

The Regional Municipality of York

Committee of the Whole
Environmental Services
January 14, 2021

Report of the Commissioner of Environmental Services

Proposed Regulation to Transition Blue Box Program to Full Producer Responsibility

1. Recommendations

1. Council endorse comments identified in Attachment 1, which were submitted to the Ministry of the Environment, Conservation and Parks in response to Environmental Registry of Ontario posting 019-2579: A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating Blue Box Programs.
2. The Regional Clerk circulate this report to the local municipalities and the Ministry of the Environment, Conservation and Parks, Association of Municipalities of Ontario, Regional Public Works Commissioners of Ontario, and Environment and Climate Change Canada.

2. Summary

The Ministry of Environment, Conservation, and Parks (the Ministry) released a draft regulation to make producers responsible for Blue Box Programs. Staff provided comments to the Ministry in response to the proposed regulation.

Key Points:

Region and local municipal staff collaborated to develop a response to the proposed regulation. Staff comments focused on the following:

- Agreement on a common collection system across the province with an expanded list of designated materials and agreement that it should be maintained in the final regulation
- Support for the proposed expansion of eligible sources and that the regulation includes, with clarity, all parks, public spaces, schools, and long-term care facilities
- Support for material category management targets but subcategories suggested to promote continuous improvement

- Request that recycled content component be removed from the regulation and be addressed in collaboration with the federal government
- Maintain curbside collection frequency and depot collection as a supplement to curbside collection to ensure convenient access to services
- Acknowledgement that the Region and local municipalities received the preferred transition date of 2025 and requested the final regulation include flexibility for an earlier transition if it is advantageous to the integrated waste management system throughout the Region

City of Markham have requested the province allow them to transition separately from the rest of the Region at an earlier date

On [November 30, 2020, Markham General Committee](#) approved Markham staff recommendations to request from the province an earlier transition date of January 1, 2023 and the ability to transition independent from the Region. City of Markham staff included this request in their comments to the Ministry on the draft regulation.

Although Markham now has a separate collection contract that provides the City with cost savings by transitioning earlier, doing so is forecasted to negatively impact the rest of the system. Markham supplies approximately 30% of the tonnes processed at the Waste Management Centre. Losing that tonnage would impact operational efficiency and reduce revenue generated by the sale of recyclables. While Regional staff would pursue efforts to mitigate, preliminary estimates indicate it would increase net blue box costs at the Region by approximately \$0.5 million a year.

Region staff support negotiating an earlier transition if it has a net advantage to all parts of the system

[In June 2020](#), Council endorsed a resolution that the Region and all local municipalities transition together in 2025 as the preferred alternative. Council also authorized the Environmental Services Commissioner to work with all local municipal partners to negotiate with producers on an earlier transition to maximize opportunities for cost savings if it is advantageous to the integrated waste management system. These opportunities will be best understood when the final regulation is released and as municipalities see acceptable progress towards early and smooth implementation. Local municipal and Regional staff will continue to collaborate to manage blue box contamination and ensure that our leading blue box collection and processing system is working smoothly for our residents.

3. Background

SM4RT Living Plan and leading diversion results have set a strong foundation for producers to build upon

Council's leadership on waste reduction and diversion has enabled creation of a province-leading integrated waste management system that provides convenient, cost-effective

programs supported by all York Region residents. The SM4RT Living Plan endorsed by Council in 2013 and updated in 2020, prioritizes the Region's focus towards a circular economy which aligns with the province's move towards full producer responsibility for the Blue Box Program. Municipal leadership has provided a strong foundation for waste diversion that producers can build on to expand service, increase diversion and address problematic materials cost effectively. By moving the province towards a circular economy through extended producer responsibility, improved environmental outcomes can be achieved while maintaining cost effective service levels that meet resident expectations.

