

10. Program Agreement

Preamble

THIS AGREEMENT made in duplicate is effective as of this 19th day of February, 2003.

B E T W E E N:

WASTE DIVERSION ONTARIO,
a corporation without share capital
incorporated by the *Waste Diversion Act, 2002*
(hereinafter referred to as “Waste Diversion Ontario”)

- and -

STEWARDSHIP ONTARIO,
a corporation without share capital
incorporated pursuant to the *Corporations Act (Ontario)*
(hereinafter referred to as “Stewardship Ontario”)

WHEREAS according to Subsection 25 (3) of the *Act*, a waste diversion program developed under this *Act* must include an agreement between Waste Diversion Ontario and the industry funding organization that the program is developed in cooperation with, governing the role of the industry funding organization in the implementation and operation of the program and governing the exercise of the industry funding organization’s powers under the *Act*;

AND WHEREAS Waste Diversion Ontario has caused Stewardship Ontario to be established under Section 24 of the *Act* for the purposes of developing and implementing a waste diversion program for designated Blue Box wastes under the *Act*;

NOW THEREFORE in consideration of the premises and mutual agreements contained herein and subject to the terms and conditions hereinafter set forth, the parties covenant and agree as follows:

10.1 Purpose of the Agreement

10.1.1 The purpose of this Agreement between Waste Diversion Ontario and Stewardship Ontario is to:

- (a) Define the roles and responsibilities of the two parties;
- (b) Set out the operating relationships between the two parties; and
- (c) Ensure openness and transparency to serve the public interest.

10.2 Definitions and Interpretation

10.2.1 When used in this Agreement, the following words and expressions have the following meanings:

- (a) “**Act**” means the *Waste Diversion Act, 2002*, S.O. 2002, s. 6, as may be amended from time to time;
- (b) “**Agreement**” means this Program Agreement which is entered into pursuant to Section 25 (3) of the *Act* and includes all attached schedules and any amendments thereto;
- (c) “**Blue Box Program Plan**” means the waste diversion program submitted by Stewardship Ontario and approved by Waste Diversion Ontario and submitted to the Minister for approval, as set out in Schedule A;
- (d) “**Blue Box Waste**” means waste materials defined under Ontario Regulation 273/02 dated September 23, 2002;
- (e) “**Business Day**” means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year’s Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day, Boxing Day and any other day which the Government of Ontario has elected to be closed for business;
- (f) “**Documentation**” means, for purposes of Section 10.8 of this Agreement, correspondence, documentation pertaining to public consultation during development of the Blue Box Program Plan, minutes of meetings of the Board of Directors and subcommittees, internal reports, consultants’ reports, agendas and other information and data obtained, created or maintained by Stewardship Ontario;
- (g) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended;
- (h) “**Funds**” means monies paid by Stewards to Stewardship Ontario as set out in Sections 30 and 31 of the *Act*;
- (i) “**Industry Stewardship Plan**” means a program referred to in Section 34 of the *Act*;
- (j) “**Minister**” means the Minister of Environment;
- (k) “**Ministry**” means the ministry of the Minister;
- (l) “**Operating Agreement**” means Operating Agreement entered into between Waste Diversion Ontario and the Minister;
- (m) “**Stewards**” means the persons or classes of persons designated under the Blue Box Program Plan rules as responsible for paying fees to Stewardship Ontario;
- (n) “**Waste Diversion Program**” means a program referred to in Sections 23 and 25 of the *Act*.

