
MEMORANDUM

PWC-C 24-2021

Subject: Residential Blue Box Program – Final Producer Responsibility Regulation

Date: Tuesday July 13, 2021

To: Public Works Committee

From: Sherri Tait, Program Manager, Policy & Planning

The purpose of this memorandum is to provide Public Works Committee with information on the final regulation for the residential Blue Box program.

Key Facts

- On June 3, 2021, the Province released the final Blue Box regulation [Blue Box regulation](https://www.ontario.ca/laws/regulation/r21391) (<https://www.ontario.ca/laws/regulation/r21391>) following consultation on the draft new regulation under the Resource Recovery and Circular Economy Act (RRCEA) on which Niagara Region submitted comments in December 2020 (as per PW 48-2020).
- The final 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.
- Staff have undertaken a review of the regulation, and have noted the differences between the draft and final regulation in this memo and identified how Niagara Region's previous comments were addressed in Appendix 1. In general, the majority of the changes made to the final regulation do not have a significant impact on municipalities.
- Under the regulation, Niagara Region would transition from the current Blue Box program to the full producer responsibility model no later than January 1, 2024.
- Under the draft 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. Niagara Region will engage in discussions with producers and/or PROs to continue collection services as part of the integrated collection system and report to Committee with a recommendation.

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- Additional considerations and/or decision points that will need to be made related to the Blue Box regulation (ex. to continue to collect non-obligated materials, to continue to collect Blue Box material from non-eligible sources etc.) are outlined in this report.

Background

Under the Resource Recovery and Circular Economy Act (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 (RPPRA) 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 RPPRA 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 was January 1, 2023, 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.

On October 19, 2020, the Province released a draft new regulation under the RRECA and amendments to the Regulation 101/94 to the Environmental Registry of Ontario (ERO) for a 45 day comment period. As per PW 48-2020, staff undertook a review of the draft regulation and submitted comments on December 3, 2020.

On June 3, 2021, the Province released the final regulation. As part of the analysis of the final regulation, a comparison to the draft regulation was completed to note any

differences and also to determine how Niagara Region comments on the draft regulation were addressed. The results are highlighted below and in the majority of cases, changes do not have a significant impact to municipalities.

Niagara Region's Previous Comments on the Draft Blue Box Regulation

Niagara Region has been advocating for the transition of the Blue Box to producer responsibility framework for many years and both municipalities and producers desire the change and support the shift. While not all municipal comments were addressed with the final Blue Box regulation, the Province did respond to many concerns identified by municipalities during the extensive consultation process prior to the release of the draft regulation, 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, a subset of long term care facilities, retirement homes, etc. and specified public spaces as eligible sources.
- 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.

Appendix 1 provides a summary of Niagara Region's comments on the draft regulation and how they were addressed in the final regulation. A subset of the comments maybe addressed at a later point and/or in another policy/regulation (e.g. designating certified compostable products and packaging, collection from public facing municipal buildings, compliance and enforcement measures, etc.).

Final versus Draft Blue Box Regulation

The final 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.

Generally, the final regulation is consistent with the draft version. There were some notable definition changes, revisions to eligible sources, reduction in diversion targets

for paper and plastics, deletion of recycled content requirements, reduction in material volumes needed for PROs to qualify as a rule creator for the creation of the allocation table and revised requirements for supply of Blue Box receptacles and alternative collection systems. The final regulation also includes a transition schedule with specific transition dates for each community.

Transition Schedule

The draft regulation included a transition schedule that identifies the year eligible communities are to transition and the final regulation included specific dates for transition. Producers would be responsible for transitioning municipalities on or before the dates contained in the schedule.

The preferred municipal transition dates were taken into consideration while trying to balance net program costs and materials managed over the three year transition period.

The transition period will begin on July 1, 2023 and end by December 31, 2025. Niagara Region has been identified to transition no later than January 1, 2024.

The final regulation still requires that producers maintain existing service levels (i.e. materials collected, frequency of collection, etc.) during transition (January 1, 2023 to December 31, 2025) however, it is the current understanding that a community could transition sooner if mutually agreed upon by the producers and the community. Post-transition (i.e. starting January 1, 2026), Niagara Region will have no operational program control over the residential Blue Box program including collection frequency, container type and if the program will be single or dual stream.

