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Ministry of Environment and Climate Change Strategy
Recycling Regulation Amendments
P.O. Box 9341, Stn. Prov. Govt.
Victoria, B.C. V8W 9M1

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Subject: Response to Policy Intentions Paper on the Recycling Regulation

Retail is Canada's largest private sector employer. Over 308,000 British Columbians worked in our industry before the onset of the crisis precipitated by the COVID-19 pandemic. The sector annually generates over \$11 billion (2018 data) in wages and employee benefits for British Columbians. Core retail sales (excluding vehicles and gasoline) in B.C. were \$56.4 billion in 2019. Retail Council of Canada (RCC) is a not-for-profit industry-funded association that represents small, medium and large retail businesses in every community across the country. As the Voice of Retail™, we proudly represent more than 21,000 British Columbian storefronts in all retail formats, including department, grocery, pharmacy, specialty, discount, independent retailers and online merchants.

RCC and our members are providing a response to the Policy Intentions Paper dated September 12, 2020. It is impossible not to consider the cross-impacts of the COVID-19 pandemic. Many retail businesses continue to struggle: our hope had been that Government would not make changes that result in dramatic cost and operational impacts until vulnerable businesses have recovered from the pandemic. That time is likely years away.

I note that our response focuses on the item which has the greatest cost (\$ billions) and operational impact. Nonetheless, retail is impacted by all of the changes in the paper. Because of the dramatic cost and operational impacts, our response focuses on the obligation of packaging and paper products in the industrial, commercial and institutional sectors.

RCC wishes to express our strong disappointment that the Intentions Paper did not consider topics that are at the foundation of British Columbia's extended producer responsibility system, namely: amending the definition of producer to better capture "free-riding" entities, compliance with the Recycling Regulation and enforcement of existing obligations under the Recycling Regulation.

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Thank you for the opportunity to provide input.

Yours truly,



Greg Wilson
Director, Government Relations (B.C.)

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Hon. Carole James, Minister of Finance
Hon. George Heyman, Minister of Environment and Climate Change Strategy
Hon. Michelle Mungall, Minister of Jobs, Economic Development and Competitiveness
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Retail Canada of Canada Response to BC Government Recycling Regulation Intentions Paper

Introduction

The RCC response focuses on the potential obligation of packaging and paper products by the industrial commercial and institutional sectors. But first, we find it necessary to challenge wording in the Policy Intentions Paper which seems to have been written by someone unfamiliar with B.C.'s existing extended producer responsibility system.

The Intentions Paper is, in our opinion, missing critical information on several aspects.

1. There are several references to “supporting” business through the extended producer responsibility system. For example, on page 4, under a heading “Supporting B.C. Businesses” there is a description of Product Care Recycling building a new facility for recycling. The headline is misleading: (a) Product Care Recycling is a registered not-for-profit corporation (as is indeed anticipated by guidance material issued by the Ministry with respect to the Regulation); (b) the principal benefit to B.C. business would be an improved environmental outcome – which comes with significant increases in business and consumer costs, and more paper-burden and operational impacts for business.
2. Likewise, there are a number of references to “consumer convenience.” It is not certain that the majority of consumers consider an obligation to recycle as a convenience. Recycling comes with a consumer cost – one that is ignored throughout the document. A mattress recycling program, for example, will likely result in an eco-fee of perhaps \$60 per mattress, which the majority of consumers will certainly not view as convenient.
3. The point of transferring the management of this waste from local governments to producers through extended producer responsibility was to ensure that those responsible for creating the waste are responsible for managing the waste. The distinction is, however, very subtle. At its essence, Government is using the Recycling Regulation to transfer costs from local government taxpayers to consumers. This is likely not to the financial benefit of low-income consumers.

This is also not to the benefit of B.C.-based businesses whose competitors outside British Columbia either don't face obligation under the Regulation, or, where obligated are able to escape enforcement. RCC's view is that a pre-cursor to any expansion of obligations under the Recycling Regulation would be for Government to get its “house in order” and obligate our foreign competitors and improve enforcement upon ‘free-riders’.

