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Jamelia Alleyne
 Ministry of the Environment, Conservation and Parks
 Resource Recovery Policy Branch
 40 St. Clair Avenue West, 8th floor
 Toronto, ON M4V 1M2

RE: A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs ERO # 019-2579

Dear Ms. Alleyne,

The Association of Municipalities of Ontario (AMO), the City of Toronto, the Regional Public Works Commissioners of Ontario (RPWCO) and the Municipal Waste Association (MWA) collectively submit these comments on behalf of municipal governments regarding ERO 019-2579 on the Ministry's proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs.

We would like to thank the Minister of the Environment, Conservation and Parks and Ministry staff for continuing to move this important file forward and for all of their hard work throughout the consultation period, especially under trying conditions. The consultation was well-run with all stakeholders having had significant opportunities to provide their perspectives.

Producer responsibility policies are fundamental to reducing waste and increasing the recovery of resources in Ontario. By establishing outcomes and allowing for flexibility in achieving these outcomes, producers of packaging and products have the greatest ability to drive these outcomes in the most efficient and effective way.

Overall, the draft regulation has achieved what many previous governments have failed to and if finalized consistent with these core regulatory components, will establish Ontario as a leader in moving us towards a circular economy. Ontario municipalities strongly support the following elements of the draft regulation:

- Establishment of a province-wide common collection system:** Moving Ontario's current patchwork of recycling programs across the province to a requirement that by 2026, all Ontarians have the same access to recycling is a significant step forward. Ontarians should have the opportunity to recycle wherever they live, work and play. Including all communities regardless of size, all dwelling types, schools, retirement homes, long-term care facilities and

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- municipal public spaces (e.g., parks, playgrounds, outdoor areas, and streetscapes in Business Improvement Areas) will improve outcomes.
- **An enhanced and standardized list of materials:** An expanded and standardized list of blue box materials collected and managed across the province through one common collection system will make it easier for all Ontarians to know what can be recycled no matter where you live. It also provides a common standard for producers supplying into the market that they are responsible for managing their used packaging and products sold to consumers.
- **High, progressive and enforceable targets:** Ensuring that all consumer paper, packaging, packaging-like products and certain single use items from eligible sources have progressive, enforceable collection and management targets beginning in 2026, will force innovation and investment in collection and processing infrastructure, and stimulate the creation of new end markets. The Conference Board of Canada estimates that increasing waste diversion in Ontario would support an additional 12,700 jobs and add as much as \$1.5 billion to Ontario's GDP.¹ The proposed targets represent a significant improvement from current rates and will help to reduce litter and wasted resources if effectively implemented and properly enforced.
- **Certainty for planning to ensure a seamless transition:** Establishing a three-year schedule between 2023 and 2025 to transition all current municipal blue box programs to full producer responsibility in a seamless manner allows all stakeholders to plan accordingly and allow for necessary investments in a more effective recycling system.
- **Removing burden from municipal budgets at a time when it is needed more than ever:** Municipal blue box programs have been an increasing burden on municipal budgets and one that we have little ability to influence. Municipal governments cannot control the type of packaging being supplied into the market, we have little influence on recycling markets, nor can we predict changes in packaging to make appropriate investments in collection and processing infrastructure. Producers can. By shifting responsibility to producers, a net savings to property taxpayers and ratepayers will be achieved once fully implemented (i.e. over \$135 million per year based on 2018 costs).

Municipal governments would strongly advocate that the Ministry not weaken any of these core policy components, which was not the case between the draft and final regulations for electronics and batteries. There is broad stakeholder agreement on these core components, and they must be maintained. Combined with equally critical timely and effective implementation of the required Administrative and Monetary

¹ Conference Board of Canada. Opportunities for Ontario's Waste: Economic Impacts of Waste Diversion in North America, 2014. Available at <https://www.conferenceboard.ca/e-library/abstract.aspx?did=6233&AspxAutoDetectCookieSupport=1>.

Penalties regulation, the government will have achieved its key goals of providing producers with flexibility to innovate while ensuring strong environmental outcomes.

There are, however, some areas in the draft regulation that are problematic and require amendment. The following are key items that need to be addressed in the regulation:

Management targets and recycled content: In its current form, the draft regulation allows producers to reduce their recycling targets through incorporating recycled content derived from materials collected through the common collection system into their products. As many products already include recycled content (e.g. paper, glass, cardboard, aluminum), this provision could increase management risks with little benefit. It is also very difficult to audit and confirm the source and quantity of recycled content incorporated. In addition, there is the potential of competition related issues associated with it (e.g. potentially disadvantage smaller producers who must compete with larger multi-nationals, limitations for producers that cannot currently use recycled content in food contact or pharmaceutical applications). It also has the potential to allocate management responsibilities to producers which are greater than the total quantities of materials that they supply into Ontario, in many cases for production process changes that were made years ago.

