

December 3, 2020

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40 St. Clair Avenue West, 8th floor
Toronto, ON M4V 1M2

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

Dear Ms. Alleyne,

On behalf of the Ontario Waste Management Association below are our comments on the proposed Blue Box regulation under the *Resource Recovery and Circular Economy Act*.

The Ontario Waste Management Association supports the Ontario government's commitment to strengthen the Blue Box recycling program and set some of the highest waste diversion targets in North America. Shifting responsibility of the Blue Box to producers will create a catalyst to improve Ontario's recycling performance. This is not only good for the environment, it is good for the economy, and will encourage investment, job creation and innovation in the recycling and resource recovery sector.

Our comments are as follows.

a) Common Collection System:

OWMA supports the draft regulation's proposed framework for a single coordinated, "common collection system" for blue box materials across the province, including small and remote communities, with one key exception:

Section 8 - The proposed 10% threshold of material supply to enable producers and/or producer responsibility organizations (PROs) to participate in the rule-creation process is too high and will hinder competition. It is understandable to seek assurances of competency and viability of PROs and producers who are involved in the development of rules to govern the annual allocation table. A threshold of 10% represents approximately 100,000 tonnes of material, a very significant amount.

OWMA recommends eliminating this threshold and applying other performance-based criteria to determine qualifications. These other criteria could include performance-based surety bonds and reference letters from producers attesting to competency in delivering similar stewardship services.



b) Annual Allocation Table and Registration of Rule Creators:

The deadline for determining who meets the criteria in subsection 8 (2) is July 31, 2021 which is only four (4) months after the 10% market share criteria has been determined by the Authority. It is extremely difficult for any new entrant PRO to achieve this when they won't have access all the necessary market information. Only the incumbent stewardship organization has this information.

We recommend the ministry allow additional time for PROs to collect producer contact information, producer supplied tonnes, and market share information, that is necessary to complete the first allocation table by March 31, 2022.

OWMA supports the Section 12 provisions providing for the Minister to make or amend rules as a backstop should PROs be unable to agree on rules for the allocation table.

c) Compostable Materials:

For the regulation to achieve its goal of increasing recycling rates and diverting more waste from landfills, compostable materials must not be exempt from collection and management requirements. Exempting compostable products and packaging will mean that producers may be induced into using products and packaging that cannot be managed properly. A sudden increase in the use of compostable products and packaging will simply add to the costs of the municipal waste management systems without sustainable management of these products.

The proposed regulation's definition of compostable materials is problematic, and provides no certainty that any of these materials are compostable using conventional composting or anaerobic digestion processes. The proposed definition should be amended to exclude materials that are recyclable, as follows:

Part I, Definitions, 1. In this regulation,

*"compostable materials" means materials that are designed to be managed at end of life through composting, anaerobic digestion, or other processes that result in decomposition by bacteria or other living organisms. **Any compostable materials that are able to be recycled in practice and at scale as eligible blue box material should be excluded from this definition. (bold = added)***

The proposed definition in the draft regulation is ambiguous enough to potentially result in producers of fibre-based products (e.g. pizza and cereal boxes, coffee cups etc.) defining their products or packaging as compostable to avoid collection and management requirements. Consideration must also be given to a waste processors' ability to manage compostable material before encouraging more compostable plastics into organic waste streams.

Compostable packaging has performed poorly from a material recovery perspective because these materials are often not compatible with current composting and anaerobic digestion facility processes. This would result in most certified compostable plastics being removed and sent to landfill, along with other contaminants. Though they are likely to decompose in landfills over time, these materials will not be diverted for better material recovery and will add unnecessary costs to the management of waste.

d) Minimum Requirements:

Section 37 of the proposed regulation should be amended to indicate that there will be a requirement for management targets for compostable materials starting in 2026 and onwards. The draft regulation requires registration and reporting of compostable packaging supply from 2022 to 2026, and the Ministry of the Environment, Conservation and Parks has proposed that this information is intended to create management requirements for compostable materials that could begin in 2026. There is no assurance, however, that these targets will be created, and the public is being asked to accept this intention in good faith.

To provide greater certainty that resource recovery objectives will be achieved and that producers of compostable materials will share in the responsibility and obligation of the future Blue Box program, the table of recovery percentages in Section 37 should be amended by adding:

Recoverable Material	Minimum (in tonnes)	Recovery percentage 2026-2029	Recovery percentage 2030 onwards
Compostable material	To be prescribed by the Minister	30	40

Adding these recovery percentages for compostable material provides assurance that there will be a level playing among producers of all other obligated materials. These targets are consistent with other low-performance materials such as flexible plastics. Should the reported supply information from 2022 to 2026 indicate that different targets are appropriate, the Minister may prescribe those at that time.

Recovery percentages for other materials

The proposed regulation aims to position Ontario as a leader in the circular economy, and aggressive management targets will be instrumental in driving higher recycling rates. OWMA strongly supports the other recovery percentages listed in the Section 37 Table for paper, rigid plastic, flexible plastic, glass, metal and non-alcoholic beverage containers. These should be upheld and maintained.

e) 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.

OWMA supports the proposed eligible sources list and obligations, 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). Under the proposed regulation, these are properly defined as residences, facilities and public spaces in Part I.

OWMA recommends that the Ministry maintain the proposed eligible sources list and obligations in the final regulation and avoid reducing any of these obligations, as experienced in amendments made to the Batteries and Electrical and Electronic Equipment regulations compared to their original, proposed draft versions.

f) Recycled Content:

Under the proposed regulation, a producer that uses recycled content sources from blue box materials would be allowed to reduce their supply for that material category for the next calendar year in proportion to the initiatives undertaken. While Section 36 limits the overall reduction of recycled content to no more than 50% for a material category, there is no rationale for any formula for including recycled content, as it will not reduce the total quantity of materials requiring collection and management, or the costs that are to be shared by producers in the common collection system.