4. There are other impacts when responsibility for waste management is transferred from local governments to not-for-profit recycling agencies. Good-wage jobs in local government are replaced by lower-wage jobs created by the not-for-profit stewardship agencies. Most of those local government jobs are in represented workplaces, while most of the jobs created to replace them are in unrepresented workplaces.

The Ministry doesn't ask for comment on the definition of producer, compliance or enforcement. RCC's position is there needs to be significantly more discussion on all three topics.

Potential Obligation of Packaging and Paper Products from the Industrial, Commercial and Institutional Sectors

The expansion of an extended producer responsibility regime to include industrial, commercial and institutional (ICI) generators would be highly disruptive to the existing waste management industry and to the ICI sectors. RCC will address the commercial obligation – but expect industrial, institutional and waste management stakeholders will also have strong opinions.

Many of these stakeholders are unaccustomed to being impacted by the Recycling Regulation and are therefore not aware of the Intentions Paper – and thus will not respond. This is a barrier to fulsome and meaningful consultation that Government would do well to address before moving forward with regulation.

To be clear up front, our industry is strongly opposed to the obligation of commercial packaging and paper products under the Recycling Regulation. Our view is that there is a much better and less disruptive alternative available: requiring that businesses ensure end-of-life materials are appropriately managed – be the result reuse, recovery or recycling, and whether those materials are products or packaging.

Our principal ask is that significantly more work be undertaken to obtain data on existing waste management for ICI packaging and paper products, and the source of the packaging and paper product waste arriving at landfill. *A lack of data, and particularly data that is at all comparable with British Columbia's demographics and infrastructure, made it very difficult to respond to many proposals contained within the Intentions Paper.*

Many retailers have already made very extensive investments in waste management to reduce waste and to ensure good outcomes at their stores, distribution centres and offices. Our expectation is that those systems would be dismantled at the creation of commercial packaging and paper product obligation, and result in worse outcomes, at least initially. This would result not only in financial loss – but also job loss – often of represented employees in high-wage positions. Indeed, many businesses currently have direct agreements with processors when the collected material is free of any contamination, thus eliminating the need to use MRFs for sorting their material. The proposed change would include them into a catch-all approach that would erase efficiencies and expertise learned over years.

Retail already has better resource recovery outcomes than most other industries. It is unacceptable to us that Government would contemplate a move backwards.

In addition, such an obligation would be punitive to those early-adopter businesses which have made significant financial and operational investments to achieve good outcomes. We are very wary of this move by Government to effectively punish early adopters.

Conversely, obligating commercial producers of packaging and paper waste to both reduce waste and to manage the remaining waste appropriately would confer a benefit to those who have led the reduction and recycling: it would level the playing field for those who have already made significant investments. Instead, the current proposal will essentially reward the businesses which have turned a blind eye on sound management of recyclables.

Overall, in terms of principles of producer responsibility, obligating businesses to fund collection, sorting and recycling of ICI waste means that competitors who have heavily invested in reduction and reuse initiatives will end up funding services delivered to less performing competitors. This is a major concern from an equity standpoint.

Existing Packaging and Paper Product System

The Intentions Paper briefly outlines the existing system but ignores the failures: no management of the small producer materials introduced into the residential system; the lack of success of the depot and streetscape recovery systems (to date) for those materials; and, the many types of packaging for which British Columbians currently pay an eco-fee – but remain unmanaged (for example, toothpaste and cosmetic tubes).

While there is discussion in the Intentions Paper about resolving the ICI materials, there has been no discussion of a method of handling the unobligated residential material from small producers, the depot/streetscape collection obligations, or, the unmanaged packaging types. Creating an efficient, easily-accessed system for all British Columbians ought to be the desired outcome rather than obligating packaging and paper waste through piece-meal efforts that will very likely not have the intended result of significantly improved environmental outcomes.

The Intentions Paper also mentions beverage containers but does not mention that there is little information available about the end-outcome of materials returned to the commercial sector under the return-to-retail obligation.

Finally, the beginning of the existing residential system was very rough. There was very significant disruption to the waste industry and to existing voluntary retail packaging recovery efforts.

Local governments complain about industrial, commercial and institutional packaging and paper products, the cost of handling that waste, and the environmental outcome. There has been very little study of the effectiveness of the existing system and costs and the current diversion rates.

