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Attention: Trevor Craig - trevor.craig@ontario.ca
Ministry of Environment, Conservation and Parks

February 20, 2019

Re: Proposed Producer Responsibility Framework for Waste Electronic and Electrical Equipment and Batteries - January 2019

The Toronto Environmental Alliance, Canadian Environmental Law Association, Citizens' Network on Waste Management and Health and Environment Justice Support groups are pleased to see that the Ontario Government is moving forward quickly on electronic waste and batteries under the Resource Recovery and Circular Economy Act (RRCEA). Please find below comments for consideration in developing the framework for new regulations to safely manage Waste Electronics and Electrical Equipment (WEEE) and batteries at the end of life and promote a circular economy in Ontario.

We support the following principles for this, and all regulations under the RRCEA:

- The top priority of these programs needs to be to protect human and environmental health.
- We strongly support a move to full producer responsibility with high performance targets and outcomes supported by strict enforcement.
- Disposal in landfill or by thermal treatment, even with energy recovery, should be considered only disposal, and not be considered towards a producer's target.
- Registration, auditing and reporting to validate the final destination of materials, including through downstream processors, is essential.
- Transparency and public access to reports and results is essential for accountability and public confidence.
- Ensure the result is accessible for all Ontarians, understandable, fair and equitable.
- Create a safe circular economy that provides economic, social and environmental benefits to Ontario.
- Consider the key role this Provincial regulation plays in achieving municipal and national strategies to achieve zero waste and zero plastic waste.

The following principles are of particular importance to regulation of WEEE and batteries:

- The regulation should not consider just the end of life, but design for a circular economy. The regulation should incent design that leads to improved recycling, increased durability, and reduced resource consumption. The regulation must also include avoiding substances that cause toxicity in the recycling process, or perpetuate the presence of toxic substances in new materials.
- The regulations should be flexible and responsive to allow for program changes in response to chemicals of concern. New substances are continually developed that may be found to have health impacts in the future, and new research increases understanding of existing toxicants and the health or environmental impacts.

Two issues of particular importance with WEEE and batteries is 1) the perpetuation of toxic substances via the recycling process, and 2) the export of hazardous substances

Perpetuation of toxic substances in a circular system.

- One of the most glaring gaps in the processing of e-waste and materials with hazardous substances is the fact that these substances are being perpetuated in the supply chain by recycling. **While an increase in diversion of material is important, more attention should be paid to assessing the type and quantity of toxic substances associated with the recycling process.**
- This issue has not been sufficiently acknowledged or addressed in past regulations, nor has it been discussed sufficiently in the consultation process. The use of toxic substances in production needs to be connected to the full life cycle, including the impact on workers, users, waste processors and those that manufacture new products with the recycled materials.
- For example a new study^{1,2} conducted by IPEN in 2017 reveals elevated concentrations of PBDEs (polybrominated diphenyl ethers) such as octabromodiphenyl ether (OctaBDE), decabromodiphenyl ether (DecaBDE); and SCCPs (short chain chlorinated paraffins) in toys made out of recycled materials and purchased in different stores in Canada and other 25 countries globally. Levels of some chemicals were more than five times higher than recommended international limits³. They are listed under the Stockholm Convention on Persistent Organic Pollutants. However, their presence in new products, although they are banned or restricted, opens up the discussion of a problem regarding inadequate recycling regulations in a circular economy.
- It must be noted that toxic substances are used in products primarily due to product standards that are designed and negotiated outside of the regulatory framework, not by government. For example, flammability standards for electronic products. To truly reduce the toxic substances in electronic products, product standards should be developed by government and these should be referred to in applicable regulations.
- **As part of the development of this regulation the Province should develop and publicly disseminate a (or refer to an existing) list of chemicals of concern to human health and the environment used in electronics production and products.** This list should be publicly available and serve as the basis for labelling requirements, and it should be reviewed periodically.

Some regulatory tools to address toxic substances in the recycling process can include:

- Set regulations to immediately discourage the use of hazardous substances in new products.
- Mandatory reporting and labelling of hazardous substances contained in a product will provide vital information for consumers, handlers, processors and regulators.
- Materials containing hazardous substances should not be processed with materials that do not contain hazardous substances.
- Recycling targets for materials and products with hazardous substances should be significantly higher than materials with no or fewer hazardous substances.

