



June 23, 2019

Ms. Krista Friesen
Senior Policy Advisor
Resource Recovery Policy Branch
Ministry of Environment, Conservation and Parks
40 St. Clair Ave., W.
Toronto, Ontario
M4V 1M2

RE: Comments regarding ERO #019-0048 – Draft Regulation for Batteries under the Resource Recovery and Circular Economy Act, 2016

Dear Ms. Friesen,

The National Electrical Manufacturers Association (NEMA) appreciates the opportunity to participate in the Ministry of Environment, Conservation and Parks' (MECP) consultation on proposed regulations to govern the producer responsibility framework for used batteries under the Resource Recovery and Circular Economy Act (RRCEA). On behalf of Member companies in the NEMA Dry Battery product section,¹ we herein provide the following feedback on the draft regulation.

GENERAL COMMENT

NEMA's principal concern is that the regulatory requirements in Ontario harmonize to the extent possible with comparable rules in other provinces. There are several sections in the proposal (noted below) where this consistency is not maintained, which threatens to create additional costs and complexity for the regulated parties. We respectfully urge MECP to strive to align as closely as possible with other provincial rules for battery management. Where Ontario regulations differ (e.g., requiring producers to report individually rather than through a producer responsibility organization), it is incumbent on the Ministry to justify and identify the benefits derived from adopting an alternate approach.

DESIGNATED CLASS AND PRODUCERS

NEMA supports including small single-use and small rechargeable batteries as designated classes of materials to be managed under the stewardship framework. This aligns with our comments submitted previously that a threshold weight of 5 kg is necessary to ensure that collection, sorting and transport of used batteries is economically viable. It is also consistent with other provincial requirements in Canada.

That said, we encourage the MECP to identify explicitly in the regulatory text the types of small single-use and rechargeable batteries that are governed by the regulation. The most commonly used battery types at present include Alkaline (single use), Nickel Cadmium – or NiCad – (rechargeable), Lithium based (both single use and rechargeable), small Lead Acid (rechargeable), Zinc Carbon (single use) and Nickel Metal Hydride (rechargeable). At some

¹ Duracell, Panasonic, Energizer, and Rayovac.

point, however, innovative new battery products with different electro-chemical compositions may enter the market and require unique processing capabilities that are not yet available. These new products, if they appear, should not be drawn into the scope of the regulations without adequate review and consultation.

NEMA therefore recommends that newly introduced batteries based on chemistries **not** listed above be excluded from the scope of the regulation at this time. Furthermore, NEMA does not support the inclusion of large batteries – principally designed for automobiles or commercial/industrial applications – as a designated class for producer responsibility. We recommend instead that industrial or other batteries above the 5 kg limit be managed by the respective generators rather than co-mingled into consumer battery streams. Including these batteries in the scope of the RRCEA regulations will greatly expand reporting requirements and impose an additional burden on producers.

Maintaining this distinction among covered materials will harmonize this regulation with current practices – both within and outside of Ontario – minimize disruption for consumers and promote optimal environmental outcomes.

Regarding the definition of producers, NEMA generally supports the proposed hierarchy, which begins with the resident brand holders, followed by first importers, distributors, retailers and marketers. The expansion to brand holders resident in Canada as opposed to resident in Ontario is inconsistent with other provincial jurisdictions, however, which likely will create complexities and unnecessary administrative burden. NEMA recommends amending the hierarchy so that the requirement lies on brand holders resident in Ontario, followed by the first importer, and then marketers.

In addition, the regulatory text should clearly establish that on-line first importers are governed by the rule since many on-line retailers do not have a physical presence in Ontario. In some instances, this may include transportation/delivery companies that bring products into Ontario. The most important aspect for NEMA is to ensure the hierarchy of responsible persons captures all obligated parties and minimizes the existence of “free riders.”

We support the Ministry’s position – as explicated in the proposal – that responsibility for batteries embedded within electronic products lies with the product manufacturer rather than the battery manufacturer.

COLLECTION OF BATTERIES

A key issue for battery manufacturers is the importation of batteries shipped directly to consumers by on-line retailers located in other jurisdictions. Consumer behavior has shifted and more people now buy products on-line rather than at physical retail locations. NEMA therefore supports the inclusion of requirements in Section III (8) of the rule as pertains to “Producers without a retail location” as a way of capturing internet sales and obligating the parties responsible for putting these products on market.

That said, the regulatory text should be strengthened to ensure that on-line retailers – and NOT resident brand holders – are held accountable for internet sales of batteries. For example, if Amazon sells a Duracell product, the current proposal would hold Duracell responsible for that product at end of life because Duracell is resident in Ontario/Canada. It would be immensely difficult for Duracell (or any battery manufacturer) to track this type of sale and meet its reporting obligations.

Ontario's population density varies widely throughout the province. Applying a single standard to accessibility is therefore problematic since the demand for collection and transportation of used batteries in urban areas will be far greater than in remotely populated rural areas. While accessibility standards should be set to ensure both low-density and high-density areas receive adequate service, NEMA urges flexibility in defining the requirements for each jurisdiction to ensure program resources are employed efficiently across the province.

Regarding the collection network itself, manufacturers are concerned with the volume of collection sites required for large and small producers. Applying a standard of one collection site for every 15,000 residents leads to unnecessarily broad coverage across the province. Our recommendation is to increase the threshold to a less burdensome threshold of 25,000 residents.

NEMA advises the Ministry to consider non-monetary incentives to encourage collection of materials in more remote areas. For example, material collected in rural, sparsely populated, or Indigenous communities could be prescribed a value 1.5 times greater than material collected in more densely populated parts of the province.

