

Friday, June 16, 2023

Resource Recovery Policy
Resource Recovery Policy Branch
40 St. Clair Avenue West
8th floor
Toronto, ON M4V 1M2

Dear Minister Piccini,

RE: Amendments to the Blue Box Regulation to expand deductions for producers – ERO 019-6962

Thank you for the opportunity to provide feedback on the proposed amendments to the blue box regulation to expand deductions for producers. The City of Guelph (the City) encourages the Resource Recovery Policy Branch to consider the City's feedback and feedback from other municipalities.

The City of Guelph shares the view of the Ministry of the Environment, Conservation and Parks ("Ministry") that the Blue Box Regulation ([O.Reg. 391/21](#); "the Regulation") will provide "consistent service that will reduce litter and allow more materials to be recycled in more communities" and that the approach to "make producers responsible for collecting and managing paper, packaging, and single-use items" provides the right framework to achieve these goals (Ministry, (May 17, 2023). [Amendments to the blue box regulation to expand deductions for producers](#). *Environmental Registry of Ontario*. "the Proposal").

We have concerns that the amendments contained in this Proposal represent further softening of the Blue Box regulatory approach that was contained in the original O.Reg 391/21 from June 2021 and signify a divergence from the comprehensive and transformative approach advocated in the [Strategy for a Waste-Free Ontario: Building the Circular Economy](#) (Ministry, 2017; "Strategy"). Specifically, the amendments appear to lessen the rigour which will be applied in determining and auditing Producer performance. Producer responsibility is the core philosophy of the entire [Resource Recovery and Circular Economy Act](#) ("Act") framework. Without clear and practical definitions of a Producer's obligations and the ability of a third-party auditor to scrutinize a Producer's performance, the system may underperform and fail to reach the circular economy goals that are key to Ontario's future.

Background

One of the legacies of Ontario's 1994's "3 Rs" regulations ([O.Reg 101](#), [102](#), [103](#), and [104/94](#)) is the separation of industrial, commercial, and institutional (ICI)

source separated waste and municipal Blue Box waste. The provincial Strategy highlights the deficiencies of this approach and calls for ICI sector opportunities to be leveraged under “Action 5: Amend the 3Rs Regulations to increase resource recovery across all sectors”. The 2018 Made-in-Ontario Environmental Plan also highlights the poor diversion in the ICI sector at only 17% ([Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan](#)). To date, there has been no indication of further policy or regulation development that would support this action substantially.

The Regulation preserves the ICI and consumer waste distinction by defining “consumer” in s.1.(2) using the language “end user...for personal, family or household purposes” and limiting the scope of the Regulation to products used by this definition of consumer. The quantification of Blue Box material following this scope is presented in s.40.(1) of the Regulation which requires reference to s.50.(3) for Initial Reports and s.51.(1) for subsequent Annual Reports: the “Management requirement” is ultimately equal to the product of the “Recovery percentage” and the weight of blue box material supplied (s.50.(3).1 or s.51.(1).1) less the weight of blue box material deducted (s.50.(3).2 or s.51.(1).2)).

S. 40.(1) is significant because, after the definition of consumer contained in the weight of blue box material supplied (s.50.(3).1 or s.51.(1).1), it introduces the next exception from management requirements of the Regulation within the deductions allowed in s.50.(3).2 and s.51.(1).2. These are:

“Blue box material...

- i. deposited into a receptacle at a location that is,
 - A. not an eligible source, and where the product related to the blue box material was supplied and used or consumed, and
 - B. collected from an eligible source at the time a related product was installed or delivered.”

The Proposal appears to seek to amend this list by clarifying (i) to include more explicitly:

- businesses and commercial sources (e.g., office buildings)
- recreational facilities (e.g., arenas)
- some institutions (e.g., hospitals)

Critique

The Regulation already makes provisions for collecting materials outside the Collection system encompassing residences, facilities, and public spaces described in Part IV with Alternative Collection Systems (Part V) and supplemental collection systems (s. 1.(1)). A supplemental collection system is already explicitly defined as encompassing collection systems outside Part IV and Part V. The deductions already afforded by s.50.(3).2 and s.51.(1).2 create a third pathway to reduce Part IV Collection system management requirements.

Both Alternative and Supplement Collection Systems require registration (s.45 and 46), reporting (s. 50, 51, and 52), and auditing (s.67), similar to Part IV collection. However, deductions made under in s.50.(3).2 and s.51.(1).2 do not appear to require the same registration, reporting, and auditing rigour as Supplemental and Alternative Collection Systems. Unlike Supplemental and Alternative Collection Systems, deducted tonnages do not have to be described as in s.45.(3) and s.46.2; only the weights are reported under 45.(3).7.ii. The audit provisions in s.67.(2) refer to s.51.(1).10 which relates to the determination of the management responsibility but there is no explicit reference to auditing the deductions claimed under s.50.(3).2 and s.51.(1).2.

In the current Regulation, there is already a difference between the rigour applied to the s.50.(3).2 and s.51.(1).2 deductions and the rigour applied to Supplemental and Alternative Collection Systems. There is also already poor definition between what can be considered Supplemental, Alternate, or a deduction, all of which refer to different methods whereby material supplied to consumers does not have to be recovered through the Part IV Collection system. For example, the Proposal itself states "Examples of supplemental or alternative collection systems could include retail take-back programs or mail-back program"; while retail take-back and mail-back programs are explicitly mentioned in Part V, there are other models of collection that fit the description of "industrial, commercial and institutional sources that producers are not required to provide blue box collection services to under the blue box regulation" that could conceivably be registered as a Supplemental or Alternative Collection System or as a s.50.(3).2 and s.51.(1).2 deduction.

This lack of definition between these three methods outside Part IV is not offered better clarity by the Proposal. The language in the proposal affirms the potential for Producers to reduce management requirements by preferring using the deduction provisions in s.50.(3).2 and s.51.(1).2 where before they may have considered registering and reporting a Supplemental or Alternative Collection System. Without the scrutiny of registration, reporting, and auditing, these deductions have the potential to reduce the management requirements which drive the performance and innovation of the new Blue Box system.

In the short term, it is true that "clarity to producers on their blue box obligations" and the "a smooth transition" identified in the Proposal should be prioritized. However, the current proposal further blurs the lines between the consumer Blue Box material and ICI material by explicitly listing ICI locations as eligible for deductions. If an amendment is made, it should offer clarity around when Supplemental Collection System, Alternative Collection System, or s.50.(3).2 and s.51.(1).2 deductions apply and require the same registration, reporting, and auditing rigour between all three pathways to reduce leakage of Blue Box material in or out of the management requirement.

In the longer term, a comprehensive waste diversion strategy that applies to the ICI sector would simplify reporting, create better economies of scale for collection and processing, focus resources more efficiently toward the greatest opportunities, and ultimately lead to greater diversion.



Our concerns about the proposed deductions from ICI and the lack of regulation of ICI are echoed by many of our municipal peers as you will find in their respective submissions on this Proposal.

Once again, we appreciate the opportunity to provide input and trust that our comments, as outlined above, will be given due consideration.

Sincerely,

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