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Subject: ERO Number 019-2579 - A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs

Premier Tech Home & Garden (PTHG) is one of the leading Canadian manufacturer of lawn and garden products, including pesticides, fertilizers, soils, and grass seed. In addition to being stewards in the Ontario Blue Box Program, we are stewards in post-consumer paper/packaging and household hazardous waste programs across Canada.

In June 2019, the government engaged David Lindsay as a Special Advisor on recycling and plastic. In July 2019, he delivered a report to the Minister of Environment, Conservation and Parks outlining his recommendations for improving recycling through the Blue Box Program and better manage plastic waste. In August 2019, the Minister issued direction letters to the Resource Productivity and Recovery Authority (RPRA) and Stewardship Ontario (SO) to wind up the current Blue Box program as part of the transition to a 100% Extended Producer Responsibility (EPR) model under the *Resource Recovery and Circular Economy Act* (RRCEA). The SO Blue Box Transition Plan has been submitted to RPRA and the final approval of that plan is expected in December.

On October 19, 2020 the government posted ERO 019-2579 “A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs” (proposed regulation) on the Environmental Registry of Ontario for a 45-day comment period, ending on December 3, 2020.

PTHG participated in the Ministry of Environment, Conservation and Parks (MECP), November 19, 2020 Improving Ontario’s Blue Box Program webinar. While the MECP extended the time for the session, we believe that stakeholder consultation on these substantial changes to the regulation of post-consumer packaging and paper products is insufficient. This session was the only opportunity for many stakeholders to ask questions directly to the MECP department staff on the proposed regulation. Some questions were deferred for further consideration by the presenters, others remained unanswered. Participant questions were still being entered in the chat function when the webinar closed.

General Comments

The proposed regulation is so ambitious in scope that there is potential for both producers and the government to fail in providing Ontarians with a smooth transition to a Blue Box program under the RRCEA. The proposed regulation contains sections that are the antithesis of the Red Tape and Regulatory Burden Reduction Initiative the government has spent the last two years establishing as a cornerstone of their commitment to making Ontario open to business.

In a recent news release, the government celebrated the second anniversary of their directional paper [“Preserving and Protecting our Environment for Future Generations – A Made in Ontario Plan”](#). We note that November also marked the second anniversary of the governments first legislation, resulting from their Red Tape and Regulatory Burden Reduction Initiative. We believe that the success of the Blue Box transition depends on developing a regulation that takes both commitments into account.

At any time, the 2021 timelines proposed in this regulation would be onerous, if not impossible to attain given that we do not expect the regulation until the new year. However, 2020 has been even more challenging with many stakeholders being impacted by the COVID-19.

The regulation will also have significant financial impact on producers, beyond the undertaking of 100% of program costs. Expanding the list of materials and adding eligible sources will further burden producers with additional costs and unknown recovered material quality which could impact producer options for recovered material markets and meeting targets. Under the new regulation community eligibility will be expanded in 2026 to capture the approximately 6% of Ontarians that do not currently have access to Blue Box programs. To our knowledge there has been no information shared with producers that would help them determine the costs of expanding community eligibility, which could be substantial per kilogram of recovered material.

The government has not provided a regulatory impact analysis other than a qualitative regulatory impact statement. A full regulatory impact analysis is needed to determine the cost to producers, increased internal resource requirements and the costs associated with RPRA oversight as these are passed on to the regulated community.

No doubt, the COVID-19 pandemic has had some impact on the Ministry’s timelines for developing and introducing this proposed regulation. However, given the importance of this program to Ontarians and the commitment of this government to modernize and improve Blue Box services, the regulatory groundwork must be sound and include robust consultation, which has not been the case to date.

Recommendations:

We propose that the Blue Box regulation focus on the smooth transition to a full EPR model and growing Ontarians’ trust and engagement in participating fully in the Blue Box program. As such, the focus of the regulation should be:

- Transition to a Blue Box program fully funded and operated by producers.
- Maintain existing Blue Box program and eligible sources to ensure uninterrupted service. As suggested by Mr. Lindsay “transition must consider whether and when it makes sense for producers to be responsible for blue box services beyond curbside or depot collection.”
- Create a harmonized list of materials that should be included in the Blue Box across the province. However, harmonization should be a goal that takes into consideration the system capacity and infrastructure and be reflected in the development of targets. Harmonization can have a significant impact on the cost of programs if the infrastructure must be put in place and may need to be a gradual process.
- Develop regulation in the spirit of the government’s commitment to reducing red tape Ontario businesses.
- Inclusive and robust consultation with stakeholders.

Below are comments specific to the proposed regulation as written.

Part I

Interpretation

The definition of “transport packaging” does not provide sufficient clarity that this would only include transport packaging that is included in the packaging provided to consumers.

The definition for “compostable material” is vague and no standards or incorporation by reference are provided. The recent consultation on proposed changes to the Food and Organic Waste Policy Statement does not provide any greater clarity, describing the criteria for compostable material to be “certification according to international, national or industry standards”. Certification standards vary and there is no regulation on the use of the term “compostable” in Canada, to our knowledge. Further clarity is needed to facilitate producer packaging decisions, consistency in the use of the term and appropriate consumer education on how to identify and manage compostable materials.

