

An offer we can't refuse: Amendments to Ontario's Blue Box regulation

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On April 19, 2022, and without undergoing public consultation, Ontario's Ministry of the Environment, Conservation and Parks released amendments to the [Blue Box regulation](#) under the *Resource Recovery and Circular Economy Act, 2016*. The regulation covers the recycling of paper products and packaging materials for residential uses currently managed in Ontario under municipal Blue Box programs.

What you need to know

- [Initially released](#) on June 3, 2021, the regulation's aim is to transition municipal Blue Box recycling programs across Ontario to full extended producer responsibility (EPR).
- EPR transfers responsibility for the collection and management of Blue Box materials to companies that supply those materials in Ontario, also known as producers.
- Under the current system, over 240 Ontario municipalities run their own separate Blue Box programs, with the net costs of the system split between municipalities and producers.
- Under the new Blue Box system, companies will not just cover the cost of the system but also take over operational responsibilities from municipalities.

Reasons for the amendments

Since its release, both environmental groups and producers have criticized the Blue Box regulation for being confusing and ineffective. For producers, the criticism largely relates to the confusing guidelines set by the regulation for determining the "allocation table". The table was an Ontario policy innovation that would determine which producers would be responsible for collecting from which residences, facilities or public spaces in Ontario. Once in force, the allocation table would have regulatory effect over producers who would have to collect from the allocated sources.

With the transition of municipal recycling systems set to begin by July 1, 2023 and the initial allocation table due on July 1, 2022, producers had to quickly work with the rules of the regulation to determine the allocation table. However, eight months after the

regulation was published, producers still struggled to build a workable system off the government model and called upon the Province to amend the regulation.

The amendments to the Blue Box regulation released on April 19, 2022, came after weeks of negotiations between the government and the organizations that represent producers in the new Blue Box system, also known as producer responsibility organizations (PROs). According to the Province, the regulation was amended to help streamline the path forward for producers, PROs, and the waste sector to collaborate on a province-wide collection system for Blue Box materials. Most notably, the new regulation eliminates the innovative allocation table along with its corresponding rule-making obligations.

The amendments

The changes to the regulation largely remove the confusing guidelines around the creation of the allocation table, thus granting producers independent decision-making power over how they collect and manage Blue Box materials to meet the diversion targets set by the regulation.

The Province has revoked sections of the regulation related to rule creators and the rule creation process, including the allocation table, collection period, and the requirement for representation agreements. PROs will no longer be required to create allocation rules or an allocation table that allocates different sources of collection to each PRO or producer. Instead, new sections of the regulation indicate that every producer is responsible for providing Blue Box collection to every eligible source in Ontario.

According to the newly added section 50.1, PROs that as of April 1, 2022, either on their own or with another PRO, represented producers that supplied more than 66 per cent of Blue Box material tonnage in Ontario in 2020 are required to submit a report on how they will operate the Blue Box system. The report must be submitted to the Resource Productivity and Recovery Authority by July 1, 2022.

Lastly, the amendments exempt newspaper producers whose newspaper supply accounts for more than 70 per cent of their total Blue Box supply from collection, management, and promotion and education requirements. Newspapers, however, will continue to be collected in the Blue Box system. The Province has justified the exemption on the basis of the vital public service role newspapers play in the communities while maintaining environmental outcomes.

No public consultation

The government's amendments to the Blue Box regulation were released without undergoing public consultation under the *Environmental Bill of Rights, 1993*. Public consultation is typically required for significant amendments to, or upon the introduction of, new laws that could have a significant effect on the environment. In such scenarios, the Ontario government is obligated to post the development for comments on the Environmental Registry of Ontario.

The Province has, however, indicated that the changes do not impact the regulation's outcome, including expanding the Blue Box to more materials, communities and

locations. Additionally, the changes do not affect the timelines for municipalities, which will begin transitioning their Blue Box recycling programs to the new system on July 1, 2023.

Takeaways

The amended Blue Box regulation continues to pursue Ontario's commitment to full EPR by shifting to producers the entire financial and operational responsibility for end-of-life paper products and packaging while granting producers greater control over the collection and management of materials. Despite the lack of public consultation, the amended Blue Box regulation provides an important update to a system ready for a change.

Transitions of Blue Box programs across Ontario will begin in July 2023. PROs have until July 1, 2022, to submit a plan to the Province for how the new, single collection system will work, and will have less than a year to implement that system in some parts of the province. The new rules will impact what every Ontarian puts in their blue bins, who picks up those bins, and how many of the items placed in our bins end up getting recycled in Ontario versus how many end up in a landfill.

Criticism of the amended Blue Box regulation and the process that generated it continues. As the Province's plan is put into motion, the regulation will reveal its flaws but also, what are hoped to be, significant improvements to the current municipally-run systems.

For questions about the transitions of Blue Box programs across Ontario, please reach out to Denisa Mertiri or the key contacts listed below.

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