Subject: Blue Box Program Transition to Full Producer Responsibility

Report to: Public Works Committee

Report date: Tuesday, June 16, 2020

Recommendations

1. That the Clerk **BE AUTHORIZED** to respond to the Association of Municipalities of Ontario's request that municipal governments pass a resolution to provide a preferred date to transition the residential Blue Box program to full producer responsibility, if provided the opportunity to self-determine (between January 1, 2023 and December 31, 2025), with the following:

    a) Niagara Region's preferred date to transition the residential Blue Box program to full producer responsibility is as early as possible in the transition period, which is on January 1, 2023, subject to cost benefit analysis when the Blue Box regulation is finalized.

    b) Niagara Region expresses interest in providing curbside and depot Blue Box collection and haulage services on behalf of producers, subject to mutually agreeable commercial terms, including service duration, beginning on January 1, 2023.

    c) Niagara Region anticipates completion of the Material Recovery Facility (MRF) Phase 4 Opportunity Review in late 2020, which will inform how or if the MRF asset will be potentially divested and Niagara Region's potential role in processing services.

2. That the draft resolution as outlined in Appendix 1 **BE APPROVED** and sent to Association of the Municipalities of Ontario and the Ministry of the Environment, Conservation and Parks.

Key Facts

- The purpose of this report is to seek Council's approval to provide the preferred date of January 1, 2023 to the Association of the Municipalities of Ontario (AMO) and the Ministry of the Environment, Conservation and Parks (MECP) for Niagara Region's

transition to full producer responsibility for the residential Blue Box Program, under the Resource Recovery and Circular Economy Act (RRCEA).
- Niagara Region is not obligated to transition on January 1, 2023, nor is it guaranteed that this preferred date for transition will be secured, as the final Blue Box regulation has not been released. Niagara Region's proposed transition date will be revisited upon release of the draft regulation and again with release of the final regulation.
- After transition, municipalities will no longer have financial or operational control of the residential Blue Box Program and producers (brand holders or first importers of any paper, packaging, or packaging-like product managed through the Blue Box Program) will be accountable for all costs associated with collection, haulage and processing of the material. However, producers may be interested in having municipalities provide residential Blue Box collection and haulage services on their behalf, as part of their integrated collection systems, under contract and subject to agreement on the commercial terms (e.g. detailed service requirements and acceptable payment provisions). These discussions are expected to occur once the Blue Box regulation is finalized.
- The Blue Box regulation will define a timeframe for transition, ensure a common collection system, transition municipal assets, standardize materials accepted in the Blue Box, identify eligible sources, set effective targets and promote increased diversion from the landfill.

Financial Considerations

<u>Cost-Benefit Related to Transition Timing</u>

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. However, it is anticipated that the payment formula will not include an allowance for increased reimbursement over that threshold.

In 2019, Niagara Region received Blue Box program funding of $3,711,276, which was 69% of net costs (based on the 2017 program) and in 2020, $4,380,000 in funding was budgeted due to lower recycling end market revenue (in the 2018 program), which increased the net program costs. In addition to poor recycling end market conditions, the primary factors which would cause the net program costs to increase are the contract costs for collection and processing, which continue to increase over time.

Using the 2019 net residential program (collection, haulage and processing) costs of $10,240,495, as submitted to Resource Productivity and Recovery Authority (RPRA), as a point of reference (see Table 1 for a breakdown of costs), for every year that Niagara Region does not transition, taxpayers would unnecessarily incur an estimated annual expense of approximately $5,120,000 based on the 50% funding structure for the existing residential Blue Box program. However, the increased curbside collection costs under the new contracts beginning October 2020 will result in higher net program costs than reported in 2019, and the increased burden on the taxpayer, based on the existing funding structure, is estimated at an additional $3,075,000, for a total of $8,195,000 annually.

A breakdown of 2018 residential program costs, approved by RPRA, and 2019 costs, which have been submitted but are not yet approved by RPRA, are included in Table 1 below.

Table 1 – 2018 and 2019 Residential Blue Box Program Costs

Blue Box Program Cost Component	**2018 tonnes/$**	**2019 tonnes/$**
Reported Residential Marketed Tonnes	35,855 tonnes	34,912 tonnes
Residential Collection Costs ($)	$7,309,763	$7,888,776
Residential Processing Costs ($)	$4,338,376	$4,601,199
Residential Depot/Transfer Costs ($)	$349,152	$340,203
Residential Promotion & Education Costs ($)	$190,014	$208,710
Interest on Municipal Capital[1] ($)	$176,114	$187,465
Administration Costs ($)	$479,563	$512,853
Administration Factor[2]	3.9%	3.9%
Residential Gross Costs Including Interest on Municipal Capital and Administration ($)	$12,842,982	$13,739,206
Total Gross Revenue ($)	$4,901,152	$3,498,711
Total Net Costs[3] ($)	$7,941,830	$10,240,495

Notes:

1. Interest on municipal capital debt is calculated as follows:

    - For capital expenditures with an amortization period of seven years or more which were commissioned:

- In or after 2004, the average of the prime interest rate for the year in which the capital was commissioned will be utilized as the factor to calculate interest.
- Prior to 2004, the average of the prime interest rate less 1¼% for the year in which the capital was commissioned will be utilized as the factor to calculate interest, reflecting that it was generally funded as an opportunity cost in the past.

