



November 19, 2021

Dale Gabel, Manager, Waste  
Ministry of Environment, Conservation and Parks  
Resource Recovery Policy Branch  
40 St. Clair Avenue West, 8th floor  
Toronto, ON M4V 1M2

Mr. Gabel,

**RE: York Region Staff Comments – Proposed Administrative Penalties Regulation  
ERO 019-0045**

York Region staff thank the Ministry of the Environment, Conservation and Parks (the Ministry) for the opportunity to comment on the proposed producer Administrative Penalties Regulation (the Regulation) under the *Resource Recovery and Circular Economy Act, 2016* (RRCEA). Region staff are pleased to see this regulation move forward and offer the following recommendations:

**Remove the \$1 million maximum penalty to incentivize compliance**

Administrative penalties are critical to create economic incentives to ensure regulations under the RRCEA are effective. In the context of the Regulation, the amount of an administrative penalty must not be larger than is necessary to serve the purposes of Section 89(1). Conversely, the proposed amounts need to be an effective driver for adherence to the regulations. Should the “economic benefit” received through non-compliance be greater than the maximum penalty of \$1 million then a fine of over \$1 million would be warranted. Staff recommend the removal of the \$1 million maximum penalty to ensure incentives are in place to protect both the public and environment.

**Penalties for non-compliance must consider mitigation costs**

For the Regulation to effectively ensure compliance, full costs, including mitigation costs, must be factored into the penalty. Should other parties, such as municipalities, incur costs because of a non-compliance, these costs should be included in the penalty calculation. Further, Resource Productivity and Recovery Authority (RPRA) should consider reimbursement of mitigation costs incurred because of a non-compliance. For example, if municipalities are required to pick up materials curbside due to failed collection services on behalf of a Producer Responsibility Organization (PRO), costs incurred to provide this service should be compensated.

## **Provide municipalities an exemption from producer requirements, like exemptions under the HST**

The proposed Administrative Penalties Regulation includes penalties for failure to register with RPRA as a producer, a contravention with the provision covered under Subsection 45(1), O. Reg. 391/21. Based on definitions under the RRCEA and O. Reg. 391/21 Blue Box, municipalities will be captured under the definition of producer due to the small producer requirement definition of \$2 million in revenue per year. Revenues of government and other non-profit entities do not represent sales into the market and should not be considered as such under the regulation. Subjecting government agencies to producer requirements creates significant reporting for very few tonnes, resulting in an administrative burden that exceeds the intent of the regulation. It is recommended consideration be given to providing government agencies an exemption like the Harmonized Sales Tax (HST), where non-optional services provided to residents by a government agency are not subject to the HST.

## **RPRA must develop guidance for “best efforts” under the Regulation and amend Section 11 to state that penalties may be applied**

In legal drafting, to impose an obligation on a party to use its “best efforts” to achieve a result is generally interpreted to impose a very high obligation on that party. Region staff recommend “best efforts” provisions enable the “reasonableness” standard applied to commercial contract dispute cases, such as *Atmospheric Diving Systems Inc. V. International Hard Suits Inc.*, 1994 CanLII 16658 (BC SC) where “best efforts” has been defined and applied across Canada and in Ontario. Since “best efforts” can vary according to circumstances, staff recommend RPRA develop guidance for application of ‘best efforts’ requirements based on anticipated industry practices. Further, it is recommended that Section 11 of the Regulation be amended to state penalties may be applied if “best efforts” are not made.

Staff thank the Ministry for considering these comments and request the Regulation reflect recommendations in this response. If Ministry or RPRA staff would like to discuss the recommendations above, please contact Lindsay Milne, Manager, Waste Management, at [Lindsay.Milne@york.ca](mailto:Lindsay.Milne@york.ca).

Sincerely,



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Director, Environmental Promotion and Protection  
Environmental Services  
The Regional Municipality of York

Copy to: Dave Gordon, Senior Advisor, Association of Municipalities of Ontario