

Transition of the Blue Box to Full Producer Responsibility

August 5, 2021

1.0 Disclaimer

Staff of the Municipal 3Rs Collaborative (M3RC) have prepared the following commentary for consideration by municipal staff when completing their own review of the Province's final Blue Box regulation. This should not be considered legal advice, nor does it usurp or replace the local decision-making of Councils. Rather, this analysis is intended to help in prepare for the impending changes.

If there any questions related to this material, please contact Dave Gordon, Senior Advisor at dgordon@amo.on.ca.

2.0 Executive Summary

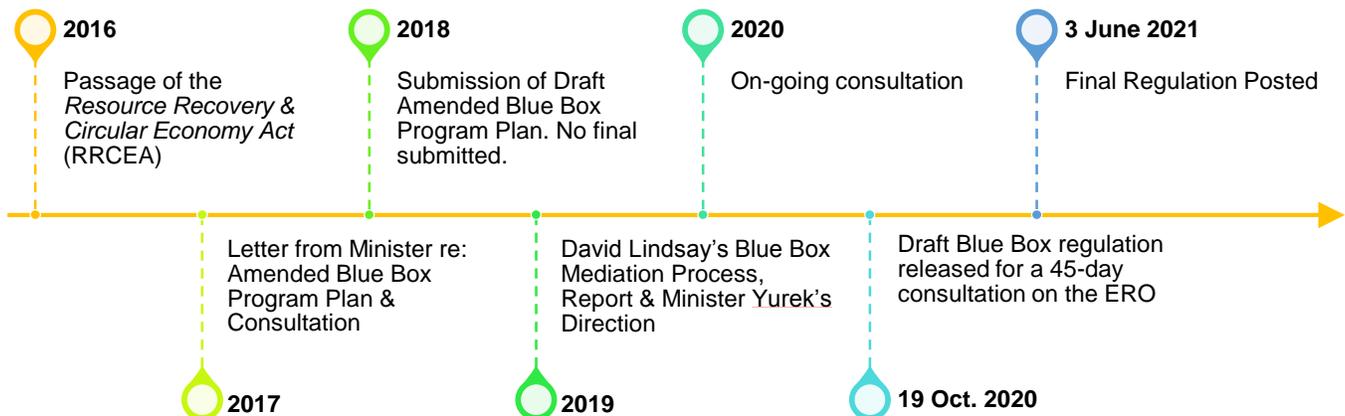
- Final Blue Box regulation (Ontario Regulation 391/21) under the Resource Recovery and Circular Economy Act, 2016 passed on June 3, 2021, and transitions municipal Blue Box programs to full Producer responsibility.
- The Blue Box Regulation transitions the responsibility for promotion and education, collection and processing for Blue Box materials to producers and identifies minimum service, and diversion targets. The transition will occur between July 1, 2023 to December 31, 2025.
- As per the new Blue Box Regulation, all transitioning municipalities are required to submit an Initial Report to the Resource Productivity and Recovery Authority by September 30, 2021. The Initial Report will identify current services levels, number of residences, number of eligible locations and number of recycling containers located in public spaces.
- **Edwardsburgh Cardinal** is currently scheduled to transition on **February 2, 2025**. Details on the transition are not known yet but staff will continue to provide timely information and details to Council during the transition process.
- Council will likely need to make decisions in the following key areas:
 - Does the municipality want to provide services to producers (e.g., promotion and education, contract management, collection, processing), if producers are interested in using municipal services and a mutually agreeable commercial agreement can be established?
 - How will this be decided? Delegated authority from Council to enter into discussions w/ producers/PRO's/service providers to determine what the terms of commercial agreements may look like? Comparison of offers with what your cost is to perform the services? Consideration of performance requirements like promotion and education, contamination, compaction rates, distance travelled to transfer stations, service complaint management etc.
 - Based on the decisions above, how might the municipality address any associated impacts such as:
 - Assets that may need to be re-purposed, sold, leased, etc.,

- Contracts that may need to be terminated or renegotiated,
- Human resource implications or re-deployments,
- Services for non-eligible sites currently serviced that may need to be addressed through other means (e.g., servicing of small businesses and municipal facilities), and
- Change management measures (e.g., internal / external communications) to allow for a smooth transition to the Blue Box.