Municipalities and other stakeholders have been advocating for Blue Box Program full producer responsibility for several years

York Region and its local municipal partners have been actively advocating for producer responsibility for the Blue Box Program and other diversion programs for many years (See Attachment 2). It is the most complex program to be transitioned to full producer under the *Waste-Free Ontario Act*. As shown in Figure 1, Regional and local municipal staff have been collaborating to prepare for a smooth transition since initial discussions between municipalities and producers about amending the Blue Box Program in 2017. Since the Blue Box Wind Up letter was issued in August 2019, local and Regional staff have met regularly to provide input into consultations and municipal policy positions. Collaboratively we completed a preliminary financial analysis and a risk assessment considering service level and contract impacts, culminating in a joint recommendation on transition timing shared with Council in June 2020.

Figure 1
Key Milestones in the Blue Box Transition Process to date



Staff submitted comments on the proposed Blue Box regulation to meet the Ministry's timeline for input

On October 19, 2020, the Ministry posted the proposed regulation and proposed regulatory amendments that would make producers responsible for operating Blue Box Programs to the Environmental Registry for comment. The province set a closing date of December 3, 2020 for public comments on this regulatory package. Regional staff consulted with local municipal partners to solicit input into the response letter. Due to timing of the Environmental Registry posting, Council input was not possible ahead of the submission deadline. The submission to the province aligned with comments jointly submitted by the Regional Public Works Commissioners of Ontario, Association of Municipalities of Ontario, Municipal Waste Association, and City of Toronto (Attachment 3). Comments were submitted and include a request that the Ministry consider any additional comments from Council as part of the Region's official submission. The Ministry is expected to incorporate comments and finalize the Blue Box regulation and amendments in early 2021.

Proposed regulation establishes model for producer-led Blue Box Program and sets framework for transition

As reported to Council in [June 2020](#), over the past year the province focused on developing a Blue Box regulation that will govern the new full producer responsibility system shifting financial burden from tax payers to producers and resulting in better environmental outcomes.

The proposed regulation includes a phased approach for when specific obligations would take effect. Once finalized, work begins on implementation. In 2021, it is expected that municipalities and producers will register with the Resource Productivity and Recovery Authority (the Authority) and that producer responsibility organizations will become established and also register. Producer responsibility organizations will then collaborate to develop a common collection system.

4. Analysis

Region staff support draft regulation as it reinforces municipal advocacy position and promotes improved environmental outcomes

While Regional staff were pleased to see that many key components previously advocated for were reflected in the draft regulations, we are concerned about the potential for backsliding based on recent experience with the Electrical and Electronic Equipment Regulations. In this case significant backsliding was noticed between the proposed regulation and the final regulation.

To achieve the desired environmental, social and financial outcomes, it is critical that the components of the draft regulation listed below are carried through to the final regulation:

- Establishing a producer responsibility framework through a common collection system to shift the burden from taxpayers to producers and streamline the program across the province.
- Expansion of designated materials list to include problematic single use items to decrease litter often associated with these materials.
- Inclusion of schools, long term care facilities and some public spaces as eligible sources is an improvement compared to the list of eligible sources proposed in earlier consultations by the province.
- High performance management targets for material categories including a subcategory for non-alcoholic beverage containers which is a substantial improvement compared to current program with only one aggregate target and no enforcement.

Establishing certainty in the proposed transition schedule is appreciated with added flexibility to negotiate earlier transition. In June 2020, in response to the Association of Municipalities of Ontario's call for action, Council passed a resolution that declared the Region's preference to transition blue box transfer and processing services concurrently with local municipal collection services in 2025. The proposed regulation is accompanied by a "Blue Box Transition Schedule" that identifies eligible communities and their transition year which lists York Region in the cohort scheduled in 2025. Preferred dates or delegated authority recommendations were received through 151 Council resolutions; 63 municipalities were given their preferred transition date.

