
Subject: Residential Blue Box Program – Proposed Producer Responsibility Regulation

Report to: Public Works Committee

Report date: Tuesday, November 10, 2020

Recommendations

1. That staff **BE AUTHORIZED** to send comments on the proposed Blue Box regulation to the Ministry of Environment, Conservation and Parks (MECP) or before the close of the consultation period on December 3, 2020, following further internal and external coordination and analysis of the proposed regulation.

Key Facts

- The purpose of this report is to seek Council's support for the submission by staff of comments on the Blue Box regulation to the Ministry of Environment, Conservation and Parks (MECP) on behalf of Niagara Region.
- On October 19, 2020, the Province released a [proposed new regulation under the Resource Recovery and Circular Economy Act \(RRCEA\)](https://ero.ontario.ca/notice/019-2579). (<https://ero.ontario.ca/notice/019-2579>) and amendments to the Regulation 101/94 to the Environmental Registry of Ontario (ERO) for a 45-day comment period (see Appendix 2, 3 and 4 for a copy of the proposed regulation and supporting documentation).
- Staff have undertaken a review of the regulation, and have included an outline of preliminary comments for submission to MECP in Appendix 1, subject to further refinement as a result of ongoing analysis and consultation.
- The Blue Box regulation defines a timeframe for transition, ensures a common collection system, designates materials to be collected, standardizes materials accepted in the Blue Box, identifies eligible sources, sets effective targets and promotes increased diversion from the landfill.
- Under the proposed regulation, Niagara Region would transition from the current Blue Box program to the full producer responsibility model in the year 2024. A specific date within 2024 was not provided.
- Under the proposed regulation, the producer shall establish a collection and management system of designated materials and it is expected that producers will be interested in having municipalities provide Blue Box services on their behalf, should mutually agreeable terms be negotiated. These discussions would start once the Blue Box regulation is finalized and Niagara Region will engage in discussions

with producers to continue collection as part of the integrated collection system and report to Committee with a recommendation.

- Staff will continue to provide reports to Committee with further updates on the proposed legislative changes.

Financial Considerations

As stated in PW 23-2020, Stewardship Ontario (SO) is a not-for profit organization funded and governed by industries that are the brand owners, first importers or franchisors of products and packaging material, including those managed through the residential Blue Box Program. Under the current Blue Box Program, the municipal sector and SO each pay 50% of net residential Blue Box-related costs; however, Niagara Region's payment from SO has exceeded the 50% threshold over the last four years based on the funding formula which reflects good program performance.

The 50% payment structure would continue to be applied during the residential Blue Box Program transition period if a municipality has not yet transitioned. For Niagara Region, the 50% payment structure would continue until transition sometime in the year 2024.

As per PW 23-2020, taxpayers currently incur approximately \$8.2 million annually for residential recycling collection and processing net of the 50% blue box funding including the impact of the new contract costs with Miller Waste Systems Inc. (Miller) and GFL Environmental Inc. (GFL), which commenced on October 19, 2020 and expire March 5, 2028. If Niagara Region does not continue to provide collection and haulage service on behalf of the producers, the savings (estimated at \$8.2 million annually) attributable to not having to share recycling and processing costs may be eroded (at least initially) by costs to exit the component of the collection contract(s) related to the residential Blue Box Program. However, if Niagara Region does not provide residential Blue Box collection and haulage, Miller and GFL must make commercially reasonable efforts to re-deploy to other contracts or sell assets at fair market value. A formula was designed and included in the contracts to calculate the compensation payable by Niagara Region.

Additionally, even if municipalities provide collection and haulage service under contract to the producers, existing contracts may need to be amended to reflect the new service requirements, standards and other factors on which the payments by the producers will be determined. Under the proposed regulation, producers must maintain collection service types, standards and levels the same as delivered by the local municipal

program until December 31, 2025 and starting January 1, 2026, the service standards set out in the proposed regulation would apply.

The proposed regulation includes a transition schedule and Niagara Region is identified to transition in 2024. There is no specific date within 2024 identified; however, based on the formula within the curbside collection contract, a transition date of January 1, 2024 would result in an estimated maximum compensation payment of \$5,664,530.

Niagara will continue to be responsible and incur costs for non-eligible sources (e.g. the Industrial, Commercial and Institutional sector) of the Blue Box program. Collection of non-designated materials such as books and alcoholic beverage containers and associated packaging (which still make it into the Blue Box program despite the deposit return program) would also be at full cost to Niagara Region, if Niagara Region decides to continue to collect this material for recycling. The costs to continue to collect this material will be the subject of future analysis and reports.

