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## **MEMORANDUM**

**WMPSC-C 2-2020**

**Subject: Update on Provincial Initiatives for Extended Producer Responsibility**

**Date: Monday, January 27, 2020**

**To: Waste Management Planning Steering Committee**

**From: Jennifer Mazurek, Program Manager, Policy, Planning & Engagement**

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This memorandum provides an update on Provincial Initiatives to support the Waste Free Ontario Act, 2016 (WFO) which is comprised of the Resource Recovery and Circular Economy Act, 2016 (RRCEA) and the Waste Diversion Transition Act (WDTA). Under the RRCEA, the Province is shifting to an Extended Producer Responsibility (EPR) framework for designated material, such as products and packaging (Blue Box material), making producers and brand holders accountable for recovering resources and reducing waste associated with their products. The WDTA allows for the designated materials managed under existing waste diversion programs to be transitioned to the new EPR framework.

Of particular importance, the timing and upcoming decision points that will need to be considered by Council regarding the transition of the residential Blue Box program to EPR are described in this memorandum.

### **Background**

The WFO drives Ontario toward a circular economy, with the aim to eliminate waste throughout the lifecycles of designated materials, and maintain the value of products and materials for as long as possible. This keeps resources within the economy and minimizes waste. EPR is a key part of a circular economy, as design considerations become more important when producers are required to consider end of life management of products and packaging.

Via the WDTA, Resource Productivity and Recovery Authority (RPPRA) oversees three waste diversion programs: Blue Box, Municipal Hazardous or Special Waste (MHSW) and Waste Electrical and Electronic Equipment, hereafter referred to as Electrical and Electronic Equipment (EEE). RPPRA was established in 2016, with authority under the RRCEA to enforce EPR. Tires have already shifted to an EPR system under the RRCEA, with RPPRA as the authority that enforces compliance and manages program-related data. In the case of the residential Blue Box program, the Waste Diversion Act, 2002, established the current 50/50 cost-sharing model for producers and municipalities, under which municipalities are reimbursed for approximately 50% of net costs. Under this cost-sharing model, Stewardship Ontario (SO) manages the funds that

producers provide to Ontario municipalities for the operation of the Blue Box program, and is accountable to RPRA. SO is a not-for profit organization funded and governed by industry stewards, who are the brand owners, first importers or franchisors of the products and packaging materials.

SO also produced a wind-up plan to transition to full EPR for MHSW and will be issuing one for Blue Box, while Ontario Tire Stewardship (OTS), an Industry-Funded Organization (IFO) under SO, was responsible for the wind-up plan for tires. Ontario Electronic Stewardship (OES), another IFO under SO, was responsible for the wind-up plan for EEE and batteries. The wind-up plans are developed for the existing diversion programs, via the WDTA, to ensure there is no disruption to services for residents in the lead up to transition (e.g. continued operation of collection sites, continued compensation for municipalities, etc.), while at the same time ensuring activities associated with the existing programs are wound up properly (e.g. disbursement of excess funds, wrap up of service provider contracts, etc.). Development of the plans and the associated approval by RPRA ensures stakeholder consultation is incorporated, while defining SO's assets, liabilities, rights and obligations in relation to the existing programs.

A key action item in the Province's Made-in-Ontario Plan, released on November 29, 2018, specifically refers to and reinforced the Province's position on EPR: "Make producers responsible for the waste generated from their products and packaging" (<https://prod-environmental-registry.s3.amazonaws.com/2018-11/EnvironmentPlan.pdf>). Committee was informed of this plan in WMPSC-C 9-2019. The plan included a focus on reducing litter and waste and keeping our land and soil clean. A discussion paper titled "Reducing Litter and Waste in Our Communities" was released on March 6, 2019, offering the following commitments:

- Reducing and diverting food and organic waste from households and businesses;
- Reducing plastic waste;
- Reducing litter in our neighbourhoods and parks;
- Increasing opportunities for the people of Ontario to participate in waste reduction efforts.