10.2.2 In this Agreement,

- (a) Words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) The word “including” or “includes” shall mean “including [or includes] without limitation”;
- (c) Any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) When calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; if the last day of such period is not a Business Day, the period shall end on the next Business Day;
- (e) All dollar amounts are expressed in Canadian dollars;

- (f) Any tender of notices or documents under this Agreement shall be made upon the relevant party at the address set out in Section 10.12;
- (g) The division of this Agreement into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (h) Except as specifically defined or provided for in this Agreement, words and abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

10.3 Term of Agreement and Amendment

- 10.3.1 The term of this Agreement shall commence upon approval of the Blue Box Program Plan by the Minister and shall remain in effect until five (5) years after that date and for successive periods of five (5) years each thereafter unless terminated earlier in accordance with Section 10.16 of this Agreement or amended in accordance with Subsection 10.3.5.
- 10.3.2 Any changes to the terms of this Agreement shall be by written amendment signed by both parties. No changes shall be effective or shall be carried out in the absence of such an amendment.
- 10.3.3 The parties agree to conduct a review of the performance and implementation of this Agreement not later than two (2) years following the date of this Agreement first written above and every two (2) years thereafter. As part of such review, each of the parties may suggest any appropriate amendments to the terms of this Agreement.
- 10.3.4 Notwithstanding Subsection 10.3.3, the parties agree that Waste Diversion Ontario and Stewardship Ontario shall be able to suggest appropriate amendments to the terms of this Agreement to the Minister at any time.
- 10.3.5 No material change may be made to the Blue Box Program Plan or to the terms of this Agreement without the written approval of the Minister as set out in Section 27 of the *Act*.

10.4 Roles of the Parties

- 10.4.1 Waste Diversion Ontario represents and warrants that it has approved the Blue Box Program Plan.

Waste Diversion Ontario:

- (a) Will ensure that the terms and conditions of this Agreement are carried out in a responsible, complete and thorough manner, and on a timely basis;
- (b) Will ensure that the criteria applicable to the approval of the Blue Box Program Plan set out in the Operating Agreement (including the schedules thereto) and the *Act* are applied, with such changes as may be appropriate, to Industry Stewardship Plans for Blue Box wastes submitted to Waste Diversion Ontario for approval except that:

- (i) the proponent of any such Industry Stewardship Plan shall not be required to disclose the costs of managing the Blue Box wastes which are subject to such Industry Stewardship Plan; and
- (ii) no such Industry Stewardship Plan shall become effective prior to the later of January 1, 2004 or the date six months following the date of approval of such Industry Stewardship Plan by Waste Diversion Ontario;
- (c) Will provide estimates to Stewardship Ontario from time to time in advance of the share of costs expected to be incurred by Waste Diversion Ontario in carrying out its responsibilities under the *Act* and by the Ministry in administering the *Act* to be charged to Stewardship Ontario for purposes of Section 32 of the *Act*; and
- (d) Will implement the programs, policies and procedures identified as the responsibility of Waste Diversion Ontario in the Blue Box Program Plan approved by the Minister.

10.4.2 Stewardship Ontario:

- (a) Will, following approval by the Minister, implement the Blue Box Program Plan; and
- (b) Will comply with all of its obligations under the *Act* including the preparation of an annual report pursuant to Section 33 of the *Act*.

10.5 Transparency

10.5.1 Stewardship Ontario will maintain an Internet website accessible by the public and will post every rule made pursuant to the *Act* on its website. Subject to confidential or proprietary considerations, and provided that information is available in electronic format, Stewardship Ontario's website is to include information on, or contain the appropriate electronic links to, the Blue Box Program Plan and Stewardship Ontario's annual report pursuant to Section 33 of the *Act*. Stewardship Ontario will provide a copy of a rule to every person who requests a copy and may charge the person a reasonable fee for such copy.

10.6 Information Sharing

10.6.1 Subject to confidential and proprietary considerations, Stewardship Ontario shall provide data and information obtained in the course of developing or implementing the Blue Box Program Plan to Waste Diversion Ontario upon request. The parties acknowledge and agree that data and information which might be confidential or proprietary in relation to one steward may cease to be proprietary or confidential if aggregated with data and information relating to more than one steward. Information to be shared shall include, without limitation, comments received from Stewards with respect to the Blue Box Program Plan. The parties agree to negotiate in good faith with a view to agreeing upon an information sharing protocol to implement the provisions of this Section 10.6.1.

