

**NON-BINDING**  
**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**RESOURCE PRODUCTIVITY AND RECOVERY AUTHORITY**  
**(the “Authority”)**  
**AND**

**HER MAJESTY THE QUEEN in Right of Ontario as represented by THE ONTARIO MINISTRY OF THE ENVIRONMENT AND CLIMATE CHANGE (“MOECC”), INVESTIGATIONS AND ENFORCEMENT BRANCH (“IEB”)**

**HEREAFTER REFERRED TO INDIVIDUALLY AS A “PARTY” AND COLLECTIVELY AS THE “PARTIES”**

*This Memorandum of Understanding is established as a formal agreement between the Parties to identify the roles and responsibilities of each party in association with enforcement action taken under the Provincial Offences Act with respect to alleged offences under the Resource Recovery and Circular Economy Act, 2016 and the Waste Diversion Transition Act, 2016.*

**1. INTRODUCTION**

**Whereas** the MOECC, as Ontario’s primary environmental regulator, is responsible for enforcing compliance with environmental laws in Ontario through its authority under environmental legislation administered by the MOECC.

**And whereas** the Authority, as a non-Crown corporation, is given statutory responsibility for ensuring compliance with and enforcement of the *Resource Recovery and Circular Economy Act, 2016* (RRCEA) and the *Waste Diversion Transition Act, 2016* (WDTA).

**And whereas** Section 28(1) of the RRCEA requires the Authority to enter into an operating agreement with the MOECC with respect to the Authority’s activities, and whereas Section 15 of that operating agreement requires the Authority and the MOECC to develop, maintain and implement a Memorandum of Understanding (MOU) related to compliance and enforcement matters.

**And whereas** the MOECC, through its Investigations and Enforcement Branch (IEB), has undertaken to carry out certain of the Authority's enforcement responsibilities relating to the WDTA under the *Provincial Offences Act* (POA), as appropriate, until the Authority has staff that have been designated by the Minister of the Environment and Climate Change (the "Minister") as Provincial Offences Officers under the POA for the purposes of enforcing alleged contraventions of the RRCEA and the WDTA.

**And whereas** the MOECC will have responsibility at all times for enforcement of certain offences under the RRCEA and the WDTA, as set out in this MOU.

**And whereas** the Parties intend to communicate in order to support their respective compliance and enforcement responsibilities.

## 2. **OBJECTIVES**

The objectives of this MOU are to:

1. Establish a formal process for the Authority to refer matters to IEB for the purposes of investigation of alleged offences under the RRCEA and the WDTA.
2. Establish a formal agreement between the Parties designating which Party shall be responsible for enforcement of which RRCEA and WDTA offence provisions.
3. Establish a formal agreement between the Parties with respect to delivery of enforcement under the POA by IEB relating to alleged offences under the WDTA, until such time as the Authority has staff that have been designated by the Minister as Provincial Offences Officers under the POA.
4. Establish a process by which the Authority may, as appropriate, provide IEB with information relevant to IEB's enforcement responsibilities.
5. Establish a process by which IEB will provide the Authority with appropriate information related to the investigation of referrals made by Industry Funding Organizations and the Authority to IEB.

## 3. **ROLES AND RESPONSIBILITIES OF THE PARTIES**

3.1 During the period before the Authority has staff that have been designated by the Minister as Provincial Offences Officers under the POA, IEB shall be responsible for enforcement related to certain offences alleged to have been committed under the WDTA, as follows:

- a) During this period, IEB Provincial Offences Officers shall be responsible for alleged offences committed under Sections 65 and 66 of the WDTA.
- b) After the completion of this period, the Authority shall assume responsibility for compliance and enforcement activities under these sections, except for alleged offences under Section 65(4) of the WDTA.

3.2 At all times IEB shall be responsible for enforcement of any offences alleged to have been committed by the Authority, and for enforcement of alleged offences under Section 98(3) of the RRCEA.

3.3 Save for as described in sections 3.1 and 3.2, above, the Authority shall be responsible for enforcement of alleged offences under the RRCEA and the WDTA.

3.4 Where IEB requires anything in the possession of the Authority in furtherance of an investigation, IEB shall obtain a search warrant under the POA for that purpose. The Authority shall not release any information or any thing in its possession to IEB relating to an investigation being conducted by IEB without judicial authorization, except for the summary contained in a referral related to an alleged offence, as described below.

3.5 IEB shall not release any information or anything in its possession to the Authority relating to an investigation being conducted by the Authority without judicial authorization, except as provided below.

#### **4. PROCEDURE FOR REFERRALS TO IEB**

4.1 The Director of IEB will identify a Provincial Offences Officer that the Authority may consult with on proposed referrals regarding alleged offences under the RRCEA and WDTA.

4.2 In addition to referrals relating to offences alleged to have been committed under the RRCEA and the WDTA, the Authority may also refer matters to IEB where it believes an offence may have been committed under other environmental legislation administered by the MOECC.

4.3 Referrals should contain a brief summary of the Authority's grounds for believing an offence may have been committed, but not contain any evidence, documents, or other material in the Authority's possession.

4.4 IEB shall be solely responsible for determining whether it will investigate any alleged offence under the RRCEA and WDTA and the manner in which the investigation proceeds. All decisions regarding an investigation shall be made in

accordance with the decision-making process for an IEB investigation, including decisions on whether to close a file or proceed with charges.

