

November 8, 2021

Dale Gable  
Resource Recovery Policy Branch  
40 St. Clair Avenue West  
8th Floor,  
Toronto, ON  
M4V 1M2

Dear Mr. Gable,

**Re: ERO #019-0045, Administrative Penalties Regulation made under the Resource Recovery and Circular Economy Act**

The Ontario Waste Management Association (OWMA) commends the Ministry of the Environment, Conservation and Parks (MECP) for introducing a monetary penalties regulation to help ensure compliance with legal requirements under the Ontario's new producer responsibility framework.

Oversight and enforcement is critical to ensuring that the Resource Productivity and Recovery Authority (RPRA) has verified information on the amount of products and packaging supplied into Ontario, and verified information on the amount of products and packaging that has been managed in accordance with the Regulation. This Regulation must generally ensure that RPRA has the resources it needs to oversee compliance and monitoring activities, ensure a competitive and level playing field, and enforce non-compliance of the producer responsibility regulations.

The OWMA supports the use of monetary penalties that can be imposed by RPRA to achieve legislated purposes such as ensuring compliance with legislative or regulatory requirements and preventing persons and organizations from deriving economic benefit from non-compliance with legal requirements of regulations under the *Resource Recovery and Circular Economy Act* (RRCEA).

The OWMA recommends the following provisions to best ensure compliance with the Regulation under the RRCEA.

**1. Appeals**

The general rights for a person to appeal are provided in section 91 of the RRCEA, however, the Regulation is silent as to the appeals process.

A clear appeals provision providing a mechanism by which one can appeal a decision of the tribunal must be included.

It is understood that appeals are administered by the Ontario Land Tribunal, but this process or this reference should be outlined directly in the Regulation.



## 2. Best Efforts

Section 11 sets out that there are no penalties for “best efforts” provisions. This should be amended to state that penalties do apply if best efforts are not attempted for other RRCEA requirements such as producers who fail to register with RPRA or fail to establish a collection system as required by regulations.

Under the law, an obligation to achieve “best efforts” imposes a higher standard than some of other common phrases, such as “reasonable efforts”. Best efforts impose a specific level of obligation, and means taking, in good faith, all reasonable steps to meet the requirements of the Regulation.

Failing to comply with the standard of best efforts should result in enforcement and penalties, just as failing to comply with other provisions and requirements of Ontario’s producer responsibility regulations would be met with enforcement tools such as monetary penalties for non-compliance. Penalties must be sufficient enough to discourage non-compliance.

## 3. Maximum penalty amounts

The OWMA supports the establishment of the maximum base penalty amounts of \$1 million per contravention (which is the maximum sum of the base penalty and economic benefit). This maximum penalty amount is reasonable to prevent violators from economically benefiting from non-compliance with regulatory requirements. There is an important policy principle that must be upheld to ensure that the vast majority of producers, manufacturers, importers and processors who will likely comply with the Regulation are not unfairly disadvantaged by the small number of those who may be non-compliant. The level of penalties must reflect the potential economic and financial unfairness that would be imposed on compliant individuals due to those who gain an advantage by blatantly and fragrantly violating the Regulation and the Act.

## 4. Transparency

Transparency of non-compliance should be considered. Consumers, business partners, suppliers and the public should be aware of non-compliant players to make better, informed decisions and choices. To achieve this transparency, RPRA could host a webpage listing those that have received these administrative monetary penalties, similar to the public notices given for administrative monetary penalties under the Financial Transactions and Reports Analysis Centre of Canada.

Thank you for your consideration and time. I can be reached at [mchopowick@owma.org](mailto:mchopowick@owma.org) to schedule a discussion with you and your staff to provide further details and information.

Sincerely,



Mike Chopowick  
Chief Executive Officer