10.6.2 Stewardship Ontario acknowledges that information provided by Waste Diversion Ontario to the Minister is under the control of the Minister within the meaning of FIPPA. Waste Diversion Ontario shall retain full control over all other information obtained, created or maintained by Waste Diversion Ontario.

- 10.6.3 Any data or materials provided by Stewardship Ontario to Waste Diversion Ontario which are confidential and are to remain confidential shall be clearly marked as confidential. In the event that the Minister receives a request under the FIPPA relating to the disclosure of any such confidential information which has been provided by Waste Diversion Ontario to the Minister and provides notice thereof to Waste Diversion Ontario, Waste Diversion Ontario agrees to provide Stewardship Ontario with notice to that effect. Notwithstanding the foregoing, Stewardship Ontario acknowledges that the Minister is bound by FIPPA and may be required by order of a court or tribunal to disclose confidential information provided by Stewardship Ontario to Waste Diversion Ontario which has in turn been provided by Waste Diversion Ontario to the Minister.
- 10.6.4 Each of the parties agrees to hold data and information received from the other which are marked confidential in confidence, unless:
- (a) Such party is required to disclose such data or information by applicable law or by the order of any court or tribunal of competent jurisdiction;
 - (b) Such data or information have become generally available to the public without breach of this Agreement;
 - (c) Such data or information were developed independently by the recipient without the use of such confidential data or information or were lawfully received from another source having the right to furnish such data or information; or
 - (d) Such data or information were previously known to the recipient free of any restriction as evidenced by documentation in the recipient's possession.

10.7 Stakeholder and Public Consultation

- 10.7.1 Waste Diversion Ontario may require Stewardship Ontario to provide opportunities for consultation with stakeholders, including the public, which may be affected by any proposed material changes to the Blue Box Program Plan. Such consultation is to be open, accessible and responsive to concerns expressed.

10.8 Stewardship Ontario Responsibility for Documentation and Audit

- 10.8.1 Stewardship Ontario shall be responsible for maintaining Documentation in carrying out its responsibilities under this agreement, in a responsible and complete manner.
- 10.8.2 Without limiting the generality of the foregoing, the Board of Directors of Stewardship Ontario shall maintain the following:
- (a) All documents relating to its consultation activities, comments and responses received and a review of whether and how comments and responses were addressed; and
 - (b) All documents relating to the Funds.
- 10.8.3 The receipt and disbursement of the Funds will be reflected in the audited financial statements of Stewardship Ontario. The audited financial statements are to be prepared in accordance with generally accepted accounting principles and accompanied by the auditor's report thereon.

- 10.8.4 Stewardship Ontario agrees to implement and maintain measures to ensure the security and integrity of the Documentation and to protect the Documentation against loss, alteration and destruction.

10.9 Complaints and Inquiries Handling

- 10.9.1 Waste Diversion Ontario shall be responsible for handling all complaints and inquiries it receives in the following manner:
- (a) Waste Diversion Ontario will be responsible for determining if the complaint and/or inquiry is related to:
 - (i) its responsibilities as set out under the *Act* or as set out in this Agreement;
 - (ii) any other action of Waste Diversion Ontario; or
 - (iii) Stewardship Ontario;
 - (b) If the complaint/inquiry is related to Waste Diversion Ontario's responsibilities as set out under the *Act* or as set out in this Agreement, or to any other action of Waste Diversion Ontario, Waste Diversion Ontario will be responsible for addressing the complaint or responding to the inquiry;
 - (c) If the complaint/inquiry is related to Stewardship Ontario, Waste Diversion Ontario shall forward the complaint/inquiry to Stewardship Ontario asking it to address the complaint or respond to the inquiry (in accordance with any applicable dispute resolution mechanism) and report to Waste Diversion Ontario after doing so;
 - (d) In the event that Waste Diversion Ontario receives complaints/inquiries pertaining to enforcement issues, Waste Diversion Ontario will forward such complaints/inquiries to the Ministry; and
 - (e) With respect to any other complaint or inquiry, Waste Diversion Ontario will be responsible for forwarding the complaint or inquiry to the appropriate person.