3.0 Context

On June 3, 2021 the Ministry of Environment, Conservation, and Parks (MECP) published the final Blue Box regulation ([O. Reg. 391/21](#)) under the *Resource Productivity and Circular Economy Act, 2016* (RRCEA). The final regulation and the accompanying amendment to [O. Reg. 101/94](#) remove the responsibility to operate Blue Box recycling programs from municipalities and instead make the producers of blue box materials (e.g., paper, packaging, packaging-like products, and certain single use items) directly responsible for the operation and financing of the programs and the achievement of outcomes established in the regulation. This change in responsibility will save municipal taxpayers an estimated \$156M annually across the province.

This regulatory change has been advocated for by municipal governments for over a decade with major consultations occurring over the last two years to discuss how a smooth transition from municipally-operated programs to a producer-led Blue Box system could occur.



Currently, Ontario municipalities with a population of at least 5,000 are required to provide a Blue Box management system. This is done either directly by the municipality or via a contract with a service provider. Producers of Blue Box materials (e.g., Unilever, Loblaw, Proctor & Gamble, Coca Cola etc.), are required to compensate municipalities for roughly 50% of the costs on an annual basis.

There is agreement amongst all stakeholders, including municipalities, service providers, and producers, that the current Blue Box system is not working. Recycling rates have broadly stagnated or declined and costs are steadily increasing. This is because municipal governments have no mechanism to respond to the rapidly changing composition of Blue Box materials and provide the necessary investments in collection and processing infrastructure. They also do not have the ability to influence end markets. That is why making producers fully responsible for managing the Blue Box materials that they supply into Ontario fundamentally changes this structure.

There has been broad support to transition the Blue Box program to the RRCEA because producers are best positioned to reduce waste, increase the resources that are recovered and reincorporated into the economy and enable a consistent province-wide system that makes recycling easier and more accessible.

3.1 Positives Associated With the Final Regulation

The Blue Box regulation is generally in keeping with what municipalities have advocated for. It removes seeks to make producers fully responsible for the management of their materials at the end-of-life (i.e., collection and recycling).

The regulation is expected to result in:

- **Net savings:** a net savings for municipal governments of over \$156 million per year once fully implemented
- **Expansions in servicing:** to all communities (including First Nation communities) except those in the Far North, regardless of their population by 2026
- **More materials collected:** an expanded and standardized list of Blue Box materials collected and managed across the province through one common collection system with curbside, depot and public space infrastructure;
- **Province-wide eligible sources:** expanded Blue Box services to a comprehensive list of sources, such as multi-unit residential buildings, schools (e.g., public and private), non-profit retirement homes, non-profit long-term care homes and some public spaces (e.g., parks, playgrounds, sidewalks, public transit stop or station), by 2026
- **Target requirements for producers:** enforceable targets which producers must meet for a number of material categories
- **Certainty:** a two-and-half year schedule between July 2023 and December 2025 to transition all current municipal Blue Box programs to full producer responsibility.

The regulation provides producers with the ability to find efficiencies (e.g., standardizing collection and processing, investing in new collection and processing infrastructure to address the changing packaging stream, better supporting end markets, adapting packaging design). It includes provisions to capture internet retailers and other producers without residency in Ontario to ensure fairness. It also continues to provide an exemption for small businesses - businesses with less than \$2 million in annual revenue would be exempt (e.g., small, independent convenience store owners, however we note this will likely result in municipalities being considered a producer).

3.2 Potential Areas of Concern in the Final Regulation

There are several priority areas that councils may want to aware that could pose some potential issues:

- **Certified compostable materials:** certified compostable materials should be exempt from collection and management targets which means that there is no incentive for producers to find adequate solutions to ensure their products can be managed properly. Instead these products and packaging simply add to the costs of the municipal waste management system.
- **Servicing requirements:** once transition of municipal programs is complete in 2026, the regulation removes the requirement for producers to provide depot collection in communities that have curbside collection. A number of communities currently supplement curbside collection with depots. This could be seen as a reduction in service and remove an important part of the current collection infrastructure.
- **Annual Performance Audits:** Producers should be required to perform annual performance audits, as is required for Ontario's deposit return system. 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 three years of audits into one year).

