

Waste Diversion Act

ARBITRATION

2014 Annual Steward Obligation for the Blue Box program

AMENDED MUNICIPAL CLAIM

Association of Municipalities of Ontario and City of Toronto

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INTRODUCTION

Nature of the case

1. Waste Diversion Ontario (WDO) has referred to you, for arbitration, the following question:

[T]o determine the 2014 Annual Steward Obligation for the Blue Box program. Specifically, the Arbitrator will be asked to determine Stewardship Ontario's obligation pursuant to Subsection 25(5) of the *Waste Diversion Act, 2002* (Ontario) to contribute to the "net costs" incurred by the municipalities as a result of the waste diversion program for Blue Box waste.

2. Subsection 25(5) of the *Waste Diversion Act, 2002* states:¹

Blue box program payments to municipalities

(5) A waste diversion program developed under this Act for blue box waste *must provide* for payments to municipalities to be determined in a manner that results in *the total amount paid to all municipalities* under the program being *equal to 50 per cent of the total net costs incurred* by those municipalities as a result of the program.

3. Municipalities say that this arbitration question has three parts:

Issue 1: Is the 2014 Annual Steward Obligation *equal to* 50% of the total net costs that municipalities actually incurred to operate their Blue Box programs, or of some lesser amount?

Issue 2: What were those actual total net costs? Municipalities say that the 2014 Annual Steward Obligation is at least \$114,072,322, based on municipal Blue Box costs incurred, as reported and verified.

Issue 3: Can Stewardship Ontario force municipalities to accept part of that sum in "in kind" newspaper advertising services, instead of monetary payment? If so, in what amount, and how is its value to be calculated?

4. If you decide in favour of the municipalities on (at least) issue 1, this will conclude the arbitration. If you determine, on issue 1, that the Annual Steward Obligation is curtailed by factors other than the costs actually incurred by municipalities, there will be a fourth issue:

Issue 4: What factors curtail the municipalities' s. 25(5) cost recovery right and how should those factors be applied?

¹ *Waste Diversion Act, 2002*, S.O. 2002, [WDA] c. 6, s. 25 (5) [emphasis added]. This paragraph determines the amount to be paid, in aggregate, to all municipalities each year, not the amount to be paid to any individual municipality.

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5. WDO has also invited you to provide comments or suggestions for determining the annual Steward Obligation for the Blue Box Program in future years. Municipalities say that none of the issues described in this Municipal Claim are unique to 2014.

Parties

6. The applicants are the Association of Municipalities of Ontario (AMO) and the City of Toronto (Toronto).
7. AMO is a non-profit corporation and voluntary association whose members are municipalities. Most of the member municipalities operate Blue Box programs. In this arbitration, AMO represents 211 Blue Box programs operated by, and on behalf of, Ontario municipalities. These programs are listed in Appendix A.
8. Toronto is a municipal corporation that operates Ontario's largest Blue Box program.
9. Between them, AMO and Toronto represent over 90% of Ontario's Blue Box programs, and over 99% of the municipal residents served with Blue Box programs. Altogether, these programs serve approximately 13.1 million Ontario residents.
10. The respondent, Stewardship Ontario (SO), is an Industry Funding Organization (IFO) incorporated under section 24 of the WDA. Per Ontario Regulation 33/08, SO is managed and controlled by the stewards: the companies who import or manufacture printed paper, packaging and similar materials that can become Blue Box waste. Some stewards are small businesses, but most of the board members of SO are from large, for-profit companies:

CKF Inc.; McCain Foods; A. Lassonde Inc.; Tim Hortons Inc.; Canadian Tire; Unilever Canada Inc.; Procter & Gamble Canada; Loblaw Companies Inc.; Recochem Inc.; Akzo Nobel Canada Inc.; Wal-Mart Canada Corp.
11. Other stewards include Fortune 500 companies such as The Coca-Cola Company, PepsiCo Canada, the Nestle Company and Kraft Canada Inc.
12. SO is now part of a national stewards' organization, the Canadian Stewardship Services Alliance (CSSA).

Blue Box Terminology

13. **"Blue Box program"** (BBP) is a term used for one or more of the following overlapping activities:
 - a. a municipal undertaking that collects, handles, transports and processes waste Blue Box materials, and related activities, including public communication. By virtue of section 7 of O. Reg. 101/94, made under the *Environmental Protection*

Act (EPA), virtually all Ontario municipalities over 5000 people (15,000 in Northern Ontario) must establish, operate and maintain a Blue Box program;²

- b. a waste diversion program developed by WDO in consultation with SO, under Section 23 of the WDA, and its regulations 273/02 and 33/08.³ This is primarily a program to collect funds from stewards and distribute those funds to municipalities and others, to support Blue Box waste diversion by municipalities. Stewards do not physically collect, handle, transport or process Blue Box waste.
14. “**Blue Box Program Plan**” (BBP Plan)⁴ refers to a specific document by that name, written by WDO and SO. It refers to (and depends on) municipal Blue Box programs, describes the funding program established under the WDA, and includes related information, descriptions and aspirations.
 15. “**Blue Box waste**” under the WDA overlaps, but is not identical to, the definition of “Blue Box waste” under the EPA, as shown in Appendix B.

Municipal Blue Box Programs and the EPA

16. O. Reg 101/94, *Recycling and Composting of Municipal Waste*, sets out a small number of minimum requirements for municipal Blue Box programs. In essence, municipalities that collect garbage must collect, and make reasonable efforts to divert from landfill, five kinds of “Basic Blue Box waste” and at least two kinds of “Supplementary Blue Box waste”. As shown in Appendix B, Blue Box wastes under this regulation consist primarily of packaging and printed papers. Municipalities must provide Blue Box information to users and potential users of their program.
17. Blue Box programs are not limited to residential waste. O.Reg. 101/94 does not require municipalities to collect Blue Box materials from non-residential sources at curbside, but does not prohibit them from doing so. Municipalities *must* accept all source separated Blue Box waste (whether residential or non-residential) at depots wherever municipal waste is accepted from the public.⁵
18. In addition, municipalities must comply with other applicable laws, such as the procurement requirements of the *Municipal Act, 2001*⁶ and the *City of Toronto Act, 2006*⁷ and the waste diversion requirements found in many municipal waste site Environmental Compliance Approval(s) under the EPA.

² R.S.O. 1990, c. E.19 (This regulation came into force January 1, 1995 for southern Ontario, and January 1, 1996 for Northern Ontario).

³ For clarity, this is sometimes described as “WDO/ SO’s BBP”.

⁴ Waste Diversion Ontario, *Blue Box Program Plan* (Waste Diversion Ontario, 2003) online: Waste Diversion Ontario <http://www.wdo.ca/files/7113/5877/9734/Blue_Box_Program_Plan.pdf>.

⁵ O. Reg. 101/94, s. 7(2)(b).

⁶ S.O. 2001, c. 25.

⁷ S.O. 2006, c. 11, Sch. A

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Waste Diversion Act

19. The WDA came into force in 2002, many years after Ontario municipalities were required to start operating Blue Box programs. It was introduced to the Legislature as Bill 90 in 2001, and was adopted, with amendments.⁸
20. The WDA's main purposes were to increase waste diversion in Ontario, and to stabilize funding for municipal Blue Box programs.⁹
21. The WDA increases producer responsibility for the wastes that they create. Producers, or stewards, may meet this responsibility through direct take back programs, or by funding third-party programs such as the municipal Blue Box programs. Stewards must also pay certain costs of administering and enforcing the WDA.

Waste Diversion Ontario

22. Approximately half of the WDA deals with the powers and responsibilities of WDO, a special corporation without share capital. Until recently, stewards appointed the majority of the WDO board;¹⁰ WDO board members no longer formally represent particular stakeholders.¹¹ The WDO board makes all decisions by majority vote.
23. The WDA governs the powers and responsibilities of WDO and the obligations of stewards in relation to waste diversion; it does not purport to govern the conduct of municipalities. The WDA establishes a number of offences, punishable by substantial penalties. These offences can only be committed by WDO, by an IFO, or by a steward.
24. WDO is funded by charging fees to IFOs. It is not a government body or an agent of the Crown.¹²
25. While WDO has the power to “*determine* the amount of money required by Waste Diversion Ontario and the industry funding organizations to carry out their responsibilities under this Act”,¹³ WDO has no comparable power to determine the total amount of money to be paid to municipalities under s.25(5) of the WDA.