Recommendation:

1. Incentives for recycled content are better addressed through a separate policy mechanism such as mandatory minimum recycled content requirements for certain products and/or packaging.

Annual performance audits: Producers should be required to perform annual performance audits, as is being proposed for Ontario's beverage container deposit return systems. The current proposal requires performance audits every 3 years, which increases risks and does little to actually reduce any administrative burden (i.e., it simply condenses the reporting of three years of audits into one year). Furthermore, there would be no publicly available data to monitor producer performance through the 2023 to 2029 period (six years) making it difficult to identify potential problems and to make any program adjustments required.

Recommendation:

2. Performance audits and the reporting of must be required on an annual basis to reduce risks and promote continuous improvement.

Compostable materials: Compostable materials should not be exempt from collection and management requirements. An exemption will mean that there is no incentive for producers to find adequate solutions to ensure their products or packaging can be managed properly. Instead, these products and packaging simply add to the costs of the municipal waste management system and it is highly likely that Ontario consumers will not get the sustainable management of these products they expected at purchase and brand owners will never know the success of the recovery of their compostable

packaging. Further, this would create an unlevel playing field for producers who are required to collect and manage all other obligated materials regardless of how these are ultimately managed.

Large, multi-national producers have already made strong commitments to ensure all plastic packaging is reusable, recyclable, or compostable by 2025.² The Ellen MacArthur Foundation defines compostable packaging:

A packaging or packaging component is compostable if it is in compliance with relevant international compostability standards, and if its successful post-consumer collection, sorting, and **composting is proven to work in practice and at scale**. (Emphasis added).

The guidance is clear that “Compostable packaging needs to go hand in hand with appropriate collection and composting infrastructure in order for it to be composted in practice. Therefore, when claiming compostability in the context of a specific geographical area (e.g., on-pack recycling labels, public communications), it is important to take into account the local context and available systems in place as outlined in ISO 14021 ...”³ Therefore to be reported as compostable, it must be proven to work in practice and at scale.

The proposed approach would make producers of compostable materials less responsible than under the current framework (i.e., they currently pay into Ontario's blue box programs), while at the same time the government is proposing to add greater responsibility to municipal government and organic processors for these materials (i.e. proposed changes to the Food and Organic Waste Policy Statement). Municipal governments are extremely concerned about the impact intentional regulatory exemptions or loopholes like this will have on the entire system.

There is also a concern that the proposed definition of compostables could lead to producers of fibre-based products (e.g. pizza and cereal boxes, coffee and drink cups etc.) defining their products or packaging as compostable to avoid collection and management requirements. Compostable materials should be more clearly defined in the final regulation to create a delineation from products and packaging that can be recycled in practice and at scale in Ontario (e.g., fibre based products and packaging such as coffee and drink cups, drink trays, newspapers, take away containers).

Recommendations:

3. The definition of compostable material must be clarified to ensure that materials that can be recycled in practice and at scale are excluded from the compostable materials definition (e.g. coffee and drink cups, drink trays, take away containers).

² This includes numerous Plastic Pacts such as in Canada, United Kingdom, United States, Europe, Australia, New Zealand.

³ Ellen MacArthur Foundation. New Plastics Economy Global Commitment, 2019. Available at <https://www.ellenmacarthurfoundation.org/assets/downloads/13319-Global-Commitment-Definitions.pdf>.

4. Compostable materials must NOT be exempt from collection and management requirements (i.e. amend section 2(2) and 2(3)). A separate target for compostable materials must be established based on progressive targets similar to those used for other lower performing materials like flexible plastic.

Servicing requirements: Once all municipal blue box programs are transitioned by 2026, the draft regulation removes the requirement for producers to provide depot collection in communities that provide curbside collection to all residents. Most communities with curbside servicing currently supplement curbside collection with depots. There are many communities where these depots are a significant collection point:

- Those with post-secondary schools where there are frequent move-in/move-outs that generate large amounts of cardboard.
- Communities with large seasonal populations that use depots as they leave their properties to return to their primary residences as they cannot participate in curbside programs that operate through the week when they are not at their seasonal property.

Further, these depots could provide needed capacity and accessibility post transition particularly in communities where producers may change collection frequency from weekly to bi-weekly. We are aware of some communities that offer all residences curbside collection that still receive 30% of their total annual blue box tonnage through depots.⁴

Recommendation:

5. Producers must be required to continue to provide at least as many depots for the collection of blue box material as there are depots for household garbage in that municipality, regardless of whether curbside collection is provided.

