



Retail Council of Canada

1255 Bay Street, Suite 800, Toronto, Ontario M5R 2A9

Telephone (416) 922-6678

Fax (416) 922-8011

www.retailcouncil.org

January 24, 2010

Mario Bérubé, Director

Direction des matières résiduelles et des lieux contaminés

Ministère du Développement durable, de l'Environnement et des Parcs

Édifice Marie-Guyart

675, boulevard René-Lévesque Est, 9^e étage, boîte 71

Québec (Québec) G1R 5V7

Via E-Mail: mario.berube3@mddep.gouv.qc.ca

RE: Retail Council of Canada Comments on Québec's Draft Regulation respecting the recovery and reclamation of products by enterprises

Dear M. Bérubé:

On behalf of Retail Council of Canada (RCC) and its members operating in Québec, we are writing to provide our comments on Québec's draft regulation respecting the recovery and reclamation of some products, as published in the Gazette Officielle du Québec (*November 25, 2009, Vol. 141, No. 47*).

RCC has been the Voice of Retail in Canada since 1963. We speak for an industry that touches the daily lives of Canadians in every corner of the country – by providing jobs, career opportunities, and by investing in the communities we serve. RCC is a not-for-profit, industry-funded association representing more than 40,000 store fronts of all retail formats across Canada, including department, specialty, discount, and independent stores, and online merchants.

The retail industry is one of the most competitive and vibrant sectors of Québec's economy, creating over \$95 billion in 2008, an increase of 5 per cent over the previous year. With over 52,000 establishments in Québec, the retail sector reaches every corner of the province. Employment in the retail sector represents 12 per cent of the province's total employment, directly employing over 502,000 citizens. The contributions made by this economic sector are felt in every corner of the province and affect the lives of all residents.

Retailers, as the sellers of designated products and the touch point for both consumers and manufacturers, have a significant stake in the development of stewardship programs. Currently, RCC's members are active participants in over 40 such programs across the country and will be called upon to expand their role as new ones are developed. RCC and its members are committed to waste diversion as a whole. Our members are involved in virtually every aspect of responsible environmental stewardship, including, but not limited to:

- Complying with various provincial environmental/recycling regulations
- Assisting in the development/implementation of stewardship programs
- Reporting and remitting their obligations to stewardship agencies
- Developing and administering consumer education programs

This takes significant financial and human resources. Retailers spend millions of dollars each year on these activities and they continue to put additional resources into managing the growing number of environmental programs in Québec and across Canada.

The following represents the initial thoughts of retailers, which may be added to and/or refined as further discussion and consultation takes place.

Conseil canadien du commerce de détail

1255, rue Bay, bureau 800, Toronto (Ontario) M5R 2A9

Téléphone (416) 922-6678

Télécopieur (416) 922-8011

www.retailcouncil.org



Chapter I – PURPOSE

Section 1 of the Draft Regulation outlines the following purpose:

The purpose of this Regulation is to reduce the quantities of residual materials to be eliminated by giving enterprises responsibility for the recovery and reclamation of the products referred to in Chapter VI and marketed by them and by promoting the design of products more respectful of the environment.

As stated earlier, RCC supports waste diversion as a whole, and while we support efforts to reduce packaging, we strongly believe that the objective to promote the design of products (as underlined above) falls outside the scope of the Draft Regulation. RCC believes that for this Regulation to be effective it must be limited in scope to only recycling and waste diversion. Promoting the design of products, or Design for Environment (DfE), is best managed separately and most importantly, at a national level.

It must be recognized that retailers have limited influence on the design of packaging as it is the manufacturers who develop packaging for products. Manufacturers must be compelled to change the design of their products; which could be done through regulatory standards, incentives, responding to customer demand, and an internal desire to decrease the manufacturers' environmental footprint.

RCC believes that the stakeholders that are responsible for packaging decisions need to be provided with clear guidelines and definitions of what types of packaging are sustainable and compatible with recycling facilities. Clear, consistent and national guidelines are needed to assist them in their packaging choices to avoid problematic wastes. As packaging is seldom designed for a provincial market – it is typically designed for a national and global distribution systems – this guidance should come from a national body such as the Canadian Council of Ministers of the Environment (CCME), which recently approved, in principle, *A Canada-wide Strategy for Sustainable Packaging*, which is a strategy to reduce packaging waste in Canada and promote more sustainable packaging choices.

Furthermore, it is worth noting that studies have shown that DfE and Extended Producer Responsibility are unrelated and gives further credence to why the DfE element of the Draft Regulation should be removed.

A February 2006 study from the OECD entitled *EPR Policies and Product Design: Economic Theory and Selected Case Studies*, discusses the DfE impacts of EPR policies and investigates the extent to which EPR policies can be expected to contribute to DfE. The study states that:

Much that is written on the topic seems to take it on faith that any form of producer responsibility will provide DfE incentives, but there is very little careful conceptual thinking on how such incentives work through the system and sparse documentation of real-world changes that have been made in response to policies.