Analysis

Background

Under the RRCEA, the Province is shifting to a full producer responsibility framework for products, packaging, and packaging-like products, making producers and brand holders accountable for recovering resources and reducing waste associated with products. The Waste Diversion Transition Act, 2016 (WDTA) allows for the products and packaging currently managed under existing waste diversion programs to be transitioned to the new full producer responsibility framework. The Resource Productivity and Recovery Authority (RPRA) was created to support the transition to a circular economy and waste-free Ontario through oversight of existing waste diversion programs, including the Blue Box Program, and the transition of recycling programs to full producer responsibility models per the RRCEA. The RPRA will be responsible for oversight and enforcement of the residential Blue Box regulation, ensuring that expected outcomes are met by producers.

As per PW 23-2020, in order to support development of the regulation associated with the framework, and to begin planning for transition, Association of Municipalities of Ontario (AMO) had requested that municipalities with residential Blue Box programs notify AMO and MECP of both preferred transition date and of intent to consider provision of collection, haulage, and/or processing of Blue Box materials on behalf of producers after transition.

As per report PW 23-2020, Niagara Region's preferred date to transition the residential Blue Box program to full producer responsibility is January 1, 2023, subject to cost benefit analysis when the Blue Box regulation is finalized and expressed interest in providing curbside and depot Blue Box collection and haulage services on behalf of producers, subject to mutually agreeable commercial terms, including service duration, beginning on January 1, 2023.

On October 19, 2020, the Province released a proposed new regulation under the RRECA and amendments to the Regulation 101/94 to the ERO for a 45 day comment period. Comments are due by December 3, 2020. Staff have undertaken a review of the regulation, and have included an outline of preliminary comments for submission to MECP in Appendix 1, subject to further refinement as a result of further analysis and consultation (which was ongoing as of the timing of the submission of this report to Committee).

Review of Proposed New Regulation

The proposed new regulation under the RRCEA makes producers responsible for collecting and managing the full life cycle of designated products and packaging.

The sections below provide a summary of key elements of the proposed new regulation. The full proposed regulation can be found in Appendix 2.

It is important to note that the proposed regulation would require producers to maintain the same collection service types, standards and levels as delivered by the local municipal program until December 31, 2025. As of January 1, 2026, the designated materials, eligible sources, service standards, etc. as contained in the proposed regulation would apply.

1. Designated Materials

The proposed regulation designates Blue Box materials under the RRCEA that producers would be responsible for collecting and managing which consists of items made from paper, metal, glass, plastic, or any combination of these materials including:

- packaging
- printed and unprinted paper
- non-alcoholic beverage containers
- single-use packaging-like products such as foils, wraps, trays, boxes, bags

- single-use items such as straws, cutlery, plates and stir sticks

The list of designated materials under the proposed regulations is an expansion to the current designated Blue Box material with the addition of such materials as unprinted paper, foils, wraps, trays, bags, straws, cutlery, plates and stir sticks.

The regulation excludes materials that are subject to other producer responsibility requirements such as tires, batteries, electric and electronic equipment, municipal hazardous and special waste and pharmaceuticals and sharps. In addition, items intended for disposal in sewage works (e.g. toilet paper), paper fibres used for sanitary purposes (e.g. paper towels, napkins), Blue Box packaging that cannot be easily separated from hazardous waste, garbage bags, books and hardcover periodicals and alcoholic beverage containers or their associated packaging which is currently handled under the existing Ontario Deposit Return Program are also excluded. Niagara Region currently accepts paperback books and hardcover books (with cover removed) and alcoholic beverage containers and their associated packaging in the Blue Box program. Niagara Region will need to decide whether to continue to collect this material after full transition of the Blue Box program if the final regulation does not include an expanded material list.

Under the proposed regulations, producers of designated materials would be responsible for collection, management, promotion and education, registration, reporting and auditing, except for producers of compostable products, which would only be subject to registration and reporting requirements. The Province has indicated this would allow them to gather more data on compostable materials while it works with stakeholders on a producer responsibility approach for these materials.

2. Responsible Producer

The regulation is proposing a cascading hierarchy of producers to ensure the person with the closest connection to the designated products and packaging is made the responsible producer. The regulation would capture retailers that are located outside of Ontario but who supply designated products and packaging to Ontario consumers through the internet.