2. Administration costs are calculated as follows:

   - 3% of reported contracted costs
   - 5% of reported municipal costs

3. Net cost includes supply chain costs, commodity revenues, and promotion and education (P&E), regulatory, market development and program management costs.

The net cost for the non-residential portion of the Blue Box program, which would continue to be the direct responsibility of Niagara Region after transition, will be calculated and reported on at a future date.

<u>Cost-Benefit Related to Provision of Collection and Haulage Services on Behalf of Producers</u>

It is expected that producers will be interested in having municipalities provide Blue Box services on their behalf, should mutually agreeable terms be negotiated. These discussions would start once the Blue Box regulation is finalized (currently scheduled for early 2021). It is 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 Resource Productivity and Recovery Authority (RPRA) as an independent entity.

Collection of any non-obligated materials (i.e. those not covered under the regulation) would be at full cost to Niagara Region. It is expected that non-residential sources will be excluded from the program. The regulation may also lead to potential removal of one or more materials that Niagara Region residents are accustomed to putting in the Blue Box, as our current program is comprehensive and covers a wider variety of material than some of the comparator municipalities.

The estimated $8,195,000 in 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, if Niagara Region does not provide collection and haulage service on behalf of the producers. 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 commence October 19, 2020 and have an end date of March 5, 2028. Collection contracts were awarded in 2019 to GFL Environmental Inc. (GFL) and Miller Waste Systems Inc. (Miller). 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 residential 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 to other contracts or sell at fair market value the capital assets. A formula was designed and included in the contracts to calculate the maximum compensation payable by Niagara Region:

> Maximum Compensation Payable = (Year 1 contract cost x 7 years x 10% capital component) x percentage of total contract terminated x (Years remaining in contract term 1 / Total years of contract term 1)

Per this formula, it is estimated that the maximum one-time compensation payable to GFL based on the January 1, 2023 transition date is $2,743,217 and the maximum compensation payable to Miller is $ 4,278,867, for a total potential payment of $7,022,084. Based on the savings from transitioning identified above using the 2019 program costs and adjusted for the new collection contract costs, this compensation payment would be offset within the first year of transition with the removal of 50% of the net program expenditures from the Niagara Region taxpayer burden. For comparison, a transition date of January 1, 2024 would result in an estimated maximum compensation payment of $5,664,530, and transition as of January 1, 2025 would be $4,306,977. Table 2 below shows the estimated net savings to the Niagara Region in year one, if transition occurs January 1, 2023.

Table 2 – Net Savings to Niagara Region upon Transition in Year 1

Net Residential Blue Box Program Costs (2019)	$10,240,495
Increased Recycling Collection Contract Costs	$6,150,000
Total Estimated Residential Blue Box Program Costs	*$16,390,495*
Annual savings to Niagara Region - share of net costs (based on current 50% funding formula)	$8,195,248
Maximum compensation payable to curbside collection contractors - partial early contract termination (January 1, 2023 transition date)	$7,022,084
Estimated Net Savings to Niagara Region (Year 1)	*$1,173,164*

<u>Cost-Benefit Related to Provision of Processing Services on Behalf of Producers</u>

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 a recommendation report to be presented to Public Works Committee in closed session as 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 periods in Niagara Region's key recycling processing contract agreements are as follows:

1. Niagara Recycling, for the processing and marketing of recyclables 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;
2. Haldimand County, for the processing of their recyclables until March 2021 with a 1 year option to extend to March 5, 2022 and a six (6) month cancellation that can be applied by either party;
3. Region of Waterloo, for the processing of their fibre material with contract expiry occurring on the date that Waterloo transitions to full producer responsibility or until the end of Waterloo's existing collection contract (March 2024), whichever comes first. Although there is no explicit cancellation provision, termination could apply with notification, or the contract could be reassigned with permission.

If Niagara Region divests of the MRF, the successful proponent will be required to assume the processing of the current material being processed at the Niagara Region

MRF, unless Waterloo and Haldimand, or any of the smaller commercial customers, redirect their recyclables to another facility. Depending on timing, producers may also be responsible for processing this material.

