

Call2Recycle Canada, Inc.

Changing habits. Inspiring action.™

Krista Friesen
Senior Policy Advisor, Resource Recovery Policy Branch
Ministry of the Environment and Climate Change
40 St Clair Avenue West, 8th Floor
Toronto, ON
M4V 1M2

June 20, 2019

Dear Ms. Friesen:

In response to the Ministry's release of the draft Batteries and WEE regulations under the Resource Recovery and Circular Economy Act of 2016, Call2Recycle Canada is submitting our feedback for your review and consideration. We have noted items requiring further clarification as well as policy items we wish to question, and we offer guiding comparators and recommendations as we see appropriate, to assist with the revision process.

Our comments are based on 22 years of extensive consumer battery recycling experience across North America on behalf of more than 300 companies, including battery, power tool, computer and other consumer goods manufacturers and retailers. Our feedback is consistent with policy recommendations submitted from Call2Recycle to the Policy Branch on March 4, 2019 and to Minister's office on March 12, 2019, as part of the Ministry's consultation process.

Call2Recycle supports the Ministry objectives of increasing waste diversion, recovering resources, increasing sustainability and improving environmental outcomes. Like you, we are committed to ensuring that all used consumer batteries in Ontario are collected and managed at their end-of-life in a safe and environmentally sound manner. We also support the benefits of an extended producer responsibility model and the associated circular economy.

The purpose of our recommendations below is to create a world class system that increases battery collection and recycling in a cost-effective manner. Complex systems are inherently challenging and expensive. Other provinces in Canada have been able to find reasonable accommodations that have been successful. We strongly urge the MOECP to consider one of the four provinces that have already successfully implemented battery recycling programs, instead of creating a new one that is overly complex and expensive.

Call2Recycle Canada, Inc.

Changing habits. Inspiring action.™

Based on the feedback and uncertainty expressed by our stewards, we are concerned the Ontario draft regulations will lead to confusion for the consumer and significant expense for producers to manage and administer. We have already received numerous questions on how this draft regulation will work and why Ontario is so different from the other provinces.

As such, our first recommendation is that the regulations should be battery-centric and aligned with the four other provinces already administering battery regulations. Please see the attached summary of other provincial regulations.

Our second key concern is that the regulation appears to mirror that of the Tire industry (weight vs. units) and outlines similar reporting and other requirements with the Authority. This is noted because industry data on sales and reporting around batteries and products containing batteries is not the same as tires. The tire program is very complex but, with fewer SKUs, it is much easier for retailers to manage as compared to the proposed battery regulation. Another important factor for consideration is that the world-wide standard measurement for battery collection and reporting is based on weight. Nowhere else in the world is any other measurement used but weight and weight is the only proven and effective way to accurately and efficiently measure battery collections. Again, our recommendation is that the regulation should be battery-centric and aligned with the four other regulated provinces, whose tried and tested programs meet the respective provinces' environmental objectives and reflect the unique nature of battery sales, use and end-of-life management.

While our feedback focused on batteries, we suggest that expanding the electronics category to include power tools, small appliances and other devices currently included in existing battery regulations, is not recommended at this time. Additional scope increases the complexity in managing a complicated transition, as well as increasing consumer confusion and costs. We feel that this complexity is unnecessary and will not increase battery collection and recycling rates. This is also inconsistent with other jurisdictions and ignores the life cycle of the products in question. For example, a power tool is likely to last many years, but the battery may only last a few years, and this is the item that needs to be recycled for safety, environmental and weight reasons. There are also no targets for diversion for these products, which means a marketplace will not develop and collections will be negligible—at this point the environmental benefit becomes questionable.

Our stewardship/PRO experience would suggest that power tools, medical devices, drones, and small appliances should be excluded from the electronics category and only their associated batteries be considered for inclusion as part of the battery regulation, consistent with other products that contain batteries, such as toys.

Call2Recycle Canada, Inc.

Changing habits. Inspiring action.™

Our additional feedback follows and is mapped to the proposed regulation's content for your reference and review.

Thank you for this opportunity to provide you with our expertise and feedback on the draft regulations.

Regards,



Joe Zenobio
President, Call2Recycle Canada, Inc.

