

EPR: Visible Fees vs Invisible Hand

Getting Stewardship Right



**Office of the Environmental
Commissioner of Ontario**

About the ECO

- The Environmental Commissioner of Ontario (ECO) is an independent officer of the Legislative Assembly and does not report to a political party or a ministry
- Current Commissioner is Gord Miller
- What the ECO does:
 - Produce an Annual Report and occasional Special Reports
 - In these reports, the ECO:
 - ***Reviews government decisions that are environmentally significant***
 - Reviews Ontario Government compliance with the Environmental Bill of Rights (*EBR*)
 - Oversees an Application process for the public under the *EBR*
 - ***Discusses emerging and significant issues***

Background: EPR in Ontario

- Waste Diversion Act (WDA), 2002
- Waste Diversion Ontario (WDO)
- First stewardship program – Blue Box
- Stewardship Ontario – first IFO
- Other stewardship programs (tires, WEEE)
- Phase 1 MHSW program

Background (cont'd)

- Phase 2 & 3 MHSW program, July 1, 2010
- The eco fee fiasco in early July
- Govt announced program suspension with 90-day review, July 20
- ECO report, July 27
- Govt announced program cancelled, Oct 12
- Other stewardship programs (incl Phase 1 MHSW) to be continued, consumer protection enhanced

Quick Review of MHSW Program implemented July 1, 2010, cancelled Oct 12, 2010



- Stewards had two options:
 - Participate in Stewardship Ontario (SO) Program
 - Apply to Waste Diversion Ontario (WDO) for approval of own program
- Participation in SO Program entailed:
 - Registering as steward
 - Reporting data
 - Paying share of program costs (now 100%)



Quick Review of MHSW Program (cont'd)

- SO to use monies received from Stewards to pay municipalities, not-for-profits, and private businesses to collect, haul, process, etc.
- All contracts were to require tracking
- Public participation to have been voluntary: goal to make it as easy as possible for public to “do the right thing”
- Collection systems were to include depots, collection events, mobile depots, and return-to-retail
- Plan included promotion and education programs
- Targets: 68% collection; 52% recycling by Year 5

Dispelling Common Misconceptions

- 1) The “eco fee” was not a tax; a fee was charged to stewards, not to retailers or consumers
- 2) The fees went to SO, not the government
- 3) The “eco fee” on sales slips was invented by some retailers and was not a component of the MHSW Program

What Went Wrong?

- SO, WDO, and the MOE did virtually nothing to publicize the implementation
- Some retailers (e.g. Canadian Tire) chose to add a separate “eco fee” line to their receipts
- Others, like Wal-mart, chose to leave their prices unchanged
- July 1, 2010 was also the day the HST went into effect in Ontario

What Went Wrong (cont'd)

- The “eco fees” created widespread confusion and the misconception that a “recycling tax” was being mandated by the government
- Further outrage occurred when it was discovered that retailers charged widely variable “eco fees”, some much higher than what SO was charging the steward.

Media Highlights

- **New Eco Fee Slips Under Radar amid HST Changes** (National Post, Jul 5, 2010)
- **Eco Fees Latest McGuinty Green Grab: Editorial** (Toronto Sun, July 7, 2010)
- **Ontarians Hit with New Eco Tax; Environmental Fee Quietly Arrives on Same Day as HST** (Toronto Star, July 8, 2010)
- **Eco Fees Catch Many Ontarians by Surprise** (CTV, July 8, 2010)
- **On the Edge of What's a Fee and a Tax** (National Post, July 17, 2010)

The Government Response

- July 20 - MOE to work with stakeholders over the following 90 days to “develop a new system”
- provincial taxpayers would provide up to \$5 million to run the program in the meantime

The Government Response

- news release failed to explain EPR or to clarify that “eco fees” were a creation of retailers and never a component of the MHSW program - instead, because MOE announced that the ministry was cancelling “eco fees”, it perpetuated the myth that the fees were created by the McGuinty government

The ECO Special Report, July 27, 2010

Getting it Right

Paying for the Management of Household Hazardous Wastes

Special Report to the Legislative Assembly of Ontario
Environmental Commissioner of Ontario



July 27, 2010



From the ECO's Perspective: Program Strengths



- Would have diverted more MHSW from landfill
- Would have shifted cost from taxpayer to consumer
- Would have ensured collection of much-needed data

From the ECO's Perspective: Program Weaknesses



- Did not include all waste management costs
- Did not send the correct price signals to stewards
- Contained weak mechanisms for ensuring cost-effective programs
- Did not promote competition between stewards on “Design for Environment” (DfE)

ECO Recommendations

1. That MOE require that the MHSW program cover all end-of-life management costs, including the costs of disposing those products not captured by the program.
2. That MOE implement the phase-in of differential fees based on the full end-of-life management costs of a product's waste.



