

December 3, 2020

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Public Works

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RE: ERO# 019-2579 - Draft Blue Box Regulation: Region of Peel Comments

Dear Mr. O'Hara:

The Region of Peel appreciates the opportunity to provide commentary on the draft Blue Box regulation for Packaging, Paper and Packaging-like Products (PPPP) and the shift to full producer responsibility. It is important to remember that full producer responsibility is a critical and effective policy tool necessary to hold producers accountable for the end-of-life impacts of their PPPP regardless of the generation point.

The Region's comments and recommendations on the draft regulation are outlined below.

Transition Schedule

Establishing a three-year schedule between 2023 and 2025 to transition all current municipal blue box programs to full producer responsibility in a seamless manner allows all stakeholders to plan accordingly and allow for necessary investments in a more effective recycling system.

The Region supports the draft regulation's transition schedule and the noted transition year of 2024 for the Region of Peel. Staff suggest a flexibility provision be built in the regulation that would allow Peel to transition earlier should the opportunity arise.

Recommendations

- The exact transition date in the transition schedule for the Region should be October 1, 2024.
- Include a process in the final regulation that would allow producers and municipal governments to adjust their transition timing in the schedule by mutual consent.

Designated Materials

The Region supports the expanded and standardized list of blue box materials requiring collection and management through a common collection system. In

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In addition, the Province's choice to include these items aligns Ontario's list of materials with those regulated under British Columbia's producer responsibility program. This is a positive sign of more national harmonization on producer responsibility regulations, consistent with the federal initiatives in this area and the Region's position on the matter.

In addition, the proposed list of acceptable material addresses the confusion among the general public of what is and is not recyclable and ensures all eligible sources across the province will accept the same material.

With regard to compostable materials, they should not be exempt from collection and management requirements. An exemption will mean that there is no incentive for producers to find adequate solutions to ensure their products or packaging can be managed properly. Instead, these products and packaging simply add to the costs of the municipal waste management system and it is highly likely that Ontario consumers will not get the sustainable management results of these products they expect at purchase. Further, this would create an unlevel playing field for producers who are required to collect and manage all other obligated materials regardless of how these are ultimately managed.

The proposed approach would make producers of compostable materials less responsible than under the current framework (they help fund blue box programs), while at the same time the government is proposing to add greater responsibility to municipal government and organic processors for these materials through the proposed changes to the Food and Organic Waste Policy Statement. The Region is concerned about the impact the loopholes like this will have on the entire system.

There is also a concern that the proposed definition of compostables could lead to producers of fibre-based products (e.g. pizza and cereal boxes, drink trays, etc.) defining their products as compostable to avoid collection and management requirements. Compostable materials should be more clearly defined in the final regulation to create a delineation from products and packaging that can be recycled in practice and at scale in Ontario versus those that are truly meant to be processed in an organics facility (e.g. composting or anaerobic digestion).

Recommendations

- The definition of compostable material should be clarified to ensure that any materials that can be recycled in practice and at scale are excluded from the compostable materials definition (e.g. coffee cups, drink trays, take away containers).
- Compostable materials should not be exempt from collection and management requirements. A separate target for compostable materials should be established based on progressive targets similar to those used for other low performing materials like flexible plastic.

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- Increased harmonization and consistency among existing and complimentary (e.g. Food and Organic Waste Policy Statement) policies that speak to compostable PPPP.

Responsible Producers

The Region supports the proposed methodology for identifying responsible producers as it puts the responsibility of the blue box program on large producers, including online retailers, and not on small businesses.

Common Collection System

The Region supports the concept and intent of both the common collection and alternative collection systems. However, the common collection system should be established in way that does not hinder competition amongst producer responsibility organizations (PROs) and the broader waste management industry. The 10% threshold to participate in the development of the common collection system represents a potential barrier to entry for smaller PROs and producers and may therefore limit competition. This initial barrier, while limited to the rule-making stage, may set the tone for competition (or lack thereof) in the long-term operation of the program.

In addition, the recommended elimination of the threshold is vital in consideration that the common collection system rules once in force will have regulatory effect over producers. If only one PRO is able to meet the proposed threshold for participating in the preparation of the rules, they would have an ability to create their own rule of law without any oversight.

Recommendation

- The 10% threshold represents a barrier to entry for smaller PROs and should be eliminated.

Eligible Sources

Moving Ontario's current patchwork of recycling programs across the province to a requirement that by 2026 all Ontarians have the same access to recycling is a significant step forward. Ontarians should have the opportunity to recycle wherever they live, work and play.

Although further expansion is recommended, the Region in principle supports the proposed eligible sources list, which includes permanent/seasonal dwellings, multi-residential buildings, public and private schools, long-term care homes and retirement homes, and specific public spaces (e.g., parks, playgrounds, outdoor areas, and streetscapes in Business Improvement Areas). The Region in consultation with our local municipalities (City of Mississauga, City of Brampton and Town of

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Caledon) have also expressed support of the eligible sources proposal and will likely submit feedback on this matter.