Designated Materials

The list of designated material under the draft regulation was expanded compared to the current Blue Box program; however, there have been some changes from the draft to final regulation. The final regulation now excludes a product made from flexible plastic that is ordinarily used for the containment or handling of food such as cling wrap, sandwich bags, or freezer bags. The definition still does include aluminum foil, metal trays, plastic film, plastic wrap, wrapping paper, paper bags, beverage cups, plastic bags, plastic cutlery, straws, and cardboard boxes or envelopes.

Also the definition of alcoholic beverage product and packaging has been expanded. In the draft regulation the definition only included regulated containers as defined in the Deposit Return Program regulation. The final regulation includes all products with their

primary packaging that are alcoholic beverages, non-alcoholic beer, wine and spirits, products and packaging that are imported or supplied by Brewers Retail Inc. and the Liquor Control Board of Ontario or for which they are the brand holders. It also includes the convenience and transport packaging for these products.

The definition of certified compostable product and packaging has been amended to mean material that is only capable of being processed by composting, anaerobic digestion or other processes that result in decomposition by bacteria or other living organisms to add material that is certified as compostable by an international, national or industry standard that is listed in the Blue Box Verification and Audit Procedure. Similar to the draft regulation, producers are not required to collect or manage this material but there are reporting requirements.

Eligible Sources

Public Spaces

The definition of public space was expanded to include transit stations or stops under municipal or provincial jurisdiction as well as outdoor parks, playgrounds or sidewalks, not just in designated business areas.

Producers are required to provide a minimum number of Blue Box receptacles per person in every community based on a density formula which is population of lower tier municipality divided by:

- 400, if the eligible community has a population equal to or greater than 500,000;
- 600, if the eligible community has a population equal to or greater than 30,000, but less than 500,000;
- 800, if the eligible community has a population equal to or greater than 5,000, but less than 30,000; and
- 1000, if the eligible community has a population less than 5,000, with no less than one blue box receptacle in any eligible community.

It is the producer's responsibility to provide Blue Box receptacles appropriate for public spaces, provide repairs or replacements.

Long Term Care and Retirement Homes

Producers are required to provide services at long-term care and retirement homes currently serviced by municipal programs; however in the final Blue Box regulation, for-profit homes are excluded from collection requirements.

Obligations for Curbside Collection

Additional details regarding providing receptacles for Blue Box material are contained within the final regulation. Producers must provide a receptacle at least one week prior to the date producers start collection, repair or replace any damaged receptacles upon request and within one week of the request and provide Blue Box receptacles that are appropriate, including with respect to size.

Alternative Collection System

A new section provides requirements for producers that register an alternative collection system for Blue Box material that includes collection by mail (i.e. pre-paid postage).

Allocation Table

The regulation requires the development of an annual allocation table, according to which the common collection system would be delivered and that identifies which producers are responsible for collection and from which sources. Requirements on how the rules are created for the creation of the allocation table were amended in the final regulation.

PROs must have signed up producers with a combined total of 20,000 tonnes of Blue Box material to qualify as a rule creator where previously it was 10% of total tonnage of Blue Box material supplied to consumers in Ontario.

The rules for the allocation table must have agreement from PROs representing 66% of all producer tonnes at the negotiation stage where the previously the threshold was 90% agreement.

Producers are no longer listed as an entity that can make rules relating to the creation of an allocation table, only the PROs and the Minister can do so.

Creation of the rules for the allocation tables has been revised and has been divided into two separate sections: Creation of Rules and Creation of Allocation Table.

Creation of Rules outlines all of the elements that must be addressed in the creation of the rules for the creation of allocation tables, such as identifying the person that will create the allocation table, setting out the requirements and procedures for creating the allocation table, specifying the length of the collection period that the allocation table will apply to, etc.

Creation of Allocation Table outlines the responsibilities of the person creating the allocation table and the components that must be included in the allocation table. For example, allocation tables must have a collection period that commences July 1, 2023 and include every residence and facility that was an eligible source prior to the date the allocation table is required to be submitted to the Authority. The tables must also have mechanisms to include every residence and facility that will become an eligible source during the collection period covered by the allocation table in accordance with the rules made under the regulation.

Management Targets

The formula for calculating the management requirement has changed in the final regulation. The formula is now the weight in tonnes of the material category that the producer is required to report in the previous year multiplied by the recovery percentage for the previous year. The weight of recycled content and the redistribution factor are no longer incorporated into the equation.

Targets on management requirements for paper materials and rigid and flexible plastic have been reduced as per Table 1.

