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RE: Regulation under the Resource Recovery and Circular Economy Act (RRCEA) to make producers responsible for the Blue Box, and amend Regulation 101/94: Recycling and Composting of Municipal Waste to sunset municipal obligations after transition to full producer responsibility. ERO # 019-2579

Currently, less than seven per cent of Ontario's waste is recycled through the Blue Box, and the province sends more than 8 million tonnes (70 per cent) of material to disposal every year.

Now, more than ever, we need the Government of Ontario to adopt a regulation that supports the province's transition to a low-carbon non-toxic circular economy where products and services are fundamentally redesigned to prevent waste, and where companies are financially and operationally responsible for their products at end-of-life through Extended Producer Responsibility (EPR).

Our organizations collectively submit comments to the Ministry of Environment, Conservation, and Parks (MOECP) proposed regulation and regulatory amendments regarding ERO # 019-2579.

EPR is a central tenet to advancing waste reduction and resource efficiency in the province of Ontario. The proposed regulation to make producers fully financially and operationally responsible for the Blue Box materials they sell into Ontario provides a critical opportunity to improve the performance of the Blue Box Program as well as decrease disposal of valuable printed paper and packaging (PPP) materials.

The Blue Box Program currently costs Ontario taxpayers \$300 million annually. Assigning this share of cost and liability to the producers that have direct control of their respective packaging choices provides an important incentive for better design, and creates opportunities for investments to improve Ontario's recycling infrastructure and services. Releasing this financial burden from municipal governments and taxpayers also offers opportunity for much needed funds to be redirected to other environmental programs and services, such as expanded organics diversion.

We understand that the proposed regulation has two main objectives:

1. Guide the transition for the Blue Box Program from a current shared (municipalities and producers) responsibility model to full producer responsibility.
2. Set the post-transition performance requirements, parameters, and conditions for producers to improve and expand Blue Box material waste reduction across the province.

While the regulation, as drafted, clearly sets out parameters that will effectively guide the transition of the Blue Box Program from partial to full producer responsibility, it falls short by failing to set the performance requirements and conditions that will ensure effective expansion and improvement of waste reduction of PPP more broadly.

This submission offers comments and recommendations to improve the regulation's ability to achieve short- and longer-term objectives and are listed in order as they appear in the regulation rather than order of priority.

Amendments to the *Resource Recovery and Circular Economy Act, 2016*

A primary objective of the proposed regulation is to transfer responsibility of management of Blue Box materials, as defined, from municipal governments and taxpayers to producers that sell them into Ontario. The regulation outlines a scheduled transition period from 2023 – 2026 whereby municipalities will be required to make the decision as to whether they will agree to transition their respective collection and processing services, or maintain the service and enter into a commercial arrangement with the obligated and registered parties (such as producers and Producer Responsibility Organizations / PROs).

As such it is unclear why the government has tabled amendments to the RRCEA in Schedule 41 of Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 that intends to provide effective regulatory powers to producers for the purposes of rulemaking. It is unclear why giving regulation-making authority to private interests is necessary to deliver a common collection system for the Blue Box Program. Ontario's last foray into the privatization of public policy under the *Waste Diversion Act, 2002* resulted in anti-competitive producer behaviour and poor environmental outcomes (see additional discussion under Part III Annual Allocation Table).

Recommendation:

Remove all pending amendments to Bill 229 that relate to the RRCEA until the MOECP can demonstrate the need for statutory amendments and meaningful stakeholder consultation has been completed.

Definition of Blue Box Materials

The regulation addresses an important aspect to waste reduction in Ontario by broadening the scope of collection sources for targeted Blue Box materials to include parks, schools and other facilities. As well, the regulation includes much needed focus to ensure service for Ontario's First Nations. These sources are critical to improving Ontario's waste reduction performance. Current collection services are inconsistent and, in some instances, ineffectual. Expanding the scope of what is defined as residential sources is an important step toward standardizing services across the province and diverting more materials from disposal.