- **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.
- **Commercial servicing:** As with the previous Blue Box program plan, municipalities are not compensated for the collection and processing of materials captured from businesses and not-for profit organizations. As producers are not responsible to collect from these sites, municipal governments may have to come to alternative arrangements to ensure these sites continue to be serviced.

Appendix A provides more specific information on the key areas of the regulation.

4.0 Initial Analysis and Next Steps

Outline of any initial issues and outline of steps key milestones for staff to report back to Council before transition.

Appendix A - Key Areas of the Blue Box Regulation

Designated Materials

The final regulation includes a number of new items that many municipal programs do not currently collect, such as all rigid and flexible plastic packaging and certain single use items. A full list of the materials is included in Appendix B.

These Blue Box materials would need to be collected by 2026 as part of a standardized common collection system across Ontario. The details of how this will be achieved will likely be set out as part of the rules for the Allocation Table (see section 4.8).

At a minimum during the transition period producers would need to collect all eligible Blue Box materials currently being collected. Note that producers would not need to collect non-obligated materials during the transition period that municipalities may currently accept (e.g., books, pots and pans).

The regulation only requires certified compostable products and packaging material to registry and report (i.e., they are not required to be collected or managed). By not obligating these materials, it provides an incentive for companies to move to this format which property taxpayers will be forced to subsidize.

Establishment of Responsibility

The final regulation establishes a cascading hierarchy to ensure that the person with the closest connection to designated products and packaging is the responsible producer.

The regulation captures producers that are located out-of-province but who supply Blue Box materials to Ontario consumers through the internet. The regulation continues to exempt producers who fall under a \$2 million annual revenue threshold. This is the same approach currently taken under the shared responsibility model to avoid undue burden on small business.

Municipalities and First Nations communities who have a Blue Box program today also have reporting requirements:

1. Initial Reports (based on section 54 of [O. Reg. 392/21](#)):
 - All municipalities submit on or before September 30, 2021
 - All reserves submit on or before November 30, 2021
2. Transition Report (based on section 55 of [O. Reg. 392/21](#))
 - Municipalities transitioning in 2023 submit by September 30, 2021
 - Reserves transitioning in 2023 submit on or before November 30, 2021
 - Municipalities and reserves transitioning in 2024 submit on or before August 31, 2022
 - Municipalities and reserves transitioning in 2025 submit on or before August 31, 2023

Reporting is required by the lower tier municipality, however, section 58(1) does allow for information to be submitted by a person acting under authority or direction (e.g., Regional/County government, municipal Association).

The Municipal 3Rs Collaborative and Continuous Improvement Fund are working with the Resource Productivity and Recovery Authority (RPRA) to ease the burden associated with reporting and will be providing regularly updates. Local governments should be assessing the data they have available to report to ensure it is up-to-date and comprehensive enough to ensure all currently serviced eligible sources are accounted for.

All Blue Box processors, including those municipal processors, would also need to register and report annually to RPRA starting on or before April 1, 2022.

Eligible Sources

Based on the final regulation, Blue Box programs would operate as they do today during the transition period from July 2023 to the end of 2025. Producers are required to at least maintain servicing (based on servicing as of August 15, 2019) for all eligible sources already serviced (e.g., residences – single unit and multi-unit residential, depots, public schools, long term care and retirement homes, parks, playgrounds, and streetscapes) and to at least maintain how program currently provides servicing (i.e., material collected, collection frequency). New developments would also need to be serviced, where services are already provided (e.g., new multi-residential units will be serviced if the municipality already collects from these types of buildings).

By 2026, producers would need to ensure any non-serviced communities outside the Far North, multi-residential units, public and private schools, non-profit long-term care and retirement homes that notify their intention to be serviced are serviced. For all communities, including new communities, the service level would be equivalent to how garbage collection is provided (e.g., depot/drop-off based, curbside or a combination if curbside is not provided to the entire community).

