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**Subject:** Provision of Curbside Collection on behalf of Producers for Residential Blue Box Program

**Report to:** Public Works Committee

**Report date:** Tuesday, July 11, 2023

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## Recommendations

1. That Niagara Region **ELECT NOT** to 'opt in' to the continued provision of curbside collection of Blue Box materials (as defined by O. Reg 391/21), from residences, facilities, and public spaces on behalf of producers after Niagara Region's transition date of January 1, 2024;
2. That staff **BE DIRECTED** to notify Circular Materials Ontario and advise Local Area Municipalities of Niagara Region's decision respecting the provision of curbside collection of Blue Box materials; and
3. That, as a service to residents and in the interest of waste diversion, staff **BE DIRECTED** to develop and implement a communication strategy leading up the transition date (January 1, 2024) to advise residents of the changes to the residential Blue Box program.

## Key Facts

- In accordance with O. Reg 391/21, Niagara Region will transition the residential Blue Box (includes Grey Box) program to full producer responsibility on January 1, 2024 and as of this date will no longer have financial or operational control over the program.
- While Niagara Region does not have any obligation to provide residential Blue Box collection beyond January 1, 2024, the Producer Responsibility Organization (PRO), Circular Materials Ontario (CMO), has reached out to eligible communities to provide curbside collection and related promotion and education services for eligible sources (residences, multi-residential buildings, some long term care homes and retirement homes and some public spaces) on their behalf for the transition period (January 1, 2024 to December 31, 2025 for Niagara Region) provided that eligible communities agree to CMO's terms and conditions contained within Statement of Works and a Master Service Agreement.

- Waste Management Services and Legal Services staff have reviewed the Statement of Works (SOW) and Master Service Agreement (MSA) and have identified significant risks with providing curbside collection from eligible sources including financial risks arising from the scope of work, service level obligations, change management, and termination clauses. Niagara Region would also need to enter into negotiations with existing contractors to amend current contracts to align with CMO's SOW and MSA.
- CMO has advised Niagara Region that they will not be making any changes to the SOW and MSA to address the concerns or discrepancies between their documents and Niagara Region's existing collection contracts and furthermore, Niagara Region's two collection contractors, Miller Waste Systems Inc. and GFL Environmental Inc. indicated they would not agree to the terms within CMO's SOW and MSA as currently written and presented. Both contractors have indicated that while they would not agree to some changes at all, some they would agree to but would come at a cost to Niagara Region.
- Due to the significant risks, CMO's decision not to change the SOW and MSA and Niagara Region's inability to pass along changes to the existing collection contracts to address some of the risks, it is recommended not to opt-in to the continued provision of curbside recycling services on behalf of CMO.
- Promotion and education, customer service and supply and distribution of containers including public space containers becomes the responsibility of CMO's contractor, effective January 1, 2024 with Niagara Region not opting in to provide collection services on CMO's behalf.

## **Financial Considerations**

### **1. Compensation Offer**

Compensation is being offered by CMO to eligible communities that collect recyclables from eligible sources (i.e. residences, multi-residential buildings, some schools and long term care homes and retirement homes and some public spaces) on their behalf and CMO did provide pricing based on stops per month; however, Niagara Region was not able to do a fulsome analysis on the offer as there are outstanding questions related to the offer (ex. did it include administrative costs, how fuel escalations would be handled with Niagara Region having one contractor using diesel and another using compressed natural gas, and it is subject to change prior to January 1, 2024 based on actual CPI

and fuel escalations instead of estimates). CMO did not provide staff with answers to the above questions regarding compensation.

Based on the preliminary price per stop per month offered to Niagara Region (which is subject to escalations), compensation appears to cover the anticipated 2024 Blue Box collection costs; however, the exact compensation amount from CMO may not be known until the transition date if inflationary factors (CPI and diesel index) are applied to CMO's compensation offer which has not been confirmed by CMO to date. Therefore, there is a risk that the compensation offered by CMO may not actually cover the full 2024 costs for recycling collection for eligible sources, which includes collection costs of approximately \$16 million dollars and subject to the points below.

