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**REPORT TITLE: Transition of the Blue Box Program to Full Producer Responsibility – April 2022 Update: Region Obligations and Collection Transition Strategy**

**FROM: Kealy Dedman, Commissioner of Public Works**

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## **RECOMMENDATION**

**That the Chief Financial Officer and Commissioner of Corporate Services be authorized to execute the agreements reached by staff with the producer or producer responsibility organization, as defined in O. Reg. 391/21 made under the *Resource Recovery and Circular Economy Act, 2016* (Regulation) responsible for the collection of Blue Box recyclables within Peel Region, or one of its related legal entities formed for the purposes of carrying out its responsibilities under the Regulation, for the provision of collection services by the Region for blue box materials and related services from eligible sources within Peel Region and/or at the Region’s six Community Recycling Centres for a period of one to two years following the Region’s transition date of October 1, 2024, on business terms satisfactory to the Commissioner of Public Works and on legal terms satisfactory to the Regional Solicitor;**

**And further, that should the Region be successful in reaching agreement with producers for the Region to provide recyclables collection on their behalf, that the Chief Financial Officer and Commissioner of Corporate Services be authorized to execute an amendment to contract 2015-007T with Miller Waste Systems Inc., for an additional one-year extension commencing October 1, 2025 and ending on September 30, 2026 on business terms satisfactory to the Commissioner of Public Works and on legal terms satisfactory to the Regional Solicitor;**

**And further, that should the Region fail to reach an agreement with producers for the Region to provide recycling collection services on their behalf, the Chief Financial Officer and Commissioner of Corporate Services be authorized to execute an amendment to contract 2015-007T with Miller Waste Systems Inc., for an additional one-year extension including price adjustments, on a lump sum or unit price basis, to reflect the removal of recyclables collection services, on business terms satisfactory to the Commissioner of Public Works and on legal terms satisfactory to the Regional Solicitor;**

**And further, that should the Region fail to reach an agreement with producers for the Region to provide recycling collection services that the Chief Financial Officer and Commissioner of Corporate Services be authorized to execute amendments to Contracts 2014-004T with Halton Recycling Ltd. dba Emterra Environmental and Waste Connections of Canada Inc. including price adjustments, on a lump sum or unit price basis, to reflect the removal of recyclables collection services, on business terms satisfactory to the Commissioner of Public Works and on legal terms satisfactory to the Regional Solicitor.**

# Transition of the Blue Box Program to Full Producer Responsibility – April 2022 Update: Region Obligations and Collection Transition Strategy

## REPORT HIGHLIGHTS

- Once producers and producer responsibility organizations (PROs) finalize the rules for the new producer led Blue Box Program (expected to occur around mid-2022), negotiations will need to take place immediately with PROs to confirm the Region's role in the collection of Blue Box recyclables under the new Regulation to ensure a smooth transition on the Region's transition date of October 1, 2024.
  - PROs will be operating under a compressed timeline to have services in place after rule setting and in time for the start of transition. Given this constricted timeline for negotiations, new agreements between the Region and PROs may require expedited execution. Staff is requesting delegated authority to enter into any necessary agreements to ensure a seamless transition is achieved and Peel residents' best interests are protected.
  - To ensure seamless operations during the first two years after transition on October 1, 2024, staff will exercise existing extension options in the current collection contracts and delay procurement of new contracts for up to two years.
  - Staff is proceeding with the divestment of the Region's Blue Box Material Recovery Facility (MRF) as directed by Regional Council. The competitive procurement documents to obtain the best value for the Region's MRF assets are expected to be released by the end of Q2 2022.
  - Municipalities, including the Region, through the supply of paper products to residents (e.g., water bills, Regional services handouts, and other notices) may meet the definition of a producer under the Blue Box regulation and be required to meet management requirements outlined in the regulation.
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## DISCUSSION

### 1. Background

On June 3, 2021, the Ministry of the Environment, Conservation and Parks (MOECP) released the Blue Box regulation (Ontario Regulation 391/21) that transitions the current Blue Box Program to full producer responsibility.

A report titled "Transition of the Blue Box Program to Full Producer Responsibility – September 2021 Update: Final Blue Box Regulation" was included on the September 16, 2021 agenda of the Waste Management Strategic Advisory Committee, describing the Blue Box regulation and its potential impacts to the Region of Peel's recycling program (Resolution 2021-992).

