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SUBMITTED ONLINE TO THE ENVIRONMENTAL REGISTRY OF ONTARIO:

<https://ero.ontario.ca/notice/019-0045>

Mr. Dale Gable
Manager, Technology Projects
Resource Recovery Policy Branch
Ministry of the Environment, Conservation and Parks
40 St. Clair Avenue West, 8th Floor
Toronto, ON M4V 1M2

Dear Mr. Gable:

Re: Environmental Registry of Ontario Number 019-0045: Administrative Penalties Regulation made under the *Resource Recovery and Circular Economy Act, 2016*

City of Toronto (the “City”) is pleased to provide comments in response to the Ontario Ministry of the Environment, Conservation and Parks’ (the “Ministry”) consultation on the proposed administrative penalties regulation made under the *Resource Productivity and Circular Economy Act, 2016*, (RRCEA), that was posted on September 17, 2021 to the Environmental Registry of Ontario for comment.

The City applauds the Province’s on-going commitment made under the RRCEA to recover resources and reduce waste by holding those most responsible for the design of products and packaging accountable for management of their materials supplied into the Ontario marketplace. Enforcement through the use of administrative penalties is an important step in helping the Province meet their interests of increasing recovery of valuable materials and improve environmental outcomes.

The City offers the following comments to help ensure that design and use of administrative penalties will strengthen the intended outcomes of the RRCEA and achieve the Province’s objective of moving towards a circular economy.

Comments:

1. Administrative penalty amounts need to be sufficient to adequately support and resource the compliance activities of the Resource Productivity and Recovery Authority.

The Resource Productivity and Recovery Authority (the “Authority”) requires sufficient resources to monitor producer performance and address any producer deficiencies to fully achieve Provincial performance targets. Administrative penalties must be set high enough and imposed broadly enough to ensure RPRA has sufficient resources to undertake these essential activities. The RRCEA and the Minister depend on the Authority’s ability to actively monitor and enforce against non-compliant actors.

2. Administrative penalty amounts should be established in such a manner that no entity can economically benefit by not meeting its required obligations.

Using administrative penalties as an enforcement tool is intended to financially incentivize compliance and hold regulated entities accountable for meeting their obligations. Therefore, administrative penalties must be set in such a manner that a regulated entity is never financially better off incurring the penalty instead of complying with the regulations under the RRCEA.

3. Administrative penalties should apply whenever a producer’s failure to achieve “best efforts” is substantial or cannot be demonstrated.

The proposed administrative penalties regulation does not apply penalties to those producers that fail to meet “best efforts” provisions. However, if the failure to meet “best efforts” is substantial enough to amount to a non-effort instead of a reasonable attempt at “best efforts”, administrative penalties should apply. The City is particularly concerned about the immediate and long term financial impacts to municipalities that a failure to make adequate preparations to transition programs, failure to establish a Province-wide common collection system by January 1, 2026, the lack of recovery targets during transition, or an individual producer’s failure to register as a producer, will have if the “best efforts” standard allows producers to avoid administrative penalties. Imposing administrative penalties when there has been no “best effort” provides the financial disincentive to make an effort at all.

4. The Authority must consult municipalities about collecting sufficient administrative penalties to address municipal losses from producer non-compliance and providing a portion of the collected administrative penalties to municipalities to recoup such losses.

During the development of the RRCEA in 2016, it was determined that the management of funds collected through administrative penalties would be maintained and managed by the Authority, given its compliance oversight role. The Authority also has the ability to determine how monies from administrative penalties will be used.

The City strongly feels that the Authority should consult on guidelines for how the monies are to be used. The Authority should allocate funds collected through administrative penalties towards the payment of costs resulting from backstop measures employed by the City (and municipalities and First Nations) in the event that Producer Responsibility Organizations or producers are unable to meet servicing requirements.

In the case of the City's integrated waste management system that provides waste collection services to over 867,000 residential homes/units and some non-residential locations; a missed or delay in collection can radiate significantly throughout the system, from managing resident complaints, litter in the community, public health concerns, creating backups in traffic and leakage of recyclables into the City's waste stream. The City, with its decades of experience, understands that coordinating the efficient movement of over 900,000 tonnes of waste annually through the streets, transfer stations, and processing or disposal sites is crucial to maintaining Torontonians' positive experience with the waste system.

Should there be any deficiency in services, such as too many missed recycling collections, inadequate servicing levels for multi-residential buildings that do not have space to store their recycling materials until the next scheduled pick up, or litter due to a lack of public space recycling bins or inadequate service levels, the City may be required to step in as a backstop. Should this occur, funds must be allocated by the Authority to compensate costs incurred from acting as a backstop to protect resident's experience with waste diversion programs under the RRCEA.

Thank you for the opportunity to provide comments on the Environmental Registry of Ontario Number 019-0045: Proposed Administrative Penalties Regulation made under the *Resource Productivity and Circular Economy Act, 2016*. The City looks forward to ongoing collaboration with the Ministry, including involvement in any future consultations and proposals.

Should you have any questions regarding our submission, please contact Annette Synowiec, Director of Policy, Planning & Outreach, Solid Waste Management Services, by email at Annette.Synowiec@toronto.ca or by telephone at 416-392-9095.

Thank you for your consideration.

Yours truly,



Matt Keliher
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Solid Waste Management Services

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