



December 9, 2020

Association of Municipalities of Ontario and City of Toronto

I am writing to advise municipalities of the results of a recent inspection undertaken by the Resource Productivity and Recovery Authority of Ontario Electronic Stewardship (OES) and Electronic Products Recycling Association (EPRA) activities related to the wind up of the Waste Electrical and Electronic Equipment (WEEE) Program.

As service providers to the WEEE Program, municipalities may have received communications from persons identifying themselves as OES or EPRA personnel advising that OES is being rebranded as EPRA Ontario and that it would continue to operate Ontario's electronics recycling program. The communications may have also advised municipalities to sign a new contract with EPRA Ontario to ensure continuity in service.

These communications are incorrect, contravene the conflict-of-interest guidelines that are part of the OES Wind-Up Plan, are inconsistent with the Minister's Directions and non-compliant with the requirements of the *Waste Diversion Transition Act, 2016* (WDTA) and the *Resource Recovery and Circular Economy Act, 2016* (RRCEA).

Please be advised of the following:

- OES is not being rebranded. It is being liquidated and will completely cease to operate soon after the wind up of the WEEE Program on December 31, 2020.
- EPRA will not operate a new provincial electronics recycling program. It is one of many producer responsibility organizations (PRO) that will be providing resource recovery services in a competitive marketplace under the new Electrical and Electronic Equipment Regulation.

Following the wind up of the WEEE Program operated by OES under the WDTA on December 31, 2020, a new program will begin on January 1, 2021 under the EEE Regulation issued by the government on September 21, 2020 under the RRCEA. The EEE Regulation establishes a competitive market for service providers such as PROs and processors to provide resource recovery services to electronics producers. More information on Ontario new regulatory framework for resource recovery, including Electrical and Electronic Equipment is available [here](#).

Under the EEE Regulation, there is no requirement for municipalities to collect waste electronics from residents. However, a municipality may continue to do so, in which case it should enter into a contractual agreement with an electronics processor or PRO registered with the Authority to

ensure the waste electronics collected are picked up. Municipalities have the right to enter into an agreement with any PRO or processor registered with the Authority. Contact information for registered PROs is provided on the Authority's website [here](#) and for registered processors [here](#).

OES has utilized the services of EPRA to administer the program and EPRA is paid for those services out of the trust fund held by OES. As part of the OES Wind-Up Plan that was approved by the Authority on August 16, 2019, OES was required to implement conflict-of-interest measures to ensure EPRA does not gain an unfair advantage in the new competitive marketplace based on its special relationship as a service provider to OES. As part of these measures, OES was required to identify EPRA staff that are dedicated to the OES program and ensure they are firewalled from the rest of the EPRA organization. Additionally, an independent manager was retained under a contract with an advisory firm to manage the OES program wind up.

The Authority's inspection found evidence that OES-dedicated EPRA staff engaged in activities aimed at advancing EPRA's commercial interests in the new competitive marketplace established under the EEE Regulation, in contravention of the conflict-of-interest measures. These activities are also prohibited under s. 35 of the WDTA, which requires funds held in trust by OES are to be used for the purposes of delivering and winding up the WEEE program. Additionally, s. 2 of the RRCEA requires the Authority to promote competition in the provision of resource recovery services in order to achieve the Provincial Interests in reducing waste and litter, spurring innovation through competition in the waste management and resource recovery sectors, and advancing Ontario's circular economy.

As a result of the Authority's inspection findings, OES has agreed to cease using the trust fund to support activities promoting EPRA's commercial interests and has taken the following additional steps:

- The OES Program Wind-Up Oversight Manager has written to OES-dedicated staff to formally remind them:
 - "to adhere to the conflict of interest requirements as reviewed together previously",
 - to ensure that they "are not communicating with OES Program participants regarding EPRA's future role in the new program under the EEE Regulations", and
 - "if a program participant inquires about the transition...to refer that person to RPRA, or RPRA's website, and not to EPRA".
- The OES Board Chair has written to EPRA to:
 - remind EPRA of "the conflict of interest requirements outlined within the OES Wind-Up Plan", and
 - "request that EPRA ensures that non-OES dedicated employees will not engage with OES-dedicated employees for any purpose other than the administration of the OES Program and related OES Program Wind-Up requirements".
- The OES Program Wind-Up Oversight Manager has confirmed expenses incurred for the retention of counsel on this matter will not be reimbursed from the OES trust fund.

A competitive marketplace is a key contributor to achieving the objectives of the EEE Regulation. That marketplace will drive innovation in the design of products, as well as in the ability to recover resources from those products when they reach end of life. In this context, businesses entering the Ontario marketplace to compete with EPRA seek a level playing field, so that innovation can be introduced into that marketplace, while creating jobs in Ontario and contributing to the Ontario economy.

As the provincial regulator mandated to enforce the requirements of Ontario's circular economy regulatory framework, the Authority is committed to ensuring a level playing field for all market participants and will continue to monitor the marketplace for anti-competitive activities and will take immediate steps to ensure compliance with all legislated requirements.

If you have questions or concerns, please contact the Authority's compliance team at (647) 496-0530 or toll free at (833) 600-0530 or registry@rpra.ca.

A handwritten signature in black ink, appearing to read 'Pat Moran', with a stylized, flowing script.

Pat Moran
Registrar

Cc: Ontario Waste Management Association