In the proposed regulation, compostable materials are not Blue Box materials for the purposes of Part III (Annual Allocation Table), Part IV (Collection Under Annual Allocation Table), V (Alternative Collection System) VI (Management), VIII (Promotion and Education), and IX (Transition). The only requirement for compostable materials is for producers to register and report annually on quantities while the government determines how to manage these materials. Without reporting criteria based on environmental objectives, aggregating reported quantities from producers that may be using different criteria to identifying compostable material would have little value. Clarification on the purpose of limiting the regulatory requirements for compostable materials is needed.

Part II

Determination of the Producer

PTHG supports the rules of determining the producer of blue box packaging.

Part III

Annual Allocation Table

Part III is intended to outline a process that determines producer or PRO obligations through the development of rules that in turn would be used to create an annual allocation table. Yet it is incredibly confusing, and the ERO 019-2579 Proposal Details provide no clarity. As we can only guess at the purpose of the annual allocation table and the impact on producers, we cannot provide meaningful comment at this time.

Part IV

Collection Under Annual Allocation Table

Section 20 and Section 21 are prescriptive. The government should set reasonable targets for producers. It should be the producer’s or the PRO’s responsibility to develop a program to meet the targets with the flexibility needed to deliver services in the most efficient and effective way. Community needs can vary and the producers or the PROs should be allowed to determine the best approach for their program.

Part VI

Management

The limits on what can be reported as a recovered resource creates unreasonable limitations on producers who do not have control over all the factors that could impact how and when the recovered resources are marketed. For example, how was the three-month processing requirement determined in Subsection 35(3) paragraph 4? What is the purpose of this requirement? Depending on the quality of material recovered, processors may not be able to find a ready market without financial impact, instead preferring to wait for more favourable market conditions. Once that material is marketed, regardless of the timeline, producers should be allowed to include those amounts in their reports. Would this three-

month turnaround require processors and producers to create a chain of custody for recovered materials and how would this work for partial or mixed bales recovered at different times if there is a three-month limit on some of the baled materials? Would this three-month limit force processors to choose less environmentally optimal options in order to make room for new recovered materials?

Regarding Section 35, with advancements in energy from waste technologies, should the use of recovered material for fuel or fuel supplement be considered reportable recovered material in part or under certain conditions?

Minimum Requirements outlined in the Section 37 table are not supported by any explanation in the ERO 019-2579 Proposal Details. Given the overall recovery rate of materials in Ontario has hovered in the 60% range and the diminishing amount of paper that in the past has contributed significantly to maintaining that rate, how were these recovery percentages determined for the blue box materials?

A definition and further information is needed for the “redistribution factor” in Section 38. The information provided in the ERO 019-2579 Proposal Details appears to indicate that producers using recycled materials would not be recognized for their full initiative. Rather, those in the same material category would benefit through the redistribution factor. How will this redistribution be balanced with incentivizing producers in the material category to increase their recycled content?

Part VII

Registration, Reporting, Auditing, and Record Keeping

Section 40 outlines requirements for producers including reporting materials and information for the previous year that were not included in the current Blue Box program. Prior to registering, in order to provide accurate information, producers will need to undertake tasks that will require significant resources.

- review all packaging and paper products to determine if they contain any of the materials that are proposed to be added to the Blue Box Program.
- determine with suppliers, the quantity of recycled material that was contained in their packaging as that would not have been a data point previously retained.
- determine if their plastics are compostable by any number of standards, as these products’ requirements are exempt from certain requirements in the regulations.
- Reprogram data systems so that new information can be input, stored and retrieved for reports.
- Develop standard operating procedures to ensure continuity, along with system checks.
- Create training documents that clearly define roles and responsibilities with the numerous departments involved including regulatory, purchasing, finance, and marketing.

All of the above must occur between the time the regulations are finalized in early 2021 and April 1, 2021. This will be a tremendous burden on producers.

At the same time, producers will need to identify an appropriate PRO, which may not have registered with RPRA since they do not register until they have been retained by at least one producer. In turn, once those PROs have been engaged by at least one producer, they will be required to create rules and submit those by July 31, 2021.

Annual reports for producers, PROs and processors repeat much of the same information. Why is this necessary? How will this annual reporting be used by RPRA? This seems like a resource intensive activity which should be justified with a rationale for the value added.

In addition to the annual reports, producers will be subject to an audit every three years. This is another onerous requirement. The company resources that are needed to prepare for an audit and available for an auditor are significant. Between the audit and the triplicate annual reporting by producers, PROs and processors, there is room to eliminate some of this overlap. Perhaps random audits of a percentage of producers could be undertaken on a schedule could serve the same purpose.

Submitting the audited information to RPRA through the registry appears to be redundant (Section 54). Would an attestation from the auditor be sufficient?

Part VIII

Promotion and Education

Section 57(5) describing the form of the promotion and education program is unnecessarily prescriptive. Producers and PROs should determine the most appropriate form of promotion and education which could vary from community to community.

The Section 57(6) requirement that promotion and education be provided in French and English is more extensive than the government services in the province. Again, the language of promotion and education material should be left to the producers and PROs depending on the community.

In closing, PTHG appreciates this opportunity to provide input into the development of new Blue Box regulations under the RRCEA. We would be happy to discuss our comments further to provide our company perspective. Should you have any questions or require clarification on any of the above or previous comments provided by Premier Tech Home & Garden, please feel free to contact me by phone, 416-432-5508 or e-mail, beas4@premiertech.com.

Sincerely,



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