Unquestionably there is ICI material arriving at landfill. But there is also residential material arriving at landfill as a result of the exemption for small producers.

Is replicating the residential packaging and paper product program the most efficient way of resolving the problem? The residential system resulted in the creation of multiple collection systems (blue box, depot and streetscape). While the blue box system has been a success, the jury is out on the effectiveness of depot and streetscape collection.

Currently, commercial businesses are choosing, or are obligated by leases, to source-separate materials at their locations. That source-separation may provide a more successful outcome than either extending the residential system, or, creating a new system, to manage commercial waste.

RCC is also very cognisant that there are packaging materials (for example, toothpaste tubes) for which consumers are paying an embedded eco-fee, but which are not being managed because of the technologies currently available, or lack thereof. The commercial system will also have similar packaging materials that will be a struggle to manage.

Comparisons with European Jurisdictions

The Ministry cites European jurisdictions as a potential model for B.C. RCC is convinced this is not the case.

1. The regulatory model in European jurisdictions is very different than the model in British Columbia – the European model relies on private waste management companies while B.C. relies on not-for-profit corporations created by producer collectives.
2. Population density and population size makes the European market not easily comparable to B.C. (or Canada as a whole).

Jurisdiction	Population	Area	Density
British Columbia	5 million	944,735 sq km	5/sq km
Austria	8.8 million	83,879 sq km	109/sq km
Belgium	11.5 million	30,689 sq km	376/sq km
Germany	82 million	357,386 sq km	233/sq km
Netherlands	17.3 million	41,500 sq km	488/sq km

RCC recommends that the Ministry examine the definition of producer, compliance and enforcement regimes, particularly in Belgium and the Netherlands. These two countries seem more successful at obligating products and packaging entering their countries from elsewhere.

Major Differences Between Collection Systems

There are significant differences between and within residential and commercial waste collection systems that would dramatically complicate program delivery in this area, for example:

1. Pickup times for the commercial sector often need to be scheduled around product deliveries and store hours.
2. Heavier trucks are required for large stores because commercial recycling volumes are greater. For example, a triple axle truck is required to haul a 40-yard compactor. Similarly, smaller trucks are needed to service smaller retail stores and restaurants.

Major Potential Impacts of Change

The potential impacts of obligating ICI packaging and paper products are very consequential and therefore our recommendation is that there be significant study of the existing system and the impacts of potential change before change is seriously contemplated.

1. There will likely be significant financial, operational and employment disruption in the existing waste management sector.
2. Higher-paying, and often represented employees, will be replaced by generally lower-paid unrepresented employees.

3. Those businesses that have made substantial financial and operational investments to improve outcomes will lose a significant amount of that investment. Their waste management and reverse logistics operations will suffer significant job loss.
4. There is the likelihood that diversion rates would decrease in the early years of a new system.
5. There is the potential for a significant increase in greenhouse gas emissions at a time when retail's focus has properly been on decreasing greenhouse gas emissions resulting from transportation.

An Excellent Policy Alternative Exists

RCC is convinced that there is an excellent alternative to obligating ICI waste. That alternative is relatively straightforward. RCC is convinced it will be more successful, less disruptive, and create more high-paying jobs with more innovation.

The alternative government should use is to obligate industrial, commercial and institutional entities to manage their waste appropriately and undertake compliance or enforcement action against those who do not do so.

New Obligation of Mattresses and Foundations

The Intentions Paper proposes the addition of mattresses as a separate product category (or schedule). We do have a concern with the method that British Columbia uses to obligate new products because adding each category as a separate schedule can result in inconsistency in the "rules of the road." Those inconsistencies make it more difficult for businesses and other stakeholders to easily understand the parameters. Easy comprehension is a key aspect in achieving both transparency and fairness.

Accordingly, RCC strongly urges Government to rewrite the Regulation in a more consistent, easy-to-follow, manner.

Government outlines assumptions in the Intentions Paper that do not align with the facts. For example, the landfill costs are just a small portion of the current end-of-life costs. Even for local governments, transportation is a significant factor.

