



CLIFF #382796
eApproval #11875

Tamara Burns
Executive Director Western Canada
Recycle BC
171 Esplanade West, suite 230
North Vancouver, BC V7M 3J9

Dear Tamara Burns,

Thank you for your August 4th, 2022, and revised October 20th, 2022 submissions regarding the Extended Producer Responsibility (EPR) plan amendment for New Plastics Targets in fulfillment of the requirements of your approved EPR plan (the plan). Thank you for your October 5th, 2021, and revised August 4th, 2022 submissions regarding the Single-Use Plastics and Packaging-Like Products (SUP/PLP) amendment in fulfillment of the requirements of Order in Council #370, Appendix 2, which amends the Recycling Regulation (the regulation), made under the *Environmental Management Act*, to include SUP/PLP as of January 1st, 2023.

Under the Regulation, the director can both amend an approved EPR plan on their own initiative and approve amendments to an approved plan that are proposed by the producer.

I have completed my review of the proposed amendments to your Packaging and Paper Product (PPP) EPR plan and identified that, while elements of the proposed amendments meet the criteria set out in s5(1) of the regulation and my previous direction, certain components remain outstanding.

Prior to the issuance of this decision letter, Recycle BC was provided with feedback on the New Plastics Targets amendment as well as extensive feedback on the SUP/PLP amendment, and has had the opportunity to propose further amendments or provide additional information for consideration.

Recycle BC addressed several of the identified deficiencies either through revising the proposed amendment itself or through providing supplementary information. Matters that I do not consider to be effectively addressed are set out below. Please be advised that in addition to the amendments proposed by Recycle BC, I am making the amendments identified below, pursuant to section 5(5) of the regulation.

1. New Plastics Targets

Recycle BC has been a leader in the recovery and recycling of residential plastics, and I commend the efforts and progress the program has made to date on this front. This is a trend that the Ministry would like to see continue.

The proposed amendment has demonstrated how the plan meets subsection 5(1)(a)(iii) for the rigid plastic target and provides for a performance target that is achievable in a reasonable timeframe. Therefore, I approve the amendment target of 73% for rigid plastics, to be achieved by 2025.

However, I note that the proposed flexible plastics target has already been surpassed, with Recycle BC reporting a 28% recovery rate in 2021. Currently, 72% of producer's flexible plastics are not being collected for recycling and are instead either being landfilled or filtering into the environment. I do not consider that the proposed flexible plastics target meets producers' obligation to manage their products.

As the overall plastic target is calculated as a combination of the rigid and flexible plastic subcategories, an increase in the flexible plastic target will automatically increase the plastic target. Given this link between the two targets, neither are approved.

As Recycle BC is currently consulting on its 2023 EPR plan, I do not require Recycle BC to resubmit improved targets for flexible plastics and overall plastics. I do however expect to see substantially higher plastic and flexible plastic recovery rates proposed in the 2023 EPR plan to ensure that continuous progress is being made.

2. Single-Use Products and Packaging-Like Products

The proposed amendment has demonstrated how the plan fulfills the requirements of Order in Council #370, Appendix 2, which amends the regulation to include SUP/PLP; however, I am amending section 2 of the plan (The Extended Producer Responsibility Agency), the footnote on page six of the plan, section 3.1 of the plan (Packaging), and Appendix D of the plan to align the definition of "producer" to that established under the regulation, which prevails. I understand that these amendments were discussed at length between the ministry's and Recycle BC's legal representation, agreed by both parties, and were expected by the ministry to be included in Recycle BC's proposed amendment.

Specifically:

- i. The final paragraph of Section 2 (The Extended Producer Responsibility (EPR) Agency) of the plan is amended to read:

“For the purposes of the Program Plan, the producer for a specific unit of packaging or paper product is generally the supplier of service packaging or the first of the following: brand owner, the franchisor or the first seller (also known as the first importer).⁹”

- ii. The footnote nine on page six of the plan, referring to Appendix D, is amended to state:

“⁹ B.C.’s Recycling Regulation defines “producer”. For Recycle BC’s working definition, see Appendix D.”

- iii. I approve section 3.1 (packaging) and further amend it to better reflect SUP/PLP descriptions. I amend the plan to read:

(f) effective January 1, 2023, packaging and paper products include:

- (i) “Packaging-like Products” as described in section 2 of Schedule 5 of the Recycling Regulation (see B.C. Reg 162/2020); and*
- (ii) “Single-use Products” as described in section 4 of Schedule 5 of the BC Recycling Regulation (see B.C. Reg 162/2020).*

- iv. In Appendix D of the plan, under the heading ‘Designation of Producers’, I amend sub-section ‘Producers for Packaging’, to read:

“Producers for Packaging

For Packaging the Producer is the Person Resident in British Columbia who:

- a) manufactures the product and uses in a commercial enterprise, sells, offers for sale or distributes the product in British Columbia under the manufacturer's own brand,
- b) if subparagraph (a) does not apply, a person who is not the manufacturer of the product but is the owner or licensee of a trademark under which a product is used in a commercial enterprise, sold, offered for sale or distributed in British Columbia, whether or not the trademark is registered, or

- c) if subparagraphs (a) and (b) do not apply, a person who imports the product into British Columbia for use in a commercial enterprise, sale, offer for sale or distribution in British Columbia”

Thank you for your efforts on this plan amendment and I appreciate the industry’s continued commitment to achieving compliance in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laurel Nash', written in a cursive style.

