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Sent: Tuesday, February 2, 2021 4:29 PM
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Subject: Regional Council Decision - Proposed Regulation to Transition Blue Box Program to Full Producer Responsibility

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On January 28, 2021 Regional Council made the following decision:

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.

The original staff report is attached for your information.

Please contact Laura McDowell, Director, Environmental Promotion and Protection at 1-877-464-9675 ext. 75077 if you have any questions with respect to this matter.

Regards,

Christopher Raynor | Regional Clerk, Regional Clerk's Office, Corporate Services

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Our Mission: **Working together to serve our thriving communities – today and tomorrow**

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.

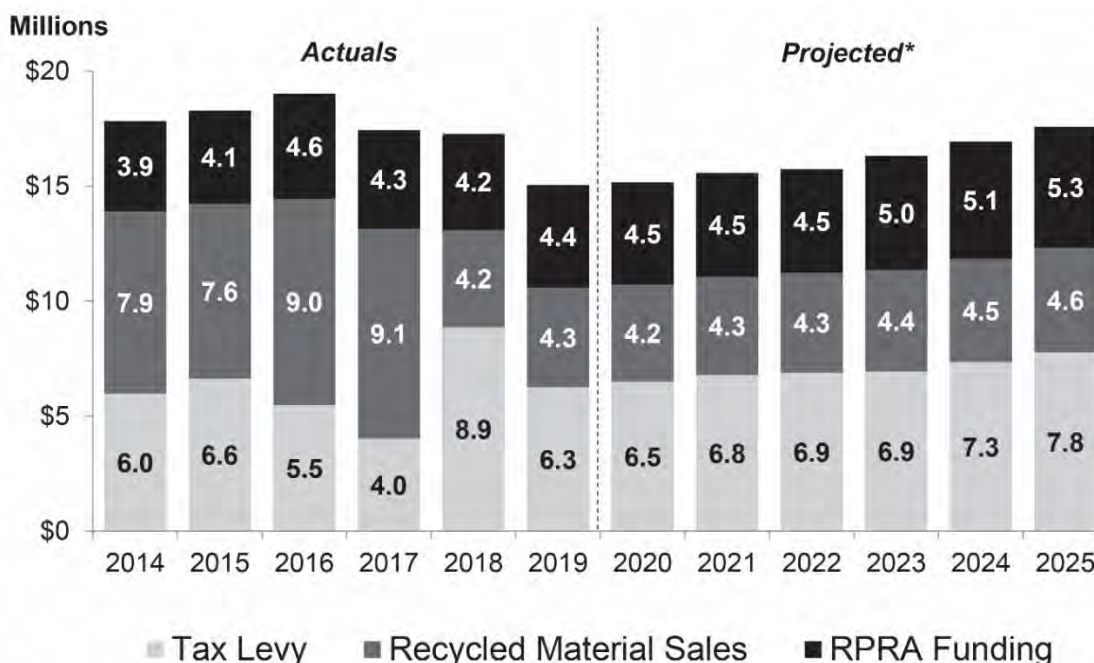
5. Financial

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)
#11873699



December 2, 2020

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

Dear Ms. Alleyne:

RE: York Region response - a proposed regulation, and proposed regulatory amendments, to make producers responsible for operating Blue Box Programs – ERO 019-2579

York Region staff thank the Ministry of the Environment, Conservation and Parks (the Ministry) for the opportunity to comment on the proposed Regulation, and proposed regulatory amendments, to transition Blue Box Program operation to producer responsible under the *Resource Recovery and Circular Economy Act, 2016*. This submission is 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 on behalf of the municipal sector. Municipalities such as the Regional Municipality of York are strong partners to assist in determining an effective path forward.

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

Region staff were pleased to see many key components previously advocated for reflected in the draft regulations. It is critical that the Province maintains these key components in the final regulations as there is concern these may be removed or weakened as seen in the battery and electronic waste final regulations. Staff recommend the following key components be maintained in finalizing the draft regulations.

Establishing a producer responsibility framework through a common collection system across the Province

- Making producers financially responsible to collect a consistent set of materials across the Province including all designated products and packaging from all eligible sources will not only shift the burden from taxpayers but will reduce confusion across municipal borders.

Expansion of designated materials list to include problematic single-use items

- Expanding the designated materials list to include single-use packaging like products, and single-use food and beverage service items as designated materials is an improvement to the current Blue Box Program.
- Shifting the responsibility for managing these problematic materials from municipalities to producers increases the likelihood that solutions for collection and recycling of these materials will be developed and has potential to decrease litter associated with these materials.

