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## MEMORANDUM

**PWC-C 22-2022**

**Subject:** Blue Box Transition Update

**Date:** August 9, 2022

**To:** Public Works Committee

**From:** Sherri Tait, Manager - Waste Collection & Diversion

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The purpose of this memorandum is to provide Committee with information and update on the residential Blue Box transition to full producer responsibility.

### Background

On June 3, 2021, the Ministry of Environment, Conservation and Parks (MECP) released a new Blue Box regulation under the *Resource Recovery and Circular Economy Act, 2016* and filed [amendments](https://www.ontario.ca/laws/regulation/r22349) (<https://www.ontario.ca/laws/regulation/r22349>) to the Blue Box regulation on April 14, 2022. The regulation makes producers of the Blue Box materials fully responsible for their products and packaging once consumers dispose of them. Between July 1, 2023 and December 31, 2025 all existing residential Blue Box programs in Ontario will move to a single, provincial collection system funded, governed and operated by the producers. Niagara Region has been identified to transition to full producer responsibility no later than January 1, 2024.

Producers and Producer Responsibility Organizations (PROs) (organizations that were created to help producers meet their obligations) have registered with Resource Productivity and Recovery Authority (RPRA).

The recent Blue Box regulation amendments require PROs with 66% of aggregate weight of Blue Box material supplied, to describe, in an initial report, how they will establish a province-wide collection system and operate a post-collection system (i.e. processing of Blue Box material) by July 1, 2022. Circular Materials Ontario (CMO) has standing to file the initial report as they have entered into agreements, as a PRO with their own subscribing producers and, as the common collection system administrator, with producers subscribing to other PROs (i.e. Ryse Solutions Ontario) through an agreement. Together, they are responsible for more than 66 per cent of the aggregate weight of Blue Box material supplied to Ontario consumers in 2020.

## **Decision Points/Considerations**

As presented in previous reports (PW 23-2020 and PWC-C 24-2021), there are several considerations and decisions that will need to be made related to the Blue Box transition. A high level overview of these are presented below and the anticipated timelines for decisions in brackets. The timelines noted below are approximate, and will be impacted by the timing of key information (e.g. compensation) received by CMO.

1. Provision of collection and haulage services on behalf of producers. (Fall 2022)
2. Servicing additional property types that are not included in the Blue Box regulation (i.e. industrial, commercial and institutional) during transition if Niagara Region does not contract with CMO or after full transition starting in 2026. (Prior to December 31, 2025).
3. Collection of Non-Designated materials (ex. soft cover and hard cover books and some flexible plastics used for containment of food such as sandwich bags and freezer bags) after full transition of the Blue Box program on January 1, 2026. (Prior to December 31, 2025).
4. Service at residential drop off depots. (Fall 2022 for contracting with CMO during transition period. Producers are required under the regulation to provide depot collection services during the transition period only for eligible communities that have curbside collection. A decision will be required prior to December 31, 2025 if Niagara Region wishes to provide residential depot collection services starting January 1, 2026).
5. Provision of promotion and education for Blue Box program on behalf of CMO (Fall 2022).
6. Continuation of Special Events Recycling as it is not included in the Blue Box regulation. (Prior to January 1, 2024).
7. Provision of collection and haulage of Public Space Recycling on behalf of producers. (Fall 2022).

## **CMO's Procurement Approach for Blue Box Collection Services**

On May 2, 2022, the Association of Municipalities of Ontario (AMO) and the Municipal 3Rs Collaborative (M3RC) held a webinar where CMO presented their procurement approaches for the residential Blue Box transition.

CMO's proposed approach to the residential Blue Box transition includes the following:

- Status quo (i.e. collection from current residences and facilities, accepted materials, dual stream collection, same collection container type, continuation of commingling of materials from eligible and non-eligible sources (ex. businesses)) for transition period (July 31, 2023 to December 31, 2025) if an eligible community or their contractor has contracted with CMO for the transition period.
- Procure collection services through competitive procurement using catchment areas after transition period. Niagara Region is a catchment area.

