

October 18th, 2024

The Honourable Andrea Khanjin
Ministry of Environment, Conservation and Parks
5th Floor, 777 Bay Street
Toronto, Ontario M7A 2J3

Re: Duracell's Response to Proposed Amendments to the *Batteries Regulation* in Ontario

Dear Minister Khanjin,

On behalf of Duracell, I am pleased to submit comments on the proposed amendments to the *Batteries Regulation* (O. Reg. 30/20) *Resource Recovery and Circular Economy Act, 2016*.

Duracell believes that some additional modifications to the regulation are necessary to provide increased flexibility, reduce administrative burden, and simplify compliance requirements for battery producers. These five modifications, which are outlined below, will also harmonize the *Batteries Regulation* with that of other leading jurisdictions.

1. Eliminate Recycling Efficiency Rate (RER) and Resources Recovered requirements for both processors and producers to enable accurate calculation of collection/management targets.

Rationale: The current reading of the amendments removes the RER and resources recovered requirements for processors, but not for producers. The initial understanding was that the RER and resource recovered requirements would be removed for both processors and producers. We recommend that Section 16 (1) be updated to remove the RER and resources recovered requirement for producers as well. If the RER is not removed for producers, it will significantly increase the total aggregate collection requirements. For example, a 50% RER/resource recovered target is equal to a 62.5% total aggregate collection target.

Also, by removing RER and resources recovered requirements for producers, it will make the law similar to other jurisdictions. Ontario is the only jurisdiction where, because RER is used instead of a total aggregate collection requirement, performance outcomes are artificially understated. Because the Ontario model is different from other jurisdictions, it requires additional systems to account for recycling, which are more complicated and costly. The removal of RER would allow resources to be redirected from tracking and reporting to improving operations, efficiency, and outcomes.

2. Combine reporting targets for single-use and rechargeable batteries

Rationale: Duracell is not in favor of MECP's proposal to maintain separate management targets for single-use and rechargeables.

This approach exacerbates the challenge of achieving targets because a surplus of one type cannot be used to offset a shortfall of the other. Producers, PROs and RPRA are required to report separately for each category, which takes resources away from core recycling activity. Keeping the management targets separate will prevent producers from achieving compliance and will increase the likelihood of further non-compliance orders and significant administrative penalties.

In aggregate, single-use batteries account for ~80% of sales into the market and total collection volume, while the rechargeable category represents ~20% of sales into the market and total collection volume. It is therefore not possible for producers and PROs to “over collect” in the rechargeable category to meet management requirements if the categories were combined,

Ontario and Quebec are the only provinces in Canada that separate single-use and rechargeables. Combining the two would align Ontario’s regulation with most other provinces.

There is precedent for this recommendation. On pages 22 and 23 of the Plain Language Description of Proposed Regulatory Amendments, MECP proposes to remove reporting requirements for replacement parts from ITT/AV equipment, meaning producers of ITT/AV equipment would no longer have to report on supply weight of those parts, and would not have obligations related to that supply weight. Part of MECP’s rationale for this proposal is to “reduce administrative burden for producers of replacement parts for ITT/AV equipment”, and it notes that the change “would not have a negative impact on environmental outcomes as producers’ collection networks would still have to collect and manage these parts”.

Combining the management targets for single-use and rechargeables would reduce the tracking and reporting burden for producers without negatively impacting environmental outcomes of the batteries program.

3. Adjust Collection/Management Targets by year:

Assuming that RER/resource recovery removal is added for producers and single-use/rechargeable reporting targets are combined, collection/management targets are achievable using the following framework:

- 2023: 30% (one combined target)
- 2024: 40% (one combined target)
- 2025: 40% (one combined target)
- 2026 onwards: 50% (one combined target)

Rationale: Duracell is not in favor of MECP’s proposal for management targets.

While maintaining the management target at 45% from 2025-2029 instead of increasing it to 50% in 2024 is an improvement, producers cannot collectively achieve a 45% management target until approximately 2026. This leaves the period 2023-2026 where producers do not achieve targets and for which they may face further non-compliance orders and significant administrative penalties.

A successful framework will include achievable targets that are guided by historical actuals and will include a realistic escalation. The above recommendations follow these guidelines.

The Ontario batteries regulations only came into effect roughly four years ago, during the time of a major global pandemic that caused significant disruptions to the recycling ecosystem. Yet, Ontario has the highest targets of the provincial jurisdictions in Canada, and they do not reflect the province's historic collection rates. This is highly aggressive when compared to the collection rates in other Canadian provinces, which have allowed for slower ramp-up of targets and/or lower initial targets that increased as the program matured. It should also be noted that the following are aggregate collection targets. If they were RER and resources recovered targets like Ontario's framework, these targets would be even lower.

- British Columbia: Year One 12%, Year Two 18%, Year Three 25%
- Manitoba: Year One 11%, Year Two 15%, Year Three 18%
- Quebec: Year One 20%, Year Two 25%, Year Three 30%

In contrast, Ontario's RER and resources recovered targets are: Year One 40%; Year Two 40%; Year Three 45%.

There is precedent for decreasing management targets in Ontario's EPR framework. In the 'Regulation Specific Changes' section on page 19 of the Plain Language Description of Proposed Regulatory Amendments, MECP is proposing to reduce the collection/performance targets for the Tires program by 20 per cent, from 85 per cent down to 65 per cent for 2025-2029. It goes on to say the rationale is to "align with the results that have been achieved to date." Applying this rationale of basing targets on actual historic results, the targets within the *Batteries Regulation* should also be adjusted down to those outlined in the previous table.

4. Change the effective date of the regulation changes to 2023

Rationale: MECP proposes using the 2025 performance year as the starting point when regulatory changes will come into effect. This means that for performance years 2023 and 2024, producers are at risk of non-compliance orders and significant financial penalties because both years are still open to RPRA's examination and enforcement.

Several stakeholders have engaged MECP on recommended regulatory changes since 2022 and producers should not be penalized for the length of time the engagement process has taken.

Duracell requests that MECP apply regulatory amendments retrospectively, coming into effect for the 2023 performance year onwards.

Otherwise, if MECP decides to use 2025 as the effective date for regulatory amendments, then RPRA should avoid issuing non-compliance orders and administrative penalties to producers for the 2023 and 2024 performance years.

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I appreciate the consideration of Duracell's recommendations outlined above. Duracell believes that with these changes, producers can focus efforts on public participation in battery returns leading to improved environmental outcomes.

Sincerely,

Arthur Adams

Regulatory Manager – North and Latin America