The transition schedule released by the MOECP, as an attachment to the Blue Box regulation, indicates that all Ontario municipalities will transition between July 1, 2023 and December 31, 2025. The Region will transition to full producer responsibility on October 1, 2024.

During the transition period (July 1, 2023 to December 31, 2025), producers of products and/or packaging will be required to make best efforts to implement or continue operation of recycling programs as established in each municipality (e.g., maintain the collection frequency and collected materials as were in place in the municipality before transition) for eligible sources and public spaces as defined by the regulation.

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As of January 1, 2026, producers are required to implement a standardized Provincial Blue Box Program (the common collection system) across Ontario that meets the regulatory requirements set by the province. It is expected that obligated producers will enlist the services of Producer Responsibility Organizations (PROs) to meet their regulatory requirements under the Blue Box Program on their behalf. A PRO would provide collection, management and administrative services to assist producers in meeting their regulatory obligations.

PROs are currently in the process of developing rules for the new producer-led Blue Box Program that must be submitted to and accepted by the Resource Productivity and Recovery Authority (RPPRA), the agency of the Province responsible for program oversight under the Regulation.

### **2. Region's Obligations under the Blue Box Regulation**

#### ***Data Submission Reports***

As communicated in the September 2021 Committee report, municipalities must provide the Resource Productivity and Recovery Authority (RPPRA) with information regarding their individual established waste and recycling collection systems through an Initial Report and a Transition Report. The Initial Report was submitted by Regional staff to RPPRA by the September 30, 2021 deadline. The Transition Report, which includes additional details, will be submitted by Regional staff to RPPRA by the August 31, 2022 deadline.

The information collected as part of the Initial Report and Transition Report will help producers and their delegated PROs understand existing municipal recycling programs that will need to be replicated as part of their responsibility under the Blue Box regulation during the transition period.

It will also help PROs as they collaborate to determine how they will collectively service all eligible sources and public spaces in transitioned municipalities.

#### ***Municipalities as a Producer***

Under the Blue Box regulation, the Region could meet the definition of a producer for the paper-type correspondence and information distributed to Peel Region residents, such as water bills, Regional services handouts, and other notices. If this is the case, the Region may also need to fulfill the requirements of a producer, including collection, management, and promotion and education requirements related to the paper products supplied to Peel Region residents.

The Blue Box regulation exempts producers that:

1. Generate less than \$2 million gross annual revenue from products and services in Ontario; and/or
2. Supply less than 9,000 kilograms per year of paper.

Based on current discussion and guidance, the Region does not meet either of these exemption criteria and would therefore be designated as a producer and be subject to fulfilling producer obligations.

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Of interest, these criteria would capture many municipalities across Ontario, along with provincial ministries, agencies and Crown corporations, colleges and universities, as well as other not-for-profit organizations.

Should it be determined that the Region is a producer and therefore required to meet collection, management, and promotion and education requirements set out in the Blue Box regulation, obtaining the services of a PRO to help meet producer requirements would need to be carefully considered, in addition to registering as a producer.

The Association of Municipalities of Ontario (AMO) is continuing discussions with the MOECP and RPRA on behalf of Ontario municipalities on the interpretation of this requirement and the potential exemption of municipalities and will provide further guidance as more information is obtained.

### **3. Development of the New Blue Box Program**

A full understanding of the potential opportunities and impacts to the Region's current recycling program will not be known until the rules are established. The rules must be submitted to RPRA by July 1, 2022 and will set out how PROs will manage collection services for all municipalities throughout Ontario. Until then, it will be difficult to understand how collection will be undertaken for Peel residents or which PRO to enter into discussions with about the provision of blue box collection services. Currently, three PROs are working to establish the rules: Circular Materials, Resource Recovery Alliance and Ryse Solutions Ontario Inc. At the writing of this report, the PROs have not reached agreement on the rules. Staff's understanding is that efforts are underway to facilitate a resolution by the end of March. Any significant developments between the writing of this report and the April 7 Committee date will be provided to Committee verbally at the April meeting.

### **4. Waste Collection Transition Strategy Update**

Since the report on final the Blue Box regulation was provided to Committee on September 16, 2021, staff has continued to consult with external stakeholders such as PROs and the AMO in order to better understand potential impacts the new Blue Box Program will have on the Region's integrated waste management system and associated policies and programs. Progress on key considerations and deliverables for the successful transition of the Blue Box Program for the Region is described below.