Cc:

John Armiento
Manager, Waste Diversion
Ministry of the Environment and Climate Change
40 St Clair Avenue West, 8th Floor
Toronto, ON
M4V 1M2

Cobi Lechem
Policy Advisor
Office of the Honourable Rod Phillips
Ministry of the Environment, Conservation and Parks
77 Wellesley Street West, 11th Floor Ferguson Block
Toronto Ontario,
M7A 2T5

David Donovan
Chief of Staff, Ontario Ministry of the Environment
Ferguson Block
77 Wellesley St. West, 11th Floor
Toronto, ON
M7A 2T5

Draft Ontario Regulation under the Resource Recovery and Circular Economy Act, 2016: Batteries

Feedback and Key Considerations

Submitted: June 20, 2019

Draft Regulation Item of Note:

Feedback: Concerns, Implications & Recommendations

DEFINITIONS

Section 1, page 2:

“Batteries Guideline” means the document entitled “Batteries Processing and Refurbishing Guideline” published by the Authority and dated [date to be confirmed], as amended from time to time, and available on the Registry;

- The batteries guideline document has not been drafted and the Authority should not be charged to develop it as the battery industry, marketplace and recycling/refurbishing processes are complex, even for industry insiders.
- The Ministry’s plans for processors and recycling efficiency are unknown at this point. This creates confusion on the role refurbishing can play in lithium ion processing.

Comparator: There are already very clear guidelines on recycling efficiency (based on well-proven EU guidance) and refurbishing (must meet UN 38.3 for safety reasons). These are the standards adhered to within other provinces.

Recommendation: Ontario regulations should follow industry best practices and should align with existing provincially regulated programs.

“battery collection site” means a site where batteries used by a consumer in Ontario are collected for the purpose of resource recovery;

- The regulation does not include a definition of consumer.
- Additionally, it is unclear whether this regulation thus applies to business-to-business uses or institutions.
- This section requires clarification since this scope affects collection locations, categories and expense.

Comparator: A collection facility is defined BC’s Hazardous Waste Regulation as: “a permanent place that is operated for the collection and storage of household hazardous waste” or a collection facility established by the producer or identified in an approved plan.

“battery hauler” means a person who transports, in Ontario, batteries that are destined for processing, reuse, refurbishing or disposal, but does not include a person who transports batteries for private domestic purposes;

*“battery” means a product that,
(a) is a container consisting of one or more voltaic or galvanic cells, in which chemical energy is stored as electricity or converted into electricity and used as a source of power; and
(b) falls into one of the following categories:
(i) Small single use batteries.
(ii) Small rechargeable batteries.
(iii) Large batteries.*

*“battery processor” means a person who receives and processes, for the purposes of resource recovery,
(a) batteries used by a consumer in Ontario, or
(b) processed materials derived from batteries used by a consumer in Ontario;*

- This definition is too broad, as it could apply to any consumer bringing a battery to a destination for recycling.

Recommendation: Limit the scope to commercial entities transporting collected batteries from a collection site to a secondary location.

- Call2Recycle supports the inclusion of rechargeable batteries, and small sealed lead acid batteries specifically, but only where an established collection network does not exist. One does exist for lead acid car batteries.
- The regulation includes “large batteries”, which is too broad a category.

Comparator: In other regulated provinces, applicable regulation only applies to single-use and rechargeable batteries weighing 5 kg or less.

Recommendation: The regulation should provide more explicit definition and scope for the meaning of a “large battery” currently defined as any battery weighing more than five kilograms.

Call2Recycle recommends the inclusion of rechargeable batteries as defined in the draft regulation and the exclusion of EV batteries from the regulation so that the Ontario regulation is aligned with the other four regulated provinces.

- **For clarification:** In the case of multi-step processing (e.g. with lithium-ion batteries) at what point does the concept of “process materials derived from batteries” end?

PART II – DESIGNATED CLASS & PRODUCERS

The Producers section (Part II, Section 4, Page 4)

determines obligated producers through a hierarchy: Brand holder if resident in Canada > person who imported into Ontario, if residing in Ontario > first person to market the product in Ontario and residing in Ontario > the person who markets it in Ontario, even if not a resident of Ontario

- Call2Recycle supports the inclusion of online/web-based retailers to create a level playing field and equity. However, the hierarchy in determining the obligated producer is confusing, including reference to a domicile on a Canadian basis in one instance vs. an Ontario basis in all others.
- Also, it is difficult—and perhaps subjective—to consistently identify the “brand holder most directly connected to the production of the battery.” For example, if an SSLA is marketed by one North American company but the battery is manufactured by a branded Chinese company not resident in Ontario, who has the responsibility?

