



Sent via email to: [john.fox@ontario.ca](mailto:john.fox@ontario.ca)

December 16, 2021

John Fox  
Ministry of Environment, Conservation & Parks  
Resource Recovery Policy Branch  
40 St. Clair Avenue West, 8th floor  
Toronto, ON  
M4V 1M2

Dear Mr. Fox:

**RE: ERO # 019-4656 - Proposed amendments to the producer responsibility regulations for tires, batteries and electrical and electronic equipment made under the Resource Recovery and Circular Economy Act, 2016**

Thank you for the opportunity to provide feedback on ERO # 019-4656 - the proposed amendments to the producer responsibility regulations for tires, batteries and electrical and electronic equipment made under the *Resource Recovery and Circular Economy Act, 2016* (the Act).

The Association of Municipalities of Ontario (AMO), City of Toronto, Regional Public Works Commissioners of Ontario and Municipal Waste Association support the stated goals identified in the proposed amendments to ensure Ontario's producer responsibility framework achieves its intended results without creating unnecessary burdens for businesses in those sectors. However, these outcome-based and market driven regulations require transparency and readily available data to allow for close monitoring.

We have included for consideration again our previous submission of March 9, 2021, following a "pre-consultation" on a number of these proposed amendments by the Ministry of the Environment, Conservation and Parks (the Ministry) (attached). As part of that submission, further detail and information was requested of the Province in order to better understand the context, rationale and supporting data and results that were driving its proposed amendments. To date, we have not yet received a response.

We hope our feedback will help support a level playing field and ensure economic and environmental objectives can be realized.

## Outcomes Based Regulation

Municipal governments have been very supportive of the government's move to an outcome-based approach for producer responsibility that allows for a greater flexibility to achieve compliance and encourage innovation in the market. We believe this approach has substantially reduced burden, however greater flexibility for producers must be complemented with the need for meaningful and sufficient monitoring of those outcomes. As a result, we are very concerned with the direction the government is proposing within this proposal:

### 1. **Reducing the frequency of management audits and moving to an internal verification process for supply data**

The need for producers to provide annual audited supply and management performance data is not red tape. It is a fundamental component of a proper oversight regime. Virtually all outcome/performance-based regulations (e.g., financial, environmental, health and safety, resource related) require annual reporting. These requirements are necessary to ensure a level playing field and to ensure the outcomes sought in the regulation are achieved – mainly that materials supplied into the market are properly managed at the end-of-life and support rules that strengthen ongoing investment into Ontario's economy and their associated returns.

Removing audit requirements for supply data reporting and replacing them with an internal verification compromises, the Province's own ability to understand whether and how producers are meeting their targets and whether there is a level playing field for all participants. Unlike audits, a producer's internal verification does not need to be completed by an accredited third party nor is based on agreed upon standards. It is unclear if industry concern is based on the cost of the audit system or other reasons. Audits in waste management have become the norm as it provides a very appropriate layer of transparency that is vital to progress and the outcomes desired. Audit costs should be viewed as money well spent and actually saves time and effort in many other ways that are generally not accounted for.

Further rationale is needed to support how requiring 3 years of management audits would reduce any administrative burden as opposed to completing audits on an annual basis. When audits are not done annually, it in fact adds more administrative burden as prior year documentation needs to be compiled (i.e., if this work is being done annually the information is readily available and easy to follow upon where questions may exist). In addition to not reducing burden, it also creates more of an oversight burden for the Resource Productivity and Recovery Authority (RPPRA). This proposed change not only compromises the system, but also introduces and creates more burden for producers and RPPRA. These proposed changes should be removed.

### 2. **Remove reporting and audit requirements for visible fees in the Tire Regulation.**

As part of [RPRA's 2020 Annual Report](#), it notes concerns and investigations related to visible fees related for tires. Given these concerns and past issues with consumers being incorrectly charged visible fees, it is unclear what benefits to the public interest this change provides. Furthermore, promotion and education requirements should not be driven by whether or not producers meet their collection and management targets. The purpose of ongoing general promotion and education is to raise awareness and educate consumers on diversion opportunities to help achieve positive environmental outcomes for all. The proposed change to remove the requirement for ongoing general promotion and education should be removed.