Table 1: Management Targets by Material Category

<i>Material Category</i>	<i>Target: 2026-2029</i>	<i>Target: 2030 onward</i>
<i>Paper</i>	<i>80% (90% in draft regulation)</i>	<i>85% (90% in draft regulation)</i>
<i>Glass</i>	<i>75%</i>	<i>80%</i>
<i>Metal</i>	<i>67%</i>	<i>75%</i>

<i>Material Category</i>	<i>Target: 2026-2029</i>	<i>Target: 2030 onward</i>
<i>Rigid Plastic</i>	<i>50% (55% in draft regulation)</i>	<i>60%</i>
<i>Flexible Plastic</i>	<i>5% (30% in draft regulation)</i>	<i>40%</i>
<i>Non-Alcoholic Beverage Containers</i>	<i>75%</i>	<i>80%</i>

Considerations Related to Blue Box Transition

Staff identified some considerations related to the Blue Box transition (report PW 23-2020). These considerations and important factors have been captured in this report again and with new information and additional considerations as a result of the release of the final regulation in order to represent a full set of implications and considerations.

Transition Timing

Producers have ability to transition communities prior to the date stated in the transition schedule. Niagara Region could engage with PROs to negotiate an earlier date.

Niagara Region could explore the ability to negotiate (or through other undefined process at this time) with producers an earlier transition date. As stated earlier, Niagara Region is scheduled to transition no later than January 1, 2024.

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.

Based on the 2021 budget, Niagara Region's net residential Blue Box program (collection, haulage and processing) cost is approximately \$15.6 million with taxpayers

incurring an estimated annual expense of approximately \$7.8 million based on the 50% funding structure for the existing Blue Box program. If Niagara Region were to successfully negotiate (or through another undefined process at this time) to transition earlier, the burden on the taxpayer would be reduced at approximately \$650,000 per each month that Niagara Region transitions earlier (based on the 2021 budget and the 50% funding structure). These figures also include estimated administrative costs/resourcing that will need to be further evaluated to determine if they need to be reallocated to other areas of the division. They also do not include the one-time potential pay-out to the collection contractors as noted below.

Provision of Collection and Haulage Services on Behalf of Producers

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 are expected to commence once the allocation table is finalized. The regulation requires the allocation table be submitted to RPRA no later than July 1, 2022. As per PW 23-2020, it was recommended that Niagara Region engage in discussions with producers to continue collection as part of the integrated collection system. 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 would be applied and overseen by RPRA as an independent entity.

Important factors influencing Niagara Region's decision to provide collection and haulage service on behalf of producers are:

- Definition of service areas by producers, i.e. the service area may not align with Niagara Region's current collection boundaries;
- Length of contract required by producers, i.e. length of the contract may not align with Niagara Region's existing collection and haulage contracts, upon which the bid would be based;
- Possibility of dealing with multiple producers, leading to increased administration requirements;
- Reducing confusion for residents, i.e. residents dealing with multiple agencies for collection issues (Niagara Region for garbage and organics, and a separate agency or agencies, on behalf of producers);

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- Responsibility to residents in the event that service standard changes cause a reduction in collection convenience or increased enforcement at the curb (to achieve a lower residue rate);
 - Definition of clear service standards and expectations, acceptable residue rates, and how targets will be measured; and
 - Potential for a fragmented collection system related to promotion and education and customer service.

Under the scenario that Niagara Region does not provide collection and haulage service on behalf of the producers, the estimated \$7.8 million in annual savings as noted above, may be somewhat offset by costs for exiting the component of the collection contracts related to the residential Blue Box Program. Additionally, it should be noted that even if municipalities provide collection and haulage service under contract to the producers, the full 100% of these costs may not be covered, subject to the payment formula developed. This is due to the fact that existing contracts may not reflect the new service requirements, standards and other factors on which the payments by the producers will be determined.

Niagara Region's new waste collection and haulage contracts commenced October 19, 2020 and have an end date of March 5, 2028. The new contracts include escape clauses related to early termination of the Blue Box collection and associated haulage due to changes in legislation/regulation.