As mentioned, there are also many unknowns related to the exact compensation offer from CMO and although it is currently estimated to cover Niagara Region's curbside Blue Box collection costs and associated administration costs, it can not be guaranteed. Moreover, there could be additional costs associated with opting in which are unknown at this time, including:

- Price increases to the existing collection contracts as a result of negotiations to address discrepancies with CMO's SOW and MSA. As discussed below in the report, the contractors are not willing to renegotiate existing contracts without additional costs to the Niagara Region which would not be funded by CMO;
- Additional administration time/costs on staff in order to meet reporting requirements as set out in CMO's documents; and
- Additional promotion and education costs needed to meet the requirements as set out in CMO's documents.

The risks of not being able to do a full analysis on the CMO offer include:

- The inability to accurately calculate the impact of changes in the assumptions included in CMO's offer leading up to the January 1, 2024 transition date. For example, staff were unable to determine what the impact on the compensation would be if specific escalation factors changed between now and the January 1, 2024 transition. This impacts the Region's ability to accurately estimate 2024 revenues from CMO in comparison to estimated collection costs;
- The impact of CPI and fuel market changes on the current CMO offer would not be known until close to the January 1, 2024 transition date and therefore there is

an inherent risk that the compensation amount may decrease and not provide sufficient funding to cover the Region's collection contract costs; and

- The current collection contracts have different annual escalation factors compared to the escalation factors included in CMO's offer. For example, Niagara Region's collection contracts have annual escalations with 80% of the escalation tied to CPI and 10% tied to changes in the fuel market. CMO's offer includes annual escalations with 80% of the escalation tied to CPI and 20% tied to fuel. Niagara Region does not have information on how CMO will handle the fuel escalations (with the Region having one contractor using diesel fuel and the other using compressed natural gas) and so staff were unable to calculate any potential fluctuations in the fuel market and how that would impact funding received from CMO and compare it against anticipated payments to the collection contractors;

## 2. Budgetary Considerations

In anticipation of the transition of responsibility for Blue Box collection from municipalities to producers, Niagara Region reserved a right in its collection contracts to remove the residential Blue Box related portion of work, subject to paying any reasonably incurred costs of the collection contractors in winding down that portion of the work (including the value of any stranded assets). In the current context, it is likely that the Region's collection contractors will be in a position to redeploy their capital assets, which mitigates against the risk of there being any stranded capital assets as a result of the removal of this portion of the work.

The decision to not opt-in to the Blue Box collection will result in expenditures associated with this service being removed from the operating budget effective January 1, 2024. The reduction in expenditures would be net of any one-time wind down costs such as potential amounts owing to Miller Waste Systems Inc. and GFL Environmental Inc. noted above. Any one-time wind down costs included in the 2024 operating budget would be removed from the 2025 operating budget with 2025 reflecting the first full year of ongoing collection costs (ex. garbage and organics collection and Blue Box collection from non-eligible sources which will remain the responsibility of Niagara Region following transition).

Staff will soon begin the 2024 operating budget process. Decisions made by Council (i.e., the decision to not opt in of residential Blue Box collection) will be reflected to the extent possible in the 2024 operating budget and the 2025/2026 multi-year budget where applicable. It is important to note that while costs for residential Blue Box

collection will be removed from the 2024 operating budget, this may not result in \$16 million savings in the budget when considering all other operating costs/decision points as part of the 2024 budget planning process. As an example, other operating budget impacts to be considered as part of the 2024 operating budget include, but are not limited to:

- Impact of any one-time wind down costs as noted above. The total amount of wind-down costs are undetermined at the time of writing this report and will be considered during the operating budget process;
- Reduction of Waste Diversion Ontario (WDO) funding (related to the blue box program) which Niagara Region will not longer receive effective January 1, 2024 as a result of the transition to full producer responsibility (2023 budget included WDO funding of \$6.2 million);
- Impact of budget mitigation strategies (including the Waste Management Stabilization reserve and capital reserves)
- Anticipated costs increases due to changes for collection and processing of recyclables from non-eligible properties (commercial) as a result of the transition to full producer responsibility.

