AMO/CIF training sessions. I have personally provided formal and informal training and other resources to the majority of Ontario program operators during the past 3 years, including First Nations. AMO and CIF conduct an annual consultation and education tour, visiting 5 locations in March to early May each year. In 2013 and 2014, for example, Michael Birett and I provided training to 105 participants at sessions in London, Peel, Smiths Falls, North Bay and Dryden. In 2012, we provided training sessions in Kenora, North Bay, London and Smiths Falls; presented at conferences in 5 locations including Toronto and Huntsville; and conducted webinars.
34. Over 100 participants have attended each twice-annual CIF Ontario Recycler Workshop since 2008, which are also available by webinar. CIF also provides general

Reply affidavit of Alec Scott

and specific education courses and is designing on-line modules to reach out to the more remote programs.

35. Paragraph 23: The overwhelming majority of the 230 municipal programs provide some P&E with almost all programs having at least one page dedicated to their Blue Box program on their web site. Larger programs have extensive P&E that is effective in increasing diversion and educating the public. Because not all programs collect the same materials in the same way, P&E must be tailored to the individual program.
36. Paragraph 24: WDO auditing is extensive and comprehensive, and frequently addresses cost splitting and allocation decisions including separation of blue box waste costs from other waste management expenses. The number and scope of audits is determined primarily by SO, who pays for them.
37. Paragraph 25: Costs related to items of this nature cannot be reported in the Datacall because there is no WDO category to report them under. Some residents may put the odd inappropriate item out in their Blue Box, such as a book or pot or pan, but they represent a minuscule portion of the processed waste stream and have negligible impact on the total net costs incurred. Aluminum pots would actually reduce net costs because they generate more revenue than they cost to collect and process. In accordance with the best practices recommended in the KPMG report, all the municipal programs that I am familiar with tag and leave (do not pick up) Blue Boxes that contain significant amounts of non-Blue Box materials, such as boat shrink wrap.
38. Paragraph 26: In my experience, municipalities dedicate extraordinary effort and time to the Datacall to ensure accuracy. Most municipal staff are professionals and make every effort to provide accurate data.

In response to Guy Perry

39. Paragraph 27 to 28: Mr. Perry does not correctly describe how the three year revenue average is calculated, as mentioned in Mr. Stephenson's affidavit, tab 29 of the Applicants Book of Witness Statements, at paragraphs 79-80.
40. There are two possible methods of calculating three year revenue averages:
 - a. The average of averages (per tonne) method, which WDO currently uses to calculate average BB revenues. In this method, the average revenue *per tonne* is averaged over a period including the current year and the 2 previous years. The

Reply affidavit of Alec Scott

resultant 3-year average revenue *per tonne* is then multiplied by the current year's tonnage to yield the so-called, "three year average revenue".

- b. The true average of revenues method: in this method, the total revenues for the 2 previous years and the current year are averaged to yield a, "three year average revenue."

41. Mr. Perry appears to claim that the "average of averages" per tonne method resulted in a \$26 million benefit in favour of municipalities. In fact, it has cost municipalities approximately \$7.2 million since 2003. The calculation is attached as Appendix A.

42. To prepare this calculation, I obtained additional historic data from WDO, which I have set out in the enclosed revision to my original Appendix 7.

43. Paragraphs 92 to 97: I worked with Mr. Lalani to develop the Baseline Cost Model. At the time, I mistakenly believed that:

- a. Municipalities were obliged to negotiate with stewards based on some kind of computer model; and
- b. A Baseline Cost Model would produce a number much closer to municipal net costs incurred than the model used to set the Stewards Obligations in 2009 had done, and so would make the negotiations easier, and the results fairer and less costly for municipalities.

44. The model was a failure. It did not achieve these objectives. I don't think anyone should use it.

Conclusion

45. I understand that this affidavit is sworn evidence to be offered to the arbitrator deciding a question of 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.

Sworn or Affirmed before me

On May _____, 2014

at the City of _____

in the Province of Ontario

A Commissioner, etc..

Reply affidavit of Alec Scott

Alec Scott

Appendix A

Program Year	Net Revenue	Tonnes	Revenue per Tonne	Method 1 Three year Average of Averages (per tonne)	Method 2 Three year Average of Revenues
2001	\$46.0 M	700,749 T	\$65.62/T		
2002	\$59.8 M	726,718 T	\$82.22/T		
2003	\$65.6 M	779,844 T	\$84.12/T	\$60.3 M	\$57.1 M
2004	\$83.7 M	823,635 T	\$101.66/T	\$73.6 M	\$69.7 M
2005	\$83.3 M	861,313 T	\$96.76/T	\$81.1 M	\$77.6 M
2006	\$85.1 M	937,979 T	\$90.72/T	\$90.4 M	\$84.1 M
2007	\$104.8 M	902,498 T	\$116.14/T	\$91.3 M	\$91.1 M
2008	\$105.9 M	929,529 T	\$113.90/T	\$99.4 M	\$98.6 M
2009	\$60.8 M	870,214 T	\$69.87/T	\$87.0 M	\$90.5 M
2010	\$95.0 M	887,242 T	\$107.04/T	\$86.0 M	\$87.2 M
2011	\$125.0 M	904,850 T	\$138.20/T	\$95.0 M	\$93.6 M
2012	\$89.1 M	892,924 T	\$99.80/T	\$102.7 M	\$103.0 M
				\$866.9 M	\$852.5 M

The “average of averages” per tonne method, the method now used to calculate the three year rolling average of BB revenue, calculates a total revenue \$14.4 M higher than method 2, which averages the revenues actually received by municipalities.

Since 2003, this has allowed stewards to pay \$7.2 M less than if actual revenues received were averaged

Appendix B

A revised version of Appendix 7 from my April 6 affidavit.