If Niagara Region does not provide Blue Box collection and haulage under contract to the producers, costs may be incurred for winding down the Blue Box-related portion of the work, including the value of stranded capital assets, such as collection vehicles, with the caveat that Miller and GFL must make commercially reasonable efforts to re-deploy capital assets to other contracts or sell them at fair market value. A formula was designed and included in the contracts to calculate the maximum compensation payable by Niagara Region:

$$\text{Maximum Compensation Payable} = (\text{Year 1 contract cost} \times 7 \text{ years} \times 10\% \text{ capital component}) \times \text{percentage of total contract terminated} \times (\text{Years remaining in contract term} / \text{Total years of contract term})$$

Per this formula it is estimated that the maximum one-time compensation payable to Niagara Region's current contractors based on the January 1, 2024 transition date is approximately \$6 million dollars. Therefore the estimated savings in the first year of transition is approximately \$1.8 million.

Material Recovery Facility

Niagara Region currently owns and operates (through Niagara Recycling, a not-for-profit third party) a Material Recovery Facility (MRF) in Niagara Falls. A review related to the preferred MRF ownership structure is currently underway, with the most recent fulsome project report being Confidential PW 17-2020. This review consists of an assessment, which will be based on actual market considerations, to determine the best future opportunity for the MRF.

The required notification and termination period for the contract with Niagara Recycling, for the processing and marketing of recyclables is until Niagara Region fully transitions to full producer responsibility or proceeds with a direction based on the outcome of the MRF Opportunity Review, with provision for six (6) month notification for early termination.

Completion of the MRF Opportunity Review is required for Niagara Region to finalize decisions related to the processing of Blue Box materials under full producer responsibility.

Servicing Additional Property Types

Niagara Region currently services a number of non-eligible sources (i.e. property types) which are not included in the regulation. While the current level of service must be maintained by producers until the end of the transition period on December 31, 2025, the producers are not obligated to include service to certain properties, such as the Industrial, Commercial and Industrial (IC&I) sector including municipal and regional buildings, commercial portion of mixed-use properties and for profit long term care and retirements homes. Public and private schools are included in the regulation.

The Province is proposing an update to different regulations specific to the IC&I properties at a future date, as yet unspecified. Should Niagara Region continue to collect from IC&I properties not serviced during or after the transition period, producers may have little incentive to expand programming to encompass these properties and municipalities will continue to bear the costs. These costs include existing staffing, promotion and education, processing and other expenditures for this portion of the service. On the other hand, elimination of this part of the Blue Box program, until provincially mandated service is available, would be a reduction in service to the IC&I sector in Niagara Region.

Based on several assumptions and the 2021 budget, the cost to provide the IC&I collection, haulage and processing service is approximately \$3.7 million. Further refinement of the assumptions may impact these costs.

A cost benefit analysis must be completed and the decision to service these properties may hinge on Niagara Region's decision to bid on collection and haulage and potentially availability of a processing facility to take material from these sources, depending on the outcome of the MRF Opportunity Review.

Collection of Non-Designated Material

If Niagara Region decides to collect non-designated material under the regulation, Niagara Region will be solely responsible for costs related to collection, haulage and processing of these materials. Niagara Region would also be responsible for producing extra promotion and education for the locally accepted materials (versus the provincial standard). Furthermore, Niagara Region may not be able to find a processor for non-designated material. On the other hand, removal of material from Niagara Region's Blue Box stream may generate confusion for residents and propagate a perceived reduction in service levels. Niagara Region's diversion rate could also be incrementally impacted by a change in materials collected.

Niagara Region current accepts the following materials that are non-designated materials:

- Soft cover and hard cover books (with hard covers removed);
- Alcoholic beverages, non-alcoholic beer, wine and spirits, with associated products and packaging; and
- Some flexible plastics used for containment of food such as sandwich bags and freezer bags.

Service at Depots

Under the final regulation producers are not required to provide depot collection where curbside collection is offered unless producers wish to include them in order to achieve the diversion targets. In the event that Niagara Region is not paid by producers to operate the residential Blue Box portion of depots, Council may still choose to continue with the service for community benefit, mainly resident convenience and to minimize illegal dumping. Additional enforcement may be required to ensure contamination rates enforced by producers are met, and depot reconfiguration may be required based on

producer requirements. These existing depots are integrated with the current landfill and public drop-off depot infrastructure.

As per PW 23-2020, if Niagara Region retains curbside collection, depot locations should also be retained as part of a comprehensive program. In the event that Niagara Region does not manage a curbside program, it is recommended that depots continue to be operated for an interim/transition period and then re-evaluated for the longer term, based on results of a cost benefit analysis and other factors such as customer convenience. Depending on the outcome of the MRF Opportunity Review, Niagara Region may need to find a processor for this material. The portion of depot costs associated with the residential Blue Box program is approximately \$342,000 based on the 2021 budget.