Staff recommend revisions to improve accessibility and customer service levels as well as strengthen transparency

Upon review of the draft regulations, staff noted opportunities to strengthen transparency, improve accessibility, and ensure no negative impacts to residents or their experience with the Blue Box Program. The recommendations can be reviewed in detail in Attachment 1, and are summarized below:

- **Public space eligible sources should include municipal parks and community buildings, along with businesses in downtown core areas** which will help the province achieve its goal of reducing litter in our communities.
- **Performance targets must be established for problematic materials like compostable and single-use packaging** to prevent low performing recyclers from hiding behind high performers in their broad material category. In addition, it prevents leakage of fibre-like materials into municipal streams such as the Region's Green Bin Program which is one of the most cost intensive waste programs delivered to Regional taxpayers at a unit cost of \$270 per tonne, for a total annual cost of \$27 million.
- **Recycled content component of the Regulation should be removed and addressed in collaboration with the federal government.** Recycled content should

not be linked to management targets as this provision may inadvertently lower capture rates without driving new growth in recycling markets. It is difficult to audit recycled content which adds potential associated trade issues. Recycled content requirements would be best addressed by coordinating with federal efforts to introduce national recycled plastic content requirements.

- **Require annual audits rather than proposed cycle of every three years** which increases risks and does little to reduce administrative burden. An annual audit cycle would provide municipalities and producers with better line of sight on program performance and provide an opportunity to improve programs year over year.
- **Require producers who charge consumers a “resource recovery” or similar fee at the point of sale to report on fees collected, perform audits**, and ensure consumers are properly informed of the fee purpose, how the fees are determined and how collected fees are spent.
- **Require producers to provide the same service levels during and after transition that the municipality currently provides.** The draft regulation removes supplementary depot collection and could reduce collection frequency to every other week in the Region post transition; this is a reduction of service. This contradicts the province’s messaging that there must be no negative impact to Ontario residents and their experience with the Blue Box Program.