Resource recovery fees: Producers who charge consumers a “*resource recovery*” or similar fee at the point of sale should be required to report on fees collected, perform audits, and ensure consumers are properly informed about the purpose of the fees charged; how the fees are determined and how the funds raised are spent. These requirements are included in Ontario’s Used Tire Regulation (O. Reg. 225/08) and Ontario’s Deposit Return Systems to ensure consumer transparency, while providing flexibility for the producer. It is also a function that similar oversight organizations such as the Ontario Motor Vehicle Industry Council (OMVIC) have employed. Municipal governments do not believe there are appropriate mechanisms and resources available through the *Consumer Protection Act* to protect against possible abuse. We have already begun to hear consumer concerns about fees being charged on batteries and are concerned that the same will happen with electrical and electronic equipment (i.e. both regulations failed to include consumer protection provisions).

⁴ Data is available through the Municipal Datacall.

Recommendation:

6. The requirements related to resource recovery fees in [Ontario Regulation 225/18](#) under the *Resource Recovery and Circular Economy Act, 2016* must be included.

Transition timeline: A draft transition schedule was provided by municipal governments based on resolutions approved by municipal councils. The transition schedule met the requirements set out by the Province and also provides municipalities with some certainty in planning transition (i.e. a measured transition over a three-year period), many municipal governments did not receive the preferred transition date they requested. A complete list was provided to the Ministry with an explanation, including the proration of the numbers to balance cost, tonnes, population and geographical catchments to promote a smooth transition process and manageable cost transfers to producers over three years.

Those municipal governments who did not receive the date they selected will likely reach out to MECP directly to identify specific issues that may be created by not transitioning on their requested date.

Recommendations:

7. That municipal self-determinacy be the driving criteria that is used to establish the transition schedule because municipal governments are best versed on their own situation (e.g. encumbrances for blue box programs such as contracts, assets, human resources etc.) and that the transition schedule should use the dates provided through these resolutions.
8. Where beneficial, the final transition schedule should contain a more specific date than quarterly to ensure municipal service contracts do not expire before producers become responsible.
9. Continue to support a process that would allow producers and municipal governments to adjust their transition timing in the schedule by mutual consent.

Enforcement mechanisms: Municipal governments remain concerned about the timely development and implementation of the Administrative Monetary Penalties regulation, which is the key enforcement mechanism to ensure a level playing field for producers and to ensure their targets are met.

Recommendations:

10. An Administrative Monetary Penalties regulation should be moved forward as soon as possible.
11. The regulation must ensure that producers implementing alternative collection systems cannot economically benefit from failing to meet targets.

Common Collection System: Our understanding of the policy intent of the annual allocation table is to ensure any servicing issues can be addressed quickly and

efficiently. However, the scope and complexity of this part of the regulation seems to encompass much more. For example, the proposed regulation would provide the ability for producers to make their own rules under the regulation, that would then have the force of law. This was not discussed as part of the working group meetings. The scope of these rules is not well defined or understood. Municipal governments are concerned that these rules could be used in a way that conflicts with the public interest such as:

- superseding other legislation, regulations, and bylaws,
- hindering competition in the marketplace,
- unfairly burdening some companies to the benefit of others.

Further, if only one organization is able to meet the proposed threshold for participating in the preparation of the rules, they would have an ability to create their own rules without any oversight. Given these rules have the force of law, municipal governments have concerns about protecting the public interest and what mechanisms the Province will employ to achieve this. It will also be critical to ensure that the proposed process works if there is only one PRO or multiple PROs.

In light of the above, there is continued concern that the proposed 10% threshold to enable producers and/or PROs to participate in the process appears too high and will hinder competition.

Recommendations:

12. The 10% threshold represents a barrier to entry for PROs and producers at the rule-making stage and should be reduced.
13. The annual allocation table process must work in a manner that protects the public interest if there is one PRO or multiple PROs.

Industrial, commercial and institutional (ICI) servicing: Municipalities are pleased to see consultation will begin shortly on the ICI waste framework. The Ministry has been officially reviewing this framework since February 18, 2013, when a request was submitted under Part IV of the Environmental Bill of Rights.⁵ It is hoped that progress can finally be made, given this sector represents a larger portion of the waste generated and disposed in the province and action is required to achieve Provincial objectives to establish a circular economy.