Paying for Products Not Captured by Program

- **Why?**

- 1) Complete process of cost shifting for sake of fairness
- 2) Provide incentive for DfE

- **Barriers?**

- 1) Higher costs & thus resistance from stewards, public
- 2) Balancing cost-recovery and incentive functions in fee structures

Differential Fees

- **Why?**
 - 1) Create competition between stewards to reduce costs through DfE
 - 2) Ensure maximum program effectiveness
- **Barriers?**
 - Real costs don't always reflect environmental costs & benefits (e.g., rechargeable batteries)
 - Who should decide environmental criteria?
 - Will system be too complex and unwieldy?

New Minister's final decision

- On October 12, 2010, MOE announced that it was “permanently ending” phase 2 of the MHSW program
- The costs of managing these wastes have been transferred from stewards (and consumers) back to taxpayers
- Phase 1 MHSW, WEEE, used tires, will continue without change, including the collection of fees from stewards

The Collateral Damage

- Eco fee controversy has put at risk the future of EPR in Ontario
- the government had planned to overhaul the outdated *Waste Diversion Act*
- “From Waste to Worth: The Role of Waste Diversion in the Green Economy, A Minister's Report on the Review of Ontario's Waste Diversion Act, 2002”
- Now on hold

Visible Fees

- EPR based on concept of producer responsibility for end-of-life impacts
- As Ontario example shows all too well, visible fees create the PERCEPTION that government is responsible, not producers (in other words, an advance disposal fee)
- As long as this perception exists, producers are “off the hook” for true responsibility

The Invisible Hand

- In free market systems, the “invisible hand” is supposed to optimize efficiency through competition
- In order to optimize environmental efficiency, producers must compete on these issues
- If the perception exists that producers are not responsible (because government sets or collects the fees), they do not have to compete
- Visible fees, therefore, weaken the potential environmental benefits of the invisible hand

Bury: “Should EPR Programs use Eco-Fee-Included pricing?”

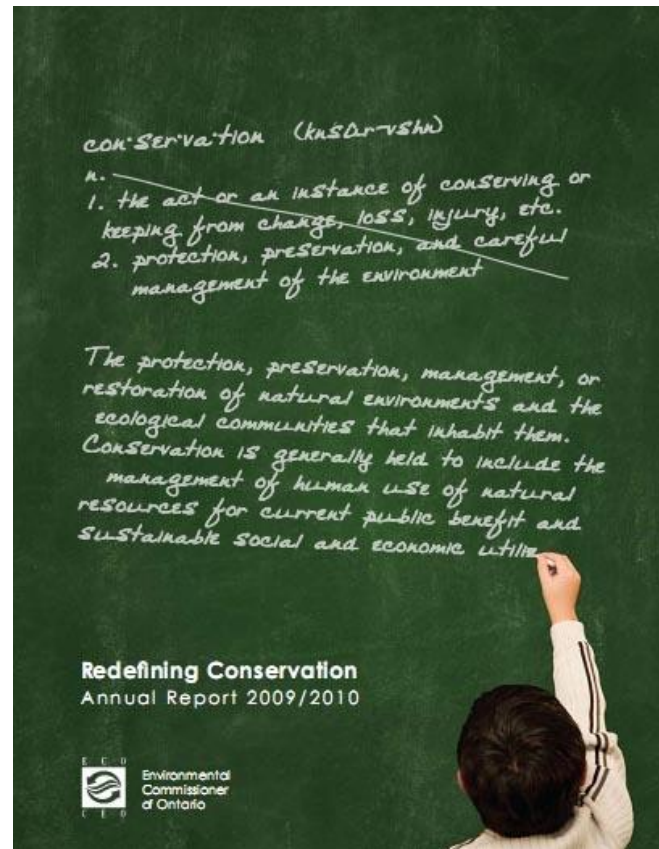
- Duncan Bury article in *Canadian Tax Journal*
- Available as free pdf download on CTJ website
- “The producer prices the product for the market through a complicated process of costing, with due regard for competitive and profit pressures, and then simply adds the fee. This is not a recipe for environmental accountability. It is a recipe for fee collection.”

The ECO's View on Future of MHSW Program and Stewardship in General

- Stewardship must be the foundation of our future management of residuals in Ontario
- Good that most programs were left in place
- MHSW Program cancelation may hurt stewardship by emboldening opponents
- An effective program of public education and engagement required to ensure future successes
- Government needs to consider (as in NB and Quebec) making producers and retailers include EPR costs in the price of the product

Redefining Conservation

www.eco.on.ca



E C O



C E O



Thank You!

www.eco.on.ca