Producers would also need to meet public space accessibility targets (e.g., parks, playgrounds, sidewalks and transit station/stops) by 2026. Producers would be required to provide collection at public spaces based on a density formula:

Population of lower tier municipality divided by

- 400, if the eligible community has a population equal to or greater than 500,000;
- 600, if the eligible community has a population equal to or greater than 30,000, but less than 500,000;
- 800, if the eligible community has a population equal to or greater than 5,000, but less than 30,000; and
- 1000, if the eligible community has a population less than 5,000, with no less than one Blue Box receptacle in any eligible community

The regulation does not include the public facing areas of municipal buildings or facilities (i.e., community centres, libraries, arenas), nor businesses or not-for-profit organizations in Business Improvement Areas or other locations. If Councils wish to provide services to these locations, they would need to be managed through a separate agreement. The regulation also does not require producers to use the public space recycling sites that are currently being used by the municipality.

Also note that any contemplated changes to Blue Box services by a municipality that could result in increased costs compared to 2019, should be vetted by RPRA and the process is described in [RPRA's 2020 Datacall User Guide](#). Changes in Blue Box services could include:

- Changes in collection type (i.e., single stream vs multi-stream; depot vs curbside)
- Changes in collection method (i.e., bags, containers, carts)
- Changes in collection frequency
- Changes in accepted materials

If a municipality or First Nations community operating a Blue Box program contemplates a change in Blue Box Services and wishes to know if the change will impact their funding eligibility prior to

implementing the change, the program may submit a [Blue Box Service Change Assessment Form](#) to RPRA.

Servicing Requirements

During transition years (July 2023 – end of 2025), producers would be required to at a minimum to maintain the service level and frequency provided by municipalities to residences and blue box materials currently collected.

As noted above by 2026, producers would be required to collect all designated materials and expand servicing to more sources. The regulation also requires that producers would have the ability to change how servicing is provided as long as it is in keeping with obligations established in the regulation.

These obligations for curbside collection, depot collection, and collection for other eligible sources generally includes:

Residence or Facility Type	Blue Box Service Standard	Blue Box Frequency Standard
Households with curbside garbage collection	Curbside Blue Box collection	No less than every other week
Households with depot garbage collection	Depot Blue Box collection	Before bins are full
Apartments, schools, other eligible facilities	Must collect Blue Box materials directly from the building or eligible space (e.g., school)	Before bins are full
Public spaces, including parks, playgrounds, sidewalks, transit stops	Must provide number of bins in each community according to regulated per person standards	According to a frequency designed to collect materials before bins are full

In instances where municipalities receive curbside collection but also supplement that with depot collection, producers would only be required to provide curbside collection. They could choose to continue to provide depot collection, but this would not be a requirement.

Producers are required to provide Blue Box receptacles for the storage of Blue Box material until it is collected (adequate size). Each residence must have a Blue Box receptable before the day collection commences and replacements must be provided within one week of request.

Note as discussed, throughout the consultation process municipal governments would not have a ‘First Right of Refusal’ to provide services to producers. Decisions on contracting would be made by producers. This does not preclude producers from negotiating commercial agreements with municipal governments to continue to provide services.

Management Requirements

Management targets in the regulation are applicable in 2026 for multiple material categories and are in-line with best-in-class to comparable programs (see Table below). During the transition period, producers are required to make best efforts to meet the 2026 targets.

These targets are improvements 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.

Target Category	Existing Diversion Rates (2018)	Stage 1: 2026-2029 Final Target (draft target)	Stage 2: From 2030 Final Target (draft target)
Paper	72%	80% (90%)	85% (90%)
Rigid Plastic	48%	50% (55%)	60% (60%)
Flexible Plastic	7%	25% (30%)	40% (40%)
Glass	68%	75% (75%)	85% (85%)
Metal	54%	67% (67%)	75% (75%)
Non-Alcoholic Beverage Containers (flexible plastic formats excluded)	Unknown	75% (75%)	80% (80%)

The targets are based on the Blue Box material that is marketed (i.e., bales of material sold) and continues to exclude energy from waste or the use of materials for fuels as part of the target. This is the same way recycling is measured in the current Blue Box program plan. This is more rigorous than the targets established in British Columbia, which are based on the amount of material collected. It is however less rigorous than the European Union, which is moving to recycling targets that takes into account contamination before materials are used in new products.