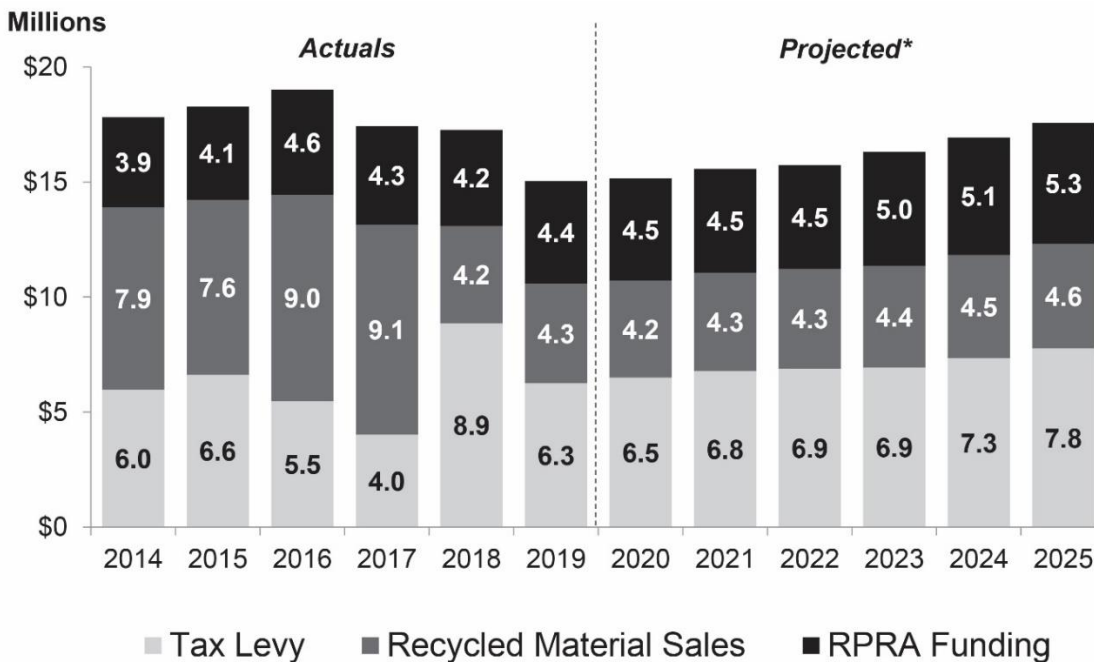
5. Financial

As reported in [June 2020](#), staff completed a high level financial analysis of the Blue Box Program based on financial data reported through the Resource Productivity and Recovery Authority Datacall. Figure 2 shows the gross cost of providing blue box transfer and processing services from 2014 to 2025 and the funding sources that support that program.

Region will continue to operate and manage processing of blue box materials until transition to producers

During transition of the Blue Box Program there will not be an interruption to this process. The Region is scheduled to transition in 2025. As outlined in Attachment 4, during 2023 and 2024, while other municipalities are transitioning, the Region will continue to operate and manage processing of blue box materials in the Region. This includes reporting to the Authority’s Datacall process. 2024 will be the final year the Region reports through the Datacall. In 2025, when the Region’s Blue Box Program transitions, funding will be prorated based on the date of transition to the producer led Blue Box Program.

Figure 2
Regional Blue Box Program Funding Sources



**2020-2022 based on 2020 Budget; 2023-2025 is projected.*

Stewardship Ontario must continue to pay municipalities through the Annual Steward Obligation until full transition

The Annual Steward Obligation is the amount of money that Stewardship Ontario must pay out to eligible municipalities each year to offset blue box operating costs. Funding for the Annual Steward Obligation is provided by obligated packaging and printed paper stewards who pay fees to Stewardship Ontario based on how much they supply annually into the Ontario residential market. All producers provide funding except newspaper stewards, who meet their obligation with in-kind contributions of advertising space for municipal promotion and education.

Blue Box Wind Up Plan proposes change to Annual Steward Obligation that could replace some funding with in-kind newspaper advertising

On August 15, 2019 the Minister issued direction to Stewardship Ontario and the Authority to wind-up the Blue Box Program to full producer responsibility. Stewardship Ontario drafted a windup plan after consultations, then submitted this draft to the Authority for review. As part of the plan, Stewardship Ontario proposed implementing a new fee setting methodology that shifts a higher proportion of producer’s blue box funding obligation to newspaper stewards. Stewardship Ontario estimates that the new fee setting methodology will increase in-kind funding by 70% in 2020, reducing the final cash payment portion of the 2020 Steward Obligation by almost \$4M. That would have reduced the Region’s overall payment by approximately \$335,000, of which 50 per cent of the funding is allocated to local municipalities to help offset their Blue Box Program costs. Staff comments during the

Authority’s consultation on the plan, recommended that the existing fee methodology be maintained through the transition process. The Authority’s board was scheduled to make a final decision in late 2020, staff anticipate outcomes of this decision to be made public in early 2021.

6. Local Impact

Staff and local municipal analysis demonstrated that transitioning together, at a later transition date allowed greater certainty and minimized risk

As reported in [June 2020](#), uncertainty around operational details of producer led programs and contract expiry dates were key factors in determining the preferred transition timing for local municipalities. Table 1 summarizes the system wide risk for each year.

While Table 1 identifies the highest potential for avoided costs if transitioning in year one, the other benefits identified with local municipal partners were taken into consideration and informed the recommended timing for the overall system as 2025. Transitioning later provides more time to adapt to new program requirements and opportunity to learn from other early transitioned municipalities. This creates greater certainty and time to better understand and mitigate the risks as the transition period progresses. Later transition also provides time to determine effective solutions to service gaps and customer service processes that may need to be addressed. Transitioning all municipalities and the Region at the same time also increases bargaining power for those municipalities wishing to remain as service providers under the new system.

