

# Product Stewardship Program Delivery Policy Analysis

## Implications of Using Local Government Facilities/ Staff to Deliver Stewardship Programs

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### Issue Introduction:

The BC *Recycling Regulation* requires industry to establish programs to manage end-of-life discards from their products. From the Government of BC website: “In British Columbia, Industry-led Product Stewardship is a government strategy to place the responsibility for end of life product management on the producer and consumers of a product and not the general taxpayer or local government.”

The Industry Product Stewardship Section of the Ministry of Environment Environmental Protection Division administers the *Recycling Regulation*, identifies products for regulation, consults with stakeholders and approves and monitors stewardship plans. There are currently 8 regulated product streams. The Government of BC plans to regularly add new products to the regulation, moving towards product stewardship for all product waste.

A stewardship plan is prepared by industry and approved by the province. The *Recycling Regulation* is silent on local government; in other words, regional districts and municipalities have neither regulatory authority with respect to stewardship plans nor any legal obligations to assist in delivering stewardship services. The province consults with local government through a variety of mechanisms, however once a plan is approved local governments have no official power to affect the plan outcomes nor any regulated role in plan monitoring.

### Delivery of Stewardship Programs to Citizens

When stewardship plans are approved, the stewards are obliged to provide province-wide access to their programs. Some stewards approach local government for assistance in program delivery. The *Recycling Regulation* does not prohibit local government involvement in delivery of stewardship programs, however there are significant local and provincial policy implications that local governments should consider before deciding on a stewardship program policy position.

The overarching question that must be answered is, “What is the policy rationale for provision of public funds/assets to businesses that are required by provincial regulation to deliver a service?”

Some local governments are assisting stewards. There are many reasons given for assistance to stewards by local government but they can be summarized into two general rationales; if local government does not provide assistance the stewardship program will not provide their residents access to the programs, and, if the local government does not provide assistance, environmental performance will suffer and stewardship materials will end up in landfills. These are exemplary policy objectives and should be lauded, however given the fact that the regulation compels producers to establish access to the programs and to keep stewardship materials out of landfills and other disposal streams, questions on the implications of using public assets to assist the stewards remains.

### ***Stewardship Program Delivery by Local Government - Policy Considerations***

- **Legislative Prohibition:** Section 182 of the *Local Government Act* prohibits assistance to business by local government. To avoid non-compliance a local government would be required to insure that all stewardship program delivery costs were covered by the industry steward. This would include built capital costs, new capital costs, operating and maintenance costs including staff, administration and incremental future capital. These are similar to the criteria for determining development cost charges for land developers. Some industries utilize agencies set up as non-profit groups to deliver their programs which may circumvent the prohibition on assistance to business. Nonetheless a regional district could simply decide that the non-profit, established solely to allow business to comply with regulation is by extension, an arm of the business. Less than full-cost recovery by local government in all cost categories would constitute assistance as defined by the *Local Government Act* and enables free-rider behaviour by stewards operating at government facilities. Enabling free-riders is as much an anathema to sound public policy as it is to stewards in the operation of their programs.

The legislative prohibition on assistance can be circumvented through the use of partnering agreements. If assistance is to be provided through a partnering agreement, the local government must publish the intended recipient of the assistance, and the nature, term and extent of the assistance. To perform due diligence to comply with this provision of the *Local Government Act*, a local government would still be required to undertake a thorough and detailed analysis of the full value of the assistance, including the various cost elements listed above. Prior to providing assistance through a partnering agreement, it would be expected that the assistance would require a sound policy justification. This would again raise the question, “What is the policy rationale for providing public funds/assets to businesses that are required by

provincial regulation to deliver a service?” Partnering agreements would be more properly used to confer a benefit to the local government, such as establishing new revenue streams or to provide non-statutory services. The use of a partnering agreement to subsidise high-revenue industries with limited local government assets to assist those businesses in delivering services that they are legally compelled to deliver does not appear to be a sound use of the partnering agreement provisions of the *Local Government Act*.

- **General Access to Programs:** Among the reasons local governments assist stewards is that they want to insure their residents full access to the program. Since the stewards are required by law to provide full access without government assistance, the relevant policy consideration is whether an approved stewardship plan includes full and reasonable access to all residents. If the plan does include adequate provisions for access, the steward is legally obliged to provide access without government assistance. If the approved plan does not include reasonable access to programs, the plan should be amended to correct inadequacies.

Although the *Recycling Regulation* requires regular plan reviews, plan amendments to correct errors can happen at any time, there is no prohibition on the stewards from fixing an inadequate plan outside of the required review interval. If a plan does not provide adequate access to residents, a local government could contact the steward and the province at any time to request corrections. Should a local government commit public funds and assets to fill in access gaps, they could weaken their position when requesting corrections to a stewardship plan and could enable program lock-in, discussed later.