3. **Provisions to clarify that producer responsibility organizations (PROs) have shared liability with producers for certain aspects of the regulation.**

This is a fundamental change to the intention of the original regulations and runs counter to the foundation of the Act that makes producers individually liable. PROs are simply contractors acting on behalf of producers. Producers have the ability to make them liable in the individual contracts they have with them. No justification has been provided for this change. It does not reduce administrative burden and compromises the tenants of the Act. These changes should be removed.

4. **Amendment to the small producer exemption to require just record keeping, rather than registration and reporting.**

While this change may slightly reduce administrative burden, it creates a blind spot for the RPRA to ensure that producers are compliant. It is helpful to understand what materials all producers that are supplying into the system to ensure there are no free-riders. These changes should be removed.

### **Increased Targets Electrical and Electronic Equipment (EEE) Regulation**

As we noted in our submission to the Ministry on May 12, 2020, there has been municipal concern since the EEE regulation has [passed](#) of reduced market demand for EEE. This reduced demand has been observed in several ways:

- service providers less willing to bid on municipal depot contracts;
- producer responsibility organizations (PROs) indicating that certain municipal depots are no longer needed in order to meet their targets; and
- public concerns related to where materials are to be brought for properly management.

Based on Ontario Electronic Stewardship's 2019 annual report, they had 291 collection events, 902 collection sites and collected 48,124 tonnes of total electrical and electronic equipment (RPRA's annual report indicates 43,084 tonnes were collected in 2020). Our current understanding is the current minimum management targets in place for 2021 and 2022 require producers to collect 30% less EEE materials than were collected under the former regulation. This translates into well over 10,000 tonnes less



---

Sent via email to: [krista.friesen@ontario.ca](mailto:krista.friesen@ontario.ca)

March 9, 2021

Krista Friesen  
Ministry of Environment, Conservation & Parks  
Resource Recovery Policy Branch  
40 St. Clair Avenue West , 8th floor  
Toronto, ON  
M4V 1M2

**Re: Review of Producer Responsibility Regulations for Tires and Batteries to Reduce Regulatory Burden**

Dear Ms. Friesen:

As requested, we wanted to provide some comments to you following the presentation you provided last week to the Association of Municipalities of Ontario (“AMO”) and the City of Toronto regarding the Ministry’s review of the producer responsibility regulations for tire and batteries with the intent to identify and develop proposed amendments to the Tires and Batteries Regulations that will:

- Reduce burden and respond to feedback received from stakeholders.
- Result in alignment between the regulations.

**Outcomes Based Regulation**

Municipal governments have been very supportive of the government’s move to an outcome-based approach for producer responsibility that allows for a greater flexibility to achieve compliance and to innovate. We believe this approach has substantially reduced burden, however with greater flexibility also comes the need for proper monitoring. As a result, we are very concerned with the direction the government has taken with the electronic and electrical equipment regulation and that is being proposed through the targeted consultation we had.

The need for producers to provide annual audited supply and management performance data are not red tape. They are fundamental components of a proper oversight regime. Virtually all outcome/performance-based regulations (e.g., financial, environmental, health and safety, resource related) require annual reporting. These requirements are necessary to ensure a level-playing field and to ensure the outcomes sought in the regulation are achieved – mainly that materials are properly managed at

the end-of-life and support rules that strengthen ongoing investment into Ontario's economy and their associated returns. Additionally this data is also necessary in order for the Province to continue to achieve best in class policies and regulations that are rooted in a Science-based approach in its decision-making to protect human health and the environment as supported in the application of the [MECP's Statement of Environmental Values](#).

**Recommendation 1:** Municipal governments strongly advocate that all producer responsibility regulations require annual audited supply and management performance data. Both the electronic and electrical equipment and battery regulations should be strengthened in this regard.

### **Instability Created by Regulatory Uncertainty**

Municipal governments are concerned by the approach being taken by the government related to producer responsibility regulations. The battery regulation, the electronic and electrical equipment regulation and now the hazardous and special product regulation have all been passed within months if not weeks of the regulation coming into force. None of the proposed deadlines to finalize the regulations were even close to being met by the Ministry. This leaves stakeholders with insufficient time to properly plan and invest in systems and infrastructure to ensure success of the program.

