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Subject AMO Policy Update: Blue Box Arbitration Decision - Analysis and Next Steps

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Blue Box Arbitration Decision - Analysis and Next Steps

As reported earlier, the Blue Box Arbitration decision concluded that the 2014 Steward Obligation is \$115,172,322. The 2014 interim payments are at a current value of \$99.5 million. This means that an estimated \$15.6 million is to be paid additionally to those municipalities and First Nations who operated Blue Box programs in 2014.

The operational details of how and when these municipal payments will occur will be discussed soon by the parties - AMO, City of Toronto, and Stewardship Ontario (SO) - and Waste Diversion Ontario. Further information on this will be provided shortly.

The Arbitrator, the Honourable Robert Armstrong Q.C., provided a thorough and thoughtful decision which will be instructive for the municipal sector, the producer community, the Province, and others to understand going forward. The complete decision is available here: [Blue Box Arbitration Award Decision](#).

Key conclusions contained in the Arbitrator's decision include:

The interpretation of section 25(5) of the *Waste Diversion Act* was at the heart of the dispute. The provision says: "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% of the total net costs incurred by those municipalities as a result of the program".

- After careful consideration of both parties' arguments on the correct interpretation, the Arbitrator concluded: "I find that under s. 25(5) of the Act, the obligation that Stewardship Ontario pay 50% of the total net costs incurred by the municipalities as a result of the program **is limited by the requirement that such costs be reasonable**". [his emphasis]

What are the total costs incurred by municipalities as a result of the program in 2012?

- To determine the Steward Obligation, the Arbitrator found that he had two choices: i) the costs reported and verified through the Datacall or, ii) the costs produced as a result of the operation of the Baseline Cost model.
- The Arbitrator was satisfied that the Datacall and its verification process passed the test of reasonableness. He rejected the Baseline Cost model on the basis that the evidence was insufficient to establish that it could "provide a reliable figure for the 2014 Steward Obligation".
- He did not reject the principles of cost containment and the objective of attempting to pursue best practices as a means of containing costs. The question of how these principles will be used in future years was left to the parties.

In-Kind Payments:

- Although the Arbitrator determined that he did not have the jurisdiction to rule on whether there is statutory authority for in-kind payments by the newspaper stewards, he did say that in his view the system of in-kind payments by the newspapers is extremely unfair to the municipalities.
- He recommends that the provision for in-kind payments for newspapers be abandoned or at the

very least it ought to be limited to a level that is reasonable both as to the total amount and to the rates charged.

- He agreed that 50% of the \$2.2 million of in-kind advertising used by the municipalities in 2012 should be included in the municipalities' costs and 50% of it paid as part of the 2014 Steward Obligation.

Determination of the Steward Obligation in Future Years:

- The Arbitrator recommended that the method he adopted for 2014, the use of the Datacall and the WDO verification process, be used in future years subject to a thorough review and discussion at MIPC as to any adjustments that need to be made each year.
- This, of course, will need to be worked out by the parties and may be overtaken by future waste diversion activities.

The Arbitrator's Comments regarding MIPC :

- He found that MIPC (Municipal Industry Programs Committee) had a broad power to make recommendations which were adopted by the WDO Board. He did not agree that municipalities were disadvantaged at MIPC as they were volunteers or did not have access to the same level of support or expertise available as stewards.

The arbitration took place over five months and over 30 hearing days. More than 24 witnesses were called and about 700 documents were produced. The Arbitrator noted that on the whole witnesses on both sides did their best to help him understand a complicated and difficult case.

With the conclusion of the Blue Box Arbitration, AMO would like to sincerely thank its legal counsel, Dr. Dianne Saxe, and her associate, Meredith James, the arbitration team of Alex Scott, Craig Bartlett, and Monika Turner, in concert with the City of Toronto team of Glenn Chu, Matthew Cornett, Vince Sferrazza, and Annette Synowiec, for all their work and efforts on behalf of the municipal sector. We also want to, again, thank all our witnesses who testified and provided affidavits on behalf of the municipal sector. All their statements and the full set of arbitration documents can be found on the AMO website at [Blue Box Arbitration](#).

What's Next?

Now that the arbitration process is complete, it is our view that its findings will be helpful to all parties given the Ontario government's commitment to bring in new waste reduction legislation with full producer responsibility. Last week the Honourable Glen Murray, Minister of Environment and Climate Change, said that the new legislation is expected in 2015 and has signalled that they are looking to the producers and municipalities to develop workable solutions themselves as input to the legislation.

We understand that this includes producer-municipal sector discussions on a new Blue Box framework. AMO, with the City of Toronto, and with staff support from the Regional Public Works Commissioners of Ontario and the Municipal Waste Association, is currently developing a sector approach to prepare for these upcoming discussions. Further information on these future waste diversion activities will be shared as it becomes available.

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