Further to the above, if an eligible community does not contract with CMO to provide collection services, CMO will approach their contractor to contract directly with them. If both do not agree to contract with CMO, CMO will need to procure collection services prior to the eligible community's transition date. If an eligible community's current contract extends into or beyond 2026, CMO will offer to contract with the eligible community using the Master Service Agreement (MSA) and Statement of Work (SOW) for vendors awarded the contract through the competitive procurement process. This will exclude requirements for collection from non-eligible sources (ex. businesses).

On May 11, 2022, CMO has released a MSA and Statement of Works SOWs for Residence and Facility Collection, Depot Collection, Public Space Recycling Collection and Promotion and Education for the transition period. Eligible communities will need to agree to and sign the MSA and SOWs in order to provide these services on behalf of CMO.

Initially, CMO asked for feedback by June 15, 2022 on the MSA and SOWs and to complete a survey by June 30, 2022 to indicate if the eligible community wished to contract with CMO to provide residential Blue Box services. However, based on a number of concerns related to the terms and conditions of the MSA and SOW raised by eligible communities and organizations such as AMO and M3RC, CMO announced on June 3, 2022 that they would be revising the MSA and SOW and anticipated that new documents would be released on June 15, 2022.

On June 22, 2022, CMO released revised MSA and SOW on the [CMO website](https://www.circularmaterials.ca/onmunicipalities/) (<https://www.circularmaterials.ca/onmunicipalities/>) and extended the deadline for the survey to July 15, 2022. The survey was only for the MSA and SOW for Residences and Facility Collection. CMO indicated that if an eligible community responded with a 'conditional yes' (i.e. is a staff recommendation and not endorsed by Council), CMO would include both the eligible communities transition date and January 1, 2026 in their formal procurement for collection services (to contract directly with service providers) and CMO will decide based on the procurement results on which date will be chosen.

While the revised MSA and SOW addressed many concerns raised by eligible communities, AMO and M3RC, the MSA and SOWs introduced new terms and conditions that may require eligible communities to re-negotiate with their service providers, at the eligible community's cost and add a number of potential risks. For Niagara Region these include but are not limited to:

### **Compensation**

The approach to determine payment to eligible communities is based on 2020 Datacall costs which, in Niagara's case, does not reflect the true costs to provide the collection services. For example it does not include a full year of increased collection costs due to the new contract that started in October 2020.

CMO requested eligible communities who experienced increases in collection costs as a result of new collection contracts to complete a survey by June 30, 2022 outlining the procurement approach and resulting cost increases.

On July 15, 2022, CMO sent an email stating they are in the process of reviewing the information received via the survey and will be able to provide a response on payment offers after an internal process. This internal process is required due to the value of the requested adjustments. They expect to share the outcome of this process by the end of August.

### **Contamination Rate**

As per the SOWC, the contractor will use best efforts to reduce the quantity of Non-Blue Box Material in collected Blue Box Material to no more than four percent (4%) by weight.

Niagara Region currently implements several tactics to reduce contamination in the Blue Box program (i.e. curbside audits and resulting education to residents and collection contractors, targeted communication to residents, Region-wide promotion and education

including specific Blue Box campaigns, social media posts etc.). The Region has not been able to meet a four percent (4%) contamination rate even including material that currently is not acceptable in the Blue Box program but that will be under full producer responsibility. The requirement for the Contractor to use best efforts to reduce the quantity of Non-Blue Box Material in collected Blue Box material to no more than four percent (4%) by weight and implement a plan at the Contractor's expense could result in significant cost increases with no significant changes to the contamination rate.

### **Eligible Sources**

It is unclear in the SOW and in CMO's responses received on July 13, 2022 to questions posed by Niagara Region, if those properties currently receiving private garbage collection but collection of recycling from Niagara Region are considered an eligible source.