⁸ Bill 90, *An Act to promote the reduction, reuse and recycling of waste*, 2nd Sess., 37th Leg., Ontario, 2002, cl. 24(5) (First Reading).

⁹ In addition, the WDA provides certain Blue Box stewards with an alternative means of addressing their failure to comply with *Containers*, R.R.O. 1990, Reg. 340 under the EPA. This regulation sets minimum refillable sales requirements for carbonated soft drinks.

¹⁰ Per WDA, s. 4(2), AMO appointed four members; stewards appointed eight members, and the Minister appointed three. Additional members could be appointed as provided by a regulation.

¹¹ WDA, s. 4(4). Under Amendment No. 2 to the Operating Agreement between the Minister of Environment and Waste Diversion Ontario (2 June 2003), the WDO board is now composed of 5 members appointed by the Minister of the Environment and 6 members appointed by the existing WDO board, from a list of qualified nominees prepared by a nominating committee of the WDO board. The new board is described as “skill based”.

¹² WDA, s. 17.

¹³ *WDA*, s. 5(d) [emphasis added].

26. The WDA does not entrust either WDO or any other person with authority over municipalities or their Blue Box programs.

Industry Funding Organizations

27. The other half of the WDA deals with the powers and responsibilities of stewards and their IFOs.

28. IFOs are corporations without share capital incorporated by WDO.¹⁴

29. An IFO's primary function is, as its name suggests, to collect money from the stewards for use in relation to the waste that the stewards, collectively, create.¹⁵ The IFO must hold this money in its trust fund, and must use it for only three purposes:¹⁶

- a. Developing, implementing, and operating its waste diversion program;
- b. A reasonable share of the costs incurred by WDO in carrying out its responsibilities under the WDA; and
- c. A reasonable share of the costs incurred by the Ministry of Environment in administering the WDA.

Municipalities

30. The WDA is not directed at municipalities, who are not even mentioned in the explanatory note to Bill 90. The WDA does not require municipalities to collect, handle, process or divert Blue Box waste, and does not otherwise regulate or impose any obligations on municipalities.

31. There are only three references to municipalities in the entire WDA:

- a. S. 4(2), which used to allow AMO to appoint four members of WDO board;
- b. S. 5(e), which sets out WDO's power to establish a process to resolve disputes between an IFO and a municipality with respect to payments to the municipality under a waste diversion program;¹⁷ and
- c. S. 25(5), stewards' obligation to pay municipalities 50% of total net Blue Box costs incurred, which is the subject of this arbitration.

32. Municipalities say the WDA does not authorize the Minister, the BBP or the BBP Plan, to limit or alter the payment obligation in s. 25(5).

¹⁴ *WDA*, s. 24.

¹⁵ *WDA*, s. 32(1).

¹⁶ *WDA*, s. 32(2).

¹⁷ WDO's exercise of this power triggered this arbitration.

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Blue Box waste diversion program

33. On September 23, 2002, under section 23 of the WDA, the Minister required WDO to develop a waste diversion program for the Blue Box wastes specified in O.Reg. 273/02.
34. Under section 23 of the WDA, a waste diversion program has only two parties: WDO and the IFO.¹⁸ In response to the Minister's letter, WDO incorporated SO to be the IFO for the Blue Box waste diversion program, a role that was confirmed by O. Reg. 273/02.¹⁹
35. WDO and SO then developed the waste diversion program known as the BBP. The BBP is included, with other information, in the BBP Plan, which WDO and SO published under their names in February 2003.
36. The BBP came into effect on December 22, 2003, when the Minister approved it under section 26(3) of the WDA. WDO and SO were then obliged to implement and operate the BBP²⁰ in accordance with a contract between them.²¹
37. Municipalities are not parties to the BBP, or to the contract. They are not governed by section 29 of the WDA, and therefore are not obliged to implement the BBP.
38. Since 2003, the Minister has purported to amend the BBP. The Minister's only possible jurisdiction to "amend" the BBP is under s. 26(3) or s. 27 of the WDA, neither of which authorizes her to amend or limit the municipal right to compensation under s. 25(5).

Municipal-Industry Programs Committee

39. Stewards need cooperation from municipalities, since it is municipalities that operate Blue Box programs and incur the costs that stewards must pay. To promote such cooperation, the BBP Plan proposed three committees in which municipalities were to participate. Only one of these now operates: the Municipal-Industry Programs Committee (MIPC).
40. MIPC advises WDO on the collection and analysis of recycling data, and on calculating and reporting payments to individual municipalities.
41. MIPC is not referred to in the WDA and has no legal power or authority.

¹⁸ WDA, s. 23(2) ("Waste Diversion Ontario shall develop the program in co-operation with an industry funding organization.").

¹⁹ O. Reg. 273/02, s. 2.

²⁰ WDA, s. 29.

²¹ WDA, s. 25(3).

ISSUE 1: MUST STEWARDS' OBLIGATION EQUAL 50% OF TOTAL NET COSTS ACTUALLY INCURRED BY MUNICIPALITIES?

42. Issue 1 is: Is the 2014 Annual Steward Obligation equal to 50% of the total net costs that municipalities actually incurred to operate their Blue Box programs, or 50% of some lesser amount?

Section 25(5): Legislative History

43. WDA s. 25(5) (which applies only to Blue Box waste) is central to this arbitration:²²

Blue box program payments to municipalities

(5) A waste diversion program developed under this Act for blue box waste *must provide* for payments to municipalities to be determined in a manner that results in *the total amount paid to all municipalities* under the program being *equal to 50 per cent of the total net costs* incurred by those municipalities as a result of the program.

44. S. 25(5) is not limited or qualified by any other section of the WDA. The WDA does not define “total net costs incurred”. The Minister can define terms and grant exemptions from any part of the WDA by regulation, but no regulations have been adopted to define “total net costs incurred”.²³ No one else has statutory jurisdiction to define this term; in particular, neither WDO nor SO has been given authority to do so.

45. S. 25(5) reflects a considered policy choice of the Legislature, reached after extensive public consultation and debate. At First Reading, Bill 90 would have supported SO's position that municipalities are not legally entitled to the full 50% of their actual costs:²⁴

25 (5) A waste diversion program developed under this Act for blue box waste *shall not* provide for payments to municipalities that *total more than 50 per cent* of the *total net operating costs* incurred by the municipalities in connection with the program.

46. This subsection was amended by the Legislature to make stewards' payment obligation “equal to 50% of the total net costs incurred” by municipalities, and to remove the limiting reference to “operating costs”.

47. The “equal to 50%” wording was based on a unanimous report from an earlier version of WDO, then known as the Ontario Waste Diversion Organization (OWDO), which included municipal and stewards' representatives.²⁵ The report recommended:²⁶

²² WDA, s. 25 (5) [emphasis added].

²³ WDA, s. 42(1).

²⁴ Bill 90, *An Act to promote the reduction, reuse and recycling of waste*, 2nd Sess., 37th Leg., Ontario, 2002, cl. 24(5) (First Reading).

²⁵ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, No. G-17 (26 November 2001) at G-370-G.371 (Hon. Ted Arnott).

²⁶ Waste Diversion Ontario, *Report to the Minister of the Environment, Achieving Sustainable Municipal Waste Diversion Programs in Ontario* (Waste Diversion Ontario, 2000) online: Legislative Assembly of Ontario, <<http://www.ontla.on.ca/library/repository/mon/ont/ev/2000/sept1full.pdf>> at x

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Industry should provide financial support equal to 50% of the aggregate provincial net costs of municipal recycling programs.

48. The report considered options for calculating these net costs, including the same issue raised in these proceedings by SO:²⁷

[W]hether the calculation of net costs should be based on the reported costs for all municipal programs in Ontario or whether the calculation should be restricted only to those municipal programs deemed to be efficient by some objective standard.

49. Having considered these two options, the OWDO unanimously chose the first:²⁸

The net cost of recycling for Ontario as a whole would be calculated on the basis of an annual province-wide survey of all municipal waste diversion program costs based on a standardized methodology of tonnage and cost reporting that the WDO would adopt.

50. “Efficiency” was recommended as a criterion for distributing funds among municipalities, but not as a criterion for determining total net costs.²⁹

51. Thus, the Stewards’ Obligation for 2014 must be “equal to” 50% of total net municipal costs actually incurred, not merely “up to” 50%, as SO claims.