Comparator: This is inconsistent with other provinces, obligating some producers who otherwise are not traditionally obligated (e.g. international manufacturers with offices in Canada, regardless of Canadian location of their product importers) and retailers (e.g. retailers that sell automotive and marine batteries would be responsible to manage end of life and comply with the regulations.)

- Other provincial legislation does not stipulate for multiple brand holders.

Given the complexity of the battery marketplace, the BC regulation clarifies the role of franchisors and franchisees: “If a franchisor and a franchisee operating under a franchise agreement are producers in relation to the same product, the duty set out in subsection (1) (a) must be carried out by the franchisor.”

Recommendation: This section should be clarified. Call2Recycle recommends an approach whereby fees collected are matched with costs incurred. For example, when Call2Recycle receives laptop batteries but EPRA is the only organization charging laptop manufacturers, EPRA reimburses Call2Recycle for costs. While there should only be one EHF per final product sold, there must be follow-up reconciliation between obligated entities for the system to function. Consistent with other feedback, we recommend that regulations align with the four other provinces already administering battery regulations.

PART III - BATTERY COLLECTION

Sections 5-9, Pages 5-12

- Related to the definition of batteries, the regulations stipulate a weight threshold for determination of the obligated entity. In other provinces the obligated entity is determined according to a pragmatic product category basis such as Power Tools or Smoke Detectors. The new definition implies several complex issues for obligated parties including the retailer, the battery manufacturer, the online producer and the importer.
- **For Retailers:**
 - For retailers selling many products (particularly seasonal), managing, reporting and auditing in this way will be extremely challenging and very expensive.
 - For these retailers, the list of products would be endless: watches, greeting cards, running shoes, air fresheners, toys, thermostats, flashlights, lights, coolers, construction equipment – such as stud finders, faucets, motion sensors, etc. would have to be included.
 - It also appears that if the retailer sells batteries, they must accept all batteries irrespective of whether they sell the brand or SKU. This would suggest a hardware retailer would have to take back car batteries or a Dollar Store retailer would have to take back power tool batteries.
 - For retailers who collect batteries (of which there are many) the collection reporting at the detailed cell chemistry level would be required. This is impossible. Currently, volume is measured by weight and chemistry at a high level only.
- **For battery manufacturers:**
 - The primary manufacturer and/or first importer of batteries would be obligated for all branded batteries regardless of whether they are importing all of them or not.
- **For online retailers and importers:**
 - Online retailers will be responsible for complying with regulations for potentially obligated imported brands.

Recommendation – The Regulation should align to the other four provinces administering battery regulations. A pragmatic approach should be taken where the obligated entity is defined according to product categories.

Battery collection, producer requirements, Subsection 3, Page 5

(a) four tonnes or less, for all batteries that fall into the category of small rechargeable batteries; (b) eight tonnes or less, for all batteries that fall into the category of large batteries; or (c) two and a half tonnes or less, for all batteries that fall into the category of small single use batteries.

Collection, Large Producers - Section 6, Subsection (3)-2, Page 7

In each territorial district with a population of 1,000 or more, as reported by Statistics Canada in the most recent official census, the producer shall establish and operate at least one battery collection site at which that category of batteries is collected.

Collection, Small Producers - Section 7, Subsection (3)-1, Page 8

Subject to subsection (5), in each local municipality or territorial district with one or more retail locations that supplies the producer's batteries or products with which batteries were provided, the producer shall establish and operate as many battery collection sites at which that category of batteries is collected as are equal to or greater than 75 per cent of the number of retail locations in the municipality or territorial district that were operating in

Battery Collection Sites 8 (3) 2 – ii, Page 10

The producer shall establish and operate at least one battery collection site at which a particular category of batteries is collected in each territorial district with a population of 1,000 or more, as reported by Statistics Canada in the most recent official census, in which the producer supplied that particular category of batteries or products with which that particular category of batteries are provided in.

The Regulation should only include products requiring frequent replacement of batteries that can be easily removed from the device (i.e. power tools, flashlights, smoke detectors, e-Toys, hearing aids and power chargers).

- These are high thresholds if the intention is to exclude small producers. This may place too much of a burden on those who will be participating in the program.

- The distinctions made here are a bit confusing. For producers to meet their responsibilities, it would be best to include special event collections as a collection site. Such events are excluded from the “collection sites” category under this regulation.

- This is an extremely high accessibility requirement for a “small producer” (i.e. having a presence in three quarters of all establishments that have batteries sold.)