There is some concern from municipal governments in the interim that some small businesses, charities, or faith-based organizations could have difficulties receiving servicing in largely residential areas. We urge the government to ensure that these entities can continue to receive servicing through some other means (e.g. mutual agreement between producers and municipalities to continue collection on a fee per service basis).

⁵ Available at <http://docs.assets.eco.on.ca/applications/2016-2017/R2012013-undertaken.pdf>.

Recommendation:

14. While municipal governments understand these sources are out-of-scope in the blue box regulation development process, real progress on waste diversion will not occur without focusing on ICI waste. We look forward to participating in the full consultation on the ICI waste framework.

Regulatory Timeline: Successful implementation of this regulation will also be strengthened by providing all parties (e.g. producers, municipalities, service providers and the Resource Productivity and Recovery Authority) time to ensure they are prepared for the changes necessary. This includes the development of producer responsibility organizations and a new registry system, sorting out contracts, and potential infrastructure investments.

Recommendation:

15. Time is essential and we would urge the government to move this regulation forward expeditiously and to maintain the implementation timelines set out in the draft regulation.

Ontario Regulation 101/94: Municipal governments remain in agreement with the approach discussed as part of the mediation table.

Recommendation:

16. Once a municipality transitions, the requirements under Ontario Regulation 101/94 for municipalities with population of at least 5,000 to operate and maintain a Blue Box management system must cease to apply. Municipal material recovery facilities operating with an exemption under O. Reg. 101/94 should be provided a similar opportunity to allow these facilities to continue to operate unimpeded.

Amendments to the *Resource Recovery and Circular Economy Act, 2016*: Municipal governments do not want to impede producer access to blue box materials for collection. Municipal governments are however concerned that their rights and powers under the *Municipal Act* and the *City of Toronto Act* could be superseded by changes to the *RRCEA* that would inhibit their ability to ensure the health and safety of their communities (e.g., noise bylaws). If the Ministry deems this to be important, a separate consultation should be established to properly discuss this after completion of the final blue box regulation.

Recommendation:

17. It is premature to further amend the RRCEA. Producers do not begin to take over direct management of existing blue box programs until 2023, and do not assume full control and management of the blue box system until 2026. Municipal governments would be pleased to participate in consultations with the Province, producers and other stakeholders to discuss how we can ensure

producers have unfettered access to blue box materials to meet their obligations and that municipal governments can ensure their legislated responsibilities to maintain public health and safety of their communities remain intact. Stakeholders have demonstrated through the David Lindsay mediation that balanced and meaningful dialogue can result in consensus positions amongst producers and municipalities.

Housekeeping and More Minor Amendments:

- **Definition of aggregates**

A more definitive explanation required than “i.e. road building” as to how materials can be used.

- **Definition of multi-residential**

To ensure greater clarity amend the definition.

- **Definition of public space**

To ensure greater clarity amend the definition for public space to:

“public space” means any land made available by a municipality,

- (a) in any park,
- (b) any playground, or
- (c) any outdoor area located in a business improvement area designated under the *Municipal Act, 2001* or by a by-law made under the *City of Toronto Act, 2006*;

- **Replacement of blue box receptacles**

May want to provide additional language under depot or curbside collection obligations to allow for measures against abuse (e.g., based on a damaged container or a theft of a container).

- **Obligation for Depot Collection**

May be better aligned with the requirements for facilities as opposed to curbside collection as currently drafted.

- **Annual report**

Ensure materials collected and processed are reported in a more detailed manner (e.g., by material category) to allow for the ability to have more specific targets in the future. Where PROs are reporting to the Authority on behalf of participating producers, require that the PROs report in the same detail that they require that producers report to the PRO.

- **Performance reporting for Brewers Retail Inc and the LCBO**

It is unclear why the performance reporting is different for Brewers Retail Inc and the LCBO from the other producers. This includes both the detail and frequency.

Furthermore, while the stated intent of the province is to recognize that alcohol beverage containers are being recycled through these programs, alcohol containers and their associated packaging would be exempt from the proposed Blue Box regulation. How will printed materials (catalogues, advertising materials, etc.) that are not beverage containers be managed?

- There appears to be a few errors in the drafting of the regulation:
 - The definition of “consumer” includes a person in (a) and an individual in part (b). It appears these should be the same.
 - The definition of “marketplace facilitator” looks like sector (a)(ii) should finish with “or” instead of “and”.
 - The definition of “packaging-like” section (a) should read “is used by the consumer for the ...”
 - The definition of “paper” includes the term “blue box consumer” should that simply read “consumer”?

Thank you again for the Province’s fortitude to tackle this important issue and for all the hard work over the last year. We look forward to continuing to work with you and are pleased to answer any questions you might have.

Sincerely,



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