Now, even before any results have been published for the effectiveness of any of these regulations, the government is proposing changes. Policy decisions should be data driven and no data or results have been reported on any regulations under the *Resource Recovery and Circular Economy Act*. We strongly agree with the Minister's latest article in the Toronto Sun in which he stated, "Ontario will have the highest recycling targets in North America which will mean less waste going to landfill, and more jobs and investment will be the result." However, to achieve this goal a stable regulatory environment is necessary.

**Recommendation 2:** Changes such as reducing reporting and auditing requirements, expanding exemptions to targets (which lowers the amount of materials required to be recycled), and limiting transparency (e.g., aggregation of supplied data should be public) should not be considered. It is in the public interest to increase trust and access to information in our new regulatory landscape, and not to reduce accountability. Increased public trust and access to aggregated data may also help support future economic investment in the Province and signal the region to be an innovation hub for business and local waste industry advancement and solutions.

### **Unclear Priorities & Limited Resources**

The Made-In-Ontario Environmental Plan set out a number of important initiatives including:

- Update the Strategy for a Waste-Free Ontario to reflect the province's roadmap to reduce and divert waste over the next 10 years.
- Finalization of an Administrative Penalties Regulation for the *Resource Recovery and Circular Economy Act*.
- Continue the consultations and eventual finalization of the blue box, hazardous waste and special waste regulations as part of the transition to the producer responsibility model.
- Consult on the Industrial, Commercial and Institutional waste reform framework to improve the current waste diversion activities within this sector.
- Work with the federal government to develop a path forward for compostable packaging, including looking at standards and supporting pilot testing of processing, so that emerging and innovative products and packaging can be managed appropriately in Ontario's existing processing facilities.
- Consult on a proposal to phase out food and organic waste from landfills by 2030 that will focus on building processing capacity in the province.
- Provide guidance to educate the public and key stakeholders about reducing and diverting food and organic waste.
- Develop and release a policy discussion paper that will seek input on thermal treatments and chemical recycling as a method for recovering value from waste and keeping valuable resources out of landfills.
- Work with partners to conduct audits to identify materials that could be recovered and recycled rather than sent to landfills. Audits would help identify new materials that could be designated under producer responsibility in an effort to recover high-volume resource streams to increase diversion and phase out these items from being sent to the landfill.
- Explore opportunities to better manage landfills, such as working with industry to better understand any issues, promote best practices to support better management and operation of landfills and improve opportunities for landfill gas capture.
- Cut regulatory red tape and modernize environmental approvals to support sustainable end markets for waste and new waste processing infrastructure, including support for emerging and innovative technologies, such as mixed waste processing.

All of these initiatives are meant to help us meet Ontario's waste diversion targets and to harness the economic opportunities of the circular economy. We understand that resources are at a premium to deliver on this large agenda and that this has led to some of the delays experienced in delivering on it.

We do not understand why these new changes being considered have been given priority when so many of the other initiatives offer much greater opportunities and the regulations in question have yet to be properly assessed.

**Recommendation 3:** Given limited resources, the government should be focused on initiatives that offer greater opportunity to drive job creation, investment and environmental improvement.

### **Information Related to Review**

The presentation provided no information on what stakeholders might be requesting the proposed amendments nor any data that might support any of the changes. It seems unusual to complete a review so early unless major issues and arising analysis have been identified. Most changes are in direct opposite of what municipal governments advocated for during previous consultations on the draft regulations.

**Recommendation 4:** Municipal governments would request the following information to be provided to us and other interested parties to better understand the context related to the proposed amendments:

- An understanding of the organizations or individuals that have requested these changes and any further information to better understand the nature of the concerns and magnitude of the reporting burden;
- Any presentations, data or compliance related information provided to the Ministry by the Resource Productivity and Recovery Authority related to these changes and more specifically:
  - Compliance issues related to free riders;
  - Compliance issues related to visible resource recovery fees;
  - Performance information related to the first year of the Tire Regulation and any compliance actions taken.

Thank you again for the opportunity to provide comments on these proposed changes and we look forward to your response. We would respectfully ask the province not to make these proposed changes while our questions and data requests are outstanding. We would be pleased to answer any questions you might have.

Sincerely,



\_\_\_\_\_  
 Dave Gordon  
 Senior Advisor, Waste Diversion  
 Association of Municipalities of Ontario



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