Producers with less than \$2 million in sales annually would be exempt from collection and management requirements, as well as registering with RPRA and promotion and education requirements. The Province has also included a weight based factor as well

which would exempt those with more than \$2 million in sales annually from management requirements if they supply less than the prescribed weight.

3. Common Collection System and Allocation Table

The proposed regulation includes requirements for producers to establish collection services to all eligible sources through a common collection system where producers would be required to collect a consistent set of materials across the Province (i.e. all designated materials). Alternatives to the common collection system are permitted provided certain requirements are met, such as higher diversion targets than the common collection system.

The proposed regulation would require producers or any Producer Responsibility Organizations (PROs) to send all collected material to a registered processor.

The proposed regulation would require the development of an annual allocation table, the purpose of which is to identify which producers are responsible for collection from which sources and according to which the common collection system would be delivered.

The regulation contains thresholds for size of PROs that can participate in negotiation of the common collection system.

4. Collection/Service Requirements

The Province has indicated that collection requirements in the proposed regulation have been structured to ensure there are continued collection services to eligible sources while also providing producers with flexibility on how they establish their collection systems. Eligible sources are permanent and season dwellings, multi-unit residential buildings, public and private schools, long term care and retirement homes, and specified public spaces.

By April 21, 2021, all communities with a program will need to register with RPRA and detail the services they provide (i.e. number of residences being serviced, how serviced, etc.).

The proposed regulation would require producers to maintain the same collection service types, standards and levels as delivered by the local municipal program until

December 31, 2025. As of January 1, 2026, the service standards as contained in the proposed regulation would apply to the relevant eligible sources.

a. Curbside Collection

Those municipalities who have curbside collection retain curbside collection. Producers can offer depot collection if that was in place prior. Blue Box material must be collected at least every other week and all Blue Box material set out for curbside collection must be collected within a single day. Producers are to provide Blue Box receptacles to each residence prior to the first day of collection and at least one replacement per year is to be provided within one week of request.

b. Depot Collection

Where producers provide depot collection, the regulation stipulates they need to provide at least as many depots as there are depots for garbage collection, have similar operating hours and one container provided prior to start of program and at least one replacement per that is to be provided within one week of request.

c. Facilities (e.g. Schools, Long Term Care)

Producers are required to provide Blue Box receptacles as needed for the storage of Blue Box material at the facility until it is collected, including insuring it has these receptacles before the first day of collection from the producer and providing any replacements within one week of the request. Producers must also collect the material before the receptacles are full.

d. Public Spaces

The proposed regulation requires producers to provide collection at public spaces only where the community provides garbage collection containers. Producers are to provide and ensure that Blue Box receptacles are placed next to every garbage receptacle at the public space and provide collection before the Blue Box receptacle is full. This includes street scape public litter bins located with a business improvement area. Where the public space is a park or playground, producers will be required to collect throughout the year and locate receptacles at entry or exit points and other areas where people congregate. Producers are to provide any replacements as requested by the eligible community within one week of the request and provide receptacles that are appropriate for the public space.

e. Management Requirements

The proposed regulation would require producers to achieve diversion targets (i.e. management requirements), based on the weight of Blue Box materials they supplied in one of six given material categories for the years 2026 to 2029 and 2030 and beyond. These targets are listed in Table 1.

Table 1: Proposed Diversion Targets

Material Category	Proposed Target: 2026-2029	Proposed Target: 2030 onward
Paper	90%	90%
Glass	75%	80%
Metal	67%	75%
Rigid Plastic	55%	60%
Flexible Plastic	30%	40%
Non-Alcoholic Beverage Containers	75%	80%

Producers are to make their best effort to meet targets set out in the regulation during the transition period.

The proposed regulation introduces recycled content credits where 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.

The proposed regulation would require performance audits for producers every three years and set out promotion and education requirements to educate consumers about producer-run Blue Box services.

Producers of compostable products are not subject the management requirements but are subject to reporting requirements.

5. Transition Schedule

The proposed regulation included a transition schedule that identifies the year eligible communities are to transition. Producers would be responsible for transitioning municipalities on or before the dates contained in the schedule. The schedule and map and geographical groupings are found in Appendix 3 and 4.

The preferred municipal transition dates were taken into consideration while trying to balance net program costs and materials managed over the three years. Of the 151 municipalities that indicated their preference, 63 received their preferred transition year.

Niagara Region has been identified to transition in 2024. It is important to note that no specific date has been identified in 2024 yet. The Province will consult on the proposed transition plan including the best way to determine the specific calendar date for each municipal transition. The transition schedule will be updated when the regulation is finalized and will include calendar dates for each transitioning program.