The regulation also expands the targeted list of materials obligated, such as defined by packaging-like and single-use. These inclusions are welcomed and critical to ensuring more materials are captured for recycling, and addresses materials that often ends up as litter that pollute land and waterways. By targeting single-use items Ontario will join other progressive jurisdictions to address the growing issue of plastic waste.

Expanding and standardizing collection and recycling service levels, as well as subject materials on a province-wide basis, is critical to improving participation levels and growth of Ontario's recycling capacity.

Recommendation:

We support the expansion of collection sources including parks, schools and other facilities, as well as the broadened list of targeted materials such as defined by packaging-like and single-use.

Compostable Materials

The regulation provides an exemption for compostable materials from any collection or management obligations. Compostable materials are a growing type of PPP as more producers switch from plastic to compostable materials for single-use products or packaging.

The rise of compostable materials in the marketplace is concerning as it creates and exacerbates problems primarily because they are not processed effectively and consistently across many municipal programs. Rather, these materials distract producers and the public from the drive to reduce packaging; escalate the costs of processing due to their contamination; and increase the amount of PPP ultimately sent for disposal.

Furthermore, plastic-like compostable materials can cause similar harm to the natural environment as fossil-fuel plastics, and some compostable packaging is treated with toxic substances such as Per and Polyfluoroalkyl Substances (PFAS), elements used for water and degreasing properties that contaminate waste and compost sites, and ultimately agricultural lands that rely on composting material.

Exempting compostable materials from regulated performance obligations means that producers that bring them to market bear no responsibility for their disposal and associated management costs, which counters the objectives and benefits of EPR in this regulation. This exemption means there is no requirement for these producers to make investment in proper collection and processing of what they put on the market, in stark contrast to all other packaging material choices.

Recommendations:

Part VI Management and Part VII Registration, Reporting, Auditing and Record Keeping: expand all management and reporting requirements to apply to compostable Blue Box materials including processing targets of 50 per cent in 2026 and 70 per cent 2030 and onward.

Prohibit the use of toxic substances in the production of compostable materials.

Part III Annual Allocation Table

The objectives of the RRCEA focus on outcomes and are purposefully designed to set performance objectives for producers to achieve. The outcomes-based approach is designed to allow producers flexibility to self-determine how they manage their responsibility and the commercial partnership they establish under the guise of meeting performance obligations under the RRCEA. This is fundamental to effective EPR policy and central to driving marketplace innovation, competition, and related environmental outcomes.

The annual allocation provision (Part III: sections 8 and 9) prescribes a process whereby producers and PROs of a certain size threshold (10 per cent of PPP material by sales) work jointly to create rules for the purpose of developing an annual table that sets out how a common collection system (Blue Box) is to be shared and how all obligated sources (residences, parks, and other facilities) will be serviced. As stated earlier the RRCEA is to be amended to give the rules the force of regulation.

As described, these provisions are counter to the central tenets of the RRCEA by prescribing a process: they effectively sanction producers and their PROs under regulation to share commercially sensitive information (e.g., costing); and directs them to design a service system between them. In addition, the regulation stipulates a participation threshold for producers based on 10 per cent of total Blue Box materials sold. This threshold will exclude smaller producers and PROs from participating in the rule-creating process that will ultimately set service and operational standards they will be forced to follow. This is an outcome that is wholly inequitable and unfair.

It appears the main objective of this section is to ensure all obligated producers and PROs ensure standards and that all collection points are serviced. If so, then Part III can be simplified.

Recommendations:

Remove Part III altogether and replace it with a standard requirement that each producer service every eligible collection point in the common collection system.

As part of registration, obligate all producers and PROs to provide details of how they intend to meet these service standards, including how those collection points are apportioned amongst PROs.

Require annual audit reports to verify that accessibility and service standards have been met.

Duty to Collect: Expand to Include the Industrial, Commercial, and Institutional (IC&I) sector

Despite recognition by the MOECP that the bulk of disposed Blue Box materials in Ontario are generated from the non-residential or the IC&I sector, the proposed regulation limits its scope to only residential sources with some limited expansion to parks, schools, and other facilities into the future.