NEMA also believes that all activities required under the rule should be readily measurable, and thus verifiable. The stewards of the existing Stewardship Ontario program have no assurance that all used batteries entering the MHSW program are generated within Ontario. Such "leakage" is not only costly, but also provides misleading results to the Province with respect to diversion data. Manufacturers have raised this concern continually with SO and its oversight authority and place high priority on preventing similar problems from occurring under the new program.

MANAGEMENT OF BATTERIES

Battery manufacturers have accumulated many years of experience recycling batteries in jurisdictions in and outside of North America, including several provinces in Canada. Judging from this perspective, the management requirement target proposed for small single-use batteries – which starts at 30% and increases to 50% for the year 2023 – may be too ambitious. We advise MECP to consider a lower figure for this product category during the program's initial years.

The proposed management thresholds for small rechargeable and large batteries, on the other hand, are unattainably high and NEMA urges the Ministry to scale them back to more reasonable levels. This regulation constitutes the first legal take-back requirement for these product types in Ontario. The program should be allowed a period of accommodation during which manufacturers and other obligated parties identify and resolve implementation problems and achieve efficiencies. For the initial years of the program, therefore, NEMA recommends assigning management targets for small rechargeable and large batteries that are within the range of small single-use batteries.

With regard to supply data used to determine management targets, it is important to realize that audited national sales data – apportioned to Ontario based on population size – is the only feasible way manufacturers can provide the data for this purpose. The regulations should therefore make clear that this approach will be permissible as a means of fulfilling reporting requirements.

The draft regulation lacks a clear definition of Recycling Efficiency Rate (RER), thereby leaving the concept open to interpretation. NEMA is aware of the authority's announced intention to

issue a “*Batteries Processing and Refurbishing Guideline*,” but in the meantime international definitions and standards for efficiency are available and adhered to by other provinces. NEMA recommends the Ministry align with these counterpart programs by recognizing and adopting the existing guidelines or allow industry to develop and set standards based on international harmonized best practices.

The value of internationally recognized (and applied) standards will grow over time as demand for battery recycling generates the need for multiple processing facilities. It is imperative that these facilities emerge within a strong and competitive processor market. Having processing facilities compete for business will promote regulatory objectives while keeping costs low for manufacturers, and ultimately, the consumer.

NEMA specifically recommends the MECP consider inclusion of principles found in American National Standard for Portable Cells and Batteries (ANSI C18.4M-2017). This standard is currently published in the United States but an international version, IEC 60086-6: Primary Batteries – Part 6: Guidance on Environmental Aspects, is under development with anticipated publication in January 2020. In alignment with this standard, the Ministry should lower the RER in the regulation to 50% by average weight as permissible for counting toward producer obligations.

In addition, NEMA recommends increasing the amount that aggregate can count towards fulfilling one’s management requirement from 5% up to 15%. This provides more flexibility to producers in fulfilling their requirement and creates opportunity for new innovations in battery recycling and recovery.

In general, NEMA supports the government’s effort to recognize, incentivize, and reward producers who go above and beyond the regulatory obligation. That said, it is essential that any waste reduction initiatives addressed in the regulation remain optional and do not require producer participation.

PROMOTION AND EDUCATION

Under the proposed regulations, brand holders must undertake education and communication efforts aimed at achieving the management targets established by the province. NEMA contends that this should be a shared responsibility, with costs/activities also borne by other stakeholders with a commercial connection to battery recycling such as retailers, collectors, and processors. We request that Part V (Promotion and Education) of the rule be expanded to ensure these stakeholders play a role in spreading awareness of the program.

As regards reporting, NEMA recommends that Section 16(2) in Part V be amended to enable obligated producers that have a contract with a producer responsibility organization (PRO) to supply the information specified therein by linking to the PRO’s web site.

NEMA supports the regulation’s accommodation of a resource recovery charge as this creates greater flexibility in attaining funding needed to ensure the program’s success at meeting the statutory objectives. The financial tools and mechanisms used to fund resource recovery is best left to the discretion of the obligated parties rather than dictated by oversight authorities. NEMA believes the limited P&E requirements associated with the resource recovery charge are reasonable.

REGISTRATION, REPORTING, AUDITING AND RECORD KEEPING

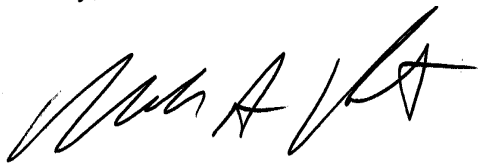
NEMA supports the requirement for producers, PROs, haulers, processors, and refurbishers to register with and report to RPRA as this aligns with our original recommendation. Manufacturers acknowledge the importance of transparency and accountability and recognize the need for obligated parties to keep records, report relevant data, and submit to independent audits. These requirements need not be overly burdensome, however, and ideally should be consistent with those of other provinces. The proposed regulations DO NOT meet this criterion in that they require producers to report independently, rather than allowing the PRO to compile and submit the information on their behalf.

To facilitate the registration process and moderate the burden on producers, we request that Section 18(2) in Part VI be modified with language affirming that producers that have entered a contract with a PRO may rely on the PRO to compile and submit the information needed for this reporting requirement.

CONCLUSION

NEMA looks forward to continued engagement and consultation with the MECP as it develops the producer responsibility framework for used batteries. Should you have questions or require clarification on any part of this submission please do not hesitate to reach out directly to me or to NEMA's representatives in Ontario, the Sussex Strategy Group.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Kohorst', with a stylized flourish at the end.

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