52. 50% is a comparatively modest percentage of Blue Box costs for stewards to pay. In more recent Blue Box programs, Saskatchewan, Manitoba, British Columbia, and Quebec, stewards pay (or will shortly pay) 75%, 80%, 100% and 100% respectively of Blue Box costs. Ontario’s current Bill 91, the *Waste Reduction Act*, would allow the province to increase stewards’ financial responsibility for the Blue Box from 50% up to 100%.³⁰

“As a result of the program”

53. The final words of section 25(5) refer to the total net costs incurred by municipalities “as a result of the program”. In this clause, “the program” must refer to municipal Blue Box programs, which do all of the physical work that diverts Blue Box waste from landfill.

54. The costs that stewards must share are “the net costs of municipal recycling programs”.³¹ Municipalities incur Blue Box costs “as a result of” collecting, handling, transporting and processing the Blue Box wastes that stewards generate, through the Blue Box programs established under O. Reg. 101/94. These are the municipal costs

[WDO Report, 2000]. (See also *Ibid.* at 70, “debate on the appropriate share from industry varied between a minimal share and maximum of 50% of the net costs of recycling.”)

²⁷ *Ibid.* at 70.

²⁸ *Ibid.* at 72 (This standardized methodology is now known as the Datacall).

²⁹ *Ibid.* at 71-72.

³⁰ Bill 91, *An Act to establish a new regime for the reduction, reuse and recycling of waste and to repeal the Waste Diversion Act, 2002*, 2nd Sess., 40th Leg., Ontario, 2013.

³¹ WDO Report, 2000 at 71.

referred to throughout the BBP. These are the costs that stewards must share, in order to achieve the purpose of the WDA, namely to:³²

[P]romote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs.

55. Municipalities do not incur any material costs³³ “as a result of” the WDA, or anything done under its authority, including WDO/ SO’s BBP. As indicated in paragraph 13.b, WDO/ SO’s BBP is primarily a method to collect funds from stewards and distribute funds to municipalities and others. It does not require waste diversion by municipalities; it does not bind municipalities, and they are not obliged to implement it.
56. The purpose of these words, “as a result of the program”, is to indicate that stewards need only pay half of costs that municipalities incur to divert Blue Box wastes from landfill, as opposed to other municipal expenses such as landfills, roads and sewers.

The Blue Box program and s. 25(5)

57. To the extent that it purports to impose or affect legal obligations, a WDA waste diversion plan may only include the items specifically authorized by the WDA. Under section 25(1), any waste diversion program *may* include optional activities such as research, development, marketing, promotion, education and public awareness.
58. In contrast, s. 25(5)’s 50% payment obligation is a *mandatory* element of any Blue Box waste diversion program. Regardless of which s. 25(1) activities are included in a Blue Box waste diversion program, such a program must always include the 50% payment obligation pursuant to s. 25(5). This special obligation applies only to Blue Box waste.
59. The BBP Plan contains a variety of elements. Some are purely narrative and historical, describing the process that had been followed to develop it. Others describe optional or aspirational activities, that “may” happen, “where ever possible”, or “when practicable”, such as research, marketing, public information and encouragement, advice to municipalities, etc. Municipalities say that none of these are relevant to s. 25(5).
60. The BBP does not purport to derogate from stewards’ obligation to pay 50% of actual total municipal net costs (subject to Issue 3, discussed below). On the contrary, it describes this obligation in mandatory language: The annual net cost “will be determined” by collecting information about municipalities’ actual costs, direct and indirect, by way of a verified, mandatory annual cost survey.

³² WDA, s. 1.

³³ Exceptions include the cost of this arbitration, and the cost of filing each year’s Datacall report.

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S. 25(5) is not limited to “reasonable” costs

61. The WDA does not limit section 25(5) to “reasonable” costs that municipalities “should” have incurred, as confirmed by the legislative history described in paragraphs 43 to 50.
62. This is deliberate, and appropriate. Stewards’ focus on the bottom line does not apply equally to municipalities, which must act in the public interest. They operate Blue Box programs as a public service, not to make a profit. Blue Box programs must balance several competing objectives, including:
 - a. Efficiency (minimizing gross cost and maximizing revenue);
 - b. Effectiveness (maximizing waste diversion, which tends to increase cost);
 - c. Access to Blue Box programs across the province, as required by O. Reg. 101/94 (which decreases both efficiency and effectiveness, by requiring many small and remote municipalities to operate Blue Box programs); and
 - d. Municipal autonomy,³⁴ including the challenges of operating 231 independent Blue Box programs, directed by municipal councils or tribal councils, each accountable to a separate electorate.
63. The WDA does not need a “reasonableness” limit to prevent municipalities from wasting money because municipalities have strong financial and other incentives to operate their Blue Box programs efficiently. For example:
 - a. Municipal governments, as a whole, must still pay 50% of the actual costs to run their Blue Box programs;
 - b. Municipal government budgets are transparent and important to the public, receive detailed public scrutiny and must be approved, in a public process, by elected councils;
 - c. Municipalities actively encourage best practices among their peers, e.g. through education, benchmarking, and peer pressure;
 - d. The municipal funding allocation model (MFAM), encourages and rewards efficiency by individual municipalities. Higher cost Blue Box programs receive a lower proportion of their actual costs than lower cost programs;³⁵ and

³⁴ Waste Diversion Ontario, *Cost Containment Principles, Policies and Practices, Efficiency and Effectiveness, Policies and Practices, Small Business Measures* (Waste Diversion Ontario, 2005), at 19 [CCP].

³⁵ MFAM determines how the Stewards’ Obligation is distributed among municipalities. MFAM is sometimes referred to as the “pay-out” model. There are no questions about the MFAM to be decided in this arbitration.

- e. Higher cost Blue Box programs are more likely to be audited, as described in paragraph 91. Several programs have been audited more than once.
64. Most municipalities have an even greater incentive to be efficient, where possible, because individual municipalities usually pay *more than* 50% of the net costs of their Blue Box program. This happens because:
- a. Stewards' funding is calculated based on costs that municipalities incurred two years ago, not on current costs, which are almost always higher. Similarly, SO pays municipalities two years in arrears, without interest;
 - b. Municipal administrative and interest costs have only been partly included in the "net cost" calculation as described in paragraph 96;
 - c. Stewards make little contribution to municipal costs to manage Blue Box materials from non-residential sources, although the WDA, O.Reg. 273/02 and the BBP apply to all Blue Box materials handled by municipalities, not merely those from residential sources;
 - d. Stewards have reduced their monetary payments by "in-kind" advertising space, discussed below in Issue 3;
 - e. Part of the municipalities' 50% share under s. 25(5) has been paid into a fund, now known as the Continuous Improvement Fund (CIF). The CIF has been jointly managed with SO, under an agreement with municipalities.
 - f. Most municipalities will not receive anything from the CIF in any given year. When grants are awarded, they are earmarked for capital improvements, training etc., and cannot be used to defray ordinary operating costs. The municipality must match any amounts provided by the CIF; and
 - g. Some of the CIF (and its predecessor, the Effectiveness and Efficiency Fund) has been distributed to persons other than municipalities, such as CIF operating and staff costs; consultants retained by SO; testing equipment purchased by SO; a legal opinion sought by WDO; GST imposed on payments by SO; audits performed by and for SO; benchmarking studies, and other expenses that are not payments to municipalities.
65. The financial pressure on municipal Blue Box programs is exacerbated by the aggregate WDA funding shortfall exceeding \$62 million, as described in paragraph 83.

Cost containment: Reducing actual (future) costs

66. The cost of collecting and processing Blue Box waste exceeds the revenue available from selling recovered materials. Since municipalities and stewards must share the net costs 50-50, they have a shared interest in minimizing such costs, subject to other Blue Box objectives.

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67. This shared interest is shown in discussions about “cost containment” in the BBP Plan, where “cost containment” refers to measures to reduce and control *future* Blue Box program costs. Most such measures are aspects of the MFAM, the payout model; as described above, the MFAM is designed to give individual municipalities incentives and assistance to improve efficiency and effectiveness. Municipalities have cooperated in numerous measures to minimize future costs, including many adjustments to the MFAM.
68. One major tool for containing future costs is “Development of program benchmarks”. Benchmarks help identify outliers, “those programs that have costs in excess of program averages”, so that both sides can “focus attention on those programs, identify the underlying cost drivers and then work to develop specific solutions for those municipalities.”³⁶
69. The BBP does not purport to use “cost containment” to relieve stewards from their s. 25(5) obligation to pay half of those Blue Box costs that municipalities have already incurred.