4.5 IEB will provide the Authority on a monthly basis with the number of investigation or prosecution files that are open under the RRCEA and WDTA that have been referred to it by the Authority or an Industry Funding Organization. The information will indicate which of these files are being screened, assigned for investigation, investigation underway, investigation closed, or charges laid.

4.6 Where charges are laid following a referral by the Authority or an Industry Funding Organization, IEB will notify the Authority within 1 business day of the charges being laid. IEB will also notify the Authority within 1 business day of any convictions under the RRCEA and WDTA.

**5. EFFECTIVE DATE**

This MOU comes into effect on the date of the signature of the Director of IEB and continues until such time as this MOU is replaced.

**6. MOU REVIEW**

The Parties will review and amend as necessary this MOU once the Authority has staff that have been designated by the Minister as Provincial Offences Officers under the POA.

**IN WITNESS WHEREOF**, the parties have executed this MOU on the dates set out below:



\_\_\_\_\_  
Greg Sones  
Director Investigations and Enforcement  
Branch  
Ministry of the Environment & Climate Change

Dated this 18 day of April, 2017



\_\_\_\_\_  
Geoff Rathbone  
Acting Chief Executive Officer  
Resource Productivity and Recovery Authority

Dated this 6 day of April, 2017

# **ATTACHMENT 1**

## **IEB Referral Processes**

### **Referral and Intake Procedure**

The Investigations and Enforcement Branch (IEB) will focus resources and efforts to maximize compliance outcomes associated with investigations and prosecutions. The basis for this is a case screening system that is used to evaluate the significance of incidents, appropriateness of investigations and to apply service delivery standards.

### **Procedure**

The investigative process is initiated with the creation and submission of a referral to IEB. The purpose of the referral is to document the initial information about the offence and request an investigation.

### **IEB's Referral and Intake Process**

- Pre-Referral: the circumstances surrounding an incident are considered by abatement staff to determine if investigation is the appropriate compliance response to a situation;
- Referral: once determined a matter should be referred the necessary information is collected, and organized to create a referral that is then forwarded for consideration;
- Case Screening and Evaluation: the circumstances are considered against criteria to categorize the significance and complexity of the incident; and,
- Intake Decision and Action: using the results of the above, decision to assign or return the case is made and necessary steps to support that decision are taken.

## ATTACHMENT 2

### Operating Agreement

#### 15. COMPLIANCE AND ENFORCEMENT MEMORANDUM OF UNDERSTANDING

15.1 Within four months of the first meeting of the Initial Board, the Authority and the Ministry will develop, maintain and implement a memorandum of understanding ("MOU") related to compliance and enforcement matters. The MOU shall address the respective roles of the parties in compliance and enforcement matters under the Acts, recognizing:

- a) the requirement for the Authority to exercise powers and perform duties in relation to compliance with and enforcement of the Acts as per section 77 of the RRCEA and clause 5 (c) of the WDTA; and
- b) the role of Ministry staff in exercising powers under the *Provincial Offences Act* for the purpose of offences under the Acts during the initial start-up period for the Authority, until the Authority has staff designated under the *Provincial Offences Act*.

The MOU shall also address communications between the parties related to compliance and enforcement under the Acts.

#### 16. COMPLIANCE AND ENFORCEMENT POLICIES, GUIDELINES, CODE OF CONDUCT FOR COMPLIANCE AND ENFORCEMENT PERSONNEL

16.1 The Authority shall develop a code of conduct, policies and guidelines for its compliance and enforcement personnel for use when exercising its powers and meeting its responsibilities with respect to compliance and enforcement under the Acts. In addition, the Authority shall develop and maintain up-to-date compliance and enforcement policies and procedures relating to the issuance of orders to pay an administrative penalty under the RRCEA or the WDTA and in relation to determining the amount of the administrative penalty, subject to any regulations made under the Acts. To the extent possible, such codes, policies, guidelines and procedures shall be consistent with the *OPS Regulator's Code of Practice: Integrity in Pursuit of Compliance* (2015), the *Ministry's Compliance Policy: Applying Abatement and Enforcement Tools* (2007), the *Ministry's Guideline for Implementing Environmental Penalties* (2012) and any other government compliance and enforcement documents provided to the Authority by the Minister. The Authority shall provide its compliance and enforcement related policies, guidelines and codes to the Minister for information purposes and make these publicly available on the Registry as these are developed and updated from time to time.

## ATTACHMENT 3

### Chargebacks

#### CROWN'S COSTS

##### Contribution to defray cost

42. (1) The Lieutenant Governor in Council may from time to time, by order, fix an amount to be paid to defray the Crown's costs in administering this Act and the regulations,

- (a) by the Authority; and
- (b) by each industry funding organization in respect of costs associated with the waste diversion program for which the industry funding organization is designated.

##### Costs

(2) The amounts fixed under subsection (1) may include costs that are attributable to the oversight of the Authority and the industry funding organizations under this Act, including costs associated with appeals to the Tribunal of the Authority's orders.

##### Payment, industry funding organization

(3) An industry funding organization shall pay the amount fixed for it under subsection (1) to the Authority in accordance with the terms of the order.

##### Same, Authority

(4) The Authority shall pay to the Minister of Finance, in accordance with the terms of the order,

- (a) the amount fixed for the Authority under subsection (1); and
- (b) the amount paid to the Authority by each industry funding organization under subsection (3).