10.10 Insurance

- 10.10.1 Stewardship Ontario shall put into effect and maintain throughout the term of this Agreement all the necessary and appropriate insurance for a prudent not-for-profit corporation.
- 10.10.2 Without limitation to the generality of the foregoing, Stewardship Ontario shall obtain and maintain directors and officers liability insurance in amounts which are customary for a prudent not-for-profit corporation.

10.11 Assignment

- 10.11.1 Stewardship Ontario shall not assign or subcontract any of its rights or obligations under this Agreement or any part thereof without the prior written consent of Waste Diversion Ontario and the Minister, provided that Stewardship Ontario shall be permitted to retain Corporations Supporting Recycling to act as the Secretariat for Stewardship Ontario.

10.12 Notices

10.12.1 All notices to or upon the respective parties hereto shall be in writing and shall be delivered to the party to which such notice is required to be given under this Agreement at the respective address set out below by personal delivery, facsimile or pre-paid registered post. All notices shall be deemed to have been duly given:

- (a) one (1) Business Day after such notice is received by the other party when delivered by personal delivery or by facsimile; or
- (b) five (5) Business Days after posting by prepaid registered post. In the event of a postal disruption, notices must be given by personal delivery or by a signed back facsimile and all notices delivered within one (1) week prior to the postal disruption must be confirmed by a signed back facsimile to be effective.

Notices to Waste Diversion Ontario shall be delivered to:

Waste Diversion Ontario
P.O. Box 113
Maple, Ontario L6A 1R6

Attention: Executive Director
Facsimile: 905-303-2347

Notices to Stewardship Ontario shall be delivered to:

Stewardship Ontario
26 Wellington Street East, Suite 601
Toronto, Ontario M5E 1S2

Attention: Chief Executive Officer
Facsimile: 416-594-3463

10.12.2 Either party may, by written notice delivered to the other party, designate a new address or facsimile number for these notices.

10.13 Waiver

10.13.1 No term, condition or provision hereof shall be or be deemed to have been waived by Waste Diversion Ontario by reason of any act, forbearance, indulgence, omission, or event. Only an express written waiver by Waste Diversion Ontario shall be binding and each such waiver shall be conclusively deemed to be limited to the circumstances, right or remedy therein specified.

10.14 Severability

10.14.1 In the event that any provision of this Agreement or any part of such provision shall be determined to be invalid, unlawful or unenforceable to any extent, such provision or part thereof shall be severed from the remaining terms and conditions of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

10.15 Dispute Resolution

- 10.15.1 Stewardship Ontario shall include a dispute resolution mechanism in all contracts to which Stewardship Ontario is a party with the exception of contracts for goods and services in the ordinary course of business.
- 10.15.2 If any dispute arises between Stewardship Ontario and Waste Diversion Ontario as to their respective rights and obligations under this Agreement, the parties shall use the following dispute resolution procedures to resolve such disputes:
- (a) The parties shall attempt to resolve disputes in the spirit of mutual cooperation through discussions and negotiations between the designated representatives of the parties within thirty (30) days of the date upon which written notice of the dispute was first given by one party to the other or as otherwise agreed upon;
 - (b) If the parties are unable to resolve the dispute in the manner aforesaid, either party shall have the right, on notice in writing to the other, to require that such dispute be submitted to the Executive Director of Waste Diversion Ontario and the CEO of Stewardship Ontario for discussion and resolution within thirty (30) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
 - (c) In the event that the Executive Director of Waste Diversion Ontario and the CEO of Stewardship Ontario are unable to resolve such dispute, either party shall have the right, on notice in writing to the other, to require that such dispute be submitted to the Chair of the Board of Directors of Waste Diversion Ontario and the Chair of the Board of Directors of Stewardship Ontario for discussion and resolution within thirty (30) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
 - (d) If the Chair of the Board of Directors of Waste Diversion Ontario and the Chair of the Board of Directors of Stewardship Ontario are unable to resolve the dispute, either party shall have the right to refer the matter to binding arbitration in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended. The costs of the arbitration and fees of the arbitrator(s) shall be borne equally by the parties. The arbitration shall take place in Toronto, Ontario, Canada, before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of an arbitrator within thirty (30) days of the notice requiring such dispute to be submitted to arbitration, then the parties will each select an arbitrator who in turn will select a third arbitrator as soon as reasonably practicable following such thirty (30) day period; and
 - (e) The parties may determine the procedure to be followed by the arbitrator(s) in conducting the proceedings, or may request the arbitrator(s) to do so. The arbitrator(s) shall issue a written award within thirty (30) days of completion of the hearing.