2005 Cost Containment Plan

70. By letter dated December 30, 2004, updated on August 11, 2005, the Minister purported to approve certain unspecified changes to the waste diversion program for Blue Box Wastes, stating:³⁷

This approval applies to precise changes related to the cost containment principles, policies and practices that require action on the part of:

1. Municipalities
2. Stewardship Ontario
3. Stewardship Ontario and the Association of Municipalities of Ontario (AMO) working cooperatively through Waste Diversion Ontario
4. Stewards

and that are described in the following documents:

1. Letter dated January 31, 2005 from Waste Diversion Ontario regarding Revised Cost Containment Plan.
2. Report dated July 12, 2004 (revised January 31, 2005) entitled Cost Containment Principles, Policies and Practices - Efficiency and Effectiveness Policies and Practices - Small Business Measures [the Cost Containment Plan or CCP].

71. The Minister’s jurisdiction to issue this purported approval ~~ale this amendment~~ can come only from s. 26(3) or s. 27 of the WDA, neither of which authorizes her to amend

³⁶ BBP Plan at 64.

³⁷ Letter from L. Broten, Minister of Environment to G. Zecchini, Chair, Waste Diversion Ontario (11 August 2005).

or limit the municipal right to payment under s. 25(5).³⁸ The CCP is a strategy, as requested by the Minister, not a document with legal effect:

- a. It is not the type of document authorized by s. 25(1) or any other section of the WDA.
- b. It lacks the indicators of a document that changes a legal right. Its language, style and content are those of a report, not of a legal instrument. No “precise changes” are identified.
- c. It did not, in law, amend the BBPP, because there was no Notice of Decision of Regulation, no changes to specific pages of the BBPP, and no changes to sections of the BBPP that are inconsistent with the CCP.
- 71.d. In the alternative, any~~The~~ BBPP amendment would have been *ultra vires* if it had attempted to derogate from s. 25(5). Municipalities say that the ~~amendment~~ CCP had nothing to do with the Stewards’ Obligation under s. 25(5).

What is cost containment?

72. In this CCP, as in the BBP Plan, “cost containment” consistently means minimizing the actual costs that municipalities will incur in the future.³⁹

3. *What is Cost Containment?*

3.1 Containment of Municipal Operating Costs

Containment of municipal operating costs is the reduction of the *actual* gross and net per tonne operating cost incurred by a municipality to collect, process and market Blue Box material, as a result of the implementation of cost containment policies and practices.

73. Municipalities say that the CCP could not, and the Minister did not purport to, amend or alter Stewards’ Obligation under s. 25(5). In addition, the ongoing relevance of the CCP is uncertain, since it states that it applies to 2008.

74. The CCP contains aspirational targets for both municipalities and stewards, set out in several “Cost Containment Principles”, including:⁴⁰

3. Cost bands will be:

- a. defined to reflect municipal diversity and ‘reasonable costs’ in 2006 and best practices in 2008;
- b. utilized to analyse program costs to identify those that are higher than best practice costs; and

³⁸ The December 4 letter also claimed authority under s. 7 of the WDA, in relation to the in kind issue, Issue 3. Municipalities say that WDO policies under s.7 cannot affect or alter the Stewards’ Obligation under s. 25(5), and that this claim of authority was, to that extent, invalid.

³⁹ CCP at 7 [emphasis added].

⁴⁰ CCP at v. (Cost bands are described in in paragraph 77 and listed in Appendix A).

Blue Box Arbitration: Municipal Claim

- c. utilized to determine net program costs and funding.
 4. Municipal Blue Box recycling programs will, where possible, work to operate at best practices to minimize gross and net Blue Box program costs.
 5. Stewards will, where possible, use materials that can be cost effectively managed in the Blue Box program while meeting their customers' needs and will support enhanced material markets through procurement and other market development initiatives.”⁴¹
75. Municipalities have made extensive efforts to follow these cost containment principles, and believe they have done far more to achieve their targets than stewards have.
76. Principle 3 is an extension of the “cost containment” proposals in the 2003 BBP Plan, and has the same focus on reducing future costs, by giving an efficiency incentive to individual municipalities through the MFAM and CIF.
77. To implement it, municipalities cooperated with SO to perform a limited, and now out-dated, benchmarking exercise, which resulted in a 2007 KPMG “Best Practices” report.⁴² This report grouped the municipal programs into nine “bands”, based on the technology and market conditions of the day. The bands, as they were for 2012, are listed in Appendix A. The bands are approximate; the cost of operating a Blue Box program varies significantly within each band and is not necessarily an accurate basis for comparison. Every Blue Box program is unique; there can be no “one size fits all”.⁴³
78. The bands have been somewhat helpful to identify higher cost Blue Box programs, so that other municipalities can encourage and assist them to improve, when appropriate. In particular, municipalities use Best Practices and the bands as part of the decision-making processes in the distribution of funds to individual municipalities through the MFAM payout model, and targeting grants under the CIF. Municipalities say this is the only relevance of the bands, and of the so-called “Best Practices” approach as a whole.

⁴¹ CCP at 18.

⁴² This report is not part of the BBP Plan.

⁴³ The efficiency and effectiveness of each program is affected by a large number of factors that are not under municipal control, such as:

- a. Population density, distribution and demographics;
- b. The proportion of multi-unit residential buildings;
- c. Local retailing and consumption patterns;
- d. The nature, type, design and volume of packaging and other potential Blue Box wastes that are sold to or used by their residents;
- e. The extent to which such materials are recyclable; and
- f. Terrain and distance to markets.

Then why have costs gone up?

79. Despite strenuous efforts at cost containment, net Blue Box operating costs have gone up. Much of the increase is more apparent than real; prior to 2007, municipalities claimed less than their true costs. The major causes of the increase in net Blue Box costs since 2007 include:
- a. Increased quantities of light-weight materials, 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.⁴⁴

“Cost containment” is not “payment containment”

80. What stewards are seeking in this arbitration is “payment containment”, i.e. to be allowed to pay less than a full 50% of municipal costs actually incurred. “Payment containment” is a distinct concept, separate and apart from “cost containment”.⁴⁵
81. Although stewards have repeatedly asked for it, the WDA contains no legal authority for payment containment. “Payment containment” could not be and is not part of the BBP Plan or the CCP.

Past settlements are irrelevant

82. In recent years, stewards and municipalities have settled the annual Stewards’ Obligation through negotiation and mediation. In most years, municipalities accepted less than 50% of their actual net costs, partly because some WDO staff instructed municipalities that they were obliged to do so. Municipalities no longer accept these instructions, which municipalities now believe were contrary to the WDA and *ultra vires*.
83. The cumulative impact has been that stewards have paid approximately \$62 million less than their full 50% share of actual municipal costs to operate Blue Box programs. This \$62 million has, instead, been paid by municipal taxpayers, whether through the property tax, or through waste disposal fees. This is contrary to s. 25(5), and is not sustainable.

⁴⁴ There are many opportunities to reduce Blue Box costs, e.g. by eliminating the curbside collection of most or all plastic and aseptic paper waste. However, this would require regulatory change, and is beyond the scope of this arbitration.

⁴⁵ When the CCP was being developed, stewards unsuccessfully demanded a hard “cap” on their payment obligation under s. 25(5), based on “benchmarking costs of efficient programs”. See CCP at 52. See also WDO Report, 2000 at 70.

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84. The negotiated settlements in previous years are not relevant to this arbitration. They were made without prejudice, did not bind any party for future years, were not based on a consistent or agreed methodology, and were induced by *ultra vires* instructions from some WDO staff.

Conclusion on Issue 1

85. The 2014 Annual Steward Obligation under s. 25(5) of the WDA must be equal to 50% of the net costs that municipalities actually incurred to operate their Blue Box programs, and not any lesser amount. The precise calculation methodology is described in Issue 2.

ISSUE 2: WHAT ARE THE “TOTAL NET COSTS INCURRED” BY MUNICIPALITIES?

86. **Issue 2:** What sum of money is equal to 50% of the total net costs actually incurred by municipalities to divert Blue Box waste in Ontario? Municipalities say that the 2014 Annual Steward Obligation is at least \$114,072,322.