Inclusion of schools, long-term care facilities and some public spaces as eligible sources

- Including public spaces and parks, long-term care facilities, schools and multi-residential buildings as eligible sources in the proposed regulation ensures equal access to recycling whether at home, office or within the community.

High performance management targets including the subcategory for non-alcoholic beverage containers are critical to driving environmental outcomes

- Targets in the draft regulation are applicable to multiple material categories and are in line with best-in-class comparable programs. Compared to the current program where only one aggregate target is measured without any enforcement or consequences for non-performance, this is a substantial improvement.
- Staff were pleased to see the addition of non-alcoholic beverage containers as a separate category as this will ensure accountability and drive higher performance.

Establishing certainty in the proposed transition schedule is appreciated with added flexibility to negotiate earlier transition

- Region staff appreciate the level of certainty that the proposed schedule accomplishes.
- Flexibility to transition earlier than the date noted in the Regulation Schedule should be maintained in the final version of the Regulations, as articulated in Part IX of the draft Regulation.

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

Upon review of the draft Regulations, staff noted opportunities to strengthen transparency, improve convenience and ensure no negative impacts to residents and their experience with the Blue Box Program. These recommendations are outlined below:

Public space eligible sources should include municipal parks and community buildings, along with businesses in downtown core areas

- In keeping with Special Advisor David Lindsay's recommendation, producers should provide blue box collection wherever it was provided by municipalities.

Recommendation:

1. Final Regulation must provide clear definitions and include as eligible sources all municipal parks, public facing municipal buildings and community facilities, super mailboxes, and businesses and not-for-profit organizations located in Business Improvement Areas. By including these sources as eligible, it 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

- Subcategory targets and reporting will prevent low performing recyclers such as those who produce single-use packaging from hiding behind high performing recyclers in their broad target category.
- The green bin cannot be used as a tool for producers to shift costs to municipal taxpayers under the guise of extended producer responsibility. The Region's Source Separated Organics Program 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. The proposed definition of compostable material could allow producers of fibre-based products (e.g., pizza boxes, coffee cups, etc.) to be categorized as compostable material to avoid management costs.

Recommendations:

2. Subcategories should be added to more closely track performance of problematic materials to expose low performing problematic packaging that often contributes to litter.
3. The Blue Box regulation and the Food and Organic Waste Policy Statement must be aligned with a clear definition of compostable materials and performance targets specific to compostable packaging to make these producers responsible for the end of life management of their packaging.

Recycled content component of the regulation should be removed and addressed in collaboration with the federal government

- Recycled content requirements would be best addressed by coordinating with federal efforts to introduce national recycled content requirements for plastics and encouraging similar standards for other blue box materials.
- Many producers already include recycled content or have committed to doing so in the future. This provision may inadvertently lower capture rates without driving

new growth in recycling markets. It is very difficult to audit recycled content and identify the quantity and source of recyclable material. Furthermore, there is potential to create advantages for larger multi-national producers over smaller producers as they may have greater access to recyclable materials.

Recommendation:

4. Encourage recycled content in packaging separately from regulations and that the Province establish recycled content targets in collaboration with the federal government.

Increase transparency and support continuous improvement by requiring annual audits

- A consistent annual audit cycle aligned with Ontario's Deposit Return program would provide municipalities and producers with better line of sight on program performance and provide an opportunity to improve programs year over year.

Recommendation:

5. The regulation must require annual performance audits rather than the proposed cycle at every three years which increases risks and does little to reduce administrative burden.

Producers charging 'recovery fees' must provide reporting and audits on how the funds are managed

- 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 of; 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.

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 in the Blue Box regulation.

Maintain current service levels including weekly collection and supplementary depot collection where it already exists

- The draft regulation removes supplementary depot collection and could reduce collection frequency to every other week in the Region post transition.
- This contradicts the Province's messaging that there must be no negative impact to Ontario residents and their experience with the Blue Box Program.

- If producers can reduce weekly collection to every two weeks and discontinue depot service after transition, this would be a reduction in service and remove an important part of the current collection infrastructure.
- Depots could provide needed capacity post transition particularly in communities where collection frequency goes to bi-weekly from weekly.
- Communities with large seasonal populations use depots as they leave their properties to return to their primary residences. They cannot participate in curbside programs that operate through the week when they are not at their seasonal property.
- Convenience promotes diversion. If the intent of the Regulation is to increase diversion, convenient recycling options must be provided to residents.

Recommendation:

7. It is recommended that the Regulation require producers to provide the same service levels during and after transition that the municipality currently provides.

York Regional Council comments will be submitted following its January meeting

Due to the timing of the consultation period, engagement with York Regional Council was not possible prior to submission. This response will be considered by Council in January and any additional comments made will be communicated to the Ministry in early February.