Staff met with all three PROs and gained an understanding of their vision for the new Blue Box Program but must await confirmation of the rules before proceeding with the step of formal negotiations. In discussions with the PROs, all three expressed a desire to enter into an agreement with the Region to provide collection services utilizing existing contracts and waste collection vendors, at least during the transition period and perhaps beyond if agreement can be reached on terms. However, as noted above, staff cannot begin negotiations with PROs until after the rules for common collection system are established (i.e., after July 1, 2022). Accordingly, it is forecasted that the rules will be set and Region will commence negotiations with the PROs in the latter half of 2022 to confirm the Region's role in the delivery of Blue Box recyclables collection.

The base terms of Region's current curbside waste collection contracts with Waste Connections and Emterra expire at the end of September 2024. Both collection contracts

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have two 12-month extension options, on the same terms and conditions, at the Region's discretion. These options could be exercised to provide blue box collection on behalf of the PROs until October 2025 or 2026 with price certainty.

The base term of Region's current multi-residential waste collection contract with Miller Waste expires at the end of September 2022 and has three 12-month extension options, on the same terms and conditions, at the Region's discretion. The first two 12-month extension options will be exercised by staff to bring the end of the contract in line with the Region's transition date of October 2024. The third 12-month extension option could be exercised to provide blue box collection on behalf of the PROs until October 2025. A fourth, one-year extension could be negotiated to align the multi-residential contract with the curbside contracts and allow the Region to provide a full suite of blue box collection services to the PROs until October 2026 with price certainty.

Should the PROs choose not to utilize the Region for blue box collection, the PROs would be responsible for securing their own service provider(s) for residential blue box collection (and for providing containers, promotion and education, and customer service). In this scenario, the Region would have two broad options for collection of the other waste streams (garbage, organics, yard waste, and bulky items):

1. Issue procurement documents in the first half of 2022 for new collection contracts to begin in October 2024. Since it is not yet known if the PROs will ultimately utilize the Region for blue box collection services, in either the short or long term, a procurement issued at this time would need to include a provisional item for blue box collection or early terminations, both of which are expected to result in increased prices.
2. Exercise the available extension options with Emterra, Waste Connections and Miller Waste until October 2025 or 2026 and amend the contracts to remove blue box collection from eligible sources, which would allow the Region to delay the procurement process for up to two years. This approach will result in price adjustments, however annual total contractual costs are expected to decrease. This approach has the benefit of knowing with certainty if the PROs will utilize the Region for blue box collection in both the short and long term before issuing the procurement documents, which is expected to lead to better prices.

Staff is recommending the second approach and is seeking authority to amend the Region's three waste collection contracts including price adjustments to reflect the removal of recyclables collection services and to amend the Region's multi-residential collection contract to add an additional one year period to bring its end date in line with the end dates of the curbside collection contracts. This would allow for the issuance of procurement documents in 2023 or 2024, with new collection contracts beginning October 2025 or October 2026.

The extension of the Emterra, Waste Connection and Miller Contracts would provide the time necessary for the PROs to organize themselves and for negotiations between the Region and the PROs to occur. This approach will facilitate a seamless transition from the Region to a producer-controlled recycling program and result in an informed procurement document, which should obtain best value for money.

In addition to the collection of Blue Box recyclables from eligible sources, producers are also obligated to collect from depots. During the initial transition period (July 1, 2023 – December

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31, 2025), PROs are required to operate or service at least as many depot collection sites for Blue Box recyclables as there are currently in Peel Region. Based on discussions with the PROs, it is anticipated that they will seek to utilize the Region's six community recycling centres (CRCs) to fulfil this obligation. Negotiations with the PROs for the use of the Region's CRC are also anticipated to occur in the latter half of 2022.

It is important to note that PROs are operating under a severely constricted timeline to have services in place in time for the transition. Accordingly, any agreement(s) negotiated between the Region and PROs may require expedited execution to ensure the Region's and Peel residents' best interests are protected. To ensure a successful and smooth transition to the new program, staff is recommending that delegated authority be given to the Chief Financial Officer and Commissioner of Corporate Services to execute any such agreements in case there is not sufficient time to report to Council for approval. Information will be brought forward to Regional Council expeditiously as more details are known and when agreements are reached, if applicable.

### **5. Collection of Blue Box Recyclables from Ineligible Sources**

The Blue Box regulation lists a number of eligible sources, from which producers must collect Blue Box recyclables including single-family homes, multi-residential buildings, long-term care and retirement homes, schools, and some public spaces (parks, playgrounds, transit stations and sidewalks).