Laurel Nash
Assistant Deputy Minister
Environmental Protection Division

cc: Sonya Sundberg, Executive Director, Environmental Standards Branch
Bob McDonald, Director, Extended Producer Responsibility Section



RECYCLEBC™

Single-Use and Packaging-Like Products
Packaging and Paper Product Extended Producer Responsibility Plan
Amendment

October 5, 2021, Revised and Resubmitted August 4, 2022

SECTION 1: Introduction

The Ministry of Environment and Climate Change Strategy (Ministry) enacted amendments to the *Recycling Regulation* in June 2020, through *Order in Council #370*, including changes to the materials to be included in the Recycle BC program. Beginning January 1, 2023, producers of Single-Use Products and Packaging-Like Products (SUP/PLP) will be obligated for these materials.

As a result, producers are required to track 2021 sales data of SUP/PLP to prepare for the 2022 reporting cycle. Reports submitted in 2022 will include 2021 SUP/PLP sales data to inform 2023 fee rates and invoices. Recycle BC will begin collection of designated SUP/PLP in 2023. Current definitions and examples of SUP/PLP are included in an [Explanatory Note](#) to the Regulation.

SECTION 2: Recycle BC Proposal

Recycle BC's amendment seeks to address the inclusion of the newly obligated materials (SUP/PLP) in its Program Plan, and to shift the responsibility for Service Packaging as currently included in Recycle BC's Program Plan from the "filler" who supplies such packaging to consumers at point of sale, to either the brand owner, first importer or franchisor of the packaging that is ultimately supplied to consumers in British Columbia.

By introducing an obligation for SUP/PLP and listing the types of materials covered by the amendments, the Ministry's amendments will supersede Recycle BC's Program Plan definition for Service Packaging. Service packaging, as currently defined in Recycle BC's Program Plan, is comprised of both Single-Use Products and Packaging-Like Products.

Packaging-like products as defined by the Ministry include, but are not limited to, items such as:

- Food bags and films purchased as a product, food storage, sandwich and freezer bags, paper lunch bags, aluminum foil wrap, plastic shrink film wrap, paper wrap (e.g. wax paper, parchment paper);
- Disposable food storage containers purchased as a product, (i.e. containers intended for short term use), non-durable plastic, paper or other food containers (e.g. plastic lunch containers), aluminum foil pie plates and baking trays, etc.; and
- Household items purchased as a product, corrugated cardboard moving boxes, banking boxes and cardboard boxes, recycling bags (i.e. bags used to collect recyclables), LDPE/HDPE film (e.g. used as drop sheets for painting, covering items like furniture or equipment), bubble wrap, plastic plant pots and saucers.

Single-use products as defined by the Ministry include, but are not limited to, items such as:

- Straws, stir sticks, utensils, plates, bowls and cups; and
- Party supplies and paper party décor (e.g. paper streamers, pinwheels and piñatas), but does not include items such as costume wear (e.g. eye glasses), balloons, ribbons, that prove especially problematic in a recycling system.

Starting with the 2022 reporting year (2021 data) and consistent with the amendment to the Regulation, the obligated party will be required to report SUP/PLP and Service Packaging under Recycle BC's program plan. This data will inform the 2023 fees and generate the incremental revenue required to fund Recycle BC's management of these materials starting on January 1, 2023.

Service Packaging is packaging which may or may not bear a brand that is supplied at the point of sale by retail, food-service or other service providers to facilitate the delivery of goods. Service Packaging includes all bags, boxes, and other items for the containment of goods at point of sale.

As noted above, for Service Packaging, this responsibility will shift from the "filler" who supplies such packaging to consumers at point of sale, to either the brand owner, first importer or franchisor of the packaging that is ultimately supplied to consumers in British Columbia.

SECTION 3: Amendment Language

Note: amendments are housed in the posted Program Plan Amendments document on Recycle BC's website.

The obligations of "small producers" and "franchise systems" will continue to be determined in accordance with the Recycling Regulation and the Government's policy guidance, as may be updated from time to time.¹

Recycle BC proposes amending Section 3.1 (Packaging) to include:

(f) effective January 1, 2023, packaging and paper products include:

- (i) "Designated Packaging-like Products" as defined by the 2020 Amendments to the BC Recycling Regulation; and*
- (ii) "Designated Single-use Products" as defined by the 2020 Amendments to the BC Recycling Regulation [Explanatory Note](#).*

SECTION 4: Next Steps

Once the Ministry has approved the proposed amendment as outlined (Section 3: Amendment Language above), Recycle BC will post this amendment to its Program Plan Amendments document on the Recycle BC website.

¹ See <https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/paper-package/sm-producer-definition-policy-interp.pdf>