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December 1, 2020

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Ministry of the Environment, Conservation and Parks
40 St Clair Avenue West, 8th Floor
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RE: Regulatory Proposal Comments – A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs (ERO #019-2579)

Dear Ms. Alleyne,

On behalf of NexCycle Canada, we would like to submit the following feedback to the Ministry of the Environment, Conservation and Parks (MECP) in response to Environmental Registry of Ontario (ERO) posting #019-2579, *A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs*.

A. Background

NexCycle has more than a 20-year legacy of providing glass recycling solutions in Ontario, Quebec and North America. As a division of Strategic Materials – the largest glass recycler in North America – we collect both post-consumer and post-industrial scrap glass from a diverse range of sources including residential curbside collection, deposit return programs, as well as bottle, plate and automotive glass manufacturers. Equipped with the latest optical sorting and glass purification technologies, NexCycle processes recovered glass into a raw material called cullet. In a truly closed loop life cycle, the cullet is then sold back into the glass manufacturing industry as a raw material, predominantly for glass containers and fiberglass.

Since the bankruptcy of a competitor in 2010, NexCycle is the sole meaningful recycler of glass containers and other glass products being the only processor of glass from the blue box program and Ontario Deposit Return Program (ODRP).

NexCycle is deeply proud to be the glass recycling solution for the municipal Blue Box Program in Ontario. We are equally passionate about our role as the recycling solution for The Beer Store (TBS) and ODRP.

In addition to our glass recycling operations, NexCycle holds a leading position as a quality, high volume recycler of post-industrial plastic scrap materials. As an ISO certified company located in Brampton, Ontario with 100 million pounds of production capacity, we service a network of manufacturers across North America. Focused on key polymer offerings, NexCycle buys scrap LLDPE/LDPE, HDPE, and PP which is melted, compounded, filtrated, re-extruded and post-blended into quality, cost effective recycled resins for re-integration in North American manufactured applications.

Across three facilities, we employ approximately 150 people in Ontario.

As an integral part of Ontario's recycling infrastructure, NexCycle has an interest in the government's strategy for transitioning the Blue Box Program to producer responsibility. Our unique role in the existing Blue Box Program as well as our experience processing post-industrial plastic resources means we are well-positioned to provide valuable insights to the MECP through this consultation process.

As a downstream processor for glass and plastic, NexCycle wants to ensure as little disruption to recycling markets as possible resulting from the Blue Box transition process. In response to the proposed regulation, we will provide an overview of NexCycle's perspective and areas of interest and concern.

B. Key Components to the Regulation

In providing our comments to the regulation it is important that we outline what we consider should be guiding principles.

The guiding principles that we have considered in our response are as follows:

B1. Ultimate Landfill Diversion is the key to a successful program.

A successful program should be measured on what tonnage of blue box eligible products that are recovered, not the quantum of blue box materials collected.

Conversion to single stream and limiting garbage collection has led to contamination in the blue box. While doing this has increased collection, it has also had the negative consequence of increased landfill occurring downstream at processors at much higher rates than may be anticipated.

For example, in recovering glass, contaminants in the stream results in collateral glass loss as systems designed to remove ceramic, fiber and other contaminants result in glass being lost as part of the sorting process which ejects the contaminant and some glass as the sortation is not 100% precise. It is often not feasible to rerun ejected materials resulting in glass being landfilled from sorting. We would imagine processors of other materials would have a similar comment.

To that end, while extending what is collected in the blue box on face seems proactive it needs to be measured against the benefits. In our opinion while including such things as disposable straw and plates seems like the right thing to do, this most likely will add a material that is more likely to be a contaminant and will actually decrease overall recovery through collateral loss of usable product through sorting. (See Commentary under C1).

In addition, NexCycle is supportive of the alternative collection systems that can have the benefit of maximizing recovery of a commodity through reducing the risk of contaminants that occur in single or dual stream recovery.

B2. Cost of the System Needs to be Reasonable.

While it is important to protect the Earth's resources, it should be recognized that a system needs to be cost efficient.