## **Analysis**

### **Background**

In June 2021, the Province approved the Blue Box Regulation (O. Reg. 391/21) under the *Resource Recovery and Circular Economy Act, 2016*. This regulation removes the responsibility of the residential Blue Box (including Grey Box in Niagara Region) recycling programs from municipalities and makes Producers of Blue Box material directly 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.

Eligible communities will start transitioning their residential Blue Box programs between July 1, 2023 and December 31, 2025. Niagara Region transitions on January 1, 2024.

As the majority PRO in Ontario, CMO has reached out to eligible communities to provide collection services on CMO's behalf from their transition date until December 31, 2025 (transition period). If an eligible community wants to provide residential Blue

Box services on behalf of CMO (opts in), they need to sign a contract with CMO and potentially revise the contracts with their current service providers based on the requirements outlined in the CMO contract. CMO has developed forms of contractual agreement (Statement of Works and overall, Master Service Agreement) for eligible communities wishing to opt in for curbside collection from residences, facilities (i.e., multi-residential buildings and some long-term care and retirement homes) and public spaces, depot collection, and delivering promotion and education. For some communities, opting in is beneficial as the community uses municipal forces to complete the work or does not have off-ramp clauses in their existing collection contracts, to allow them to terminate contracts.

If a municipality does not opt in for providing collection services on behalf of CMO, then CMO plans to approach the contracted service provider(s) in the eligible community (Niagara's current providers are Miller Waste Systems Inc./GFL Environmental Inc.) to determine if they would continue providing the service. If they do not wish to contract directly with CMO, CMO will award the work via a competitive Request for Proposal (RFP) to find a new service provider. However, both Miller and GFL Environmental Inc. have indicated that they are interested in negotiating with CMO directly to continue to provide residential Blue Box collection services in Niagara through the transition period. Miller Waste Systems Inc. and GFL Environmental Inc. have been successful in obtaining contracts with CMO to continue providing service in other communities, where the eligible community has elected to not opt in.

#### Statement of Works (SOW) and Master Service Agreement (MSA)

Confidential report PWC-C 2-2023 provided an overview of the main concerns with CMO's SOW for Collection from Residences, Facilities and Public Spaces and the MSA that eligible communities need to sign to provide services on CMO's behalf. These main concerns were related to the termination, procedures at the receiving facility, documentation, reporting and timelines, the contamination rate, pricing structures and escalations and the receiving facility location.

Legal services has provided an overview and more detailed concerns related to CMO's MSA and discrepancies between MSA and the existing collection contracts. This overview can be found in Confidential Memorandum PWC-C 5-2023. In addition to the concerns noted in PWC-C 5-2023, staff have reviewed the SOWs and below is a summary of the more substantive discrepancies between Niagara Region's existing collection contracts and concerns that could result in additional costs that Niagara Region could bear.

### 1. Procedures at Receiving Facility

Procedures the contractor will need to follow differ than what is currently in existing collection contracts. For example, a portion of curbside collection vehicles will need to go over weigh scales after emptying each compartment which is currently not a requirement.

### 2. Documentation, Reporting and Timelines

There are several documentation and reporting requirements and timelines set out with the Statement of Works that need to be met by Niagara Region. Some of the timelines may be difficult to meet. In addition, it would require amendments to existing contracts as the current contractors would be required to submit reports not included in existing contracts (ex. estimated fuel usage and kilometres driven).

### 3. Contamination Rate

An aggressive contamination target of four (4) percent is identified for collection from eligible sources without any compensation for any increased monitoring, promotion, education, and enforcement needed to try and meet this target. For comparison, Niagara Region's 2021 residue rate was approximately 10% (based on residential tonnes disposed). Niagara Region could be responsible for implementing a plan to mitigate contamination, including best practices as determined by CMO, at the Region's sole cost.

### 4. Pricing Structure and Escalations

The pricing structure, payment methods and escalations are not the same as Niagara Region's compensation methodologies. For example, for fuel and additional of eligible sources. For example, CMO will compensate eligible communities for collection services based a unit price for eligible sources whereas the Region's current collection contracts are fixed annual price. Fuel escalations in the CMO documents are based on 20% of unit price whereas Niagara Region's collection contract is based on 10% of the per annum contract price. Niagara Region also has one collection contractor using diesel and another using compressed natural gas and it is unclear how this will be reflected in the pricing and future escalations.