Sources that are not eligible for collection by producers after transition and that are currently serviced under the Region's recycling program include but are not limited to fire/police/paramedic stations and other municipal buildings, community centres and arenas, places of worship and small businesses. The exact cost to continue to service (collection and processing) these locations will not be known until negotiations with the Region's waste collection contractors on ineligible sources take place.

### **6. Material Recovery Facility Transition Strategy Update**

In accordance with the procurement approach outlined by staff in the report to the Waste Management Strategic Advisory Committee on September 16, 2021, staff is in the process of finalizing the procurement documents that would see the sale of the Region's Material Recovery Facility (MRF) sorting equipment and the lease of the MRF portion of the Peel Integrated Waste Management Facility site and building, and require the successful Vendor to process and market the Region's Blue Box recyclables until the October 1, 2024 transition date. Procurement documents are expected to be issued by the end of Q2 2022 for competitive, public response. Staff will award the contract in accordance with the Procurement By-law and will report back to Council on the details of the award after the execution of contracts, which is anticipated prior to year-end 2022.

### **7. Summary of Procurement Approach**

#### **a. Waste Collection**

As indicated above, the significant time pressure that PROs will be under to finalize agreements may result in the need for expedited execution. Delegated authority is therefore recommended in this report.

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Once the rules for the new producer led Blue Box Program are established, staff will begin negotiations with PROs for the provision of blue box collection on their behalf from October 2024 until October 2026 and, subject to receiving delegated authority as recommended in this report, execute such agreements.

Staff will also negotiate and, subject to receiving delegated authority as recommended in this report, execute amendments to all three of the Region's existing waste collection contracts to reflect the possible removal of recyclables collection from eligible sources (in case the Region is unable to secure agreements with PROs to collect blue box material on their behalf), including price adjustments to reflect the removal of recyclables collection services and an amendment to the multi-residential collection contract to add an additional one-year period to bring its end date to October 2026 to match the end date with the curbside collection contracts.

### **b. Material Recovery Facility**

Staff will finalize and issue procurement documents by the end of Q2 2022 that would see the Region recover the value of Peel's MRF. Staff will award the contract in accordance with the Procurement By-law and will report back to the Waste Management Strategic Advisory Committee once contracts have been executed, anticipated prior to year-end 2022.

## **NEXT STEPS**

Staff will continue to monitor the development and implementation of the new Blue Box Program and identify learnings from those municipalities scheduled to transition in 2023 (e.g., City of Toronto, City of Ottawa and City of London).

Once the rules for the new producer led Blue Box Program are established, staff will negotiate and finalize agreements with PROs to provide blue box collection services on their behalf as described in this report.

Staff will negotiate and finalize amendments the Region's three waste collection contracts to reflect the possible removal of recyclables collection services and an amendment to the multi-residential collection contract to add an additional one-year period to bring its end date in line with the end date of the curbside collection contracts as described in this report.

Staff will finalize and release procurement documents to obtain the best value for the Region's MRF assets as described in this report.

## **RISK CONSIDERATIONS**

If the Region chooses to end its current waste collection contracts on their current end date of September 30, 2024, without exercising option years or otherwise extending them, the procurement documents for the new collection contracts, which would commence on October 1, 2024 would need to be issued this spring to give the successful vendor(s) sufficient time to procure collection vehicles. Carrying out a procurement process this spring presents risks since producers and PROs will not have finalized the rules for the new producer led Blue Box Program or finalized negotiations with the Region with respect to the provision of blue box

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collection services in time to inform the development of the Region's new post-transition collection contracts. This would mean the procurement documents would need to include assumptions and provisional items that would increase cost and risk. To mitigate this risk, staff is recommending that the Region take advantage of available or negotiated contract extensions with existing collection service providers and delay the procurement process for new collection contracts for up to two years. This will allow for a seamless transition and provide the time necessary for the PROs to inform the Region's new post-transition collection contracts.

Staff will endeavour to negotiate agreements with PROs to provide collection of Blue Box recyclables on their behalf but there is a risk that a reasonable agreement may not be reached. The above noted extensions and delay to the procurement process for the Region's next collection contracts will mitigate this risk and avert any impacts on the Region's collection program of residential waste and green bin organics.

### **FINANCIAL IMPLICATIONS**

There are no direct or immediate financial implications associated with this report. Any financial implications arising from the transition to full producer responsibility will be communicated to Regional Council throughout the transition process and will be presented for approval as part of the annual budget process in the appropriate year.

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