

March 29, 2021

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

Dear Ms. Friesen:

Re: Amendments to the Operating Agreement Between the Minister and RPRA (ERO 019-2886)

As Ontario transitions its recycling and waste diversion programs to a full producer responsibility framework, adequate oversight and enforcement must be given heightened importance to ensure economic competitiveness, regulatory compliance and a level playing field among industries and businesses.

Currently, the Resource Productivity and Recovery Authority (RPRA) delivers these functions, effectively, at no cost to taxpayers, and with minimal administrative burden. For example, the Registry has worked well for tires in allowing data to be shared with Producer Responsibility Organizations, with more streamlined data requirements than under the former Ontario Tire Stewardship Program.

Future business investments to expand recycling capacity are conditional upon having a proper oversight and enforcement structure in place. Accountability and transparency must be upheld in the province's administrative authorities. However, independent enforcement authority, such as that provided by RPRA, is also a necessary pillar to ensure business competitiveness and investment confidence.

While some of the proposed amendments to RPRA's Operating Agreement may help to support accountability and transparency, the Ontario Waste Management Association (OWMA) sees little evidence that amendments to restrict RPRA's mandate, and change the qualifications for directors on its Board, are needed at this time. RPRA's activities to-date have shown it to be an effective regulator that is providing value to industry, consumers and municipalities who participate in regulated recycling programs. OWMA opposes some of the proposed amendments, as they may hinder RPRA's ability to independently fulfill its functions and mandate. Our detailed recommendations are as follows:



Quarterly Updates – Section 9.11

The proposed amendments to the Operating Agreement will require RPRA to meet with Ministry staff every quarter to provide updates on the Authority's key activities. This requirement will help ensure the Ministry is updated on RPRA's progress on its business plan.

OWMA notes that RPRA is already required to submit its annual Business Plan and Annual Report to the Minister, a requirement that is likely sufficient to ensure the Ministry has information on the Authority's progress. While this proposed amendment is not necessary, regular exchanges between staff in RPRA and the Ministry could prove useful in identifying possible challenges in advance.

Advisory Councils – Section 9.8

OWMA supports the new requirement for RPRA to create industry advisory councils. The advisory councils could provide an effective forum for consultations with stakeholders. Due to its role as a regulator, RPRA will also be inevitably confronted with pressures from industry. There is a risk that some industry stakeholders may use the Advisory Councils to unduly influence regulators' decisions through lobbying and advocacy.

Any new Advisory Councils established by RPRA should be safeguarded against this undue influence by stakeholders. These safeguards should include a requirement in the Operating Agreement that any RPRA Advisory Councils shall publicly disclose their membership rosters, meeting agendas and meeting minutes. An additional safeguard could include registration of lobbyists who interact with RPRA (under the Ontario Lobbyists Registry) and prompt disclosure of attempts to improperly conduct or influence the regulator.

Board Composition and Member Qualifications – Section 7.1

OWMA does not support the proposed amendment [7.1(b)(xi)] to update RPRA's board qualifications to include industry-related skills. As a Regulator, RPRA oversees the functioning of markets and a fair level playing field for the improved quality and delivery of material recovery services. To fulfil this function, RPRA's Board of Directors must make and implement impartial, objective and evidence-based decisions. It must do so independently, without undue influence from the parties it is regulating. Requiring Board members to specifically have "*experience working for a corporation or other entity, or an individual, with respect to a product, primary packaging, convenience packaging or transport packaging*" is fraught with potential entry points for undue influence from industry.

The necessary skills for RPRA's Board should continue to include compliance and enforcement, compliance auditing, supply chain management, data management, and public administration. Experience and expertise in the packaging industry is not directly applicable to the skillset required for RPRA to fulfill its mandate. Section 7.1(b)(xi) should be removed from the proposed amendments to the Operating Agreement.

RPRA's Mandate – Section 4.2

OWMA does not support the proposed amendment to define RPRA's functions by clarifying that RPRA shall not carry out any activities other than those within its mandate. This is an unnecessary change that could unintentionally hinder the Authority's ability to fulfill its functions. In exercising its functions under the RRCEA and WDTA, it is conceivable that RPRA may carry out some undefined activities that indirectly support its mandate. The business and market landscape in the material recovery sector is constantly evolving, and RPRA should retain the independence to carry out any activities its Board and leadership sees fit in fulfilling its legislative mandate.

Data Privacy – Sections 6 & 11 (Schedule B)

OWMA supports the amendments to the Operating Agreement's data privacy provisions through strengthened language in the operating agreement. The Authority should only collect personal information as required to fulfill its mandate, and do so only by fair and lawful means. The Authority should also take reasonable steps to ensure that the information, including commercially sensitive and personal information that it collects, uses, discloses and retains, is accurate and protected.

Thank you for considering our input on this matter. We would be pleased to meet with Ministry staff to review our comments in further detail.

Sincerely,



Mike Chopowick
Chief Executive Officer