The problem with the Section 34 formula (calculation of management requirements) is that subtracting the weight (up to 50%) of recycled content implies that there is a reduced need to collect and manage the amount of materials collected through the common collection system and/or alternative collection systems. Reducing management targets by factoring in the weight of recycled content does not affect the overall costs of collection and processing of blue box materials.

OWMA recommends that, in Section 34, the inclusion of recycled content weights in the calculation of management requirements be eliminated. There are better policy tools to achieve positive environmental outcomes such as minimum recycled content requirements for the manufacturing of certain products and/or packaging. Eliminating the recycled content weights from management requirement calculations will also ensure that this does not reduce overall diversion, or place unfair burdens or risks on small or specialized producers who are unable to utilize recycled content.

g) Recovered Resources – Section 35:

The proposed regulation focuses on extending the end-of-life of materials, but it fails to allow for any energy recovery to count towards producers meeting their diversion targets. OWMA supports the use of energy and chemical recovery to divert resources from the portion of residual collected materials that would normally be destined for landfill. Recovering energy or gas from waste in an efficient and environmentally sound manner minimizes environmental burdens, and the amount of waste requiring final disposal in landfill – a key objective of Ontario's waste diversion framework.

In terms of including energy recovery as a waste diversion solution, one approach is to assign a reduced diversion value to energy and fuel recovery, compared to diversion methods that rank higher in the waste hierarchy, such as recycling and re-use. Energy recovery can open up other opportunities within the Ontario market that do not detract from recycling, especially in consideration of new eligible materials that will prove difficult to recycle.

To help achieve better resource recovery from amounts of residual waste from material recovery facilities that is destined for final disposal, Section 35 should be amended by adding:

35. (*) *Materials converted to energy recovery may count towards management requirements based on the amount of total waste converted to energy recovery limited to and not exceeding 50% of total non-recyclable waste collected at waste processing and material recovery facilities that would otherwise not be diverted from landfill.*

Not only would this provision serve as an effective way to divert waste from landfill, it would also recognize the positive impact of energy recovery on offsetting fossil fuel emissions.

h) Blue Box Material – Exclusions:

OWMA supports the proposal in Section 2 to exclude alcohol beverage containers from the list of eligible blue box materials. This recognizes the success and positive impact cost-effective programs like The Beer Store's deposit return program have on the environment. Processors who currently recover containers under the Beer Store deposit return program have successfully recycled and reused significant amounts of alcoholic beverage container glass and other materials. The proposed regulation should ensure that the deposit return programs for alcoholic beverage containers can continue.

i) Standardized List of Materials:

It should be easier for Ontarians to understand what is recyclable and what is not. A common collection system should have a standard list of materials. An expanded and standardized list of blue box materials collected and managed across the province through one common collection system will make it easier for all Ontarians to know what can be recycled where. It also provides a common standard for producers supplying into the market that they are responsible for managing their used packaging and products sold to consumers. Standardizing Blue Box material will make Ontario's waste streams more valuable and recyclers more efficient. This can foster economic opportunities and make Ontario a global leader in recycling.

j) Oversight Role of Resource Productivity and Recovery Authority (RPRA):

Oversight of producers is critical to ensuring that RPRA has verified information on the amount of products and packaging supplied into Ontario, and verified information on the amount of products and packaging that has been managed in accordance with the regulation. Without proper oversight there is a risk of "free-riding" which can undermine Ontario's resource recovery goals.

Failure to meet targets should result in enforcement and financial penalties imposed by RPRA, this regulatory tool was provided as an important component of the *Better for People, Smarter for Business Act, 2019*.

OWMA urges 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. The registration and fee payment framework should ensure that RPRA has the resources it needs to oversee its compliance and enforcement functions, and ensure a competitive, level playing field.

A Fair and Competitive Marketplace

An independent, effective and adequately oversight function through the Resource Productivity & Recovery Authority (RPRA) must ensure a competitive marketplace, level-playing field, and enforcement of any non-compliance of the Regulation. Any provisions in the regulation under registration and reporting requirements should ensure fair competition among producers, processors and service providers, and prevent monopolistic business practices. The Ministry of the Environment, Conservation and Parks and RPRA should require regular consultation with the federal Competition Bureau to ensure negotiations between PROs and producers for the development of the Common Collection System and the associated agreement are in compliance with the Competition Act and any other competition and consumer protection laws.

k) **Promotion and Education – PART VIII:**

Under Part VIII, section 57, it is detrimental to recycling performance for key components of resident education and promotion to only be required from January 1, 2023 and ending on December 31, 2026, as listed under S. 37 (2).

OWMA recommends that promotion and education components on the following:

- **A description about how to prepare materials for placement in the blue box receptacle, including any direction about rinsing or flattening blue box material; and,**
- **A description about how materials should be sorted or bagged**

be moved to **Information to be Included** S. 57 (1) as list numbers 7. and 8. This will ensure new residents and all customers in other eligible sources continue to receive knowledge and awareness on how to contribute to improved recycling performance and waste diversion, both during **and after** the transition period. The above education provisions will be vital long after the transition period ends in 2026.

l) **Ontario Regulation 101/94 (ECA Exemptions):**

In addition to setting out requirements for municipalities to run blue box services, Ontario Regulation 101/94 also provides for exemptions from Environmental Compliance Approval (ECA) requirements for municipal recycling depots and sites that meet specified criteria. These exemptions were intended to assist municipalities in developing blue box programs when the regulation was first developed.

We recommend that provisions be added to the proposed regulation to maintain these exemptions to ensure these facilities can continue to operate unimpeded.

Sincerely,



Mike Chopowick
Chief Executive Officer