- **Local Government as Contractor:** If it can be established that the producer is paying full-costs for delivery of their program, the local government becomes, in essence, a contractor delivering a fee for service. The policy consideration in this instance is whether or not the local government should be a contractor for the private sector and if so, why?
- **Cost Recovery:** Some policy analysts suggest that were a local government to achieve full cost recovery from the stewards to manage stewardship materials it would be acceptable for local government to deliver stewardship services. In practice, available evidence suggests that local governments never recover full costs for delivering stewardship programs.

Examples of local government hosting stewardship programs include the used motor oil program. The used oil program will pay for some of the equipment required to host their programs but does not pay for equipment installation which can be a significant cost. The oil program does not pay any rent or lease payments, operating/staff costs required to operate their

programs and depending on the size of the facility pays either nothing, or very little for the actual oil collected. This is not a criticism of the used oil program; they are expected to achieve the lowest costs possible for their stakeholders. Another program that is sometimes sited at local government facilities is the Product Care program, which manages among other materials, paint, solvents, flammable liquids and pesticides. Similar to used oil, Product Care will supply the equipment required for their program and they pay for materials collected based on quantities. They generally don't pay a rent or lease payment. Staffing costs associated with Product Care depots can be quite high; the depots can be a high-maintenance operation. In the case of one regional district, Product Care payments account for approximately 25% of the actual costs incurred for depot operation.

A case study from Ontario is instructive. The province compelled industry to pay 50% of curbside collection costs. At the time, this was seen by Ontario local government and industry as a win-win arrangement. When the true cumulative costs of province-wide local government curbside programs became known, the industry associations balked and proposed a number of limitations including a best-practices regime that was explicitly designed to reduce payments to local government regardless of an individual government's cost structure. Many local governments in Ontario suggest that the cost sharing arrangement does not achieve the 50% from their perspective and requested 100% payment by industry.

It is expected that stewards make reasonable efforts to reduce costs, this would include payments to local governments seeking full cost recovery for operating stewardship programs. Local governments with higher cost structures, for example, those servicing rural populations would likely have more difficulty in achieving agreements with stewards that would provide full cost recovery.

One method that may be implemented by local government is to simply establish stewardship hosting fees in their solid waste facilities bylaws. The local government could calculate the real costs of operating stewardship programs, including appropriate shares of capital costs, operating costs and improvement costs and adopt these costs into bylaw. This would insure that the local government was conducting transparent governance in compliance with Section 182 of the *Local Government Act* and would give stewards some cost certainty in terms of dealing with local government.

- **Competition With the Private Sector:** If a local government decides to be a contractor, a policy consideration is whether or not this interferes with the ability of the private sector to provide competitive solutions, unfettered by publicly funded subsidies.

- **Inhibition of Private Sector Investment:** If a local government, through acting as a contractor, interferes in the private market, it is expected that private sector investment in establishing stewardship facilities will be minimized or eliminated.
- **Barriers to Innovation:** One of the promising elements of product stewardship is that the requirement to manage end-of-life products will lead to innovations in service delivery. If local government simply replicates existing service delivery models and assumes responsibility for product stewardship programs, innovation will be minimal. An example of crippling potential innovation is the provision of eco-depots. Some local governments feel multi-steward eco-depots constitute a reasonable access-to-program policy solution. While some proponents of return-to-retail may question whether eco-depots are the most effective long-term solution, there will be some eco-depots built. With the increasing number of approved stewardship plans, a business case is developing for innovative private eco-depots that could operate with province wide branding and replicate the success of the Encorp Return-It depots. It would be expected that a business case for private eco-depots would be severely crippled by local government participation in the eco-depot business model.
- **Convenient Access for Citizens:** An argument for local government involvement in stewardship programs is that it provides convenient access.

Local government facilities can be seen as the ideal spots to operate stewardship programs because in some areas people are used to using the facility, they may be going there to drop off other materials (garbage, yard waste etc.) and do not want to go to multiple locations.

There is often a perception that local government facilities are convenient and highly used by residents. Analysis of facility use in some regions shows that the actual use and convenience of local government facilities contradicts perceptions. Surveys have shown that a relatively small percentage of the population will regularly visit local government facilities. Compared to the customer counts at retail outlets such as Wal-Mart, Canadian Tire or London Drugs, the use of local government facilities is miniscule. For example, one regional district survey showed that less than 10% of residents visited the local government solid waste facility more than once a year, with a significant percentage having never visited the facility. While comparable statistics on retail store visits are closely guarded, one major retailer noted, off the record, that about 40% of the people in the communities where they have stores visit at least once a month. These numbers are not intended to represent every area of the province, rather to encourage an analysis on whether or not the perception that a local government facility is more convenient and well-used than potential private operations.