The targets are also increasing the amount of materials included in the program such as unprinted paper, packaging-like products, certain single use-items and the beverage container target includes materials sold to businesses. This is a positive development and a significant improvement based on today's Blue Box program.

As a means to reduce administrative burden, the regulation requires performance audits every 3 years, instead of annually. This increases potential risks associated with poor performers and is likely not to reduce any administrative burden, as it simply condenses three years of audits into one year.

Promotion and Education

Producers will be required to provide a promotion and education program. This will include a publicly accessible website and at least one piece of material delivered annually to each eligible source.

Producers must provide details on:

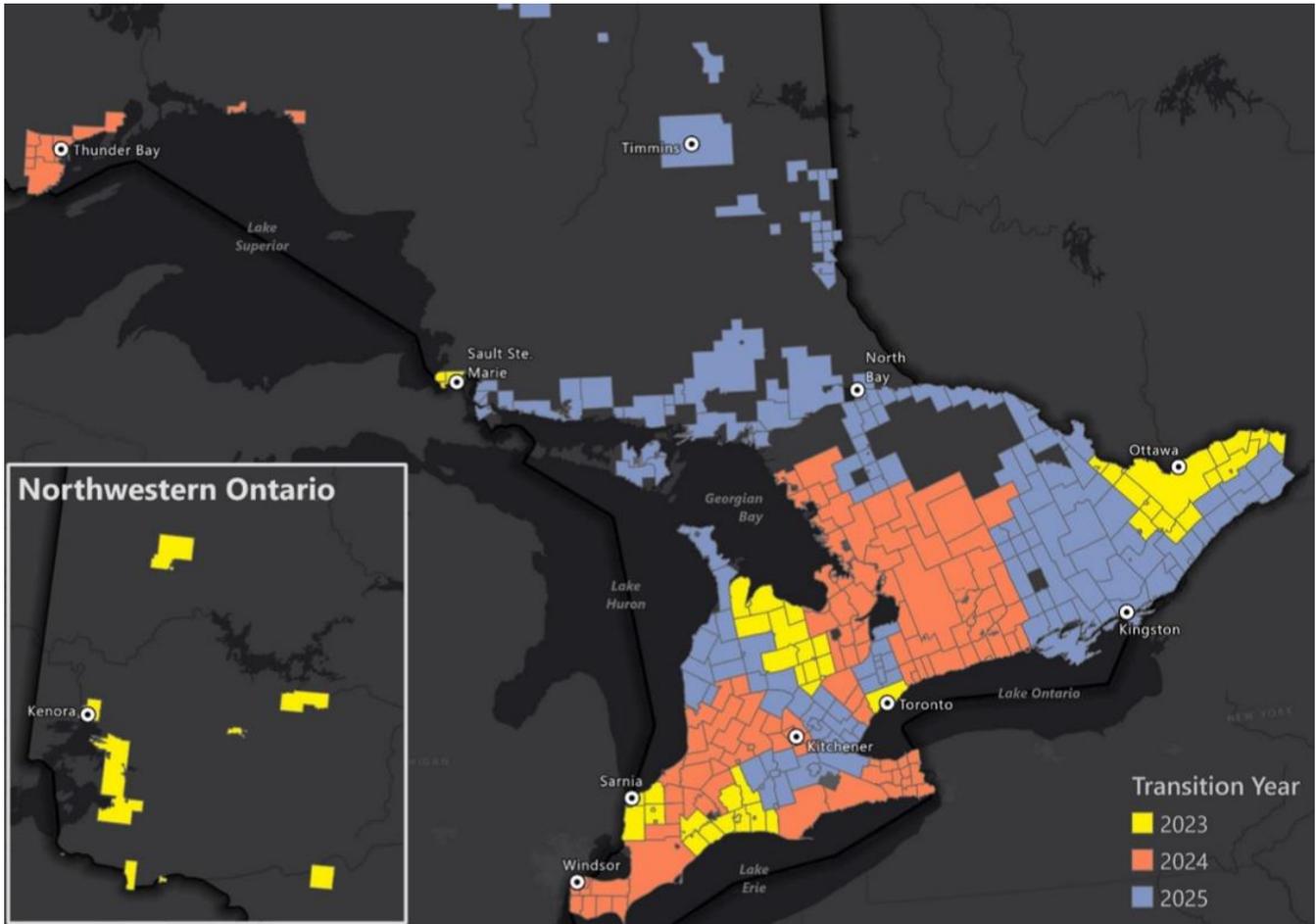
- Blue box material that may be deposited into Blue Box receptacles;
- Materials that cannot be deposited into Blue Box receptacles;
- Instructions on how to replace or request Blue Box receptacles;
- A description of how the producer will fulfil its collection responsibilities; and,
- Contact information.