¹ <http://ipen.org/documents/pops-recycling-contaminates-childrens-toys-toxic-flame-retardants>

² http://ipen.org/sites/default/files/documents/ipen-sccps-report-v1_5-en.pdf

³ http://ipen.org/sites/default/files/documents/Toxic_toy_or_toxic_waste.pdf

WEEE exports and international agreements

- We are concerned about ongoing issues with the improper processing and international transport of WEEE. Exporting materials containing hazardous substances is not only an issue of environmental justice but it undermines the development of a safe circular economy in Ontario.
- About 2500 permits are issued every year for waste export from Canada. Currently no mechanism is in place to validate the final destination of waste export. In 2014, there was international attention on container-loads of mixed waste from Canada that ended up in the Philippines. These unwelcome containers included electronic waste and other household waste from an Ontario-based company.
- This regulation should be consistent with national and international commitments, agreements and obligations on managing and phasing out hazardous substance, as well as the export and transport of electronic waste and hazardous substances.
- The Province should provide clarification on the classification of which types of electronics are hazardous with reference to the [Basel Convention of Transboundary Movement of Hazardous Wastes and their Disposal](#), and whether these devices are also qualified as hazardous under the [Canadian Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations](#).
- There is also a need to support Ontario producers and processors in understanding their obligations and build capacity to better understand which e-waste is covered by the federal regulations and whether prior informed consent from the receiving jurisdiction is required. This regulation should include mechanisms to track and validate companies to ensure the safe and proper handling of waste.

Below are comments in response to specific questions and areas of comment raised at the MECP consultation and in the draft consultation document for discussion *Proposed Producer Responsibility Framework for Waste Electronic and Electrical Equipment and Batteries* - January 2019.

Complementary Measures and Tools (slide 6):

We support the use of complementary measures and tools to achieve a circular economy and prevent harm to the environment and human health.

- **A policy statement on this issue should be passed.** Considering the far-reaching and serious consequences of improperly managing these hazardous materials, a policy-statement can demonstrate that the Province is serious about this issue.
- **The use of a range of penalties to enforce compliance is essential.** This should include scaling up of penalties as appropriate to achieve the desired outcomes, including administrative penalties, and continue up to the use of sales bans..
- **Disposal bans are a valuable tool.** Improper disposal of these materials is known to be toxic and harmful, as such, the improper disposal should be banned. Bans send a clear signal to all stakeholders and give another avenue to penalize those not taking precautions.

- **All products should be labelled to indicate the hazardous substances based on a list of substances found in electronic devices and batteries.**
- Labelling plays a crucial role in public awareness of the need for proper disposal and safe handling, as there is significant public confusion around safe disposal.
- Additionally, labelling of hazardous substances is essential for a safe circular economy, as it provides vital information to those handling the products for reuse, repair and recycling.
- **Government procurement policies at the Provincial and Municipal levels are a vital tool to grow the circular economy in Ontario and to support less toxic products and safe handling of WEEE and batteries.**
- Public funds, through the procurement process, ought to be directed to those producers and processors that fully comply with all waste regulations and those that build a circular economy, for example procurement policies can require recycled content, end-of-life processing to the highest standards, warranties and repair plans to extend the useful life of products etc.

Designating Materials (slides 7 & 8):

- **All materials that contain hazardous substances that require special handling should be designated. This is regardless of current designation, current product content, and current collection effectiveness.**
- We support designating additional materials, including WEEE accessories and related products, electronic appliances and products, toys, large appliances and medical equipment as well as all batteries.
- The definitions of materials must be broad enough to encompass new materials, as innovations in electronics mean that new products are entering the market constantly, and existing products are changing (e.g. computer parts are in more appliances and devices).
- **Designation should not be determined by past or current management trends, but on the risk to the environment and the desired outcomes.** We disagree with the suggestion that some products and materials do not need designation as they have historically been managed without designation, for example large appliances, or medical equipment.
 - New regulations adopted now will affect collection and processing for the next 5 to 10 years, and significant changes in the market and in products will occur in that time.
 - Current collection and processing markets will be affected by a number of outside factors, but may also change dramatically in the short term in response to this WEEE and battery regulation under discussion.
 - Product innovation and changes mean that future processing will differ from current processing. For example, large appliances are more likely to have plastic instead of metal parts (reducing scrap value), and include more computer parts.
 - Medical WEEE and batteries should be handled safely. The fact that there are a small number of processors and potential consumers handling this material is not a reason to avoid designation. In fact, it should make designation and reporting simpler.