## **Blue Box**

A transition for the Blue Box program was first proposed in Ontario's Strategy for a Waste-Free Ontario in February 2017, with commencement of the EPR slated for 2023, and for which SO submitted their amended Blue Box Program Plan. This plan was not submitted to or approved by RPRA but did lay groundwork for future discussions. The Province has now defined timelines for the transition of the residential Blue Box program, which are outlined below.

### Key Recommendations of Special Advisor's Report on Recycling and Plastic Waste

On June 6, 2019, David Lindsay was appointed Special Advisor on Recycling and Plastic Waste, and designated with the responsibility of producing a report outlining how the Province should transition the residential Blue Box program to EPR. The report was released on August 6, 2019 and provides recommendations about timelines for transition, materials, targets, and collection requirements. The report is discussed in more detail in WMPSC 32-2019 but key recommendations are as follows:

- A six-year transition period from 2019 through 2025 that includes a one to one-and-a-half-year period for consultation and regulation development and a two-year period for producer preparation, followed by a phased three-year period from 2023 to 2025 for transfer of responsibility from municipalities to producers;
- Flexibility for producers through both continuation of Blue Box collection and allowing for collection of some packaging through other methods;
- Establishment of specific targets that progressively increase over time, for different types of printed paper and packaging material;
- As producers assume responsibility, collection must be provided to every low-density residential property and similar location that had previously received municipal Blue Box service. There will be no expansion of services during the transition period and afterward, collection should expand in multi-residential properties, parks and public spaces, but would not include Industrial, Commercial and Institutional (ICI) properties. Rather, the province should modernize the regulatory framework for ICI properties to improve diversion rates and better align with materials recycled through the Blue Box Program.

### Provincial Timelines and Actions Related to the Transition of the Blue Box Program

On August 15, 2019, the Ministry of Environment and Climate Protection (MECP) issued a direction letter, instructing SO to develop a plan to outline how the current program will operate during the three-year transition period. This plan is due to RPRA no later than June 30, 2020 and RPRA must approve the plan, if it is consistent with the Minister's transition direction, no later than December 31, 2020.

On November 27, 2019, MECP hosted a webinar, titled "Developing Producer Responsibility Regulation for Blue Box" (Appendix A), to provide stakeholders with information about the Province's next steps. A key next step in the process is the development of the new Blue Box regulations under the RRCEA. Niagara Region is a member of the Municipal Working Group that will be providing input into the regulations. Separate Stakeholder Working Groups also exist for both Producers and a Circular Economy (includes manufacturers of unbranded packaging and products, waste management services providers that haul and process Blue Box materials, and industries that receive processed Blue Box materials and use it for feedstock in new products). The regulations will define outcomes in key areas including:

1. A hierarchy of producers that are responsible for meeting outcomes;
2. Materials to be collected;
3. Collection and management requirements; and
4. Registration and reporting (overseen by RPRA).

Specific timelines were confirmed by the MECP, consistent with those recommended in the Special Advisor's report:

Timelines specific to new regulations:

- 2019 - 2020 – Draft Regulations
- 2021 – Approval of Regulations
- 2021 - 2022 – Stakeholders organize and prepare for EPR
- 2023 - 2025 – Producers take full responsibility from communities

Timelines specific to WDTA Blue Box program services:

- 2020 – SO develops plan for transition and submits to RPRA
- 2020 – RPRA approves plan by Dec 31
- 2021 – 2025 – SO implements plan and each community continues to be funded until transition to EPR complete, with all communities complete by the end of 2025

In the spring of 2020, MECP will post a policy paper that describes the proposed details of the new Blue Box system. In the fall of 2020, the draft EPR regulations and potential regulatory amendments will be released. When developing the regulation, MECP will consider:

1. Definition and scope of the designated materials;
2. Collection and accessibility requirements;
3. Management requirements that producers must meet; and
4. Transition approach – criteria to select which communities will transition from the current Blue Box program to the EPR framework under the RRCEA in each of 2023-2025.

The province will also consider defining the responsible producer, registering, reporting and record-keeping requirements, and audit requirements.