In assessing whether design changes have taken place in response to the EPR policies, the study first discuss the incentives provided by the policy and whether, and by what means, changes may take place. It then describes anecdotal evidence of such changes – i.e., reported changes that particular producers have made and also try to look broadly across some industry-wide measures.

Unfortunately, this is a somewhat circumspect exercise. In terms of industry-wide changes, one does not know the counter-factual – i.e., what would have happened in the absence of the policy. For the anecdotes reported about changes to particular products, it is hard to know whether firms made the changes in response to the policies or for cost-savings or other reasons.

Again, RCC recommends the Québec's Draft Regulation be limited to only recycling and waste diversion for it to be effective legislation. Package design/reduction is outside the scope and must be removed from the

purpose. It should be dealt with outside of this regulation and most appropriately at a national-level, not a provincial-level.

Chapter II – RECOVERY AND RECLAMATION PROGRAM

Definition Obligated Enterprise/Steward

Section 2, chapter 3, defines an obligated enterprise (or “steward”) as:

Despite the first and second paragraphs, that obligation falls on the enterprise that acts as the first supplier of that product in Québec, whether or not the enterprise is the importer, in the following cases:

(1) the enterprise referred to in the first or second paragraph has no domicile or establishment in Québec;

(2) the enterprise that markets the product acquires the product outside Québec, regardless of whether the enterprise owning or using the brand, name or distinguishing guise has a domicile or establishment in Québec; or

(3) a product does not bear any brand, name or distinguishing guise.

RCC believes that the second sub-heading (underlined above) should be removed from the definition of what an obligated enterprise is as this clause would shift the responsibility away from the enterprise closest to making the designated product (ie. the manufacturer) to the retailer or distributor. In short, this clause defeats the purpose of Extended Producer Responsibility.

In order to be consistent with other provinces, RCC recommends that the definition of an obligated enterprise should be the Brand Owner or First Importer. However, the Regulation should be flexible enough to permit a “voluntary” steward provision which would allow for any person who elects to become a steward respecting designated materials that would otherwise be the responsibility of another steward, shall be designated a steward to allow them to report and remit on behalf of other stewards; and the steward otherwise responsible is exempt from the requirement to pay fees. This will allow non-resident brand owners to report and assume the stewardship obligation for the designated products they sell into Québec but may not be directly responsible for under the requirements of the regulation.

Exemption

Section 4 outlines the following exemption:

An enterprise referred to in section 2, 3 or 8 is exempt from the requirements of this Regulation, subject to the requirement in section 12, if the enterprise, to ensure the recovery and reclamation of a product referred to in this Regulation and marketed by it, is a member of an organization.

RCC requests clarification on how an enterprise is exempted from the Regulation’s requirements as it is unclear.

Actual costs

Section 5(10) states that the program must determine:

The actual costs related to the recovery and reclamation of each product subcategory and, not later than 3 years after the implementation of a program, adjust those costs for each product on the basis of characteristics such as toxicity, recyclability, recycled material content, lifespan or impact on the environment and on the reclamation process.

RCC believes that this entire clause is unduly prescriptive and should be removed from the Draft Regulation.

In other provincial waste diversion programs, it is left to the discretion of affected industry stewards to determine the funding rationale for each program (which requires Ministerial approval in each province), as long as a reasonable connection exists between the costs and services provided (nexus principle).

The pre-identified criteria in which fees are expected to be adjusted are too prescriptive, making the Draft Regulation unworkable and defeating the purpose of the desired outcome, which is to divert waste from landfill. In some cases, the criteria impacts stakeholders that would reside outside of this Regulation, for example for toxicity, it is the manufacturers of product who would be required to disclose the quantities and types of toxic materials in their products, if it is present, who are not necessarily the enterprises obligated under this Regulation.

Management of Fees / Visible Fees

Section 7 states that:

The cost related to the implementation of a recovery and reclamation program for a type of product may be attributed only to that type of product and must be incorporated in the price charged for the product.

RCC wholeheartedly does not support this stipulation to internalize costs and recommends that it be removed from the Draft Regulation.

RCC and our members believe that it is each individual steward's decision on how they wish to manage, and ultimately display, the costs related to the operation of such recovery and reclamation programs. It should not be mandated that these costs be "incorporated in the price charged for the product," thereby hiding the costs.

Quebec's Regulation must be silent on how fees are managed as this is a business decision, not a government decision. The majority of existing provincial legislation/regulation related to recycling and waste diversion programs across Canada are silent on the management of fees; showing that provincial governments recognize that this is outside the scope of authority.

