

Will Johnston
Deputy City Manager

Solid Waste Management Services
City Hall
100 Queen Street West
25th Floor, East Tower
Toronto, ON M5H 2N2

Tel: 416-392-4715
Fax: 416-392-4754
Matt.Keliher@toronto.ca

October 18, 2024

SUBMITTED ONLINE TO THE ENVIRONMENTAL REGISTRY OF ONTARIO:
ero.ontario.ca/notice/019-8866

Krista Friesen
Manager
Policy Development
Resource Recovery Policy Branch
Ministry of the Environment, Conservation and Parks
40 St. Clair Avenue West, 8th Floor
Toronto, ON M4V 1M2

Dear Ms Friesen,

**Re: City of Toronto Comments on Environmental Registry of Ontario
Number 019-8866:
Amendments to Four Producer Responsibility Regulations for Tires, Batteries,
Electrical and Electronic Equipment, and Hazardous and Special Products**

The City of Toronto (the "City") is pleased to provide comments in response to the Ontario Ministry of the Environment, Conservation and Parks' (the "Ministry") proposal to amend the Tires, Batteries, Electrical and Electronic Equipment (EEE) and Hazardous and Special Products (HSP) Regulations made under the Resource Recovery and Circular Economy Act, 2016 (RRCEA), that was posted on September 5, 2024 to the Environmental Registry of Ontario (ERO) for comment.

The City continues to support the commitment made by the Province to increase the recovery of resources and reduce waste by holding those most responsible for the design of products and packaging accountable for management of their materials supplied into the Ontario marketplace. As such, the City is concerned that the proposal to amend the four regulations gives the appearance of reducing the obligations placed on producers.

While the City supports the concept of regulatory burden reduction, there is concern that the Ministry has not provided any studies or data to support the rationale for the numerous proposed regulatory amendments. This includes documentation to support statements made by the Ministry in the posting that these proposed amendments will not impact environmental outcomes or access to a convenient collection network.

Finally, the City is not able to provide definitive statements of support for any of these amendments until the Ministry shares both the documentation noted above as well as the draft regulatory language, so as to allow for a comprehensive review of the proposed amendments and their possible implications.

The comments provided below outline some of the specific questions that the City feels could be addressed by the Ministry providing the documentation and draft regulatory language. As appropriate, the comments align with those provided in late 2023 in response to a request from the Ministry for feedback arising from consultation with the municipal sector on extended producer responsibility regulations under the RRCEA. The City notes that there has not been any follow-up to this consultation exercise. This is of concern as a number of the proposed amendments in the current ERO posting have implications for municipalities or appear to repeat consultations questions raised by the Ministry in late 2023.

General Comments

Maintaining a High Standard of Management

The City has significant concerns that potential improper management of materials currently captured under the Tires, Batteries, EEE and HSP Regulations will impact the City's responsibilities to safely manage waste and litter, consistent with provincial regulations, leading to:

- A potential increase in litter generated from materials designated under these Extended Producer Responsibility (EPR) regulations;
- The potential for the improper disposal or illegal dumping of these materials in the environment, which could lead to releases of harmful materials to the air and water; and
- Increased amounts of waste that the City will have to manage at its landfill, consuming precious capacity.

The concerns noted above are consistent with the Provincial Interest, as stated in Section 2 of the RRCEA, that Ontario have a system of resource recovery and waste reduction that aims to, among other goals, protect the natural environment and human health, minimize the generation of waste, and hold persons who are most responsible for the design of products and packaging responsible for the products and packaging at the end of life. As such, the City requests that the Province ensure that any proposed amendments to the Tires, Batteries, EEE and HSP Regulations be assessed with the goal of maintaining and then increasing the standard of management for all regulated materials, consistent with the Provincial Interest.

Commitment to Consultation with Municipalities

The Ministry has undertaken a number of amendments to all of the EPR regulations (including the Blue Box Regulation) since they were first introduced, most of which have resulted in reducing a variety of producer obligations across a range of regulated materials. Unfortunately, an uneven approach has been taken when it comes to consulting with all stakeholders impacted by these amendments.

The proposed amendments to the Tires, Batteries, EEE and HSP Regulations appear to have had significant input from industry stakeholders, as evidenced by the numerous amendments labelled as regulatory burden reduction. By contrast, the City is not aware of any consultations with the municipal sector during the development of the proposed amendments, a number of which appear to have direct implications for municipalities. This is unfortunate, given the effort made by the City to provide the Ministry with feedback in response to consultations with the municipal sector in late 2023. At that time, the City requested that this dialogue continue as amendments to the EPR regulations were being considered, however this dialogue has not occurred.