#### Blue Box Program Decision Points

Niagara Region's input into the transition process continues to be important. As noted above, Niagara Region will participate in the Stakeholder Working Group sessions. In 2020, Niagara Region will need to make several important decisions. While no regulations are currently finalized, staff anticipate that Niagara Region will need to communicate the following to the Province:

1. Timing - When the shift to EPR should occur for Niagara residents

- Methodology has not yet been defined, but staff anticipate that the order of transition will either be dictated to municipalities (based on contract expiry dates, location, economies of scale, etc. as designed by an expert authority), or, that municipalities will be able to self-nominate (identify preferred year of transition). Self-nomination is preferred by Niagara Region staff to allow for consideration of local priorities and to evaluate system cost implications.
- When identifying a preferred year for transition, considerations will include expiration dates for current contracts, asset condition and value, prescribed method of handling over-subscribed years, and the balance of the integrated waste management system (i.e. how services that Niagara Region continues to provide will integrate with the new Blue Box system).
- From 2023 to 2025, municipalities that have not yet transitioned will continue to be responsible for 50% of net costs related to collection and haulage, another key factor that will impact Niagara Region's direction.

2. Role - What role, if any, Niagara Region will occupy moving forward with respect to collection and processing

- While no regulations have been released yet, it is expected that municipalities will have the opportunity to bid on the collection, haulage and processing of residential Blue Box materials. A municipality's decision to bid on one or more aspects of the process will be based on a number of factors, including existing infrastructure and contracts. Municipalities may have the opportunity to bid on the work in partnership with the private sector or as part of a coalition with other municipalities.
- Municipalities will be competing with the private sector to provide processing services, leading to the risk of a potentially devalued Material Recovery Facility (MRF) in the event that Niagara Region bids but does not secure a processing contract. Additional information about the status of the MRF review is provided below.
- Municipalities acting on behalf of Producer Responsibility Organizations (PROs) will need to meet prescribed performance standards, yet to be released, which may influence the decision to bid on services.

### 3. Service levels for Niagara Region

- The Industrial, Commercial and Institutional (ICI) sector is not expected to be included in the regulations. As noted above, the Special Advisor's report recommends that Blue Box services not be expanded to the ICI sector, but instead that the regulations specific to these properties be strengthened. Niagara Region currently provides curbside service to smaller ICI properties and Council will need to decide if service should continue to be provided for this sector, at full cost to Niagara Region.
- Uncertainties remain regarding inclusion of some types of properties that Niagara Region currently services (e.g. parks, schools, and long-term care facilities.) The Special Advisor's report recommended gradual expansion to collection in Multi-Residential buildings, as well as parks and public spaces where municipalities provide waste collection. These examples encompass property types that Niagara Region and other municipalities currently service. Council may need to decide if service should continue for these sectors not included under the new regulations, at full cost to Niagara Region.
- There is the potential for customer service impact, in that there may be less tolerance for incorrect set-outs and contamination. If Niagara Region no longer provides residential Blue Box collection, there may be additional customer impacts (e.g. residential confusion stemming from change in phone numbers/contacts for one material stream).
- Other considerations include provision of Promotion and Educational material (P&E) and collection program enforcement.

In order to make informed recommendations for the Blue Box transition, Niagara Region staff require details about the regulations from the Province, expected to be forthcoming in the first half of 2020. Staff will bring this information forward to allow Council to decide upon preferred transition date, service levels Niagara Region will offer, and what, if any, services Niagara Region will continue to provide or offer on behalf of the PROs.

#### MRF Phase 4 Opportunity Review

This review will develop a recommendation for the preferred MRF ownership structure, considering the transition of the residential Blue Box program to EPR. An assessment will be based on actual market considerations using the Negotiated Request for Proposal (NRFP) process, among other possible alternatives, to determine the best future opportunity for the MRF and minimize the risk of a potentially devalued facility.

There are a number of potential transactional options and/or ownership structures which may be considered and will be compared to status quo.

These transaction options will be submitted to Waste Management Planning Steering Committee for input and may include the following:

- outright sale of the property;
- lease transaction;
- a joint venture arrangement for the MRF; or
- other arrangements including but not limited to royalty structures and processing contracts.

A Fairness Advisor has been engaged to be involved throughout the review and the project consultant awarded the RFP for this work is MNP LLP. It is anticipated that a recommendation report will be submitted to Council in late May or early June 2020.

