



DIRECT SELLERS ASSOCIATION MEETING
WITH
JAMIE MACDONALD, SENIOR POLICY ADVISOR, OFFICE OF THE MINISTER OF ENVIRONMENT
RE: WASTE DIVERSION ACT REVIEW
March 16, 2010

BRIEFING NOTES

ISSUE/TOPIC:
<p>The DSA is pleased to have this opportunity to meet in order to discuss some of our concerns with respect to the Waste Diversion Act Review and the implementation of Stewardship programs in Ontario.</p>
BACKGROUND
<p>The Direct Sellers Association of Canada (DSA), founded in 1954, is the national association of Canadian direct selling companies and the Independent Sales Contractors (ISCs) who market their products.</p> <p>The DSA and its member companies are supportive of the overall goal of waste diversion and have taken an active role in the development of the various programs presently in place in Ontario. We have had some concerns with the short timeframe that was originally proposed for this WDA Review consultation, given the depth of the review and the complexity of the many considerations to be evaluated, in addition to the fact that a BBPP Review was proceeding at the same time. We appreciate that an extension for comment was given earlier in the process.</p> <p>Following our meeting with the Ministry on 30th Nov. 2009 during the consultation sessions and again on 22nd January 2010, we are pleased to have this opportunity to discuss our outstanding concerns in a meeting focused on issues which have most impact on our sector.</p>
KEY CONSIDERATIONS
<p><u>1. De Minimis</u></p> <ul style="list-style-type: none">• No mention is made of this factor (of great importance to our industry sector). Although most DSA member companies would fall into the category of “small business”, a number of them would be better described as “micro business”. Also, the very many individual ISCs running their own businesses, many of whom do not have their supplier in Ontario, are generally <u>extremely</u> small, family enterprises, some with sales in the order of \$1,500.

Not only can environmental data gathering be administratively difficult for them, but to pay even a reduced fee can be impossible if they still wish to stay in business.

The requirement to administer and pay fees for this program would not only put many of them out of business but would also serve as a barrier to business entry. In addition, since they number in the tens of thousands in Ontario, to register and administer each one of them separately (for an extremely small return) would place enormous strain on the resources of Stewardship Ontario and would certainly end up as a cost to the program.

- The Act appears to permit exemptions under: "Section 30.(1)(e) exempting stewards or classes of stewards from subsection 31(1), subject to such conditions and restrictions as may be prescribed by the rules;".
The Program Request letter from Minister Stockwell to WDO on 23 Sept. 2002 regarding the Blue Box requested that the program incorporate this exemption and there is currently a de minimis applied to that program. However, the equivalent program request letters from Ministers Broten (11 Dec. 2006) and Gerretsen (22 Jul. 2008) to the WDO regarding MHSW did not make any reference to this exemption within the Act and as things stand today, there is no provision for a de minimis in the MHSW program. When we have asked the question "...can a de minimis be included", we get a response along the lines of "... it's not permitted because the Minister didn't ask for it in his letter, or "... it's in the Blue Box only because it was specified at that time".
- As an illustration of the problems with having no de minimis, one of our Member Companies, in the MHSW program Phase 1, sold only a fairly small number of batteries in jewellery items. After spending the time to gather all the data for approximately 20 SKUs, this company owed \$0.52 for the third quarter of 2008. There was no de minimis waiver on paying this fee.
- We respectfully request that any revision of the Act include the requirement to establish a de minimis at a level that is meaningful for micro-businesses. We would also ask for the Minister's support in our request for the addition of a de minimis to the consolidated MHSW Program prior to 1st Jul. 2010.

2. Extended Producer Responsibility.

- Allocating the total costs of the program to stewards removes a large motivator from all other parties to carry out that part of their responsibility of lessening the environmental impact of packaging and products. Through shared responsibility, all parties would have a vested interest in the success and efficiency of the program as a whole, this is what's required to achieve the goals of the program and it has provided good results to date in the Blue Box Program. Further, with all costs borne by industry there is no impetus on the other players to keep costs down and hence run a cost-effective and efficient program. In such a scenario, costs and expectations can be expected to escalate to a point where they become a major burden to small business and stifle innovation and business development.

- Although it appears that EPR may be non-negotiable, we request that requirements be put in place to ensure that:
 - Those who carry out the actual collection/recycling, whether it be municipalities or private groups, are held to the same accountability as industry and their motivation to run efficient, cost-effective operations is ensured by appropriate financial means including penalties for cost overruns.
 - Consumers, an important part of any waste diversion program, likewise are given an incentive to play their part.
- A long transition period to change from the present infrastructure will be necessary. In many areas of Ontario, it will be difficult if not impossible to find a private company to replace the current municipal collection system. In such cases, the lack of normal competition will require particular attention and maybe special measures to ensure cost effective recycler operations. We assume that 100% funding by producers will mean that producers control the entity doing the collection and diversion.

3. Natural Health Products in MHSW.

- The DSA does not support the inclusion of Natural Health Products (NHPs) in the definition of “pharmaceuticals” in the MHSW plan. Natural Health Products include vitamins and minerals (both of which are considered 'wellness products'), plant products, amino acids, essential fatty acids and others. These products are either naturally sourced, or a synthesis of such. No prescription products are included in NHPs. With the growth of the Natural Health Products market, Health Canada determined that drug regulations were not appropriate for this segment.
- The “active components” in natural health products are highly biodegradable by the Pseudomonas species and other bacteria in the soil and water. These bacteria ultimately metabolize them into water and carbon dioxide without much other residue. Pharmaceutical drugs, including those derived from botanicals, often have added chemical side chains which prevent this easy digestion.
- Health Canada, in association with Environment Canada, is currently developing Environmental Assessment Regulations (EARs) for new substances in products which are regulated by the Food and Drugs Act and Regulations (prior to CEPA 1999, such substances had been treated as exempt from EAs). In their deliberations, they are giving strong consideration to creating an exemption for "...substances originating in nature". Essentially these would be both the medicinal and non-medicinal substances which make up NHPs. It would seem reasonable that both federal and provincial approaches to NHPs vis-à-vis the environment should be harmonized and we strongly urge the Minister to consider discussing this with his federal counterparts.
- Consumers are more likely to consume complete containers of the NHPs they purchase because most NHPs are intended to be taken on a daily basis as wellness or preventive products that help people lead healthier lives. Consumers are less likely to stop taking

NHPs like vitamins or herbal supplements and less likely to have part-containers to return to a depot, than to have a part-container of a medication or pharmaceutical product that has served its immediate purpose or passed its expiration date. Essentially what this means is that any fees charged to NHPs will subsidize the cost of handling prescription and other drug products.

- The current "Rules for Stewards with Respect to Payment of Fees respecting Consolidated MHSM" found on Stewardship Ontario's website shows a fee for NHPs of \$0.008 per pill, gram or millilitre! For products sold in sometimes quite large packages, this will greatly increase the price per unit sold at retail and thus adversely affect our members businesses. We would be happy to share some examples of this with you.

CONCLUSION/RECOMMENDATIONS

Any future programme, as well as having environmental objectives, should not be made overly complicated and should have built-in efficiency improvements expected of all participants over time.

In all discussions, the current economic situation needs to be kept in mind. This is a difficult time for all industries and Canadians and any proposed changes to structures, official data requirements or fees need to be made with restraint. Extremely small businesses are particularly vulnerable to outside cost increases, which can not only prevent innovation but also drive them out of business.