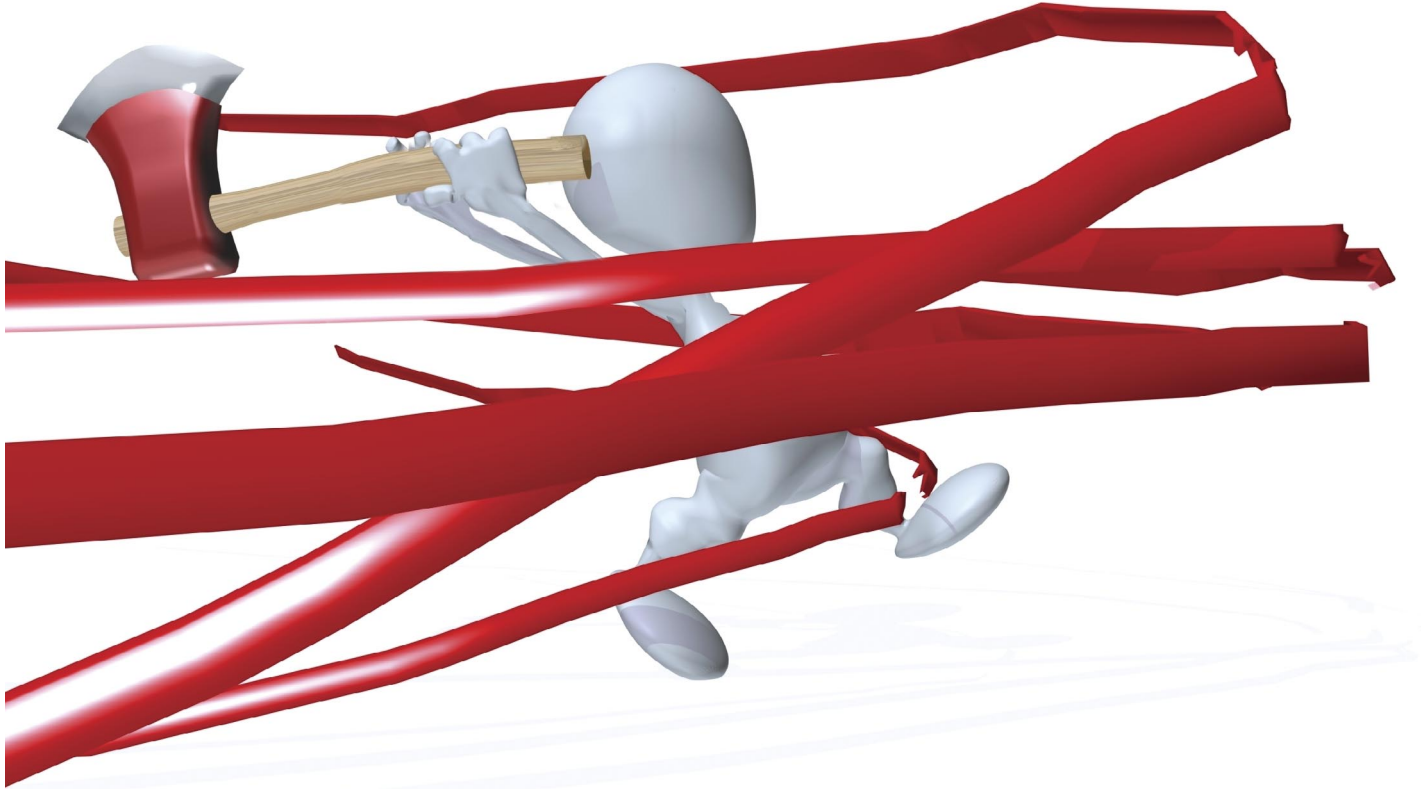


# It's Time to Reduce Red Tape in Waste Recycling in Ontario



BY GARY LEROUX

**THE PAINT AND COATINGS INDUSTRY** has been a leader in waste recycling in Canada for more than 25 years and has exceeded established waste targets for paint recycling in Ontario since 2009. A recent economic impact study of the paint and coatings industry revealed an economic impact of \$12.3 billion in Canada, 60 percent of which is in the Greater Toronto Area. Much of the recent shifts in manufacturing from Ontario to the United States, in our industry and others, has been a direct result of increasing regulatory burden. This is not a sustainable scenario for manufacturing in Canada or in Ontario, especially. Waste recycling is now included as part of that burden.

The previous government in Ontario created a new Act and Oversight Authority for waste recycling that quadrupled the previous Agency's budget in less than three years. The budget is now more than \$8 million and growing, up from less than \$2 million; tripled the staff from nine to 27 and growing; and created upheaval in the waste sector in Ontario.

All of this is paid for by industry under "extended producer responsibility" legislation. Government already requires producers to pay for the costs of recycling of

materials under the Municipal Household and Special Waste (MHSW) program. In fact, the reason consumers were not required to pay for those costs is due to the current government, while in opposition, demanding that consumers not be charged environmental fees which it said amounted to taxes.