#### AMO Request for Council Resolution by June 30, 2020

On December 18, 2019, the Association of Municipalities Ontario (AMO) sent a letter (Appendix B) to all Municipal Council and municipal waste administrators with responsibilities related to the provision of Blue Box services, including Niagara Region, requesting a Council resolution, passed by June 30, 2020 and directed to AMO and MECP that specifies:

1. Council's preferred date to transition based on exiting service provision (between January 1, 2023 and December 31, 2025);
2. Rationale for transition date;
3. Whether Council is interested in potentially continuing to provide services (e.g. contract management, collection, haulage processing services etc.) or not; and,
4. Key contacts if there are any follow-up questions.

Importantly, AMO notes in the letter that the stated preference may not be the final determination of Niagara Region's transition date, nor is Niagara Region obligated in any way by the date specified in the resolution.

#### **Tires**

Used tires were the first material to transition to an EPR regime. On January 1, 2019, producers assumed responsibility. Each producer registered with a PRO to accept the used tires returned in Ontario, and RPRA assumed responsibility for compliance and management of financial and program reporting requirements related to the new system. Although Niagara Region was not being compensated for the collection of used tires, the Region continued to collect tires at the residential drop-off depots as a service for residents. Niagara Region entered into an agreement with YESS, a PRO, to haul all collected tires. For a number of months, YESS experienced issues with picking up and

taking away tires for processing, which resulted in a backlog at Niagara Region's drop-off depots. The cause of the delays was due to YESS not being able to secure tire-processing capacity in the Niagara area. A new agreement with e-Tracks was made and they have been hauling since June with no issues. Niagara Region collected 139 tonnes of tires from residents in 2018 and 220 tonnes in 2019.

## **MHSW**

Niagara Region currently accepts MHSW at permanent depots year round (Niagara Road 12 Landfill, Humberstone Landfill, Thorold Yard Household Hazardous Waste Drop-off Depot and Bridge Street Residential Drop-Off Depot). The new regulation for the designated waste (other than single-use batteries) under MHSW comes into effect July 1, 2021. Following a presentation by RPRA in October of 2019 (Appendix C), Niagara Region submitted comments regarding the proposed wind-up plan for SO (Appendix D). Until the wind-up date, the program will continue to operate without disruption. On December 20, 2019, the Minister of MECP issued a direction letter to SO and RPRA, clarifying that all residual funds remaining upon completion of the program should be returned to stewards. SO will make revisions to its wind-up plan to address this direction, and it is expected that RPRA will approve the revisions no later than February 29, 2020. On January 8, 2020, SO sent notification that RPRA has approved the MHSW wind-up plan, subject to conditions related to deadline date submissions for stewards to submit adjustments to prior reports (to align with RPRA's data submission requirements), completion of the aforementioned changes related to residual funds and any others that arise related to operational and implementation issues, as well as provision of any information required to assist RPRA. The rules defining reporting and payment obligations by stewards for the period of January 1, 2020 until wind-up of the MHSW program were also approved, and SO will now implement the wind-up plan. At this time, there is no further change or decision point required by Council regarding this material stream.

## **EEE and Batteries**

Niagara Region currently accepts EEE, for recycling at permanent residential drop-off depots year round (Recycling Centre, Niagara Road 12 Landfill, Humberstone Landfill and Bridge Street Residential Drop-Off Depot). OES operates the recycling program for EEE in Ontario under contract, and at no cost to Niagara Region, OES also provides collection service to eligible Multi-Residential properties. Additional details about this program are available in WMPSC-C 20-2016. With respect to single-use batteries, since the pilot in 2012, Niagara Region has also offered an annual one-week curbside battery collection period. In 2019, 7,142 kg of batteries were collected curbside between April 22 to April 26 (WMPSC-C 22-2019).



The Province has directed that EEE must transition to EPR by January 1, 2021. The new regulation for batteries, currently handled as part of the MHSW stream, comes into effect July 1, 2020. As EEE and batteries are often used together, the shift for batteries allows for a coordinated policy approach. Niagara Region provided comments on the proposed regulations on June 21, 2019 (Appendix E). On September 3, 2019, RPRA approved the OES wind-up plan (with conditions).