Promotion and Education

Under the final regulation, producers are required to implement promotion and education programs and services to educate consumers on the producer run program. Niagara Region could negotiate with producers to provide a subset or all promotion and education functions related to the Blue Box.

If Niagara Region provided promotion and education functions, it would allow for the continued integrated promotion and education programs and materials (ex. collection guide, brochures, Niagara Waste App) that include information on the Blue Box program to potentially reduce designated material ending up in the garbage stream.

The 2020 actual residential Blue Box promotion and education costs were approximately \$250,000.

Set Out Service

During the transition period (i.e. 2023-2025) producers are required to maintain current service levels provided by the municipality which would include provision of set out service for Blue Box materials. Set out service is a program offered via an application process for individuals with health limitations that allows their garbage, recycling and Green Bins to be collected on their property (i.e. next to front door, outside of garage) instead of bringing the material to the curb. Once the Blue Box program is fully transitioned on January 1, 2026, producers are not required under the regulation to provide a program similar to Niagara Region's set out service.

If Niagara Region wishes to continue this service for Blue Box material, Niagara Region would be responsible for the sole costs and would need to negotiate these costs with the producers. The 2021 budgeted costs for set out service which include all materials (i.e. garbage, recycling and Green Bin) are approximately \$35,000.

Special Events Recycling

Under the final regulation, there is no requirement for producers to provide recycling collection at special events such as festivals, community events, etc. beyond what is required for public space recycling.

Niagara Region currently provides special events recycling and organics collection and if Niagara Region wishes to continue to provide this service, Niagara Region would be responsible solely for these costs including collection, haulage, processing, related promotion and education, and staff resources. The 2019 actual costs, which reflect pre-pandemic activity for this program were approximately \$32,000.

As part of Niagara Recycling's contract with Niagara Region for the processing and marketing of recyclables, they also service larger special events with the delivery and collection of recycling carts and/or roll-off bins. Niagara Recycling contract terminates when Niagara Region transitions to full producer responsibility or proceeds with a direction from the MRF Opportunity Review. As a result, costs to provide Special Events Recycling could increase as a new service provider would need to be obtained, or negotiations with the producers/PROs would be required to provide the service. A processor for this material will need to be secured, subject to the outcome of the MRF Opportunity Review.

Public Space Recycling

As noted earlier, the definition of public space was expanded to include transit stations or stops under municipal or provincial jurisdiction as well as outdoor park, playgrounds or sidewalk, not just in designated business areas.

Producers are required to provide a minimum number of public space receptacles per person in every community based on a density formula.

Niagara Region provides public space recycling collection to some local area municipalities as an enhanced service. Producers will be required to maintain service levels during the transition period, including collection from all existing public space recycling bin locations. After January 1, 2026, producers are only required to supply and

collect the number of public space bins as per the density formula and local area municipalities will no longer have a say where public space bins are located, the type of bin and collection frequency. Producers are only required to collect prior to becoming full. Some local area municipalities may have more public space recycling bins than what will be required under the regulation.

If the local area municipalities wish to have more public space recycling bins than required under the regulation, it would be at their sole cost. Niagara Region could negotiate with the producers/PROs to collect on the local area municipalities' behalf.

The 2021 budget costs for public space recycling is approximately \$101,000 which is paid directly by those municipalities requesting this service.

Next Steps

The following are the next milestone steps related to transition to full producer responsibility as outlined in the Blue Box regulation.

- 2021 – Registration for eligible communities, producers, PROs
- 2022 – Submission of proposed rules, creation of allocation table and registration of processors
- July 1, 2023 – December 31, 2025, transition of eligible communities
- 2026-2029 – New eligible sources, standardized materials and established targets
- 2030 – New targets

In addition to above next steps, many of the considerations and decision points outlined in this report will require further detailed analysis (ex. financial implications) and/or negotiations which will be brought back to Committee and Council prior to any decisions being made. Niagara Region will also continue to participate in municipal/industry sessions and subcommittees related to Blue Box transition.

Respectfully submitted and signed by

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Appendices

Appendix 1 Assessment of how Niagara Region's comments on the draft Residential Blue Box Regulation were addressed in O.Reg. 391/21: Blue Box