Actual cost information is known and reliable

87. Stewards receive an objective and reliable assessment of the “total net costs incurred” by municipalities to operate Blue Box programs each year. The cost data is obtained through a mutually agreed Datacall process, managed and verified by WDO.

88. Every municipality that operates a Blue Box program provides a detailed and accurate return of its costs and revenues. The return is filed through an electronic Datacall program, developed in cooperation with SO. SO has access to all of the data collected.

89. Each municipality’s return is signed by a senior representative, such as its Chief Financial Officer, Clerk, Treasurer or Chief Administrative Officer, verifying that the return is true and correct and accurately reflects the Blue Box program delivery costs and revenues.

90. All returns are verified by a WDO expert who, among other things, compares the results both against the baseline of many years of previous reports from the same municipality, and against comparable municipalities with similar programs. Through this verification process, most errors are corrected.

91. For additional assurance, WDO audits the returns of a certain number of municipalities each year. Those audited are not a representative sample of municipalities; most have been chosen for audit specifically because they are suspected of overstating their costs. Nevertheless, some of those audited had understated their costs.

92. If an audit concludes that a municipality has over-stated its gross costs by more than 2%, the cost of the audit is deducted from the funding that that municipality receives. In addition, any variances have been corrected, both for the individual municipality,

and for total municipal net costs, through a “prior year adjustment”. For 2012, the prior year adjustment *increases* municipal net costs by \$4,498,204.

93. This multi-step process, designed by WDO, SO and municipalities, provides stewards with a high degree of assurance that the net costs reported by municipalities, and claimed in this arbitration, are accurate.
94. Variances occur for numerous reasons. In some cases, audit variances have been reported simply because the auditor disagreed with the municipality as to which calendar year certain costs should be assigned to.
95. Other reported audit variances have been due to differences of opinion, between municipalities and auditors, as to how much of their costs are due to residential Blue Box waste, as opposed to Blue Box waste from non-residential sources. In fact, nothing in the WDA, or in O.Reg. 273/02, limits the application of s. 25(5) to municipal costs that have been incurred to manage residential-source Blue Box waste.

Calculating the net costs incurred

96. According to WDO methodology,⁴⁶ 2014 funding should be calculated using data for 2012, the most recent year for which data is available, as follows:
 - a. Gross Blue Box program costs, i.e.
 - (1) Gross operating costs, plus
 - (2) An allowance for interest on municipal capital, plus
 - (3) Administration costs, (calculated on consent as 3% of contracted costs and 5% of direct municipal costs in item (1) plus 5% of item (2));
 - b. Plus or minus prior year adjustments,
 - c. Minus a 3 year rolling average revenue from recovered materials, calculated per tonne, multiplied by the 2012 tonnage to get the “3 Year Rolling Average Revenue”.
97. In paragraph 96.a(1), gross operating costs means:
 - a. Depot and curbside collection costs,
 - b. Processing costs, plus
 - c. Promotion and education costs.

⁴⁶ For the purposes of this arbitration only, municipalities will accept this methodology. Municipalities reserve the right to challenge it when calculating the Annual Stewards’ Obligation for future years.

Blue Box Arbitration: Municipal Claim

98. Both the interest allowance, and the calculation of administration costs, understate actual municipal costs. The WDO method of averaging revenue also understates municipal net costs.

Conclusion on Issue 2

99. Using the WDO methodology, municipalities' reported and verified gross Blue Box program costs for 2012 were \$326,323,771, plus \$4,498,204 of outstanding costs from previous years (prior year adjustment). Their "averaged" revenue from the sale of recovered materials was \$102,677,331, leaving net costs incurred of \$228,144,644. 50% of that is \$114,072,322, the minimum sum that municipalities are seeking from the stewards in this arbitration.

100. This amount must be paid in money, subject to Issue 3.

ISSUE 3: CAN THE PURPORTED VALUE OF IN KIND SERVICES BE DEDUCTED? IF SO, HOW MUCH?

Newspaper advertising in kind service: Background

101. SO asserts that it is entitled to reduce its monetary payment to municipalities, due under s. 25(5) of the WDA, and instead to have certain stewards, the Canadian Newspaper Association (CNA) and the Ontario Community Newspapers Association (OCNA), provide municipalities with "in-kind" advertising space. Municipalities say that they cannot be compelled to accept unwanted advertising space in lieu of monetary payment under s. 25(5).

102. Municipalities used to accept up to \$1.3 million from newspaper stewards in the form of "in-kind" advertising space. When the BBP Plan was approved in 2003, newspaper advertisements provided an effective way of communicating with residents, to whom municipalities are required to provide information about waste diversion programs under O. Reg. 101/94; today, in the age of the Internet, newspaper advertisements are much less effective. In addition, in 2003, collecting waste newspaper did not impose significant net costs on municipalities because of its resale value. Today, the collection and processing of waste newspaper imposes a substantial net cost on municipalities, over \$17 million in 2012 alone. These changes have destroyed the factual basis on which municipalities used to accept \$1.3 million of Blue Box funding "in kind" in lieu of money.

103. On November 4, 2005, an amendment to the BBP Plan purported to allow SO to pay an unlimited "CNA and OCNA portion of stewards fees representing payments to municipalities, as calculated by the pay in model ... in the form of in-kind newspaper advertising under normal old newspaper (ONP) market conditions." Municipalities say that this purported amendment was ultra vires and without effect.

104. For 2014, SO has asserted that this allows it to reduce its s.25(5) monetary payment to municipalities by at least \$6.3 million.
105. Municipalities have never agreed to accept this amount of advertising space in lieu of the money they require to operate their Blue Box programs, and it is far beyond what they need to provide public information under O.Reg. 101/94.

Section 31 of the WDA

106. Stewards claim that this "in-kind" reduction is authorized by s. 31 of the WDA, which provides:⁴⁷

31(1) A person who is designated under the rules made by an industry funding organization as a steward in respect of a designated waste shall pay to the organization the fees determined in accordance with the rules at the times specified by the rules.

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

107. As indicated above, section 31, like virtually everything else in the WDA, concerns the internal relationships among the stewards and between the stewards and their contractual partner, WDO. It does not refer to municipalities or to s. 25(5). Section 31 does not purport to and cannot be reasonably interpreted as, modifying s. 25(5), and therefore cannot justify a reduction in the Stewards' Obligation to pay funds out to municipalities.
108. Section 31 applies to only one thing: the fees that individual stewards must "pay in" to their IFO, in this case, SO. SO collects such fees for multiple purposes, including their own expenses for staff, lawyers, public communications, reserve funds, etc., as well as for its Stewards' Obligation.

109. Section 31 allows SO,⁴⁸ to reduce the fees that a steward would otherwise pay to SO, but only if:

- a. The individual steward "has" (already) made
- b. "voluntary contributions",
- c. "to the organization", i.e. to SO itself.

110. The proposed advertising space does not meet these requirements because:

- a. It is not a "voluntary" service;
- b. It has not already been provided; and

⁴⁷ Emphasis added.

⁴⁸ With WDO approval.

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- c. It is not a contribution of services “to the organization”, i.e. to SO.
- 111. A “service” offered to municipalities is not a service contributed to SO. Section 31 would allow SO to accept newspaper advertising in lieu of CNA/ OCNA fees if SO itself used the advertising, but this would not reduce SO’s payment obligation to municipalities under s. 25(5).
- 112. The words “payment” and “paid” in s. 25(5) indicate an obligation that must be satisfied in money, not in unwanted and unnecessary “services”. Depriving municipalities of the funds they need to operate their Blue Box programs would not promote the purposes of the WDA. Nor would it be fair.

The limited value of the “in-kind” service

- 113. In the alternative, municipalities say the advertising space offered to them has far less value than SO claims:
 - a. Newspaper advertising space is of much less value now than in 2003, due to declining circulation rates and the wider availability of Internet-based advertising;
 - b. The advertisements are charged at the full CARD rate, i.e. the rate given to single-use customers, and not at the more favourable rates used for high-volume customers like municipalities;
 - c. The “in-kind” contributions in prior years “expired” at the end of each calendar year, thereby forcing municipalities to take out more advertisements than are necessary to satisfy their obligations under O. Reg. 101/94; and
 - d. The restrictions on the use of the in-kind service, for example “editorial control” on the content of the municipalities’ advertisements and assigning space in non-target papers.
- 114. In addition, municipalities are improperly prevented from claiming the value of the “in-kind” contribution as a cost under s. 25(5) for the following year, thereby reducing the Steward Obligation that would otherwise be payable by half the value of the “in-kind” contribution.
- 115. Since municipalities are required under O.Reg. 101/94 to provide information to users and potential users of the BB program, had they paid for advertising in newspapers to satisfy this obligation, there would be no question that such a cost legitimately falls under s. 25(5) of the WDA. The result should be no different just because that amount is provided as an “in-kind” service.