Retailers strongly believe that the transparency of program costs provides an important opportunity to educate consumers about a stewardship program, and hence encourage their participation. If a stewardship fee on a product or package reflects the true cost of managing that end-of-life product or packaging, the consumer has the ability to make sustainable purchasing decisions.

Numerous studies/surveys have been conducted on the benefits of visible fees, including but not limited to the following:

- In January 2009, Harris/Decima conducted a study on Québécois' attitudes regarding eco-fees associated with recycling electronic products. The results show that 75% of respondents believe that retailers should

display the eco-fee separately from the price of the product. Further, most respondents (86%) would like to see the eco-fee indicated on the sales receipt (ie. as a separate line item).

- In December 2008, the European Commission published proposals for amending the WEEE Directive, in particular, as it relates to the visibility of fees. It is being proposed that producers would be allowed to show consumers at the time of purchase, the cost of collection, treatment and disposal of products in an environmentally sound manner, without a time limitation and for all electronic and electrical equipment, if approved. (Source: Proposal for a revised directive on waste electrical and electronic equipment. December 2008. Online. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0810:FIN:EN:PDF>).
- In June 2008, the Alberta Recycling Management Authority (ARMA, who operates Alberta's recycling programs) issued a news release entitled "A Major Milestone is Achieved by Canada's Oldest Electronics Recycling Program" with a quote from Doug Wright, ARMA's CEO, that says: "In surveys commissioned by Alberta Recycling, more than 90% of Albertans support the program which is funded by an environmental fee being charged at the point of purchase of new TV's, computers and printers." Past ARMA surveys confirm this support for visible fees: In ARMA's 2005-2006 Annual Report, results from a 2005 survey that showed that over 60% of Albertans support the environmental fee for recycling electronics and nearly 70% support the environment fee added to the purchase of new tires.

Retailers believe the transparency of program costs provides an important opportunity to educate consumers about a stewardship program, and hence encourage their participation.

The Province of New Brunswick recently regulated the requirement that retailers bury the eco-fee associated with their paint recycling program, within the final selling price of the paint, thereby, hiding the costs from consumers. RCC has analyzed the consequences New Brunswick's regulation and has identified a number of serious impacts on retailers, including but not limited to:

- Retailers who lease their premises **pay more rent**: rent is based on gross sales, which increase as prices are increased to cover stewardship program costs. This is a particularly troubling concern for small independent merchants.
- **Higher advertising costs** are incurred for national or regional retailers who must produce separate production runs with province-specific pricing.
- Some national and regional retailers have **information systems that cannot be configured for higher prices** in a given province for the same product.
- Product prices in the province may become **inflated** as a result of the mark-ups that occur along the supply chain **driving business out of the province** to neighbouring jurisdictions where the advertised price of a product is lower because there is not an imbedded fee.

Québec's Regulation must be flexible and must be silent on how fees are managed, as this is a business decision, not a government decision. RCC does not support the proposed cost internalization stipulation and recommends that section 7 of Chapter II be removed from the Draft Regulation.

Chapter III – ANNUAL REPORT

Reporting on types of toxic materials

Section 9 (2) states that an enterprise must report:

The quantities and types of toxic materials...contained in all the marketed products of each product subcategory.

Given that the definition of an obligated enterprise under the Draft Regulation obligates many retailers we are concerned about the ability for retailers to fulfill this commitment since product manufacturers are not obligated to disclose the substance content in the affected products they make.

Without any legal mechanism in place requiring vendors to supply them with the quantities and types of toxic materials contained in designated products under the Draft Regulation, retailers will be unnecessarily placed at a high risk of non-compliance. Additionally, there are no marks on product labels indicating the presence of toxic materials, making it impossible for store staff to differentiate between compliant and non-compliant products.

RCC recommends that either section 9 (2) under Chapter III be removed completely or that it be amended to require manufacturers and distributors disclose the quantities and types of toxic materials in their products, if it is present.

Monthly Reporting

Section 12 states that “*An enterprise referred to in section 2 or 3 or an enterprise forming part of a group must enter every month in a register the marketed quantities of each type of products covered by this Regulation and, upon request from the Minister, send the Minister a copy of any information entered in the register.*”

RCC requests clarification on this section. If it means that there is a requirement for monthly reporting than we do not support it as that is not feasible; it takes affected stewards a significant amount of time to identify affected products and gather the necessary and accurate data to file their reports. Retailers require ample time and opportunity to fully digest any program plan, budget for it, and take the necessary steps to prepare their respective organizations for compliance with the program. This is compounded by the fact that retailers are engaged in the development of other stewardship programs, which can leave them resource challenged.

Chapter V – COLLECTION POINTS AND SERVICES

RCC and its members understand the importance of ensuring that consumers have reasonable access to collection points, particularly in remote areas. An issue of concern, however, is that one method that is consistently proposed to achieve this objective is a return-to-retail collection system.