Municipalities should be considered key stakeholders when considering any changes to the provincial regulatory framework for resource recovery and waste management. Provincial taxpayers are also municipal residents and when they feel the direct impact of changes to waste services and the improper management of designated materials (i.e. littering, illegal dumping or contamination of other waste streams), they turn to their local municipality to voice their concern. This in turn can create financial and/or operational challenges for municipalities as they work to address the concerns. The ability of municipalities to provide feedback on the real-world impacts of improperly managed waste should be recognized by the Ministry with a more rigorous consultation effort when it undertakes regulatory amendments.

Comments on the Proposed Amendments

Comments on the Collection Amendments

In addition to the specific comments below, the City is requesting that the Ministry, prior to moving forward with the proposed collection amendments, develop and circulate for consultation a document that demonstrates how these proposed amendments will result in improvements to public accessibility and recovery rates, as well as outlining any implications for existing municipal collection sites and events. The Ministry should also arrange for a consultation session with municipalities to go over these proposed collection amendments, as well as any other proposed amendments with municipal implications.

Geographic Offsetting

The proposal to allow producers to offset a limited number of required sites in a given municipality by establishing and operating collection sites in an adjacent local municipality under the Tires, Batteries, EEE and HSP Regulations appears to be aimed at addressing accessibility issues in northern communities. However, given the lack of details on how approvals for the use of this provision would be provided, the City is concerned that this provision could be used throughout the province, with the potential to impact municipal collection sites.

Adding or Increasing Collection Events

The Ministry has provided no documentation to support how the new thresholds for collection events under the Tires, EEE (lighting category only), and HSP Regulations were arrived at or why batteries and Information Technology, Telecommunications, Audio-Visual (ITT/AV) category under the EEE Regulation will continue to use the 25% threshold.

The City is concerned with the lack of details on how these events improve recovery rates and the rules under which these events would be allowed to operate.

There is also concern that the term “collection events”, referenced in the plain language wording as “public collection events” are yet to be defined, especially with respect to the timing and frequency of these events. In the proposal it is unclear whether these public collection events will be new ones established by producers or existing ones held by the municipality. If there is an expectation that producers will be allowed to include municipal collection events, the Ministry will need to enter into discussions with municipalities on the possible cost and staffing implications prior to moving forward with this proposed amendment.

Allow All Municipal Collection Sites to Count as Permanent Sites

The City notes that the plain language version of the posting indicates locations that would currently be considered municipal collection events would now be able to be counted by producers as sites. Until the Ministry clear definitions for municipal collection sites (e.g., frequency of operation in a week, daily hours of operation) associated with this proposed amendment, the City is unclear if this proposal would actually reduce access to collection sites.

In addition, the City is looking for language in the proposed amendments that requires producers to sign agreements that cover the full costs associated with the collection at municipal sites of materials under Tires, Batteries, EEE and HSP Regulations.

Adjust Timeline for New Census Data

The Ministry should provide the specific timelines, based on defined factors, that would be proposed.

Adjust The Population-Based Formula In The Tires Regulation to Reflect Higher Population Densities in Large Municipalities

The City does not support any proposed amendments that would reduce the accessibility for consumers wishing to drop-off items such as tires. Allowing for a reduction in the number of drop-off locations could result in more illegal dumping and potentially more serious environmental impacts. It may also result in capacity issues at the locations that remain due to higher demand at each location.

The City recommends that total population, as well as population densities, be used to determine appropriate levels of accessibility and the capacity at each collection location, rather than simply relying on geographic locations.

This would ensure that areas of higher population densities have the appropriate access to drop-off locations with sufficient capacity to accept tires.

Align “Take-Back” Provisions

The City cannot provide comments on the proposed amendment without first seeing the draft regulatory language.

Give New Option for HSP Producers to Meet Collection Requirements Based on the Existing Municipal Collection Network

The City does not support this proposal. The stated policy intent of this proposed amendment is to encourage and support producers to partner with municipalities in using municipal sites for the purposes of meeting accessibility requirements. However, this proposed amendment appears to ignore long standing concerns from the municipal sector regarding how producers continue to avoid paying their fair share for regulated HSP materials that are collected at municipal sites. As was stated in the City’s December 22, 2023 submission in response to the previous consultations on the EPR regulations, a Producer Responsibility Organization (PRO) had suggested to municipalities that a new agreement with municipalities be developed which bases compensation for the management of HSP using a tonnage-based approach rather than based on the number of collection hours.