The amount of “in-kind” service is not properly calculated

- 116. In the further alternative, SO’s claim for the value of the advertising space is overstated. Based on the limited information that SO has provided to municipalities,

SO came up with this figure, without municipal input, by a method that is opaque, arbitrary and unverified, and which causes the alleged value to vary unpredictably.

Conclusion on Issue 3

117. “In kind” newspaper advertising services should not reduce the 2014 Stewards’ monetary payment Obligation.

POSSIBLE ISSUE 4: PAYMENT CONTAINMENT MODEL

118. If needed, Issue 4 would be: What factors curtail the municipalities’ s. 25(5) cost recovery right and how should those factors be applied? Municipalities say there are no curtailing factors, and that this issue is therefore irrelevant. Municipalities therefore propose to defer detailed analysis of this issue until and unless Phase 2 of this arbitration takes place, that is, unless and until you decide that the s. 25(5) compensation right *is* constrained by factors other than net municipal costs actually incurred.
119. In brief, municipalities anticipate that SO will propose a computer model to justify payment containment, i.e. to establish a purportedly objective limit, based on “efficiency” and alleged “Best Practices”, on how much of the net Blue Box program costs SO must pay.
120. Municipalities say that this payment containment model is inappropriate and misleading. In particular, the payment containment model should not be relied upon because it:
- a. Ignores the impact of packaging choices by stewards, and their failure to deliver meaningful progress towards their own cost containment targets;
 - b. Is deliberately designed not to reflect actual municipal costs;
 - c. Incorrectly assumes that all municipalities within a band could and should operate at the cost of (generally) the cheapest 50%, regardless of the reasons for differences in actual cost;
 - d. Ignores the costs actually incurred by half the municipal programs in each band;
 - e. Unduly penalizes Toronto and the Regional Municipality of Peel by lumping them in with smaller municipalities, which have lower proportions of multi-residential units⁴⁹ and less traffic congestion;
 - f. Omits relevant factors by focusing on gross costs, rather than net municipal costs incurred. The model therefore:

⁴⁹ Typically, multi-unit residential buildings achieve a lower diversion rate, and have a higher contamination rate, than single residential homes.

Blue Box Arbitration: Municipal Claim

- i. Fails to account for foregone costs and revenue in contractual arrangements where processing services are traded for revenue from the sale of recovered materials; and
 - ii. Lumps all lightweight materials together, ignoring the huge difference in revenue and therefore in net costs between aluminum and plastic;
 - g. Ignores the uniqueness and variability of Blue Box programs, and the poor evidence of correlation between “best practices” and program costs;
 - h. Depends upon artificially low and/or assumed values, e.g. for Blue Box containers, transportation costs, processing costs, Promotion and Education cost (P&E) and training;
 - i. Assumes, without evidence, that private sector services are always superior;
 - j. Predicts widely divergent outcomes, depending on the assumptions chosen;
 - k. Ignores three key objectives of the Blue Box programs: effectiveness, equitable access and municipal autonomy, and other applicable legal requirements such as environmental compliance approvals; and
 - l. Does not meet judicial standards for admissibility or reliability.
121. In addition, the payment containment model puts more weight on the 2007 KPMG “best practices” study than it can fairly bear, especially now that packaging, processing technology and municipal practices have changed with time. The KPMG study is now out-dated.
122. If you decide that any computer model should be used to limit Stewards’ Obligation under section 25 (5), that model should:
- a. Provide an accurate and detailed analysis of gross costs per tonne within each band, using a weighted average;
 - b. If eliminating outliers is required, accept as reasonable the gross cost per tonne incurred, within each band, by the Blue Box programs whose weighted average costs fall within 25% to 75% of the total range within that band;
 - c. Recognize the impact of a high ratio of multi-unit residential buildings on municipal costs and revenue; and
 - d. Use actual costs, where known, instead of artificial adjustments.
123. The model results should then be adjusted to take into account net municipal costs, not merely gross costs, including the impact of revenue trading and similar contractual terms.

Conclusion on Issue 4, if required

124. SO's payment containment model should not be relied upon in determining the 2014 Stewards' Obligation.
125. More details will be provided, if required, in Phase 2 of this arbitration.

ORDER REQUESTED

126. Municipal governments therefore request a decision that:
- a. The 2014 Annual Steward Obligation for the Blue Box program, to be paid by SO, is 50% of the total net costs that municipalities actually incurred to operate their Blue Box programs in the most recent reported year, plus the prior year adjustment, namely \$114,072,322;
 - b. This obligation must be paid to municipalities in money, with no deduction for unwanted in-kind services.
127. Municipalities also request that you recommend that the same principles should determine the annual Steward Obligation for the Blue Box Program in future years, subject to the caveat in the footnote to paragraph 96.

All of which is respectfully submitted.

Dated at Toronto, Ontario on the 16 day of January, 2014

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APPENDIX A: LIST OF MUNICIPAL BLUE BOX PROGRAMS, 2012:

Group (Band)	Program (231 Programs)	Marketed Tonnes 893,362 T	Population (13,110,689)
1	HALTON, REGIONAL MUNICIPALITY OF	41,299 T	498,687
1	TORONTO, CITY OF	156,465 T	2,637,416
1	LONDON, CITY OF	26,670 T	387,700
1	YORK, REGIONAL MUNICIPALITY OF	76,737 T	1,108,570
1	HAMILTON, CITY OF	38,422 T	535,234
1	PEEL, REGIONAL MUNICIPALITY OF	86,950 T	1,328,000
2	DURHAM, REGIONAL MUNICIPALITY OF	44,429 T	639,655
2	ESSEX-WINDSOR SOLID WASTE AUTHORITY	24,918 T	388,611
2	WATERLOO, REGIONAL MUNICIPALITY OF	34,534 T	559,000
2	SIMCOE, COUNTY OF	25,511 T	277,525
2	NIAGARA, REGIONAL MUNICIPALITY OF	39,465 T	446,676
2	OTTAWA, CITY OF	60,886 T	935,074
3	BARRIE, CITY OF	11,588 T	143,500
3	GUELPH, CITY OF	8,416 T	123,000
3	SAULT STE. MARIE, CITY OF	6,014 T	75,140
3	SARNIA, CITY OF	3,873 T	75,850
3	THUNDER BAY, CITY OF	6,213 T	108,359
3	BRANTFORD, CITY OF	6,607 T	94,586
3	PETERBOROUGH, CITY OF	8,518 T	76,350
4	NORTHUMBERLAND, COUNTY OF	5,461 T	82,359
4	WELLINGTON, COUNTY OF	5,000 T	94,459
4	NORFOLK, COUNTY OF	4,677 T	63,175
4	QUINTE WASTE SOLUTIONS	10,751 T	144,089
4	PETERBOROUGH, COUNTY OF	4,707 T	54,870
4	MUSKOKA, DISTRICT MUNICIPALITY OF	5,844 T	59,771
4	NORTH BAY, CITY OF	3,896 T	53,651
4	GREATER SUDBURY, CITY OF	13,311 T	160,274
4	BLUEWATER RECYCLING ASSOCIATION	11,868 T	156,276
4	BRUCE AREA SOLID WASTE RECYCLING	4,360 T	62,283
4	KINGSTON, CITY OF	9,280 T	124,645
4	CHATHAM-KENT, MUNICIPALITY OF	4,232 T	103,671
4	KAWARTHA LAKES, CITY OF	5,857 T	87,240
4	OXFORD, RESTRICTED COUNTY OF	7,147 T	105,719
5	STRATFORD, CITY OF	2,265 T	32,000
5	OWEN SOUND, CITY OF	2,068 T	21,688
5	ORILLIA, CITY OF	2,948 T	30,709