Responsible Persons (slides 9 & 10)

- To the maximum extent possible, the regulations should be wide-ranging, comprehensive and sufficiently prescriptive to address products and packaging that are produced, used, sold, distributed or imported in Ontario, regardless of their place of origin.
- As more sales occur online, we agree that online retailers should be considered responsible persons.

Collection (slides 11 & 12)

- Ensuring that all residents across Ontario, no matter where they live, have easy access to collection points is vital. We support setting access requirements to cover all regions of Ontario. This can include return-to-retailer programs, mail back programs and other approaches.
- Collection targets may be necessary to ensure that targets are met for some complex products that are lightweight, particularly harmful or otherwise difficult to recover as demonstrated by current collection practices and with monitoring. For example, small WEEE products, small lithium batteries and wearable smart devices.

Management (slides 13 & 14)

- **Considering the hazardous substances in the materials, responsible parties should be required to manage 100% of their materials.** Producer should have responsibility for both diverted and disposed materials, otherwise this substantial percentage will be the responsibility of the public and government.
- **Management standards need to be clear and favour the highest and best use of recovered materials to support a circular economy.** Unfortunately, currently far too much electronic waste is simply shredded, meaning the loss of valuable materials, rare metals and substances, and the spread of hazardous substances. This results in 'downcycling' to a lower value material.
- **Energy from Waste and other forms of thermal treatment** should not be considered recycling or count towards meeting a diversion target.
- We support the designation of a broad range of materials, however **management targets must be material specific** enough to ensure that all products are collected, and to have a real long term impact.
 - For example, management targets applying to a broad range of materials may mean that small personal devices are ignored while large heavy computer equipment is collected to meet a broad target set by weight.
 - Additionally, material categories and targets that are too broad will have less influence on product design and improvements.

Reporting, audits and registration (slides 18-20)

The minimal tracking under the current regulation has resulted in exports of toxic and hazardous substances to jurisdictions without the required safeguards, and the loss of valuable materials from the Ontario economy.

Downstream tracking, registration, reporting and auditing

- Management targets for materials must follow materials downstream through secondary processors to final destination. This is the only way to measure and confirm proper disposal or recycling has occurred to meet an obligation target.
- **We support the use of a registration system for** entities that handle and process designated waste to follow the waste and track final destination.
- **Detailed, regular reporting and record keeping is essential.** Public access to information about hazardous substances in products and the performance of responsible stewards is essential to ensure transparency, accountability and public faith in the process.
- **Auditing by certified third parties** is essential to combat the illegal export and improper handling of WEEE.

Reduction (slides 15 & 16)

- We agree that a key goal of this regulation should be to develop a truly circular economy in Ontario. As such, producers should be required to create durable products that last longer, can be repaired easily, can be dismantled easily for recycling, contain fewer hazardous substances and use fewer resources.
- We support the complementary measures suggested, and in particular:
 - **Passing Right to Repair regulations** that allow consumers and repair industry access to information and tools to allow repair. Currently, many companies do not provide repair information, access to parts or even the tools to conduct basic repairs. This works directly against a circular economy.
 - **Increased product warranties** will provide direct incentives for producers to improve the quality and durability of what they sell. Other jurisdictions, such as the European Union, require 2 year warranties. Product warranties should be higher for more complex and expensive products that have a longer expected lifetime (e.g. large appliances)
 - **Requirements for a minimum amount of recycled content** will reduce material use but also play a vital role in stimulating a circular economy and is connected with downstream final destination reporting by processors, as their reliable reporting will be required by producers.

Promotion & Education (slide 17)

- Producers and obligated parties should be involved and required to undertake promotion and public education. This can include broad public advertising campaigns and support for municipal education efforts.
- **This regulation should include mandatory labelling on products to indicate hazardous substances and the associated safe management and disposal methods.** This information should be provided in a number of ways, including at point of sale, directly on products, on packaging, instruction and warranty materials provided at sale, on product information sites and a central database.
- The regulation should include provisions to prevent obligated parties from 'greenwashing' and making false environmental claims about their products, the toxic substances contained in their products, and the end of life management that mislead consumers.

For clarification on the above comments, please contact Emily Alfred at 416 596 0660 or emily@torontoenvironment.org. We welcome the opportunity to discuss these comments further to contribute to effective regulations to safely manage Waste Electronics and Electrical Equipment (WEEE) and batteries at the end of life and promote a circular economy in Ontario.

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