RCC has reviewed the issues arising if retail stores acted as collection points for used or leftover consumer products and packaging. These issues include, but are not limited to: lack of space to store used products; need for specialized staff training to handle incoming used products; employee and customer health and safety associated with handling and storing used products; store insurance coverage; store fire code compliance; store municipal by-law compliance; among others.

That being said, occasionally some retailers and their suppliers may operate specialized take-back events for used or leftover consumer products. The regulation should be flexible to recognize such voluntary programs

and allow retailers the flexibility to operate them; however, the regulation must not require any mandatory requirements that used or leftover consumer products and packaging be returned-to-retail.

Section 20 states that:

Where a product is usually delivered to the buyer by reason of its size, a collection service must also be offered directly at the buyer's place.

For the above reasons, RCC does not support this clause and requests that it be removed from the Draft Regulation.

OTHER COMMENTS

Minimum Rates of Recovery

Chapter VI outlines a number of minimum rates of recovery for the designated products. While retailers are committed to achieving high levels of diversion from landfill and compliance across product categories, RCC and its members contend that it is premature to identify such targets in the Regulation at this time. Programs should be operational for at least one year before performance targets are established, to allow industry to gather the best available data in which to set reasonable and appropriate targets. For targets to be achievable, they must be realistic, they must be based on best available data and the must be based on processing, collection and recycling capacity available for the materials. Currently, this information is not available and thus all targets must be removed from the Draft Regulation.

Penalties

Chapter IV (Payment to the Green Fund), section 13 states that should an enterprise:

Fail to attain the minimum rate of recovery provided for in Chapter VI for the subcategory of products corresponding to the products it markets, an enterprise referred to in section 2 or 3 must pay the Minister an amount calculated....

Section 29 of the Draft Regulation goes on to outline the penalties (or “values applicable to the products” that do not attain the minimum rate of recovery) and some are as high as \$75 per television unit.

These minimum rates of recovery, or targets, outlined in the Draft Regulation seem to have been arbitrarily developed, as there is insufficient data available to set targets. Further pinning high penalties to subjective targets before programs are even developed and approved by government, make this Draft Regulation unduly prescriptive and unworkable from the start. This approach is contrary to existing successful EPR approaches in other jurisdictions across Canada. In other jurisdictions, regulations have been developed that have been flexible enough to allow industry to develop workable program plans with achievable goals. It is government's role to set the policy framework and objectives (ie. increased waste diversion) but the details should be left to be developed within the program plan, by industry, which requires Ministerial approval.

RCC recommends that the penalties be removed from the Draft Regulation; and further that Québec embrace the concept of flexibility and try to harmonize their approach with other Canadian jurisdictions.

Implementation Time Frames

When deciding upon the actual start date for programs, RCC and its members recommend that retailers be provided with adequate time for implementation. Retailers have expressed concerns in other jurisdictions with the extraordinarily quick pace that governments have allocated for the development of product

stewardship programs. Retailers require ample time and opportunity to fully digest any program plan, budget for it, and take the necessary steps to prepare their respective organizations for compliance with the program. This is compounded by the fact that retailers are engaged in the development of other stewardship programs, which can leave them resource challenged. In general, we recommend at least one year for program plan development and at least one year for program plan implementation; so long as the program is not launched around the holiday season (November-January), as this represents the busiest time for retailers and the detailed program implementation requirements that are necessary would not be possible to achieve during this time frame.

Harmonization

Inter-provincial harmonization of product stewardship programs is a fundamental concern for the retail sector. Approaches to product stewardship across Canada are far from consistent and increasingly place national retailers in the position of having to comply with a patchwork of requirements across the country. Implementing different programs in every province has proven to be costly and administratively burdensome for retailers; therefore, harmonization must be entrenched as a foundation of product stewardship programs.

CONCLUSION

Thank you for the opportunity to provide our comments on Québec's draft regulation respecting the recovery and reclamation of some products, as published in the Gazette Officielle du Québec (*November 25, 2009, Vol. 141, No. 47*).

Retailers are committed to waste diversion and responsible environmental stewardship, and recognize that this is a critical component to any business. Retailers play a critical role in the development of product stewardship programs and we want to work together on identifying solutions to improving waste diversion in Québec. To achieve this, we urge the Ministère du Développement Durable, de l'Environnement et des Parcs to revise the Draft Regulation as per our recommendations contained in this submission and adopt a more flexible Regulation.

If you require any further information or clarification, please do not hesitate to contact me at (888) 373-8245.

Sincerely,



Rachel Kagan
National Director, Environmental Affairs

cc: Hon. Line Beauchamp Minister of Sustainable Development, Environment and Parks
Me Françoise Pâquet, Directrice des relations gouvernementales, CQCD
Ms. Shelagh Kerr, President & CEO, Electronics Product Stewardship Canada