The current turmoil and growing red tape for waste recycling in Ontario is unnecessary and causing concern for those Ontario businesses that are obligated under legislation to do the recycling. There has already been a large increase in the regulatory burden, including increased costs, in the transition to the new Act.

All of this is being done without any comprehensive cost-benefit assessment of whether or not it will reduce waste in the province or how much it will actually cost industry. Despite that fact, it is clear industry will have to raise prices on a wide range of products to recoup the increased costs of recycling due to increased administrative burden.

The transition to a new Act, now in its third year, is being done by an Agency at arm's length from the government wherein there appears to be governance issues and

accountability challenges. The new government must consider addressing those issues sooner than later to reduce regulatory burden, while at the same time build on recent successes in environmental outcomes.

Many have argued, and rightly so, that this Agency is duplicating existing program operations for various waste categories. Professional program operators, fulfilling brand owners' recycling obligations, must already submit recycling plans and targets for approval, and have both operational and financial audits done annually. Moreover, the paint industry has excelled in meeting and exceeding established targets for paint waste recycling in Ontario.

Why then the increased administrative cost burden for industry with little prospect of positive outcomes for recycling in future? There have been no cost-benefit studies done on how recent actions to transition to a new Act would actually achieve better outcomes, yet budgets continue to grow and be approved. The Minister of Environment receives the Authority's budget before it is approved by the Oversight Authority and as such should do what's necessary to rein in the red tape. One thing is clear. There will be escalating costs for companies in many sectors doing business in Ontario.

The approach in Ontario is in stark contrast to that of British Columbia, for example, which has but one Act - as in other provinces - where the Environmental Protection Act governs waste recycling. With one Act, BC continues to meet and/or exceed targets for paint and other recycling materials. In fact, the per capita cost of recycling paint per tonne in BC is as much as 40 percent lower than in Ontario. BC has only one Act without the regulatory burden, the increased costs to industry and the constant acrimony that has been the norm in Ontario for years on the waste file. There is no end in sight to this being resolved in the new "open for busi-

ness" environment promised by the new government.

The obligated stewards under the various waste Acts in Ontario are the brand owners, the companies that must ensure that recycling gets done via an extended producer responsibility approach. However, they are rarely listened to by the Agency despite many attempts to effectively engage. This is a situation that can no longer be ignored by industry or the government.

Part of the obvious inconsistencies, which is the bottom line for industry, is that this the new Oversight Agency's recent actions go against Ontario's new mantra of being "open for business" with a new focus on "reducing regulatory burden." This new approach for waste reduction has been nothing but a growing regulatory burden over the past several years with no sign of it abating any time soon!

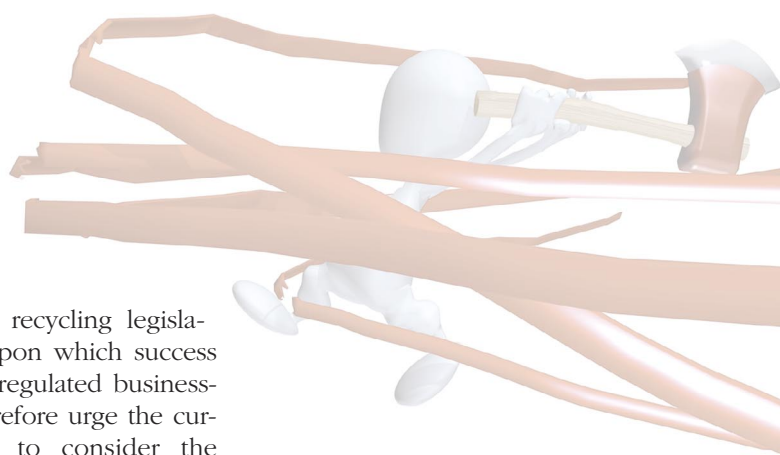
If Ontario's oversight agency for waste had done its job in the first place, there would not now be a surplus of \$53 million in the Municipal Household and Special Waste Program (MHSW). Those funds were collected from paint companies and other industries in Ontario with zero services rendered for those costs, (MHSW), 30 percent of which was paid by paint stewards. Why this is the case has never been addressed by anyone in government or by the oversight agency.

This was done in direct contravention of the original Waste Diversion Act mandating that funds be collected for the actual costs of recycling services only - nothing more - and no cross-subsidization of waste categories. Why has this been allowed to continue for the past five years with no action taken by the Oversight Authority to return those funds to the companies who paid them from internal sources, as they were not permitted to apply a visible environmental fee as was the case in several other waste categories?

A recent Ministerial direction states the paint industry will not be reimbursed those surplus funds even though they were paid from internalized operating funds and no services were rendered for them. This is the case despite being forced by the Agency to internalize those fees and pay them retroactively each quarter out of operating revenues, without a visible fee for consumers. This required paint industry stewards, the obligated companies, to absorb 100 percent of the costs for paint recycling in Ontario, as required by the government under Extended Producer Responsibility legislation for MHSW.