10.16 Termination

- 10.16.1 If, in the reasonable opinion of Waste Diversion Ontario, there has been a breach of this Agreement by Stewardship Ontario, Waste Diversion Ontario may terminate this Agreement after giving Stewardship Ontario ninety (90) Business Days prior written notice of the breach or default if Stewardship Ontario fails to remedy such breach by the expiry of the ninety (90) day notice period. In the event that the remedy of such

breach by Stewardship Ontario reasonably requires more than ninety (90) days, Stewardship Ontario shall so advise Waste Diversion Ontario without delay and provide a revised time line. Waste Diversion Ontario shall notify Stewardship Ontario in writing as to whether the revised time line is acceptable and, if it is, the revised time line to remedy such breach will apply.

10.16.2 Notwithstanding subsection 10.16.1, Waste Diversion Ontario may terminate this Agreement immediately upon written notice to Stewardship Ontario if:

- (a) Stewardship Ontario assigns or subcontracts any of its rights or obligations under this Agreement or any part thereof except as expressly provided for herein;
- (b) Stewardship Ontario becomes bankrupt or insolvent;
- (c) A receiver or trustee is appointed for any part of the assets of Stewardship Ontario;
- (d) Any assignment is made for the benefit of creditors of Stewardship Ontario; or
- (e) Stewardship Ontario is wound up or goes into liquidation.

10.17 Agreement Binding

10.17.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

10.18 Entire Agreement

10.18.1 This Agreement embodies the entire Agreement between the parties with regard to the operation of Stewardship Ontario and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of this Agreement.

10.19 Public Announcements

10.19.1 Neither Waste Diversion Ontario nor Stewardship Ontario shall make any press release or other formal public announcement which refers to the role of the other in the development and implementation of the Blue Box Program Plan without first consulting the other concerning the contents of such proposed press release or public announcement. The parties agree that prior consultation shall not be required in respect of routine communications or other general information provided by either of the parties to the public with respect to the implementation of the Blue Box Program Plan.

10.20 Governing Law

10.20.1 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby agree that any dispute arising out of or in relation to this Agreement shall be determined in Ontario.

10.20.2 Stewardship Ontario agrees that it shall, and shall require its officers, directors and staff to, comply with all laws, ordinances, rules and regulations which apply to the operation of Stewardship Ontario, any activities of Stewardship Ontario and the responsibilities of Stewardship Ontario under the Act.

10.21 Signatures

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date stated in the Preamble to this Agreement (Page 111).

WASTE DIVERSION ONTARIO



per: _____
Tim Moore
Chair



per: _____
Authorized Signing Officer

Name: Terry Cassidy

We have authority to bind Waste Diversion Ontario.

STEWARDSHIP ONTARIO



per: _____
Dennis Darby
Chair



per: _____
Authorized Signing Officer

Name: Damian L. Bassett

We have authority to bind Stewardship Ontario.