The City finds this proposed approach by the PRO problematic, and an example of how stronger tools are needed to support the EPR model and improve diversion rates. Operating hours, not tonnages, are the major cost driver under the current operating model and also directly affect the ability of residents to access collection sites to properly dispose of these materials. As such, the Ministry’s stated expectation “that it is expected that producers would negotiate with municipalities on fair terms and compensation for the access to the municipal sites” does not provide the City with any confidence that full EPR costing will result.

Proper management of HSP is especially important so as to protect the natural environment from pollution and prevent HSP from ending up in landfills. While the City prioritizes being an environmental steward, the cost to manage HSP properly should be borne by its producers who are regulated to do so under an EPR regulation, consistent with the Provincial Interest stated in the RRCEA.

As such, the City requests the Province to ensure that producers and their PROs are “fairly compensating” those who manage the collection of producer materials on their behalf by providing both the draft regulatory wording for this proposed amendment as well as a supporting policy statement.

Add New Performance Requirement for Large Producers Of Automotive HSP when Creating Alternative Collection Networks

In addition to the general comment noted at the beginning of this section, the Ministry should also provide details on any enhanced monitoring and reporting requirements so that corrections can be made quickly if the expected results are not achieved. There also needs to be documentation on how alternative collection networks could impact existing municipal collection sites and events.

Comments on Burden Reduction Amendments

Remove Recycling Efficiency Rate (RER) Requirements

The City notes that while removing the RER is being described as a burden reduction exercise, there is no data that supports either this conclusion or demonstrates that the amendment will not impact the rates of recovery for regulated materials. Given that the Ministry is asking for feedback on the implementation of this proposed amendment, the City recommends that it be deferred until the supporting documentation can be circulated and consulted on.

Adjust Small Producer Exemptions

Revise Collection Site Record Keeping

Remove Registration and Reporting for Tire Collectors

Reduce Tire Hauler Reporting

The City requests that the Ministry provide additional information supporting changes to exemptions, record keeping as well as the removal of registration and reporting requirements, especially for those materials with higher environmental and safety risks such as batteries.

Proposed changes to the Tires Regulation

Adjust Performance Target

The City requests that the Ministry provide any additional information supporting this proposed amendment. As currently worded, it is unclear why the amendment is proposing to lower the performance target for tires, other than to reflect “historical data”.

Increase the Weight Threshold for Regulated Tires

While the City would have appreciated seeing the documentation that supports this proposed amendment so it can provide informed comments, it appears to only impact existing reporting requirements. The City would like assurances that tires below the threshold would still be collected and managed. The Ministry should consider if the collection of unreported smaller tires could possibly skew data depending on the volume of smaller tires being collected.

Proposed Changes to the Batteries Regulation

Extend Management Target

The City requests that the Ministry provide any additional information supporting this proposed amendment. As currently worded, the title of the proposal obscures its intent.

In addition, it is unclear why the amendment is proposing to lower the performance target for batteries. Recent media coverage related to a battery recycling company taking the Province to court, citing lax enforcement of the existing Batteries Regulation, only adds to the City's concerns that proposed amendments to this regulation are premature.

Proposed Changes to the Electrical and Electronic Equipment (EEE) Regulation

Change Requirements for ITT/AV Replacement Parts

The City requests that the Ministry provide any additional information supporting this proposed amendment. The City would like to know how removing reporting on supply weight of replacement parts, as well as the obligations related to that supply weight, but still requiring collection and management align with EPR principles.

Revise Allowable Reuse

Remove Waste Reduction Incentives

Extend Management Target

The City requests that the Ministry provide any additional information supporting these proposed amendments. The City does note that unlike the proposals to change the targets for tires and batteries, the Ministry has indicated that these proposals are as a result of proposed amendments to the repair/refurbishment provisions.

Consult on Expanding Types of Regulated EEE

The City feels that addressing the safety and disposal issues around lithium-ion batteries is an excellent example of where producers need to take a more active role in the management of their products. Lithium-ion batteries power many devices including smart phones, laptops, e-bikes and toys.

In 2023, the number of lithium-ion battery-related fires in Toronto increased by 90 per cent compared to 2022 and up to the end of June 2024, there have already been 15 fires involving lithium-ion batteries; seven of those fires were related to micro-mobility devices.