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.

Additional Costs Related to Blue Box Transition

Regardless of whether or not Niagara Region chooses to and is successful in obtaining a residential collection and haulage contract on behalf of producers, it is suggested that Niagara Region continue to service the IC&I sector, subject to a review of net costs, and re-evaluate provision to this sector in the next contract. Existing staffing, processing and other costs related to the IC&I service will be assessed prior to formulating a final recommendation.

If Niagara Region chooses not to bid on the residential collection and haulage contract or is unsuccessful in securing the contract, one option is to consider payment to the producers to continue service for the IC&I properties. More detailed information about provision of services to those properties outside the regulation is included in the Analysis section below. Similar to the analysis needed to determine if a bid of collection and haulage of residential Blue Box material is worthwhile, an evaluation will be needed to determine how much Niagara Region will pay to service these IC&I properties.

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. The portion of depot costs associated with both the residential Blue Box program amounted to $349,152 in 2018 and $340,203 in 2019.

In summary, it is financially beneficial for Niagara Region taxpayers to transition to full producer responsibility as early as possible, subject to any final cost benefit analysis to be completed once the Blue Box regulation provides detail on the payment formula. The analysis will include a refinement to the calculations for the GFL and Miller payments if it is determined that compensation to the collection contractors will be required.

Analysis

Background

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

Considerations Related to Transition Timing

In order to support development of the regulation associated with the framework, and to begin planning for transition, AMO has 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 (see Appendix 2). It is preferable for municipalities to self-identify their preferred date of transition because locally specific concerns, such as local priorities and evaluation of system costs, can be considered. It is possible that Niagara Region would not be one of the first municipalities to transition under a provincially mandated model as Niagara Region's collection and haulage contracts have expiry dates in 2028.

It is important to note the transition date identified in this report is not a guaranteed transition date for Niagara Region, nor is Niagara Region obligated to proceed with the indicated date. The information is being collected from all municipalities simply to gauge the level of interest in transition for each quarter and year between January 1, 2023 and December 31, 2025. This will help stakeholders to propose a transition schedule based on preferred municipal dates. In the event that more than one-third of municipalities indicate a desire to transition in the same year, MECP will use criteria, not yet finalized but currently in development through consultation with stakeholders, to resolve conflicts and determine transition order. This will ensure a smooth and seamless transition.

If Niagara Region was mandated to transition later in the transition period (e.g. in 2024 or 2025), one small advantage is that Niagara Region could benefit from the experiences of those municipalities that transitioned earlier in the process. This includes preparation for potential issues relating to reporting, promotion and education (P&E), resident confusion, etc. However, there is a negative financial impact, in that Niagara Region taxpayers will continue to pay for approximately 50% of the residential Blue Box Program each year until the transition occurs.

Considerations Related to Provision of Collection and Haulage Services on Behalf of Producers

In addition to the financial factors outlined above, 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);
- 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 P&E and customer service.

Considerations Related to Provision of Processing Services on Behalf of Producers

Timing and outcome of the MRF Opportunity Review, outlined above, will be the primary factor influencing Niagara Region's decision to bid on processing contracts. Additional current considerations include the following:

1. The definition of service areas by producers to accommodate larger market sizes will be an important factor influencing the ability of Niagara Region to effectively bid against the private sector for provision of processing services. In addition to tonnage capacity throughput limitations based on the current state of the infrastructure, a service area that is not a reasonable haulage distance to the MRF location will not support continued operation of the MRF by Niagara Region.

2. Clear requirements for standards, such as residue rates, and how these will be measured would be required for protection of Niagara Region in the event a contract is secured. Alternatively, the performance standards set by producers may not be reasonably achieved based on current infrastructure.

Additional Considerations Related to Blue Box Transition

Servicing additional property types

Niagara Region currently services a number of property types which may not be immediately 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, including IC&I, select Multi-Residential (MR) properties (those not already receiving service as of a certain date yet to be specified) and public spaces during this time period. After December 31, 2025, the intent is that service will gradually be expanded to include these MR and public spaces. For IC&I properties, the province is proposing an update to different regulations specific to these 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, P&E, 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.

As noted above, 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. In the event that Niagara Region secures a collection and haulage contract, collection at IC&I properties may be a viable option. In the event that Niagara Region needs to pay a producer, there is the potential that the cost may be disproportionately high. Ultimately, the final regulation will inform Niagara Region's position with respect to servicing additional property types.

Niagara Region will continue to advocate for continued and expanded service to MR properties and public spaces already serviced during the transition period of 2023-2025, along with service to the smaller IC&I properties who utilize Niagara Region's Blue Box program.