In this case, the consumer did not even have the advantage of knowing a fee was used to recycle paint, which would likely have increased recovery efforts. To make matters worse, other recycling programs have already been fully reimbursed some surplus funds that were accumulated related to their recycling efforts, with those funds now sitting in their bank account. And, they have also been permitted a "fee elimination" period to use up the surplus accumulated over several years by Stewardship Ontario. This means that recycling operations will be provided at no cost to companies in those respective industry sectors until the surplus funds are used up.

The same approach, however, is not permitted for the paint industry, which has more than \$16 million in surplus funds still with Stewardship Ontario, all collected from paint stewards before 2015. The paint industry has not used the services of Stewardship Ontario since 2015, and recycling operations have been performed by Product Care Recycling. CPCA made the decision in 2014 to create a new Industry Stewardship Plan (ISP) under Product Care to improve efficiencies, obtain better governance and increase accountability. The Paint ISP has been operational under Product Care since mid-2015. The question remains: Why are funds, which were improperly collected in the first place, still with



Stewardship Ontario despite no services being provided to the paint industry since early 2015?

The paint companies in Ontario have been told the funds paid for recycling – now on the books as surplus funds – are “consumers’ money” and must be returned to consumers. Yet, in the past, the current government, then in opposition, was adamant that 100 percent of the costs for MHSW materials such as paint, batteries, solvents, etc. was to be paid for by industry under an Extended Producer Responsibility (EPR) approach, not taxpayers or consumers. This was forced by the Conservative opposition party at the time.

How is it now that there is a surplus where those same funds are referred to as “consumers’ money?” One cannot say on the one hand industry has to pay 100 percent of the costs, which it did, and on the other hand say that fees paid by industry are consumers’ money. Which is it? All this is being done with no credible explanation provided to the paint industry or other industries under the MHSW program. Only in Ontario could this happen and be viewed as normal.

A critical, independent review of the Oversight Agency for waste in Ontario, the various Acts and their objects should be undertaken. The accumulated surplus funds have arisen directly as a result of mismanagement and improper oversight provided by those responsible. This is only made worse by recent advice given to the Minister to direct industry to pay surplus funds to consumers, which literally resulted from over charges by the respective authorities responsible for recycling.

The current government should also inject some business acumen into the process with respect to decision-making and advice by appointing a Ministerial Industry Steward Council to advise the Minister. One would expect this to be a standard practice given that the only “obligated” stew-

ards under waste recycling legislation in Ontario, upon which success depends, are the regulated businesses. We would therefore urge the current government to consider the following recommendations:

**RECOMMENDATION 1**

The only way to rectify this situation is to have an industry steward council that consults with the Minister and/or those designated by him, as part of the decision process as it relates to policy directions and other matters impacting obligated stewards and address key aspects related to red tape reduction and the “open for business” approach in Ontario.

Part of the role of the Industry Council is to advise the Minister on potential impacts on industry from the Authority’s DRAFT business plan, which the Minister reviews 90 days before the end of the year.

Annual business plan

33. (1) At least 90 days before the beginning of the fiscal year, the Authority shall adopt and submit to the Minister a business plan for the implementation of its objects during that fiscal year.

**RECOMMENDATION 2**

Have RPRa provide a rationale as to why surplus funds for MHSW are designated as “consumers’ funds” when they were collected via a retroactive, internalized fee that could not be made visible to the consumer and could not be marked up as additional to the cost of the product.

**RECOMMENDATION 3**

Given the large and increasing budgets of RPRa and the concern continually being expressed by industry regarding lack of oversight, confusing objectives, and lack of clear cost-benefit of the Agency, there be an independent review conducted of the Authority immediately per 31(1) of the Act, and specifically per 31. 2 (b)

“by a person specified by the Minister.”

31. (1) The Minister may require that reviews be carried out of the Authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial matters.

**RECOMMENDATION 4**

The Minister issue a clear statement to obligated stewards on how “policy directions” or “Ministerial directions” noted in the Act are made by the Minister. For example, are the obligated stewards or entities representing the stewards consulted? The Authority has told industry that these decisions are taken by the Minister alone and the Authority merely implements them.

**CONCLUSION**

The CPCA Board has been seeking to address this issue for more than two years and to obtain a more reasoned approach to this unfortunate situation. Rest assured that the paint industry in Ontario continues to be committed to EPR for leftover paint waste as it has for more than 10 years in Ontario and more than 25 years in some parts of Canada.

Last year, more than 22 million kilograms of paint was recycled in Ontario, enough to paint more than 500,000 average size homes. It’s time for the Ontario government to revisit the waste file in Ontario and get it under control before becomes a serious political issue that does not serve its long overdue and much lauded “open for business” approach. ■

*Gary LeRoux is President and CEO of the Canadian Paint and Coatings Association. [www.canpaint.com](http://www.canpaint.com)*