On June 25, 2024, the City launched a campaign to increase public awareness on the safe use and disposal of lithium-ion batteries.

The City would be pleased to participate in any consultation on expanding collection and management obligations to include additional types of EEE to mitigate fire hazard potential posed by batteries embedded in those products.

The City would also encourage the Ministry to consider including additional types of EEE under the regulation

Proposed changes to the Hazardous and Special Products (HSP) Regulation

Revise Producer Hierarchy for Antifreeze and Oil Filters

Prior to moving forward with this proposed amendment, the City is requesting that the Ministry develop and circulate for consultation the draft regulatory language in support of this provision so that the City can comment on any potential implications for this proposed amendment. In addition, the Ministry should also provide the draft regulatory language for

the other proposed amendments related to the management of these materials so that there can be a comprehensive review to avoid unintended consequences.

Revise Requirements for Refillable Pressurized Containers

Prior to moving forward with this proposed amendment, the City is requesting that the Ministry develop and circulate for consultation the draft regulatory language in support of this provision so that the City can comment on any potential implications for this proposed amendment.

Other Concerns

Expanding the List of Designated HSP Materials Under the Regulation

The City is discouraged that the Ministry has not used this posting to begin consultation on expanding the list of designated HSP. As indicated in the picture below, there are a number of hazardous household waste materials that the City manages in order to reduce the risk of illegal dumping of these items or being disposed of in landfills. The materials highlighted in yellow are not currently covered by an EPR regulation. As such, the City is bearing the full cost of managing these materials, in addition to the discrepancies between what it costs the City to manage designated HSP and the compensation producers are willing to pay.



Car, garage products

Antifreeze, car batteries, brake fluid, body filler, fuel (gasoline, diesel, kerosene), motor oil (new and used), oil filters, windshield washer fluid



Personal care products

Alcohol-based lotions (aftershave, perfume, etc.), medication, nail polish remover
Syringes & medical sharps – must be in a sealed container



Household cleaning products

Abrasive powders, ammonia-based cleaners, bleach, disinfectants, drain cleaners, floor and furniture polish, metal cleaners, window glass and plastic cleaners



Pesticides, garden products

Poisons (ant, mouse, rat, etc.), fertilizers, fungicides, insecticides, weed killers (herbicides)



Paints, solvents, glue

Automotive spray paints, latex and water-based paints, paint strippers, rust removers, stains, thinners, turpentine, wood preservatives



Other

Air fresheners, batteries, compact fluorescent lamps (CFLs), cooking oil, propane tanks, swimming pool chemicals

Notes: Car batteries not covered by EPR regulations, but the City does receive some compensation.

Only 15% of the pesticides collected are covered by the PRO.

Empty metal paint cans (lids removed) and empty aerosol cans (lids on) are currently accepted in Toronto's Blue Bin Program.

Despite being a small segment of Ontario's overall waste stream, the costs associated with collecting and managing household hazardous waste is a burden, especially as it relates to ensuring that these materials are properly disposed and not going to landfill or entering into the natural environment. The City had understood that when the HSP regulation (O. Reg. 449/21) was put in place there was always an intention to expand the list of designated products, which to date has not happened.

Thank you again for the opportunity to participate in the municipal sector consultation and to provide written comments.

Should you have any questions regarding our comments, please feel free to contact Charlotte Ueta, Acting Director of Policy, Planning & Outreach at Charlotte.Ueta@toronto.ca or by telephone at 416- 392-8506.

Thank you for your consideration.

Yours truly,



Matt Keliher
General Manager
Solid Waste Management Services
City of Toronto

MK/ts

Copy to:

Charles O'Hara, Director, Resource Recovery Policy Branch, Ministry of the Environment, Conservation and Parks, Email: charles.o'hara@ontario.ca
Jean Abou Saab, Deputy Chief of Staff, Intergovernmental & Agency Relations, City Manager's Office, Email: Jean.AbouSaab@toronto.ca
Charlotte Ueta, Acting Director, Policy, Planning & Outreach, Solid Waste Management Services, City of Toronto, Email: Charlotte.Ueta@toronto.ca
Michael Skaljin, Acting Project Director Business Transformation – EPR, Solid Waste Management Services, City of Toronto, Email: michael.skaljin@toronto.ca
Tim Sharp, Senior Project Manager Business Transformation – EPR, Solid Waste Management Services, City of Toronto, Email: tim.sharp2@toronto.ca