- Call2Recycle has always supported and continues to support remote areas but servicing collections for a population as low as 1,000 will lead to complexity and significant costs with minimal environmental outcome.
- Also, in these rural areas it is sometimes impossible to identify a collection site, especially in absence of an arena or community centre. In such cases there is no guarantee of the safety and security of the battery collections.

Battery Collection Sites, Section 9 (1) 1-6, Page 11

Battery Collection Sites, Section 9 (2) 2, Page 12

1. *A public battery collection event must operate for at least four consecutive hours on the day it is held, and must accept all batteries that fall into the particular category in respect of which it is being held.*

Calculation of management requirement: Small rechargeable batteries and large batteries

1. On page 13:

11. (1) *Subject to subsection (3) and section 15, for the period beginning July 1, 2020 and ending December 31, 2021, every producer of small rechargeable batteries or large batteries, who supplied those batteries or products with which those batteries are provided in Ontario, shall manage a minimum amount of materials from batteries from each applicable category and shall determine that minimum amount using the formula,*
$$[(2016 \text{ Supply} + 2017 \text{ Supply} + 2018 \text{ Supply}) / 3 \times 0.7] \times 1.25$$

Small single use batteries, Section 12, Page 14

12. (1) *Subject to subsection (3) and section 15, for the period beginning July 1, 2020 and ending December 31, 2021, every producer of small*

Comparator: BC's regulation uses a population pivot point of 25,000. Specifically, BC regulation requires non-retail collection facilities be located within 4 kilometres by road from the retailer's premises if the retailer's premises are located in a municipality that has a population greater than 25,000, or within 10 kilometres by road from the retailer's premises if the retailer's premises are located outside a municipality that has a population greater than 25,000."

- This section does not align with how batteries are collected (e.g. collection events or collection sites that do not operate during normal business hours).
- Requiring non-retail locations to accept ALL batteries is onerous. In addition, requiring large batteries to be collected and stored in separate containers is not necessary for safety.
- The time stipulated is not necessary for an effective collection event (e.g. a school battery collection event needn't last this long) and is too prescriptive.

Comparator: No parameters on collection events in other provinces.

- The derivation of these calculations requires explanation.
- The single-use diversion rate has been set at approximately 40 per cent, increasing to 50 per cent. This is achievable but very aggressive.
- The rechargeable diversion rate is set at 87 per cent (we understand this to be a higher factor due to the inclusion of car batteries).

Comparator:

- Collection rates compiled from around the world, starting with the EU, reflected a blended rate of consumer primary and rechargeable batteries. Attaining a 45% collection rate per the EU Directive is for primary and rechargeable batteries together.
- Nowhere in the world are rechargeable battery collection rates separately collected, compiled or reported as a separate category.

single use batteries, who supplied those batteries or products with which those batteries are provided, in Ontario, shall manage a minimum amount of materials from batteries from that category and shall determine that minimum amount using the formula, [(2017 Supply + 2018 Supply + 2019 Supply) / 3 × 0.3] × 1.25

Managed batteries criteria, Section 14, Subsection 1-3, Page 16

1. *The weight of recovered resources from batteries counted toward the management requirement must be from batteries used by a consumer in Ontario, from the same category as the batteries that were used to calculate the management requirement, and that have been,*
 - i. *managed, in accordance with the Batteries Guideline by a battery refurbisher registered under section 20, and provided to a person for reuse, or*
 - ii. *processed, in accordance with the Batteries Guideline by a battery processor who meets the requirements set out under subsection (3), and*
 - A. *provided to a person for the making of new products or packaging,*
 - B. *used to enrich soil, or*
 - C. *subject to subsection (2), used as aggregate.*
2. *The weight of batteries, or recovered resources from those batteries, must only be counted once and must not be counted by more than one producer.*
3. *The following must not be counted toward the management requirement:*
 - i. *The weight of materials that are land disposed.*
 - ii. *The weight of materials that are incinerated or used as a fuel or fuel supplement.*
 - iii. *The weight of materials that are stored, stockpiled or otherwise deposited on land or used as daily landfill cover.*

- We are not aware of any data that supports a benchmark for rechargeable batteries where all sizes and applications are included.

Recommendation:

Call2Recycle would ask the Ministry to provide audited data that demonstrates how the Stewardship Ontario experience serves as a benchmark for establishing the targets in this regulation.