A prescribed change order process will need to be completed to add new eligible sources to ensure Niagara Region is compensated for servicing new locations for collection from residences, facilities, and public spaces. The same change order

process will need to be followed to remove any eligible sources. This may result in an administrative burden (at Niagara Region's expense) as currently escalations for new low density residential units is done on a yearly basis for the collection contracts. Differences in the pricing structure and escalations could result in discrepancies between payments from CMO and Niagara Region's expenses for the work.

#### 5. Receiving Facility Location

The location of the receiving facility where Blue Box material will be required to be delivered is not specified within the SOWs. It is stated that the receiving facility will be within one (1) hour driving distance (one way) of the centre of each eligible community (local area municipalities). There will be no additional compensation provided if the receiving facility is farther than the current drop off location for recycling in existing contracts. While it is anticipated that the MRF located in Niagara Falls will be the location of the receiving facility, it has not been confirmed. In addition, CMO has not included any information on unloading times at the receiving facility. If the receiving facility is a farther distance than the existing MRF and unloading times are longer than currently experienced by the existing contractors, this could lead to increased expenses that Niagara Region will not be compensated by CMO for.

The Region would not have certainty of the location at the time of contract execution. If the location is farther than the current MRF, this may not be enough time if Niagara Region's existing contractors require more vehicles, if required.

In addition, if the receiving facility can not take the material, CMO may direct the vehicles to another receiving facility and Niagara Region will only be compensated if the location is beyond the one (1) hour. Any increased driving times to receiving facility may impact the ability of the contractors to complete collection and will increase costs.

#### Discussions and Correspondence with CMO

Since the last update provided in the confidential report PWC-C 2-2023, Niagara Region has had further correspondence with CMO regarding our concerns with the SOW and MSA. CMO has advised Niagara Region that they will not be making any changes to address our concerns and discrepancies between their documents and Niagara Region's existing collection contracts. If Niagara Region wishes to opt in and provide curbside collection on CMO's behalf, Niagara Region will need to execute these documents as is. Based on the risks and discrepancies between CMO's contract



documents and Niagara Region's current contracts, Niagara Region is not in a position to execute any agreements with CMO.

Discussions and Correspondence with Miller Waste Systems Inc. and GFL Environmental Inc.

As mentioned, there are several clauses in CMO's SOWs and MSA which differ from Niagara Region's existing contracts with Miller Waste Systems Inc. and GFL Environmental Inc. and as a result Niagara Region has had discussions with Miller Waste Systems Inc. and GFL Environmental Inc. The adoption of these new clauses with CMO would, in the case of "opting in", require that the existing collection contracts be amended to ensure alignment with the CMO agreement. Both contractors have indicated that they would not be able to agree to all of the changes that would be required to their existing contracts. Both contractors indicated that while some changes could be made to their existing collection contract to meet the requirements of CMO's SOW and MSA, some would be at an additional expense to Niagara Region. Any additional expenses would not be covered by CMO.

#### Challenges of Providing Recycling Services on Behalf of Producers

In addition to the concerns noted above in this report, some additional challenges of providing collection for eligible sources and promotion and education on behalf of producers during the transition period include:

- Promotion and costs could exceed the per-household payment of \$1.50 per household.
- There may be additional costs associated with providing and distributing recycling containers that are not covered by the compensation offered by CMO.
- Fundamentally, EPR is intended to reduce financial and operational burden on municipalities. By choosing to remain part of the system, Niagara Region will continue to pay for this work if compensation does not cover all the costs that may be required to provide service including any increases in staff time for overseeing the contract with CMO.

#### Changes to the Blue Box Program

With the introduction of the Blue Box regulation and producers taking over the responsibility of the Blue Box program, there will be changes to the existing program during the transition and post transition regardless if Niagara Region does not opt in to

provide collection on behalf of producers. Below is a summary of these changes for the transition and post-transition period.