Promotion and education materials must be provided in both English and French. In the transition period, information must also be provided in any language used by the municipality to communicate to its residents about its Blue Box program.

Transition Schedule

The regulation includes a [transition schedule](#) that outlines what municipal Blue Box programs will transition between July 2023 and the end of 2025.

The government indicated that they used municipal preferred dates but also included geographical catchments, tonnes and costs to set the schedule.



If there issues with the transition date, municipal staff are encouraged to reach out directly to the Ministry and to RPRA. It is important they understand any potential problems (e.g., contractual) a municipality might have.

It is also helpful that the regulation does not preclude the ability for municipalities to be transitioned earlier, if producers and municipalities are in agreement to do so.

Common Collection System

Producers are required to collaborate to establish a common collection system to provide collection services to all eligible sources with no duplicate services to residents. Accountability for the common collection system lies with producers and their PROs, and is enabled through the creation of an Allocation Table.

Once the approach for the common collection system is decided, the regulation relies upon the Allocation Table to determine who will be liable for ensuring collection happens in a given location. The Allocation Table identifies which producer is liable for making sure collection standards are met for a given area. The regulation allows for all producers registered with a producer responsibility organization (PRO) to be jointly liable for a given area, and for the PRO to share liability with these producers. If there are any gaps in collection service requirements, RPRA can undertake compliance and enforcement with the liable producers and PROs.

The Allocation Table is created by following a set of rules which are agreed upon and written by PROs who register by November 1, 2021 to be “rule making” PROs. The regulation requires the Allocation Table to be submitted to RPRA by July 1, 2022 at the latest.

Subsequent Tables are submitted by March 31 of the year before the Table will apply and can endure for multiple years. The rules must specify a process by which producers and PRO’s can change the rules in the future.

Municipal governments will be able to pursue a commercial agreement with PRO’s to provide services for blue box. We expect these discussions to start later this year or early in 2022.

Appendix B – List of Designated Materials Under the Final Blue Box Regulation

 Designated Materials	 Not Included
<p>The following items, where made from paper, metal, glass, plastic, compostable materials, or any combination of these materials:</p> <ul style="list-style-type: none"> • Packaging, including aerosol containers • Printed and unprinted paper • Single-use packaging-like products, like foils, trays, and boxes • Single-use food and beverage service items like straws, cutlery, plates, food service ware <p>*Compostable materials are also designated, but only incur reporting requirements</p>	<ul style="list-style-type: none"> • Packaging single-use packaging-like products, and single-use food and beverage service products that are made primarily from other materials, such as wood, textiles, wax • Packaging-like products made of flexible plastics and used for food protection, containment, handling (e.g., plastic freezer bags, plastic sandwich bags) • Any materials designated under a different diversion program (e.g., automotive oil containers) • Garbage bags, recycling bags, compostable waste bags • Books and hardcover periodicals • Paper fibres used for sanitary purposes (e.g., tissues, paper towel) • Biomedical or hazardous Biomedical or hazardous waste (e.g., pressurized containers for propane) • Alcoholic beverage product and packaging (including LCBO and Brewers Retail Ltd. materials) *Note the deposit return system is required to report annually on performance