Call2Recycle supports the need for targets, but they must be incrementally established, allowing time to continue to build consumer awareness. Call2Recycle recommends that diversion targets for rechargeable batteries be reduced and aligned with diversion rates for single-use batteries.

- The criteria for a “refurbisher” should be specified.
- Reliance on the processor to self-report a “rating” is not acceptable. Recycling efficiency is subject to interpretation. For example, consideration should be given to recycling/use beyond the “first gate” such as soil enrichment. In this case, recovered material can be recovered and re-used only once as compared to a process where recovered metals are re-used to make new products and the re-recovered metals are used again.

Recommendation: Consistent with other provinces, allow industry to develop and set standards based on international harmonized best practices.

Resource recovery charges, Section 17, Page 18

17. Every producer and every person who markets batteries or products with which batteries are provided to consumers in Ontario and who identifies, in an advertisement, invoice, receipt or similar record in connection with the supply of batteries or products with which batteries are provided, a separate charge that relates to resource recovery or waste reduction of batteries, shall implement a promotion and education program by providing the following information at the time the charge is identified in the same manner in which the charge is communicated:

- 1. The person responsible for imposing the charge.*
- 2. How the charge will be used to collect, reduce, reuse, recycle and recover batteries.*

- It is unclear how “visible fees” would work on standalone batteries where there are two obligated entities. For example:
 - On a national brand the obligated entity is very likely going to be the brand owner since they are domiciled and/or importer into Ontario.
 - Accordingly, for the retailer selling national-brand AA single-use batteries, the visible fee would presumably be remitted back to the obligated entity. The obligated entity would then remit this to their stewardship program. For the private label brand, the obligation would fall to the retailer.
 - Accordingly, if you have a private label retailer, that retailer would remit directly to their stewardship program.
- Having two obligated entities creates complexity and costs. The second related issue is a potentially visible fee on the private label AA but not on the national brand. This would create significant consumer confusion, consumer calls and frustration for all parties involved.

Recommendation: Call2Recycle asks the Ministry to provide a clear interpretation of this process and associated complexities including for products with embedded batteries. Furthermore, we recommend additional requirements for fee visibility be removed so that fee visibility is left to the discretion of the obligated producer.

Reports, battery refurbishers, Section 27, Page 26

27. On or before March 31, 2022 and on or before March 31 in each subsequent year, every battery refurbisher shall create and submit to the Authority, through the Registry, an annual report that contains the following information with respect to the previous calendar year:

- 1. The number and weight of batteries, for each category of batteries, received from a battery hauler and the battery hauler’s name, contact information and any unique identifier assigned by the Registrar.*
- 2. The number and weight of batteries referred to in paragraph 1, for each category of batteries, that were refurbished or provided for reuse.*
- 3. If any of the batteries referred to in paragraph 1 were collected from outside of Ontario, the*

- The reporting requirements for refurbishers is silent on the destination of these batteries, their uses and any verification that they’ve complied with UN regulations.
- Under the proposed regulations, retailers/producers are going to have to register, track, report and provide audits directly to the Authority as opposed to other jurisdictions where the authorized stewardship program discharges this on their behalf. This may lead to significant complexities and costs without any impact on environmental concerns.

number and weight of those batteries for each category of batteries.

4. If the battery refurbisher is part of a producer's management system, the name, contact information and any unique identifier assigned by the Registrar of the producer or of the producer responsibility organization retained by the producer.

**Records, operators of battery collection sites,
Section 30: 1-4, Page 27**

30. *Every operator of a battery collection site shall keep the following records with respect to each site, if there is more than one, in a paper or electronic format that can be examined or accessed in Ontario for a period of five years from their date of creation:*

- 1. The number and weight of each category of batteries that were collected at each collection site.*
- 2. The number and weight of batteries referred to in paragraph 1, for each category of batteries, that the operator provided for reuse or refurbishing or sent for processing.*
- 3. For each battery hauler to whom the operator provided batteries referred to in paragraph 1, the number and weight of the batteries provided for each category, and the battery hauler's name, contact information and any unique identifier assigned by the Registrar.*
- 4. If any of the batteries referred to in paragraph 1 were collected from outside of Ontario, the number of those batteries, for each category.*

Recommendation: Call2Recycle recommends that audit and reporting requirements be aligned with the other four provinces currently administering battery regulations and that these requirements fall under the responsibility of the selected Producer Responsibility Organization (PRO).

- This is not feasible. Collection sites do not know the destination of the batteries they collect.