### **Ineligible Sources**

While Niagara Region does appreciate the collection from ineligible sources is included for the transition period (July 1, 2023 to December 31, 2025), the costs associated with receiving/processing of material from ineligible sources are a concern.

### **Distance to Receiving Facilities**

As per the documents, the drop off locations (i.e. Receiving Facilities) for Blue Box materials will be no more than a 60 minute drive time (one way) from the centre of the eligible communities. A 60 minute drive time one way from the centre of each eligible community is significantly longer than current drive times to Niagara Region's Material Recovery Facility (MRF). Also, CMO has indicated in response on July 13, 2022 to Niagara Region's questions that queuing and unloading times are unknown. Changes in queuing and unloading times could also impact collections and costs.

There is the potential that this will not be a concern as Niagara Region's MRF could be used as a receiving or processing facility.

### **New Terms and Conditions**

The MSA and SOW introduce new terms and conditions that may require Niagara Region to re-negotiate with our current service providers, at Niagara Region's cost and they also add a number of potential financial risks. Any terms that need to be re-negotiated as a

result of CMO's MSA and SOW may come at a significant cost increase which will not be reflected in the approach used to determine payment proposed by CMO.

### **Administrative Costs**

Administrative costs are based on current Resource Productivity and Recovery Authority Datacall (ex. approximately 3-5% of the collection contract). This does not generally (across Ontario) reflect actual costs to administer contracts, manage staff and resources and cover additional requirements such as reporting requirements stipulated by CMO.

### **Clarifications**

CMO has made several clarifications in response to questions posed by Niagara Region, other eligible communities, AMO and M3RC during Municipal Working Groups hosted by CMO. These clarifications have not been reflected yet in an updated MSA and SOW.

### **Risk**

Based on an initial review of the MSA and SOW by Niagara Region's Legal Services, the MSA and SOW allocate a tremendous amount of risk to Niagara Region including financial risk as noted above.

### **Survey Response**

Similar to other eligible communities, Niagara Region has not formally responded to the survey as mentioned above and instead sent a letter outlining the concerns noted above.

### **Request for Proposals for Receiving Facilities**

On June 7, 2022, CMO and Reverse Logistics Group (RLG), who CMO has contracted to perform work in connection to the operation of receiving facilities and related services, issued Request for Proposals (RFPs) from interested parties to establish and operate receiving facilities (i.e. transfer stations with no processing) in collection catchment areas. Three RFPs were released for various catchment areas based on date of the eligible communities' transition date within the catchment areas. Niagara Region is identified as a catchment area and is included in RFP #2.

On June 21, some municipalities sent a joint letter to CMO and RLG outlining concerns with the RFP including that some terms and conditions that municipalities had concerns with in the original MSA and SOW were contained within the RFP.

The RFP is looking for receiving facilities to be able to accept and have three tipping areas for single stream recycling, separated fibre stream and separated container stream.

Submissions for RFP #2 are currently due February 3, 2023 and the anticipated award date is prior to March 3, 2023.

CMO and RLG are looking for Receiving Facilities within one hour drive time (one way) from the centre of each eligible community (i.e. local area municipalities). Until the RFPs are awarded, it is unknown where the collection contractors will be required to drop off material.

### **Material Recovery Facilities**

Each PRO will be responsible for determining where and how they process the collected Blue Box material. It is anticipated that CMO will release an RFP for processing Blue Box material in August. PROs have also been reaching out directly to municipalities that have material recovery facilities that are strategically located and have sufficient capacity.

### **Next Steps**

Niagara Region will continue to work closely with CMO and AMO, M3RC and other eligible communities to review and express any concerns related to the MSA and SOWs.

At this time it is unclear how willing CMO is to further negotiate the terms and conditions of the MSA and SOWs.

After further review of the MSA and SOWs, analysis and potential negotiations with CMO, staff will report back on any recommendations.

In addition to the above next steps, 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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