Servicing for non-obligated materials

Niagara Region will be solely responsible for costs related to collection, haulage and processing of materials not obligated under the regulation. Niagara Region would also be responsible for producing extra P&E for the locally accepted materials (versus the provincial standard). Furthermore, Niagara Region may not be able to find a processor for non-obligated 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 will continue to advocate for a comprehensive list of obligated materials both during the transition period and after.

Service at depots

In the event that Niagara Region is not paid by producers to operate the 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.

Final considerations

As noted multiple times throughout this document, the Blue Box regulation is not yet finalized. After full transition of all municipalities by January 1, 2026, Niagara Region will have no operational program control in determining collection frequency, container type, or implementation of a single versus dual stream system. Until the transition period is complete on December 31, 2025 producers will be obligated to maintain the same level of service currently provided in Niagara Region – weekly collection of Blue Box materials through our dual stream process. Starting on January 1, 2026, producers will be paying for the entire system across the province and will have the final say in how the system is operated. Results must be guaranteed (i.e. establishing a common collection system, collection of consistent materials across the province, meeting prescribed management targets for materials, etc.) but how this is achieved will be entirely up to producers. For example, lightweight, bulky materials such as Styrofoam could be redirected from the curbside program to a depot system or deposit return may be implemented for additional items.

Throughout the consultation process with stakeholders, Niagara Region has continually advocated for weekly collection as this achieves the highest diversion and lowest residue rates, and we will continue to promote that position in our responses to the province, but ultimately the final regulation will be up to the province. Through local by-laws (e.g. restricting weight of trucks on our roads) Niagara Region will have some limited ability to protect the interests of residents. Should Niagara Region successfully bid on collection and haulage, the decision to continue that function may need to be revisited for the post-transition period, commencing January 1, 2026 or when the existing contracts with GFL and Miller expire.

Niagara Region will work to mitigate risks associated with the transitioned program regardless of Council's final decision on the MRF and whether to bid on the collection and haulage contract. For example, staff will monitor rates of obligated material entering the garbage stream after transition. To facilitate this, Niagara Region will be completing audits after the switch to every other week garbage collection occurs on October 19, 2020, and after the transition to full producer responsibility. This will allow us to verify if we are seeing increases in rates of obligated materials entering the garbage stream, etc.

Alternatives Reviewed

Considerations Related to a Later Transition Date

In previous comments to the province, in the response to the Modernizing Blue Box Stakeholder consultation for the Special Advisor's report and in previous consultations on the amended Blue Box Program (that ultimately did not pass but which informed the currently proposed transition methodology and plan), Niagara Region has advocated that payment of net verified costs (actual municipal costs) from SO should be increased to 75% in year one, increasing annually until transition is complete. Municipalities receiving payment would be subject to SO criteria that verifies program effectiveness. Past comments from Niagara Region have stressed that this is more equitable to those municipalities that cannot realize savings by transitioning earlier in the process, and who will continue to be accountable for 50% of net costs until the transition date that could be as late as December 31, 2025.

In the event that the regulation recognizes this proposed strategy, Niagara Region may realize reduced savings by exiting our collection and haulage contracts early and find that it is, in fact, preferable for customer service reasons and due to equivalent (or near equivalent costs based on reimbursement) to exit collection and haulage further along in the transition period (e.g. late in 2025). It is, however, unlikely that this proposed strategy will be accepted by producers as they will not want to increase costs in un-transitioned municipalities beyond the 50% they are already paying, while developing and implementing programs in other municipalities, for which they have full responsibility for all costs. As such, until cost-benefit analysis can be completed based on the final regulation, an early transition date is recommended.

Declining to Transition

Municipalities cannot decline the option to transition and still continue to receive the 50% funding of net programming costs from an external source indefinitely. SO is developing a wind-up plan that will include direction for management of any funds remaining at the end of the transition period. There is no requirement for SO to continue paying municipalities for Blue Box programs after the transition period ends on December 31, 2025. In fact, SO will cease to exist at that date, as per the Minister's

Direction letter from August 15, 2019 (Appendix 3). The regulation is not expected to include a requirement for producers to pay municipalities to operate any residential Blue Box program after 2025, although as previously noted there will likely be an opportunity for municipalities to provide Blue Box related services on behalf of producers. Any programming offered by Niagara Region that is not offered through commercially accepted terms between producers and Niagara Region, would be at full cost to Niagara Region and as such, declining to transition is not a viable option.

Relationship to Council Strategic Priorities

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

Other Pertinent Reports

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

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Appendices

Appendix 1	Proposed Regional Municipality of Niagara Council Resolution
Appendix 2	Request from AMO
Appendix 3	Minister’s Direction Letter to SO