In order for the province to meet its waste reduction objectives it must expand the scope of all EPR regulations, including Blue Box materials generated from IC&I sources. This has been successfully done with all of regulations under the RRCEA and with many other jurisdictions with high packaging recovery rates.

Given the complexity of the blue box transition process, it is reasonable to phase in the inclusion of IC&I sources to 2027.

Recommendation:

Expand the regulation to include collection sources from all industrial, commercial, and institutional sources effective 2027.

Materials Management: Credits for Use of Recycled Content

The regulation includes a provision for producers to gain a credit toward their recovery target for any use of recycled content in the design of their packaging. While maximizing the use of recycled materials is critical to creating demand of materials collected in the Blue Box and other recycling programs, they should not be used as credits that offset producers' financial and environmental responsibilities for materials supplied into the marketplace. Irrespective of the amount of recycled content material is used, all materials sent to market have an environmental impact and management cost that must be considered whether that material is disposed of or collected for recycling by a municipality.

Additionally, recycled content claims are difficult to verify and, therefore, would require the Resource Productivity and Recovery Authority (RPRA) to expand its capacity and associated costs to undertake necessary verification responsibilities. This additional responsibility may detract attention and resources away from its fundamental role of compliance and enforcement.

Creating market incentives to maximize post-consumer recycled content is critical to lifting the value of collected Blue Box materials and expanding Ontario's recycling capacity. However, mandating its use through supplemental policy is a more appropriate tool and would lead to desired environmental outcomes.

Recommendations:

Part VI: Management: Remove recycled content under Section 35 as a mechanism for producers to report their recovered resources and more generally as part of what can count toward management obligations.

Table supplemental regulation that mandates post-consumer recycled content for all packaging that is sold into Ontario.

Materials Management: Processing and Thermal Treatment

Thermal treatment and any form of energy-from-waste that destroys resources should not be considered diversion in any way and should be discouraged and phased out as a management approach for PPP. Material management standards should only recognize reuse, recycling, and composting as activities that count toward performance requirements.

Regulations should be revised to recognize, through clear definitions, what material processing applications count toward producer targets and exclude all forms of disposal, including any type of thermal treatment. The regulation should include a definition of *chemical recycling* to recognize this new and expanding processing application and to ensure that material management standards recognize only those processes that yield the best environmental result.

Recommendation:

Include a section in definitions and refer to it in Part VI: Management that clearly defines what types of recycling and processing applications count toward producer targets and ensure thermal technologies and/or energy-from-waste applications are defined as disposal.

Management Targets

The proposed regulation offers an opportunity to transition full responsibility to producers, and most importantly, improve the amount of Blue Box materials collected and processed, and in particular, low-value and difficult to recycle plastics. Although targets in some material categories offer a significant improvement to the status quo, targets specific to plastics are too low.

Progressive targets based on continuous improvement are critical to environmental and economic objectives of the regulation as it will divert more materials from disposal in order to grow Ontario's recycling sector. The targets set for plastics – rigid and flexible – are set too low to be meaningful, in particular as they are only applied to residential sources.

Leading producers are making meaningful corporate commitments individually and through the newly established Canada Plastic Pact, which includes commitments by 2025:

- 100 per cent of problematic and unnecessary single-use packaging eliminated through redesign innovation or alternative delivery models.
- 100 per cent of plastic packaging is designed to be reusable, recyclable, or compostable.
- Ensure that at least 55 per cent of plastic packaging is effectively recycled or composted.

These producer commitments chart an important course and provide opportunity for government to set new meaningful benchmarks for all producers under this regulation to have a real impact on plastic waste.

Furthermore, as collection and processing rates and values vary significantly between resin types, the regulation should create sub-categories for plastics with specific reporting requirements for better performance. This will add much needed transparency as to collection and diversion performance at an individual resin level and provide important data for all stakeholders.

In addition, given that the regulation sets targets into years 2030 and beyond, it is essential that government sets progressive targets that are forward focused that will encourage vital local investment and reduce Ontario's reliance on export markets for Blue Box materials.

