

ONTARIO'S NEW BLUE BOX REGULATIONS SHIFT CONSUMER PRODUCT END-OF-LIFE RESPONSIBILITIES TO PRODUCERS

Posted on November 10, 2020

Categories: [Insights](#), [Publications](#)

Ontario has been facing a waste management crisis for years with 70% of our waste materials ending up in landfills rather than being recycled.^[1] Improperly managed plastic waste that is not recovered for secondary purposes contributes to the overcrowding of landfills, releases millions of micro-plastic particles in its decomposition process into the environment and causes approximately 10,000 tonnes of plastic debris to enter the Great Lakes each year.^[2]

On October 19, 2020, the Ontario government announced that it was developing a “stronger, more effective Blue Box Program”^[3] to tackle these issues under its Made-in-Ontario Environment Plan. The government has published its proposal for the new regime and draft regulations under the Resource Recovery and Circular Economy Act, 2016 (“**RRCEA**”) that, if enacted, would transition the current Blue Box Program to an extended producer responsibility (“**EPR**”) model.

The EPR model shifts the costs of the Blue Box Program away from municipal taxpayers to producers of products and packaging requiring them to assume full responsibility for the waste they create. As a result, producers of products captured by the Blue Box Program must start planning for undertaking their products' end of life collection and recycling responsibilities to ensure compliance with the new regime.

This bulletin provide a summary of Ontario's Proposal Summary and draft proposed regulations published on October 19, 2020.

The Regulations

Ontario provides that the new Blue Box regulations are guided by the following principles: (1) improving environmental outcomes; (2) reducing costs and burdens for businesses; and (3) supporting economic growth and innovation.

Under the new regime, producers would be responsible for collecting and managing items made from paper, metal, glass, plastic or any combination of these materials, including packaging, printed paper, single use items (such as foils, wraps, straws and plates) and non-alcoholic beverage containers. Alcoholic beverage containers

and their associated packaging will not be designated as Blue Box materials under this new regime and the Ontario Deposit Return Program for alcoholic beverage containers will remain unaffected.

These regulations would also change the current Blue Box Program by: (1) expanding the types of Blue Box materials collected and managed; (2) increasing the communities serviced, in particular, those communities located outside of the Far North, including municipalities, unorganized territories and reserves regardless of the size of their population; and (3) adding eligible sources of recycled material to the program, including multi-unit residential buildings, schools, retirement homes, long-term care homes and some public spaces.

Producer Waste Management Requirements

In order to ensure that all designated products and packaging go into the Blue Box rather than the garbage, the proposed Blue Box regulations establish a common collection system to provide services to all eligible sources of recycled materials through access to collection sites or the producer's collection services (e.g. weekly curbside collection or depot collection). Producers would be required to collect a consistent set of materials.

The designated producers responsible for the blue box products sold in Ontario will be entitled to engage the services of third party producer responsibility organizations (PROs) to help them meet their Blue Box material collection, recovery and management obligations under the proposed regulations.

In terms of managing the amount of waste being recycled to ensure it does not mostly end up in a landfill or the environment, the Province has established recovery and diversion targets for each of the materials collected referred to as "management requirements". Producers will have to meet fixed recovery targets for paper, glass, metal, rigid plastic, flexible plastic and non-alcoholic beverage containers diverted away from landfills for the periods of 2026 to 2029 and for 2030 onwards.

For example, between 2026 and 2029, the proposed diversion target for paper materials is set at 90% and the diversion target for non-alcoholic beverage containers is set at 75%. Producers should use these targets when determining their management requirements for each category of material they market. Producers will be expected, but not required, to make best efforts to meet the management requirements of Blue Box materials during the transition period of 2023 to 2025.

Finally, to incentivize recycling, producers who incorporate recycled content from Blue Box materials into their new products and packaging may reduce their management requirement up to 15% for any recoverable material category for the next calendar year.

Who is a Producer?

The new regime also establishes a methodology for identifying which producer will attract responsibilities

under the proposed regulations. The Province has provided a hierarchy of producers to ensure that the person with the closest connection to the designated products and packaging is designated as the responsible producer.

For example, where a retailer sells a pair of shoes with a cardboard shoebox and provides a plastic bag to the consumer for carrying the shoes, the Canadian brand holder company of the shoes would be responsible for the recovery of the cardboard shoebox and the retailer would be responsible for the bag they provide to the consumer.

Under this responsibility hierarchy, a brand holder who is a resident of Canada would be the first person responsible. Where the brand holder is not a resident of Canada, the responsibility falls to the importer or others who supplied the Blue Box materials who are resident in Ontario. Where no importer is resident in Ontario, then the retailer who supplied Blue Box materials to consumers in Ontario will be responsible. The proposed regulations also capture retailers that are located outside of Ontario who supply Blue Box materials to Ontario consumers online.

Timeline for Transition

The proposed Blue Box regulations would transition existing Blue Box services to producer responsibility in three groups between 2023 and 2025. An accompanying “Blue Box Transition Schedule” will set out the year each eligible community will transition to the new regime. Who falls into each of these three groups has not yet been finalized by the Province.

To minimize the potential for municipalities being forced to break contracts with current Blue Box service providers to comply with the new regulations, no municipality will be assigned a date to transition to the new regime earlier than it prefers.

To deter non-compliance with the new regime, the Province is expected to develop regulations to apply administrative penalties to producers who fail to comply with the regulations.

What Does this Mean for Manufacturing Businesses?

Ontario is shifting its current Blue Box recycling program to a full EPR model, wherein Canadian manufacturers will be responsible for managing the waste they produce regardless of how many hands the product passes through before ending up with its ultimate consumer.

This change means that producers will assume full control over their products’ end of life collection and recycling responsibilities in addition to their normal design and manufacturing operations. This is in line with the commercial reality that producers know their products best and therefore know when their products’ life

span is expected to end and the potential uses for their products once their life span is concluded.

The EPR model incentivizes producers to create new and innovative cost-effective solutions for recycling and diverting their products back into the economy.^[4] Producers may in fact feel encouraged to design, manufacture and package their products using more sustainable and recyclable materials.

While the proposed changes to the Blue Box Program affect residential and public eligible sources, Ontario has also recognized that a large proportion of waste in the Province is generated by the industrial, commercial, and institutional (IC&I) sector. That is why in the coming months, the Province has indicated that its intention to reform the IC&I waste framework as well. A major component of this reform will be to bring it in line where possible with the proposed Blue Box regulations – at least in relation to the types of materials collected for recycling.

The Ontario government is currently undertaking a 45-day consultation (until December 2, 2020) on its proposed regulations. Interested or affected parties are encouraged to submit a comment to the Environmental Registry of Ontario.

by Donia Hashem, Talia Gordner and Ralph Cuervo-Lorens

[1] Ontario, Ministry of the Environment, Conservation & Parks, Reducing Litter and Waste in Our Communities: Discussion Paper, (Toronto: Resource Recovery Policy Branch, 11 April 2019) at 4.

[2] *Ibid* at 19.

[3] For more information on the content of this bulletin, please refer to the following notice put out by the Government of Ontario: [A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs](#)

[4] Ontario, Report of the Special Advisor on Recycling and Plastic Waste, Renewing the Blue Box: Final Report on the Blue Box Mediation Process (20 July 2019) at 7.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2020