Comparative usage statistics imply that going to multiple locations to drop off stewardship materials could be more convenient because the average customer makes far more frequent trips to locations other than local government facilities. Instead of minimizing trips, the local government facility could necessitate an extra trip. The key is improved public awareness of stewardship programs. Given the public's ability to remember where to acquire consumer goods, it is safe to assume that as more stewardship programs are introduced, the public will learn to take materials back to different places. Indeed, in some areas this is already happening.

Local government facilities are, by necessity, often located in somewhat inconvenient locations and days open and hours of operation are often minimal. In many instances across BC, private sector operated programs should have more flexibility and if properly designed could provide far more convenience than government facilities and will not require extra, or extended vehicle trips.

An important policy consideration in this area of discussion is whether or not it is desirable to attempt to increase traffic to local government facilities. Since many items will be returned to private facilities the customer is already going to, entrenching a system outside of the regular patterns of commerce could result in poor environmental performance through increased generation of greenhouse gases.

- **Universal Payer Misconception:** Certain industry stewardship representatives have suggested that local government should consider that there “is only one taxpayer” when asking for local government assistance for program delivery. This contradicts the user-pay, or polluter-pay model in the *Recycling Regulation*. Most regional districts have adopted a discriminatory fee model based on the principle that greater costs to the solid waste system by discreet users should result in higher fees to that user. Indeed the province's guidelines for developing solid waste management plans strongly encourage a discriminatory user pay system. User pay is a proven policy tool that results in greater waste diversion. The universal payer model subsidizes business and consumers with funds from non-users and is a regressive policy direction that creates inequities in terms of assigning waste management costs to the appropriate parties. It enables and perhaps even encourages free-rider behaviour from stewards.
- **Public Education Barriers:** If a number of local governments deliver product stewardship programs, a patch-work quilt service delivery model results. This makes a universal, province-wide public education program difficult, if not impossible to deliver. It is expected that stewardship agencies that operate across the province without government involvement can produce more effective education/advertising campaigns and deliver their information more

effectively and consistently. There is empirical evidence available in BC to support this hypothesis.

The key strength in a province-wide program is branding. Achieving good brand awareness should lead to good program awareness. Province-wide branding campaigns will require a system of local information dissemination with specific information about how to participate in a program.

- **Program Lock In:** Some stewardship agencies suggest that local government delivery of their programs would be a transitional step. Evidence suggests that once a program is delivered by local government it becomes, or is perceived as a government program and that transition to private sector delivery becomes very difficult. Based on the experience of some local governments, it is much easier to start a government subsidised stewardship program than it is to end one.
- **Program Expansion:** One of the defining elements of the *Recycling Regulation* is that the list of regulated products will continue to expand. There will be an ever greater number of stewardship agencies and it is expected that there will be multiple agencies managing the same product streams. For example, large appliances are scheduled to become regulated products and there have been multiple presentations to the Industry Product Stewardship Section and the Recycling Council of BC on appliance stewardship programs. If a local government decides to work with one group in appliance stewardship, would they feel compelled to work with all potential groups? If a local government decides to work with three or four stewardship agencies, what will they do when there are twenty or more agencies? It may be anticipated that the pressure on local government facilities would result in a demand for improvements and expansion including higher levels of staffing.
- **Level Playing Field for All Stewards:** Some stewards seek publicly funded assistance to deliver their programs while others choose to operate without subsidies. The industries and their customers that establish their own programs without government assistance are thus penalized.
- **Emergence of Intermediary Agencies:** In some jurisdictions in Canada, stewardship programs are administered by one or more intermediary agencies that sit between the regulator, the stewards and local governments. These agencies have a variety of roles and responsibilities but their defining feature according to steward's criticisms is that they are expensive and detract from efficient implementation of sound stewardship programs by diverting resources into an unnecessary bureaucracy. Another criticism of the intermediary agencies is that they create a multi-layered management system that obscures accountability. One of the purposes of intermediary agencies is to collect money from industry and distribute funds to local governments

participating in stewardship activities with of course, a significant portion of the money skimmed off to sustain the intermediary agencies. Evidence suggests that the work of the intermediary agencies is not satisfactory from the perspectives of the stewards, the regulators or the local governments. It is also clear that the general trend is for the intermediary agencies to grow in size and cost. Minimised local government involvement in stewardship activities would lessen the perceived need for intermediary agencies and free the stewards and the regulators to implement more innovative programs without the need to overcome the inertia imposed by the intermediary agencies.