5	BROCKVILLE, CITY OF	1,376 T	22,595
5	ORANGEVILLE, TOWN OF	3,605 T	27,818
5	HANOVER, TOWN OF	525 T	7,490
5	SHELBURNE, TOWN OF	488 T	5,834
5	CORNWALL, CITY OF	2,599 T	46,340
5	PARRY SOUND, TOWN OF	358 T	6,191
5	PRESCOTT, TOWN OF	258 T	4,180
5	ST. THOMAS, CITY OF	2,142 T	38,475
5	GANANOQUE, TOWN OF	428 T	5,194
5	AYLMER, TOWN OF	393 T	7,151
5	ARNPRIOR, TOWN OF	642 T	8,114
5	RENFREW, TOWN OF	458 T	8,218
5	MATTAWA, TOWN OF	158 T	2,114
5	PETROLIA, TOWN OF	3,214 T	5,528
5	CARLETON PLACE, TOWN OF	623 T	9,921
5	CASSELMAN, VILLAGE OF	241 T	3,476
5	DESERONTO, TOWN OF	121 T	1,824
5	PERTH, TOWN OF	543 T	5,845
5	SMITHS FALLS, TOWN OF	577 T	8,978
5	SUNDRIDGE, VILLAGE OF	67 T	857
6	WEST NIPISSING, MUNICIPALITY OF	627 T	14,149
6	KIRKLAND LAKE, TOWN OF	677 T	8,300
6	ELLIOT LAKE, CITY OF	516 T	11,500
6	TIMMINS, CITY OF	3,160 T	44,507
6	PRINCE, TOWNSHIP OF	80 T	1,031
6	SABLES-SPANISH RIVERS, TOWNSHIP OF	139 T	2,943
6	BALDWIN, TOWNSHIP OF	19 T	570
6	BLIND RIVER, TOWN OF	343 T	3,651
6	CENTRAL MANITOULIN, TOWNSHIP OF	118 T	1,958
6	ESPANOLA, TOWN OF	219 T	5,364
6	NAIRN & HYMAN, TOWNSHIP OF	18 T	413
6	NORTHEASTERN MANITOULIN & ISLANDS, TOWN OF	275 T	2,706
6	WAHNAPITAE FIRST NATION	-	102
6	SAULT NORTH WASTE MANAGEMENT COUNCIL	40 T	5,712
6	ATIKOKAN, TOWNSHIP OF	61 T	2,959
6	BLACK RIVER-MATHESON, TOWNSHIP OF	-	2,410
6	DRYDEN, CITY OF	681 T	7,617
6	FORT FRANCES, TOWN OF	528 T	7,952
6	HEAD, CLARA & MARIA, TOWNSHIPS OF	37 T	235
6	KENORA, CITY OF	967 T	15,772
6	MARATHON, TOWN OF	125 T	3,069
6	TRI-NEIGHBOURS	107 T	2,495

6	PAPINEAU-CAMERON, TOWNSHIP OF	55 T	978
6	POWASSAN, MUNICIPALITY OF	329 T	3,370
6	SPANISH, TOWN OF	27 T	696
6	SIOUX LOOKOUT, TOWN OF	110 T	5,183
6	ST. CHARLES, MUNICIPALITY OF	55 T	1,282
6	CHISHOLM, TOWNSHIP OF	86 T	1,208
6	EAST FERRIS, TOWNSHIP OF	356 T	4,766
6	CALLANDER, MUNICIPALITY OF	207 T	3,864
6	WHITEFISH LAKE FN	52 T	410
6	BATCHEWANA FNS OJIBWAYS	9 T	690
7	NORTH HURON, TOWNSHIP OF	482 T	4,884
7	ASHFIELD-COLBORNE-WAWANOSH, TOWNSHIP OF	258 T	4,881
7	HOWICK, TOWNSHIP OF	163 T	3,500
7	CHATSWORTH, TOWNSHIP OF	349 T	6,437
7	THE BLUE MOUNTAINS, TOWN OF	791 T	6,453
7	THAMES CENTRE, MUNICIPALITY OF	1,039 T	13,108
7	WEST ELGIN, MUNICIPALITY OF	178 T	5,242
7	AMARANTH, TOWNSHIP OF	271 T	3,546
7	MONO, TOWN OF	682 T	8,204
7	GEORGIAN BLUFFS, TOWNSHIP OF	568 T	11,600
7	MEAFORD, MUNICIPALITY OF	822 T	11,000
7	CENTRAL ELGIN, MUNICIPALITY OF	524 T	13,923
7	EAST LUTHER GRAND VALLEY, TOWNSHIP OF	221 T	2,726
7	NORTH GRENVILLE, MUNICIPALITY OF	1,102 T	15,954
7	OTTAWA VALLEY WASTE RECOVERY CENTRE	3,280 T	38,695
7	HAWKESBURY JOINT RECYCLING	1,312 T	22,684
7	NORTH GLENGARRY, TOWNSHIP OF	1,016 T	10,251
7	ST. CLAIR, TOWNSHIP OF	705 T	14,515
7	EAST GARAFRAXA, TOWNSHIP OF	230 T	2,293
7	ATHENS, TOWNSHIP OF	190 T	3,128
7	MULMUR, TOWNSHIP OF	289 T	3,391
7	MERRICKVILLE-WOLFORD, VILLAGE OF	204 T	2,850
7	NORTH STORMONT, TOWNSHIP OF	411 T	6,775
7	RUSSELL, TOWNSHIP OF	1,096 T	15,247
7	SOUTH FRONTENAC, TOWNSHIP OF	903 T	18,113
7	SOUTH STORMONT, TOWNSHIP OF	639 T	12,617
7	NORTH DUNDAS, TOWNSHIP OF	533 T	12,528
7	WHITEWATER REGION, TOWNSHIP OF	414 T	6,631
7	SOUTHWOLD, TOWNSHIP OF	192 T	4,494
7	BAYHAM, MUNICIPALITY OF	413 T	6,989
7	CLARENCE-ROCKLAND, CITY OF	1,497 T	24,998
7	THE NATION, MUNICIPALITY	856 T	11,900

7	DUTTON-DUNWICH, MUNICIPALITY OF	275 T	3,876
7	GREATER NAPANEE, TOWNSHIP OF	954 T	15,511
7	EDWARDSBURGH CARDINAL, TOWNSHIP OF	291 T	6,959
7	PLYMPTON-WYOMING, TOWN OF	280 T	7,434
7	SOUTH GLENGARRY, TOWNSHIP OF	672 T	13,162
7	MALAHIDE, TOWNSHIP OF	354 T	9,146
7	SOUTH DUNDAS, TOWNSHIP OF	528 T	10,794
7	BRANT, COUNTY OF	1,919 T	31,219
7	HASTINGS HIGHLANDS, MUNICIPALITY OF	260 T	4,168
7	HORTON, TOWNSHIP OF	179 T	2,493
7	GREY HIGHLANDS, MUNICIPALITY OF	658 T	9,520
7	MCNAB-BRAESIDE, TOWNSHIP OF	574 T	7,371
7	SOUTHWEST MIDDLESEX, MUNICIPALITY OF	373 T	5,860
7	ALFRED & PLANTAGENET, TOWNSHIP OF	627 T	0
7	WEST GREY, MUNICIPALITY OF	792 T	12,286
7	SOUTHGATE, TOWNSHIP OF	608 T	7,190
7	AKWESASNE, MOHAWK COUNCIL OF	-	11,290
7	BANCROFT, TOWN OF	387 T	3,880
7	BECKWITH, TOWNSHIP OF	435 T	6,410
7	MISSISSAUGAS OF THE NEW CREDIT FN	14 T	936
7	LAURENTIAN HILLS, TOWN OF	141 T	2,811
7	DRUMMOND-NORTH ELMSLEY, TOWNSHIP OF	527 T	7,542
7	HALDIMAND, COUNTY OF	2,902 T	44,876
7	MISSISSIPPI MILLS, TOWN OF	778 T	12,858
7	MONTAGUE, TOWNSHIP OF	214 T	2,990
7	DEEP RIVER, TOWN OF	617 T	4,796
7	MOHAWKS OF THE BAY OF QUINTE	282 T	2,152
7	LOYALIST, TOWNSHIP OF	1,043 T	17,386
7	ALGONQUINS OF PIKWAKANAGAN	28 T	470
7	CHIPPEWAS OF NAWASH FN	16 T	735
7	CHIPPEWAS OF GEORGINA ISLAND	23 T	636
7	CHIPPEWAS OF RAMA FN	91 T	750
7	CURVE LAKE FN	78 T	1,060
8	ARMOUR, TOWNSHIP OF	218 T	2,680
8	WHITESTONE, MUNICIPALITY OF	87 T	728
8	THE ARCHIPELAGO, TOWNSHIP OF	193 T	575
8	COCHRANE TEMISKAMING WMB	1,742 T	39,942
8	CARLING, TOWNSHIP OF	117 T	1,025
8	MCDOUGALL, MUNICIPALITY OF	182 T	2,705
8	SEGUIN, TOWNSHIP OF	443 T	4,280
8	MCKELLAR, TOWNSHIP OF	89 T	949
8	CASEY, TOWNSHIP OF	53 T	374