Table 1
Summary of System Wide Risk Factors by Transition Year

Risk Factor	2023	2024	2025
Uncertainty about impacts of system changes under producer-led program – (for example co-collection, service gaps, customer service, commercial terms for contamination)	Highest	Medium	Lowest
Cost and risk associated with processing infrastructure and continued decline of revenue from sales of recyclables due to market volatility	Lowest	Medium	Highest
Potential for contract penalties from early termination/amendments to existing contracts	Highest	Medium	Lowest

Collaborative decision-making maximizes whole system benefits and supports a smooth transition for residents

The Region's processing contract is structured to efficiently manage tonnage from the entire Region and would be negatively impacted if municipalities were to transition individually. Preliminary estimates on the cost of Markham transitioning independently indicate there would be minimal savings on operational costs. Our MRF processing contract includes tonnage minimums and fixed costs such as utilities and equipment, while the revenue from blue box sales would decrease significantly due to the reduced tonnage. This impact would worsen if other municipalities chose to follow suit and transition independently.

The strong partnership between the Region and local municipalities supports delivery of a Province-leading diversion program for our communities. While the Region recognized the financial benefits of transitioning processing in year one, staff worked with local municipalities to agree on year three as the most beneficial for all parties. Staff will continue to collaborate with our local partners on decision-making that maximizes benefits to the whole system and support a smooth transition for our residents.

Local municipal interests and previous advocacy positions reflected in proposed regulations

Regional and local municipal staff shared their comments on the proposed regulation at the November 12, 2020 Strategic Waste Policy Committee meeting. Local municipal concerns and components of the proposed regulation that local municipal staff were satisfied with were incorporated in the Region's response letter to the Ministry (Attachment 1) and this report.

Local municipal staff supported the expansion of designated materials and eligible sources proposed in the regulation. Local municipal staff recommendations included:

- Clear definitions for public space and facilities so the true scope of eligible sources are known.
- All public facing buildings, parks, Business Improvement Area businesses, and super mailboxes be included as eligible sources.
- Depot collection as a supplement to curbside collection and weekly curbside collection frequency be maintained.
- Annual performance audits and transparent reporting to ensure improved environmental outcomes.

Region and local municipal staff were aligned on these recommendations.

7. Conclusion

Timing of consultation period for draft regulations did not allow for Regional Council review prior to submission

The Province released the proposed regulation, and proposed regulatory amendments, to make producers responsible for operating the Blue Box Program on October 19, 2020 for a 45-day consultation period. Staff comments were submitted on December 3, 2020 to meet the submission deadline. Due to the timeframe provided, it was not possible to develop a coordinated response in time for Council endorsement prior to submission. However, any suggestions or clarifications Council wishes to make will be sent to the province to supplement staff comments.

Region and local municipalities will continue to collaborate to ensure smooth transition for residents

The proposed regulation is largely seen to be in keeping with the recommendations provided by David Lindsay, Provincial Special Advisor and the Region's advocacy responses. It aligns with other jurisdictions such as British Columbia that have implemented a similar regulation. While the proposed regulation is a positive step forward, the final regulations for other diversion programs are less favourable to municipalities than draft consultation versions. With this in mind, staff advocated that the final regulation adhere to the draft as any erosion in environmental performance will impact the province's ability to move forward with the Circular Economy.

Local and Regional staff will continue to collaborate to ensure a smooth transition across the integrated waste system. Staff will continue to participate in ongoing blue box transition consultations and will report back to Council with critical updates. Staff continue to work on a plan to monitor effectiveness of transitioned programs to minimize negative impacts on other streams like organics which continue to be managed by municipalities.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection at 1-877-464-9675 ext. 75077. Accessible formats or communication supports are available upon request.

Recommended by: **Erin Mahoney, M. Eng.**
Commissioner of Environmental Services

Approved for Submission: **Bruce Macgregor**
Chief Administrative Officer

December 11, 2020
Attachments (4)
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