Until the wind-up date, the current EEE program will continue to operate without disruption. As of the date of this memo, there is no further information regarding the final regulations and staff are awaiting a detailed update from the Province.

## **RPRA**

On October 28, 2019, the Province proposed the following changes in the mandate of RPRA:

1. Change RPRA's mandate to include digital reporting services, fee setting, and cost recovery for other programs beyond producer responsibility;
2. Allow the ministry to set guidance on fee structures for the programs that RPRA will be providing digital reporting services;
3. Other changes –
  - a. Recover ministry costs more efficiently through a Minister's order;
  - b. Amend the WDTA to allow the transfer of residual surplus funds left at the end of transition, from an IFO to RPRA;
  - c. Permit future regulations that could assign additional duties and powers to RPRA.

Niagara Region submitted comments on November 25, 2019 (Appendix F) and is generally supportive of the move to digital reporting as a means of increasing efficiency and accessibility, and reducing paper waste. With respect to specific program changes, Niagara Region recommends consideration of recycling programs for materials such as shingles, mattresses, carpets, porcelain and concrete. Finally, the continued oversight of new and existing programs by the Province is recommended. On December 29, 2019, the decision to change RPRA's mandate to include digital reporting services through its registry for a wider range of waste and resource recovery programs was posted. To change the mandate, the RRCEA, the Environmental Protection Act (EPA) and WDTA were amended.

On December 6, 2019, the Minister of MECP also informed stakeholders of minor changes proposed to the RRCEA that affect RPRA. The following changes were proposed as part of legislative amendments to modernize the governance, accountability and transparency of the Administrative Authorities overseen by the Ministry of Government and Consumer Services (MGCS), via the Rebuilding of Consumer Confidence Act (the Bill):

1. The Minister can appoint a Chair from among the members of the RPRA Board.
2. The Minister can request disclosure of compensation information from among the RPRA board of directors, officers and employees.
3. The requirement to table RPRA's annual report in the Legislative Assembly has been removed, but RPRA must continue to post the report on their website by the annual deadline of June 1.

These changes will come into effect upon Royal Assent of the proposed Bill.

### **Green Bin**

Although not a material regulated under existing SO programs, Ontario's Food and Organic Waste Framework has an associated Action Plan and Policy Statement to support the circular economy. Food and organic waste from residential and ICI sectors is an important material stream to manage and the Province's direction will impact Niagara Region. The Policy statement came into effect on April 30, 2018, and report WMPSC-C 28-2018 offers a thorough overview of strategic commitments to be taken by the Province to address food and organic waste, and how these actions could impact Niagara Region's programming. For example, the Province has included a ban on food and organic waste from ending up in disposal sites, to be phased in beginning in 2022. Staff are currently awaiting further information on how this ban will be implemented and enforced, but preliminary investigations regarding capacity and cost have been completed.

As of the date of this memo, there has been no further information released regarding action items or next steps for municipalities, and staff are awaiting an update from the Province.

### **Next Steps**

Staff will advise Council accordingly if funding models change for any of our current collection programs with the transition to EPR. Staff will also continue to be active participants in future consultations by the Province on related guides and regulations, and to report back to Committee with updates on all programs.

Respectfully submitted and signed by

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Jennifer Mazurek,  
Acting Waste Management Program Manager

## **Appendices**

- Appendix A MECP Webinar Presentation: Developing Producer Responsibility Regulations for Blue Box
- Appendix B Letter from AMO to Municipal Councils
- Appendix C RPRA Consultation: Municipal Hazardous or Special Waste (MHSW) Program Wind-Up Plan
- Appendix D Niagara Region Comments on RPRA Consultation on the MHSW Wind-Up Plan
- Appendix E Niagara Region Comments on Regulation for Recycling of Electrical and Electronic Equipment (EEE) and Batteries (EBR Registry Number: 019-0048)
- Appendix F Niagara Region Comments on ERO 019-0671 Changing the Mandate of the Resource Productivity and Recovery Authority