#### Transition Period and Post Transition

- Removal of non-designated Blue Box material under the Blue Box regulation from the program such as books and flexible plastic used for the containment of food (ex. sandwich bags).
- CMO will be promoting that Blue Box Material should not be placed inside plastic bags when set out for collection as they have indicated this format is problematic for processing facilities.
- If Miller Waste Systems Inc. and GFL Environmental Inc. are successful in contracting with CMO during the transition period, there should be little disruption to the existing collection service but collection times, for example, could change.
- CMO's contractor will be responsible for the purchase and distribution of containers including public space containers which is currently done by Niagara Region and the local area municipalities. Niagara will still be responsible for Green Bins and containers for non-eligible sources. Broken containers are currently collected by recycling collection vehicles and therefore, a new procedure for containers CMO's contractor is not responsible for will be required.
- CMO's contractor will be responsible for the operation of a customer service centre and therefore, residents will need to call a different number for issues related to Blue Box collection with Niagara Region electing to not opt in. Niagara Region will still be responsible for calls from non-eligible sources and garbage and organics related collection issues/questions.

#### Post Transition

- Starting January 1, 2026, producers are only required to collect Blue Box material every other week.
- More materials will be accepted in the Blue Box program than currently accepted. New items will include single use plastics such as plates, cutlery and straws and multi-laminated packaging.
- Collection methodology could change (ex. move to cart collection or single stream collection); however, CMO has indicated they do not plan to change the methodology at this time.

- The number of public space recycling containers collected by CMO may change as the Blue Box regulation states the number of public space recycling containers producers are required to collect and it is based on a density formula.

#### Next Steps

Niagara Region will notify CMO, the collection contractors and the local area municipalities of the recommendations related to the residential Blue Box program. In addition, staff will be reporting back to Committee on the provision of depot collection services on behalf of CMO during the transition period and the collection of Blue Box material from non-eligible sources (i.e., Industrial, Commercial, and Institutional) which are not included in O. Reg 391/21.

#### **Alternatives Reviewed**

An alternative is to opt-in and provide collection of eligible sources on behalf of producers during the transition period regardless of the compensation and concerns and discrepancies outlined in the Statement of Works and Master Service agreements.

There are short-term benefits associated with providing collection from eligible sources, and related promotion and education on behalf of producers during the transition period (January 1, 2024 to December 31, 2025). However, it should be noted that by opting in, the transition is just delayed until December 31, 2025 and these benefits are only temporary. There are still risks associated with providing collection on behalf of the producers during the transition period.

The benefits include:

- Residents can continue to contact Niagara Region in the event of collection issues, etc. during the transition period (until December 31, 2025).
- The container distribution centre locations remaining the same for the transition period (however, if Miller Waste Systems Inc. and GFL Environmental contract directly with CMO, they may wish to work with Niagara Region and the local area municipalities to continue to operate container distribution centre locations).
- Niagara Region to continue to approve collection from new developments and set-out services (collection of material from alternative location for those who cannot physically take material to the curb for collection) for all material streams during the transition period.

Opting in is not being recommended due to the risks outlined in this report and there is potential the existing collection contractors will continue to provide collection reducing the risk of substantive changes.

### **Relationship to Council Strategic Priorities**

This report strategically enforces Council's Responsible Growth and Infrastructure Planning as it relates to waste management programs and Sustainable and Engaging Government as it relates to fiscally sustainable services and exploring efficiencies.

### **Other Pertinent Reports**

PWC Presentation - Residential Blue Box Transition (February, 14, 2023)

PWC-C 2-2023- A Matter of Plans and Instructions for Negotiations to be Carried out by the Municipality, under s.239(2)(k) of the Municipal Act, 2001 - Provision of Services on Behalf of Producers for Residential Blue Box Program

WMPSC-C 13-2023 - An Update on the Residential Blue Box Program Transition

WMPSC-C 7-2023 - Residential Blue Box Transition - Decision Points

PWC-C 22-2022 - Blue Box Transition Update

PW 48-2021 - Residential Blue Box Program – Authorization to Negotiate with Producers

PWC-C 24-2021 - Residential Blue Box Program – Final Producer Responsibility Regulation

PW 48-2020 - Residential Blue Box Program – Proposed Producer Responsibility Regulation

PW 23-2020 - Residential Blue Box Program Transition to Full Producer Responsibility

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