To support a cost-efficient system, we believe the regulation should make processors' regulatory obligations clear. In our opinion, we believe that processors who are one step removed from the blue box (those that receive a segregated product from a Municipal Recycling Facility) should be specifically excluded from the regulatory framework of Regulation O. Reg. 101/94 and burdens imposed by Part V approvals. The potential imposition of such regulation provides an added cost that we believe are not necessary as other regulatory powers exist to ensure that processors like any other industrial business preserve Ontario's environment.

B3. Encouragement of Local Use.

The cost of the system needs to be supported by revenue from selling recycled outputs.

A significant component of revenue that is derived to support the system can be eroded by the need to transport recycled product long distances where there is limited local use.

While there is some incentive to use product locally, we would encourage the regulation to contemplate:

- Increased incentives for local use;
- Recognition that other alternative non blue box collection methods such as the ODRP program have the identical benefit to the Blue Box Program and users are given identical incentives; and
- Higher end recycling use that differs from the origin of material (e.g. container glass being used for fiberglass) is also incentivized.

B4. Protection of Confidential Information

To assess the performance of the system we recognize that information needs to be shared to determine its relative success.

We encourage that information shared under the regulation is not shared at a detailed level where confidential information and trade secrets are inadvertently shared in a public forum.

In the remainder of this letter we make specific comments about the regulation as drafted having regard to the above guidelines.

C. Scope of Obligated Products

C1. Alcohol Beverage Containers

NexCycle fully supports the proposal to exclude alcohol beverage containers and their associated packaging from the Blue Box regulation. As the recycling solution for TBS, NexCycle knows how successful this program is and its positive impact on the environment. Both TBS and ODRP container management programs rely on deposit return to generate return rates that are more than double those for similar packaging in the blue box. Collectively, these programs divert five times as much glass tonnage from Ontario landfills annually as the current blue box. More importantly the deposit return platform supports the use of refillable glass bottles and high-value recycling for one-way glass containers.

As a participant in the current process NexCycle recovers over 200,000 tons of glass from a variety of sources. Recovery on the materials collected under TBS management system and the ODRP are far superior than recoveries of glass from the blue box system that contaminates the glass with other recyclables, ceramic and organics that result in far less recoveries and higher landfill.

In addition, source separation of other containers such as plastic bottles (PET) and aluminum cans and packaging such as cardboard have resulted in significantly higher recovery rates of these commodities than would otherwise be achieved through a single stream blue box system.

All efforts should be made to maintain the status quo of alcohol beverage container recycling in Ontario and excluding them from obligation under the Blue Box regulation achieves that objective.

C2. Problematic Materials and Clearly Defined Exclusions

Some products may cause more harm than good when included in recycling programs, such as the inclusion of straws and disposable plates, and should therefore be excluded from the scope of materials obligated by the regulation. Plastic straws, stir sticks, and other small plastic items get caught in sorting and recycling systems causing mechanical problems and delays. It is also unlikely that there will be clearly defined markets even if recovered, and as part of the regulation the Resource Productivity and Recovery Authority (RPRA) needs to confirm that markets exist for items being recovered before a producer can count that against their individual management requirement.

Such materials have the propensity to contaminate otherwise highly recyclable streams and are likely to end up in landfill downstream and may also cause other commodities to be contaminated and downgraded. To uphold the integrity of the recycling system and ensure more material is managed properly and not disposed in landfill the MECP should consider a list of products to be included in the regulation that are excluded from the requirements imposed by the regulation.

Exclusions of certain products within the blue box under Article 2 is likely to increase tonnage being recovered as opposed to attempting to capture more within the blue box that will ultimately be disposed of when processed downstream.

This list of ‘excluded products’ should also include items such as:

- Ceramic mugs, dishware, and tiles (A significant contributor to collateral glass loss is the impact of consumers disposing of ceramics in the blue box. For each piece of ceramic removed through sorting several pieces of glass are lost as collateral);
- building products (including gypsum);
- post-industrial material that should be sent to recyclers directly; and
- windshield glass.

Ontario Regulation 522/20: Electrical and Electronic Equipment sets a precedent for this by including a list of products that the regulation does not apply to. This list of clearly defined exclusions will help producers better understand their obligation while limiting confusion amongst residents.

With more and more people working from home, there is likely an increase in the number of items people are placing in their blue box. Furthermore, with the expansion of eligible sources there is a greater risk of contamination and misuse of the blue box. It is important for the functionality and success of the Blue Box program that contaminating materials are limited. Ceramics are a significant problem for glass recycling and should be made clear they are not a part of the Blue Box system.