8	GILLIES, TOWNSHIP OF	16 T	473
8	KERNS, TOWNSHIP OF	18 T	360
8	HUDSON, TOWNSHIP OF	27 T	475
8	NEEBING, MUNICIPALITY OF	57 T	2,291
8	CALVIN, MUNICIPALITY OF	20 T	605
8	PERRY, TOWNSHIP OF	155 T	2,317
8	ASSIGINACK, TOWNSHIP OF	86 T	960
8	BILLINGS, TOWNSHIP OF	49 T	509
8	CONMEE, TOWNSHIP OF	17 T	764
8	EMO, TOWNSHIP OF	45 T	1,175
8	FRENCH RIVER, MUNICIPALITY OF	185 T	2,659
8	HARLEY, TOWNSHIP OF	53 T	540
8	HILLIARD, TOWNSHIP OF	8 T	300
8	HURON SHORES, MUNICIPALITY OF	137 T	1,632
8	JOHNSON, TOWNSHIP OF	56 T	754
8	KEARNEY, TOWN OF	114 T	841
8	KILLARNEY, MUNICIPALITY OF	42 T	454
8	MACDONALD; MEREDITH & ABERDEEN ADDITIONAL, TOWNSHIP OF	71 T	1,413
8	MACHAR, TOWNSHIP OF	104 T	838
8	MAGNETAWAN, MUNICIPALITY OF	155 T	1,454
8	MCMURRICH/MONTEITH, TOWNSHIP OF	53 T	642
8	NIPISSING, TOWNSHIP OF	183 T	1,704
8	OCONNOR, TOWNSHIP OF	19 T	685
8	OLIVER PAIPOONGE, MUNICIPALITY OF	145 T	5,732
8	RAINY RIVER, TOWN OF	30 T	842
8	RED LAKE, MUNICIPALITY OF	218 T	4,670
8	SHUNIAH, MUNICIPALITY OF	93 T	2,913
8	SIOUX NARROWS NESTOR FALLS, TOWNSHIP OF	11 T	581
8	ST. JOSEPH, TOWNSHIP OF	74 T	1,181
8	STRONG, TOWNSHIP OF	179 T	1,625
8	TARBUTT & TARBUTT ADDITIONAL, TOWNSHIP OF	215 T	3,796
8	BONFIELD, TOWNSHIP OF	48 T	2,096
8	CHARLTON & DACK, MUNICIPALITY OF	-	681
8	SERPENT RIVER FNS	22 T	440
8	SAGAMOK ANISHNAWBEK FN	37 T	2,745
8	WIKWEMIKONG UNCEDED INDIAN RESERVE	68 T	3,158
9	ONEIDA NATION OF THE THAMES	34 T	2,100
9	DYSART ET AL, TOWNSHIP OF	951 T	5,966
9	ALGONQUIN HIGHLANDS, TOWNSHIP OF	348 T	2,156
9	LEEDS & THE THOUSAND ISLANDS, TOWNSHIP OF	578 T	8,874

9	RIDEAU LAKES, TOWNSHIP OF	721 T	10,652
9	MELANCTHON, TOWNSHIP OF	132 T	2,347
9	ELIZABETHTOWN-KITLEY, TOWNSHIP OF	318 T	9,724
9	FRONT OF YONGE, TOWNSHIP OF	121 T	2,752
9	FRONTENAC ISLANDS, TOWNSHIP OF	187 T	1,732
9	AUGUSTA, TOWNSHIP OF	544 T	7,430
9	STONE MILLS, TOWNSHIP OF	431 T	7,560
9	HIGHLANDS EAST, MUNICIPALITY OF	358 T	3,249
9	BRUDENELL; LYNDOSCH & RAGLAN, TOWNSHIP OF	72 T	1,437
9	NORTHERN BRUCE PENINSULA, MUNICIPALITY OF	347 T	3,615
9	CARLOW MAYO, TOWNSHIP OF	67 T	806
9	TAY VALLEY, TOWNSHIP OF	351 T	5,571
9	LANARK HIGHLANDS, TOWNSHIP OF	305 T	5,180
9	ADDINGTON HIGHLANDS, TOWNSHIP OF	124 T	1,945
9	ADMASTON/BROMLEY, TOWNSHIP OF	113 T	2,640
9	MINDEN HILLS, TOWNSHIP OF	712 T	6,251
9	GREATER MADAWASKA, TOWNSHIP OF	204 T	2,485
9	ENNISKILLEN, TOWNSHIP OF	91 T	3,178
9	BONNECHERE VALLEY, TOWNSHIP OF	266 T	3,280
9	KILLALOE; HAGARTY & RICHARDS, TOWNSHIP OF	155 T	2,402
9	MADAWASKA VALLEY, TOWNSHIP OF	375 T	4,385
9	CENTRAL FRONTENAC, TOWNSHIP OF	244 T	3,953
9	NORTH FRONTENAC, TOWNSHIP OF	191 T	1,842
9	CHIPPEWAS OF KETTLE & STONY POINT FNS	25 T	2,215
9	FARADAY, TOWNSHIP OF	163 T	1,397
9	TUDOR & CASHEL, TOWNSHIP OF	34 T	675
9	WOLLASTON, TOWNSHIP OF	83 T	708
9	WALPOLE ISLAND FN	11 T	4,400
9	SIX NATIONS	195 T	12,278

APPENDIX B: “BLUE BOX WASTE” DEFINITIONS UNDER THE WDA AND THE EPA

WDA: (<i>Blue Box Waste</i> , O. Reg. 273/02, S. 1)	SO categories, per BBP	EPA: <i>Recycling and Composting of Municipal Waste</i> , O. Reg 101/94, Schedule 1	
		<u>Basic Blue Box Waste</u>	<u>Supplementary Blue Box Waste</u>
Glass.	<u>Glass Containers:</u> Clear Glass, Coloured Glass	Glass bottles and jars for food or beverages.	
Metal.	<u>Steel Packaging:</u> Steel Food & Beverage Cans Steel Aerosols Steel Paint Cans <u>Aluminum Packaging:</u> Aluminum Food & Beverage Cans Other Aluminum Packaging	Steel food or beverage cans (including cans made primarily of steel). Aluminum food or beverage cans (including cans made primarily of aluminum)	Aluminum foil (including items made from aluminum foil).
Plastic	<u>Plastic Packaging:</u> PET Bottles HDPE Bottles Plastic Film Plastic Laminates Polystyrene Other Plastic	Polyethylene terephthalate bottles for food or beverages (including bottles made primarily of polyethylene terephthalate).	Expanded polystyrene food or beverage containers and packing materials. Plastic film Rigid plastic containers

WDA: (<i>Blue Box Waste</i> , O. Reg. 273/02, S. 1)	SO categories, per BBP	EPA: <i>Recycling and Composting of Municipal Waste</i> , O. Reg 101/94, Schedule 1	
		<u>Basic Blue Box Waste</u>	<u>Supplementary Blue Box Waste</u>
Paper	<u>Printed Paper:</u> Newsprint - CNA/OCNA Newsprint - Non-CNA/OCNA Magazines and Catalogues Telephone Books Other Printed Paper <u>Paper Packaging:</u> Corrugated Cardboard Gable Top Cartons Paper Laminates Aseptic Containers Boxboard	Newsprint.	Boxboard and paperboard. Cardboard (corrugated). Fine paper. Magazines. Paper cups and plates. Telephone directories. Polycoat paperboard containers, being containers made primarily of paperboard and coated with low density polyethylene or aluminum, and used for food or beverages (Gabletop)
Textiles			Textiles (not including fibreglass or carpet).