- **Environmental Performance:** One of the objectives of product stewardship generally, and the *Recycling Regulation* specifically is improved environmental performance in the life-cycle of consumer products. Improved environmental performance includes design-for-recyclability, modifications to supply chain management systems intended to incorporate end-of-life into the product cycle and higher, more efficient rates of resource recovery. These are just some of the ways product stewardship will result in improved environmental performance. Analysing commercial activity through the lens of product stewardship generates countless ideas for improvement. The question for public policy makers is whether replicating the existing system of publicly owned and operated waste management facilities, modified to assist stewards in meeting their regulatory obligations will assist or hinder the shift to improved environmental performance of products' full life cycles.

Another element of environmental performance is simply the objective to keep stewardship materials out of the local government disposal stream and this is a prime motivator for some local governments that assist stewards. A consideration in this area is whether assistance through the provision of facilities is the most effective policy choice. Stewards are legally obliged to establish programs to divert regulated materials and without empirical data on the extent of stewardship materials in the disposal stream, the efficacy of diversion through assistance to stewards is speculative. The BC Product Stewardship Council is working on waste composition policies that if adopted will provide sound data on the amount of stewardship materials in the disposal stream. Committing local government resources to assist stewards in diverting their materials from disposal before the extent of stewardship materials in the disposal stream is known should be carefully weighed against the fact that, according to the environmental laws in BC, it is not the job of local government to spend public money on stewardship programs.

- **Abandoned or Orphaned Local Government Infrastructure:** There are two issues to consider in terms of local government recycling infrastructure; existing facilities that manage materials that will be in future stewardship plans, specifically packaging materials managed through curbside programs,

and secondly, materials that would be managed through a local government owned eco-depot. In terms of managing packaging discards, there is much work yet to do on packaging and the breadth of the project will require analysis beyond the scope of this paper, and the issue of local government infrastructure will be closely analysed.

Local governments considering building multi-stewardship eco-depots must consider a number of factors to ensure that the facility is well-used by the stewards. There are no statutory mechanisms that would permit a local government to compel a steward to use an eco-depot; any participation would be voluntary. Agreements could be entered into by both parties, but local governments cannot enter into indefinite agreements, so the steward would always have the option to move at the end of the agreement. Based on current payments by stewards to local government, it is unlikely that a full cost recovery regime, covering an appropriate share of capital investments and ongoing operations and maintenance costs would be acceptable to stewards. To keep stewards at a local government facility, favourable financial arrangements would be expected by the stewards, which would mean subsidies by the general taxpayer, leading to a breakdown of the equity principle of product stewardship. Were stewards asked to pay accurate market costs for their portion of an eco-depot, some, or all will leave to seek lower-cost private sector options, potentially leaving the eco-depot as a white elephant. Without subsidies by non-participants, local government eco-depots appear to be financially unsustainable.

- **Land Use Issues:** Should a local government conclude that the best way forward for diversion of waste from disposal and improved environmental performance in terms of design-for-environment and improved recycling of end-of-life product waste is expanded stewardship operated by industry with little or no local government participation, stewards will require appropriate sites to operate their programs.

To operate any business, the activities entailed in the operation must be a permitted use under the local government land use regime, including, but not limited to, Official Community Plans, Development Permit Areas and zoning bylaws. Recycling services, whereby management of end-of-life products is deeply integrated into the supply chain management systems of industry would be expected to return very high environmental performance over time. To achieve deep supply chain management integration land use plans must accommodate product return facilities as permitted uses in retail, commercial and industrial zones. Local governments should recognize the long term financial and environmental benefits that could result from integrating stewardship programs into the built fabric of the community enabling seamless participation in stewardship programs by residents. Local government working towards land use protocols that allow stewardship

facilities, either stand-alone or integrated with other operations would be beneficial to the movement towards industry run programs and would have the added feature of educating the public, elected officials and business on the environmental, social and financial benefits of greater integration of the return material flows into our existing distribution systems.

The Province of BC could ensure that stewards have appropriate sites through an amendment to the *Local Government Act*. The amendment would allow, in all Official Community Plans and zoning designations the collection and transfer of recyclable materials with the consent of the Province of BC pursuant to an approved Stewardship Plan. Local governments would continue to regulate form and character. A provincial legislative amendment would give local government planning departments the most effective mechanism available to allow stewardship operations wherever they may be needed.

## **Summary**

The *Recycling Regulation* promises to relieve local government of the costs and liabilities associated with managing regulated products while at the same time, improving environmental performance compared to the current system of distribution and recycling. Delivery of stewardship programs by local government could negate the potential of the *Recycling Regulation* to create environmentally and financially sustainable, equitable programs to manage end-of-life product waste.