In addition, the fact that no targets are made subject to compliance measures until transition is complete (2026) means there is no consequence to backsliding or reduced collection amounts in any material category.

Recommendations:

Increase the plastics target:

Recoverable Material	Minimum Tonnes	Recovery Targets (2026 – 2029)	Recovery Targets (2030 and beyond)
Rigid Plastic	1	65%	85%
Flexible Plastic	1	55%	75%

Create sub-categories for plastics that include reporting requirements for each specific plastic resin types.

Reporting and Auditing

Producer performance audits are critical to ensure compliance. The regulation suggests performance audits every three years, which means there is no way to verify any backsliding of management requirements and compliance of obligated parties. In addition, given the lack of data surrounding the amount of IC&I Blue Box materials that are generated, disposed, and diverted in Ontario, and to inform future regulations to improve diversion for this sector, reporting requirements should be expanded to require producers to report in all Blue Box materials they sell into Ontario irrespective of where it is consumed (i.e., residential and/or IC&I).

Recommendations:

Increase the frequency of auditing requirements from every three years to annually.

Require RPRA to publicly report annual province-wide collection and recycling rates for each PPP material category and sub-category type.

Require producers (not PROs) to report directly to RPRA the amount of PPP supplied to Ontario on an annual basis.

Require the service sector – including municipalities, private sector collectors, and processors – to report materials collected, processed, and disposed of by material category and sub-category type.

Require RPRA to publicly report aggregated provincial collection, diversion, and disposal rates against supplied for each material category and sub-category.

Expand reporting requirements so producers report all Blue Box materials they sell into Ontario irrespective of where it is consumed (i.e., residential and/or IC&I).

Toxicity

The regulation does not address the toxic substances or additives along the lifecycle of designated materials targeted.

To satisfy the provincial interests of the RRCEA, reduce toxic substances in PPP, and ensure provincial regulations are aligned with federal and international obligations, producers should be required to disclose any use and presence of toxic substances in their PPP as part of reporting requirements to RPRA.

These should include, and not be limited to, substances such as polybrominated diphenyl ethers (PBDEs); cadmium; lead; short-chain chlorinated paraffins (SCCPs) commonly used as softeners in plastics; bisphenol A (BPA) used in polycarbonate bottles, as well as tin lining; and PFAS used to resist water and grease in food packaging.

These, and other targeted substances, should be kept out of the recycling stream to avoid their transfer into production cycles.

The absence of recognizing the impacts of toxic substances and additives found in Blue Box materials and measures to address them will:

- a) perpetuate toxic substances (even those already banned globally) and their impacts to the environment and health through recycling processes; manufacturing of products with recycled contents; and final disposal processes of products;
- b) undermine the circular economy framework on the safety of materials to be circulated through the system; and
- c) undermine an effective EPR approach if producers do not take responsibility for toxic contents of their materials, and prevention and precaution through product innovations.

Recommendations:

Add new obligations in the proposed regulation for mandatory requirements for labelling, disclosure, restrictions, and phase-out of toxic substances and additives as noted. Put list in designated materials as part of the registration and procurement requirements with RPRA.

Restate an objective of the draft regulations that aims to reduce and prevent toxic substances and additives for designated materials in support of the RRCEA.

Develop, adopt, and regularly revise a legally binding phase-out list of hazardous chemicals in goods, including packaging, to be used by provincial procurement units and producers as a regulation to be completed within six months.

Conduct regular monitoring of compliance with the phase-out list and active dialogue with industry representatives prior to procurement so that suppliers agree to requirements to phase-out toxic chemicals from their products and packaging.

While we applaud the Ministry's efforts to advance full EPR for the Blue Box and PPP materials in Ontario, our recommendations as offered are crucial and necessary for the RRCEA to meet its objectives.

We thank you for the opportunity to provide comments and look forward to working with you to realize a best-in-class regulation for Ontario.

Yours sincerely,



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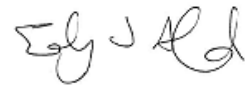
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