Staff thank the Ministry for considering these comments and for continuing to engage municipalities as development of the Blue Box regulation moves forward. We are pleased to see the Province will be moving forward with focus on improving Industrial, Commercial and Institutional diversion which is critical to the preservation of landfill space in the Province.

If you or your staff have any questions or would like to discuss this matter further, please contact Laura McDowell, Director of Environmental Promotion and Protection, at Laura.McDowell@york.ca

Sincerely,



Erin Mahoney, M. Eng.
Commissioner of Environmental Services
The Regional Municipality of York

cc:
#11844130

Communications to Council on Blue Box Full Producer Responsibility

Date	Communication
September 2013 Report	<u>Review of Bill 91, Proposed Waste Reduction Act, 2013</u>
June 2015 Report & Presentation	<u>Pending Waste Reduction and Resource Recovery Framework Legislation Update</u>
February 2016 Report & Presentation	<u>Waste-Free Ontario Act – Update on Proposed Waste Management Legislation</u>
June 2016 Memorandum	<u>Update on Waste-Free Ontario Act</u>
June 2017 Report & Presentation	<u>Update on moving toward full producer responsibility under the Waste-Free Ontario Act</u>
January 2018 Memorandum	<u>Update on Consultation Timelines for Amending the Blue Box Program Plan towards Full Producer Responsibility</u>
February 2018 Report	<u>Comments on Proposed Provincial Food and Organic Waste Framework</u>
February 2018 Memorandum & Presentation	<u>Update on Proposed Amendment to Blue Box Program Plan</u>
March 2018 Report	<u>Update on moving towards Full Producer Responsibility under the Waste-Free Ontario Act</u>
February 2019 Memo	<u>Proposed Made-in-Ontario Environment Plan - Staff Comments Submitted to the Province</u>
May 2019 Report	<u>Provincial Discussion Paper on Reducing Litter and Waste in our Communities</u>
June 2020 Report	<u>Resolution on Transition to Full Producer Responsibility</u>
April 2020 Report	<u>Five Year SM4RT Living Plan Review and Update</u>
December 2020 Memo	<u>Staff Comments on proposed amendments to Food and Organic Waste Policy Statement</u>



Sent via email to: RRPB.Mail@ontario.ca

November 30, 2020

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,



Dave Gordon
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Association of Municipalities of Ontario



Mark Winterton
Chair, Regional Public Works
Commissioners of Ontario



Annette Synowiec
Director, Policy, Planning & Outreach
Solid Waste Management Services
City of Toronto



Melissa Kovacs-Reid
Chair, Municipal Waste Association

OVERVIEW OF THE TRANSITION PERIOD

Ministry set transition schedule based on municipal preference, geographic location and balancing tonnage across all years. Peel, York, Durham and Niagara Regions, Cities of Toronto, Hamilton and Ottawa account for over 60% of overall tonnes in Ontario

2023

START TRANSITION		CONTINUE STANDARD OPERATIONS		
<p>First cohort of municipalities including City of Toronto, City of Ottawa and 46 smaller communities, transitioning to new common collection system by end of the year (approx. 1/3 of system).</p> <p>Transitioning municipalities:</p> <ul style="list-style-type: none">• Receive some Stewardship Ontario (SO) funding prorated based on transition date• No data call reporting as funding is based on previous year's report <p>Producers begin paying into both old and new systems</p>		<p>Remaining municipalities continue to operate under existing system and receive current (50%) funding from Stewardship Ontario</p> <p>York Region and local municipalities:</p> <ul style="list-style-type: none">• Continue to operate system as usual• Plan for monitoring of impacts from transition on other streams post-transition		
	FULLY TRANSITIONED		START TRANSITION	CONTINUE STANDARD OPERATIONS
	<p>First cohort of municipalities fully transitioned</p> <p>PROs are fully responsible for operation and funding of blue box in these areas.</p> <p>Transitioned municipalities:</p> <ul style="list-style-type: none">• No longer receive SO funding• No longer report through data call• No longer responsible for operation of blue box program unless under contract with a PRO as a service provider		<p>Second cohort of municipalities including Peel, Durham and Niagara Regions, Simcoe County and 27 smaller communities transition to new system over the year</p>	<p>Remaining municipalities continue to operate under existing system and receive current (50%) funding from Stewardship Ontario</p> <p>York Region and local municipalities</p> <ul style="list-style-type: none">• Prepare to implement amended contract arrangements for transition date in 2025• Final year of data call reporting submission
FULLY TRANSITIONED		START TRANSITION		
<p>2/3 of municipalities are fully transitioned</p>		<p>Final cohort of municipalities including York and Halton Regions, City of Hamilton and</p>		

2025