The proposed regulation would require producers to maintain service types, standard, and levels the same as delivered by the municipal program between 2023 and 2025.

6. Ontario Regulation 101/94

Ontario Regulation 101/94 sets out requirements for eligible municipalities to establish, operate and maintain Blue Box services. Implementation of the producer responsibility framework would make these requirements obsolete and therefore the Province will be required to make amendments to the Regulation.

7. Industrial, Commercial & Institutional (IC&I) Sector

The IC&I sector is not included in the proposed regulation as an eligible source; however, the Province has indicated they intend to move forward on the IC&I waste framework in the coming months and will include stakeholder consultation.

8. Municipal Role

There is no prescribed role for municipalities within the proposed regulation after transition. It was expected that municipalities would have the opportunity to provide the collection, haulage and processing of residential Blue Box materials and this may still be the case, but it is up to the producers to set up the collection and management systems that meet the standards set out in the proposed regulation.

Niagara Region Comments on the Proposed Regulation

Niagara Region has provided comments on the producer responsibility framework on various occasions. Appendix 5 contains Niagara Region's previous comments and identifies if they have been addressed and how in the proposed regulation.

Niagara Region has been advocating for the transition of the Blue Box to a producer responsibility framework for many years and is pleased the Province is moving forward with this initiative. With the proposed Blue Box regulations, the Province responded to many of the concerns identified by municipalities including the following:

- A broad list of designated materials to be collected and managed by producers
- The harmonized approach to material collected throughout the province as this will help reduce confusion for residents and increase efficiencies related to promotion and education material.
- The inclusion of multi-residential, public and private schools, long term care, retirement homes, etc. and specified public spaces as eligible spaces.
- The three year transition period with one-third of municipalities transitioning at a time, helping to modulate the cost of the program to producers.
- That the curbside collection system must remain in place for the existing programs and expanded where possible.

Niagara Region comments on the proposed regulation including areas of concern are found in Appendix 1.

Next Steps

The MECP will be hosting sessions to seek stakeholder feedback and input on the proposed regulation. Niagara Region will continue to participate in consultation sessions.

Niagara Region will submit comments on the proposed regulation, consistent with the themes presented in the preliminary comments found in Appendix 1, following further internal and external (ex. AMO) coordination and analysis of the proposed regulations

The Continuous Improvement Fund and Regional Public Works Commissioners of Ontario formed three steering committees to examine:

- Inbound contamination of Blue Box material with the goal of developing a consistent definition of inbound contamination and evaluating the impact contamination has on recycling operations;
- How new technologies could help reduce costs and improve operation efficiencies; and
- Municipal enforcement strategies that municipalities could implement to mitigate unintended consequences as the Province transitions to full producer responsibility.

The resulting work and reports from these steering committees are to assist municipalities' pre and post transition. Once these reports are finalized, staff will report back to Committee on any decision points, recommendations and associated financial impacts.

It is expected that producers will be interested in having municipalities provide Blue Box services on their behalf, should mutually agreeable terms be negotiated. These discussions would start once the Blue Box regulation is finalized. It is recommended that Niagara Region engage in discussions with producers to continue collection as part of the integrated collection system. As per PW 23-2020, this would be subject to Niagara Region's expectations that there would be:

- 100% payment by producers; and
- Reasonable and quantitative measures for standards and requirements related to collection and haulage that would be applied and overseen by RPRA as an independent entity.

Niagara Region anticipates completion of the Material Recovery Facility (MRF) Phase Opportunity Review in early 2021, which will inform how or if the MRF asset will be potentially divested and Niagara Region's potential role in processing services.

Alternatives Reviewed

No alternatives were reviewed as part of this report.

Relationship to Council Strategic Priorities

This report supports Council's Strategic Priority of Responsible Growth and Infrastructure Planning.

Other Pertinent Reports

- WMPSC-9-2019 A Made-in-Ontario Environment Plan
- WMPSC 32-2019 Modernizing Blue Box Program
- WMPSC-C 2-2020 Update on Provincial Initiatives for Extended Producer Responsibility
- PW 23-2020 Blue Box Program Transition to Full Producer Responsibility

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Appendices

Appendix 1	Comments on the Proposed Blue Box Regulation
Appendix 2	Proposed Blue Box Regulation
Appendix 3	Blue Box Transition Schedule: Explanatory Note
Appendix 4	Blue Box Transition Complementary Document: Map and Geographic Groupings
Appendix 5	Previous Waste Management Comments and How Addressed in Proposed Regulation