Also in support of the eligible sources list is Partners in Project Green from the Toronto and Region Conservation Authority:

“Partners in Project Green supports the continued collection of recyclable material in parks and other public spaces in the Region of Peel. There are nearly 800 municipal parks located across the Region in the City of Mississauga, City of Brampton and Town of Caledon. We would encourage the collection of recyclables from these locations and other public spaces to be maintained to increase diversion and prevent litter generation in our watersheds, in alignment with Toronto and Region Conservation Authority’s strategic objectives focused on managing our regional water resources and fostering sustainable citizenship.” -- Jeff Robertson, Senior Manager, Partners in Project Green, Toronto and Region Conservation Authority.

Recommendations

- The Region recommends that the proposed list of eligible sources and obligations (e.g. twinning) be maintained in the final regulation and a weakening in direction experienced in the Batteries and Electrical and Electronic Equipment regulations be avoided. An example of a weakened policy is the replacement of the proposed list of sources and obligations with an away from home management target or an accessibility requirement.
- For clarity, an amendment to the definition of public spaces is recommended:
“public space” means any land made available by a municipality,
 - (a) in any park,
 - (b) any playground, or
 - (c) any outdoor area located in a business improvement area designated under the Municipal Act, 2001 or by a by-law made under the City of Toronto Act, 2006;
- The Region also encourages that the Ministry expand the list of eligible sources to include: depots in communities with curbside Blue Box collection beyond December 31, 2025, municipal facilities such as city halls and offices, tax payer funded facilities such as libraries, community centres and arenas, all outdoor public spaces including Canada Post super mailboxes, small retail businesses within BIAs, places of worship and non-profit centres (e.g. home shelters, Canadian Legion, etc.).

Servicing Requirements

With the exception of limitations on promotion and education requirements and depot servicing, staff generally support the servicing requirements outlined in the draft regulation as they closely align with Peel’s current level of service.

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In terms of depot servicing, once all municipal blue box programs are transitioned by 2026, the draft regulation removes the requirement for producers to provide depot collection in communities that provide curbside collection to all residents. Most communities with curbside servicing currently supplement curbside collection with depots.

Recommendations

- Producers must be required to continue to provide at least as many depots for the collection of blue box material as there are depots for household garbage in that municipality, regardless of whether curbside collection is provided.
- The Region recommends that producers be responsible for providing ongoing promotion and educational materials for the Blue Box Program to reinforce positive consumer behaviours required to maintain program performance beyond December 31, 2025. This would include information on how to prepare materials for placement in the blue box receptacle, directions for how materials should be sorted as well as how to contact the recycling collection provider with questions, service issues and complaint resolution.

Management Requirements

Ensuring that all consumer PPPP and certain single use items from eligible sources have progressive, enforceable collection and management targets beginning in 2026, will drive innovation and investment in collection and processing infrastructure, and stimulate the creation of new end markets. Without consideration of the recycled content provision, the proposed targets represent an improvement from current rates and will help to reduce litter and wasted resources if effectively implemented and properly enforced.

However, in its current form, the draft regulation allows producers to reduce their recycling targets by incorporating recycled content derived from materials collected through Ontario blue box materials into their products. As many products already include recycled content (e.g. paper, glass, cardboard, aluminum), this provision could increase management risks with little benefit. It is also very difficult to audit and confirm the source and quantity of recycled content incorporated. In addition, there is the potential for competition related issues including: a potential disadvantage to smaller producers who must compete with larger multi-nationals; and limitations for producers that cannot use recycled content in food contact or pharmaceutical applications. It also has the potential to allocate management responsibilities to other producers greater than the total quantities of materials that they supply into Ontario.

In terms of enforcement mechanisms, the Region is concerned about the timely development and implementation of the Administrative Monetary Penalties regulation, which is the key enforcement mechanism to ensure a level playing field for producers and to ensure their targets are met.

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Recommendations

- The Region recommends that the Ministry establish targets for both broad material categories and specific material sub-categories for all designated materials, including compostable materials and packages, so that poor performing materials can be quickly identified.
- Producers should be required to report on both the broad material categories and specific subcategories for all designated materials.
- The recycled content provisions should be completely removed from the regulation. Incentives for recycled content are better addressed through a separate policy mechanism such as mandatory minimum recycled content requirements.
- Producers should be required to perform annual performance audits, as is being proposed for Ontario's beverage container deposit return systems. The current proposal requires performance audits every 3 years, which increases risks and does little to actually reduce any administrative burden (i.e., it simply condenses the reporting of three years of audits into one year). Furthermore, there would be no publicly available data to monitor producer performance through the 2023 to 2029 period (six years) making it difficult to identify potential problems and to make any program adjustments required.
- An Administrative Monetary Penalties regulation should be established as soon as possible.

We look forward to working closely with the Province as you move toward the finalization of the Blue Box regulation. We also encourage the Province to finalize the regulation by the end of January 2021 to allow the necessary business planning to take place to facilitate a seamless transition. This would help avoid transition related issues currently faced in the implementation of the Batteries and Electrical and Electronic Equipment Regulations. Please feel free to reach out if you have any questions and/or comments about the contents of this letter.

Sincerely,



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