D. Recycled Content and Other Uses (Fiberglass example)

The draft regulation creates an incentive for producers to use recycled content in their products. Producers can reduce their Management Requirement obligation by utilizing recycled content derived from blue box materials. NexCycle recommends the incentive expanded to other alternative collection systems such as the ODRP with focus on increasing local use.

Furthermore, NexCycle proposes that recycled content incentives be applied to other recycling outputs. For example, the majority of recycled blue box glass is utilized in fiberglass, not in bottles or containers, which disadvantages glass producers under the blue box regulation where their product ends up in a very viable and high end alternative source.

E. Privacy and Data

The draft regulation requires blue box processors to register with RPRA and report data annually. The information that processors are required to share with RPRA represents confidential business information and NexCycle is concerned that this information will be shared publicly on RPRA's registry. The amount of material received, the processing yields, and how those recycled resources are being marketed/sold to is very sensitive and would be valuable information to our competitors if made public.

The draft regulation only outlines what information must be reported to RPRA but does not provide any direction to RPRA about how that data is to be managed. It is our recommendation that additional parameters be created to ensure privacy and data protection.

Furthermore, it is NexCycle's recommendation that direction be provided to RPRA to create guidelines for how it will handle confidential business information and intellectual property extracted from the market through this registration and reporting process.

There should also be mechanisms in place to ensure appropriate checks and balances exist to prevent any competitor or Producer Responsibility Organization (PRO) from having an economic advantage by gaining unfair access to such information and data. The majority of producers will hire a PRO to help fulfil their obligation which means processors will have to work with PROs to facilitate this arrangement. This increases the likelihood that sensitive information will be shared and potentially made available to a greater than anticipated audience. While the regulation does not stipulate PRO/processor contract expectations, it remains an area of concern in relation to data privacy and security that we wanted to bring to the MECP's attention.

F. Managing Costs and Protecting Existing Assets

NexCycle wants to ensure the government's actions and this regulation does not negatively impact fair access to supply volumes or compromise the investments made by downstream processors to establish existing infrastructure.

NexCycle has made significant investments that are critical for Ontario to meet its existing Blue Box Program targets and goals, and which are necessary for meeting the government's objective of increased diversion from landfill. A lack of clarity, commitment, and protection of downstream recyclers will discourage ongoing investment and innovation that will be critical for a successful producer responsibility regime and an increase in diversion rates.

Making producers responsible is an important step to ensure that recycling is easier and more accessible while reducing costs for municipal taxpayers.

NexCycle wants to stress the importance of downstream processors having access to materials to allow for the development of a true circular economy. We are concerned this transition may facilitate a mass volume of materials going to a select group of companies with little control or insight into how materials are managed from that point forward. This risk of monopolies at the MRF-level would be detrimental to downstream processors and would compromise the government's objective of a level-playing field.

Transitioning to a producer responsibility framework that does not have a negative consequence of compromising current competition would naturally create efficiencies in the system. Finding such efficiencies is important but this should not compromise existing operations that have intellectual property and core competencies in specific fields.

The government's plan for Blue Box transition needs to ensure downstream recyclers are protected and left in-tact. Without this protection, the integrity of producer responsibility in the future is threatened. If secondary processors are compromised in this transition process it will limit the ability of producers to meet their future individual producer responsibility obligations.

As noted earlier, we believe the regulation should make processors' regulatory obligations clear. In our opinion, we believe that processors who are one step removed from the blue box (those that receive a segregated product from a Municipal Recycling Facility) should be specifically excluded from the regulatory framework of Regulation O. Reg. 101/94 and burdens imposed by Part V approvals. The potential imposition of such regulation provides an added cost that we believe are not necessary as other regulatory powers exist to ensure that processors like any other industrial business preserve Ontario's environment.

Conclusion

We appreciate the opportunity to contribute to the government's consultation on *ERO #019-2579, A proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs.*

Thank you for your consideration of our comments. Should you have any questions please do not hesitate to contact me directly at lborg@strategicmaterials.com. I look forward to further engagement and collaboration.

Yours Sincerely,



Laurie Borg
President
Canada Glass Operations