The Government notes that jurisdictions in the United States have had success with mattress programs. None of those programs operates under requirements as onerous as those contained in B.C.'s Recycling Regulation. Even after significant operating periods, none of their recovery rates achieve the B.C. regulation's required minimum – and their financial and non-financial reporting and transparency would not attain B.C.'s standards.

Finally, all three jurisdictions have very substantially higher population density than B.C.:

Jurisdiction	Population	Area	Density
British Columbia	5 million	944,735 sq km	5/sq km
California	39.5 million	423,970 sq km	97/sq km
Connecticut	3.56 million	14,357 sq km	285/sq km
Rhode Island	1 million	3,140 sq km	393/sq km

The costs charged by those entities, \$9 to \$16 per unit, would not cover the end-of-life per unit costs of the existing Metro Vancouver operation which we understand to be closer to \$60 per unit. RCC searched for a European jurisdiction with a mattress recovery regime but concluded that population density and different operational modalities in waste management made cost estimates unhelpful.

1. There is an existing mattress recovery system that must be integrated within the new system.
2. It is important to note that we are aware of two private businesses operating as processors for end-of-life mattresses. The obligation of mattresses and foundations could result in a boom for one of these businesses, and severe financial impacts for the other; or, it could result in the creation of a new business and severe financial impacts for both of the others.
3. The eco-fees for mattresses and foundations will be significant. Accordingly, compliance becomes a critical question. A significant number of mattresses and foundations are sold into British Columbia by entities outside of B.C.

RCC has previously argued that Government needs to address the substantial “free-rider” issue by obligating those entities and enforcing that obligation. One direction could be to obligate on-line marketplaces as producers. Another province has recently proposed to obligate marketplace facilitators to ensure obligations for non-resident merchants selling on those platforms are managed. Alternatively, Government could obligate shipping companies as producers to ensure compliance. It would be very unfair to obligate mattresses and foundations if those obligations are not equally spread across all entities selling the products.

The failure to address this issue has resulted in significant efforts by major entities to avoid BC’s Recycling Regulation. The result is unfair in two respects: some entities are able to sell their products and packaging without the eco-fee, and, the entities who are participating are left to pay for the end-of-life costs of the products sold by the non-compliant businesses.

4. Under the assumption that mattresses are obligated, great care needs to be taken not to negatively impact existing (and desirable) end-of-life outcomes. For example:
 - a. Many unsold or “gently used” mattresses are donated by retailers to charitable entities.
 - b. Retailers frequently offer to take-back and manage the old mattress and/or foundation at the time a new mattress and/or foundation is purchased and delivered. Often this comes with an extra cost to the consumer. Ending that practice could result in more, rather than less, mattresses being dumped and recovered by local governments.

A better outcome might be achieved were existing mattress recovery programs to continue, while aligning those programs with provincial standards and recovery rate targets.

5. The schedule should recognize reuse and repair as coequal options, along with recycling, for the diversion of mattresses from landfill.
6. In response to the specific request by Government for response to the question of whether to include air mattresses, sofa beds and headboards, RCC advocates gradualism to minimize both market disruption and consumer impact. Creation of a mattress recycling program will itself be a significant undertaking. Adding those other items would create very significant complications. This would likely significantly increase consumer costs and complexity.

Specifically, air mattresses are generally manufactured by different manufacturers from different materials – and are often sold by different retailers. This would significantly impact successful creation of the non-profit corporation to manage those end-of-life obligations.

Accordingly, RCC encourages Government to wait until a mattress program is successfully and firmly established before adding other items to the mandate.

Finally, the market for mattress and foundations is different than the market for other products. Although there is one tiny mattress manufacturer in B.C., most manufacturers don't have a location in Canada and thus wouldn't be obligated even under Ontario's broader definition of producer. Nearly all of the entities that would be obligated under the B.C. Recycling Regulation are retailers. Retailers also have the direct relationship with consumers and are managing a significant number of the existing end-of-life channels.

Accordingly, retailers must be the primary party tasked with creation of a new stewardship agency once Government has resolved the barriers (principally compliance and enforcement) and come to terms with the other potential impacts.

Electronic and Electrical Product Category Expansion

RCC does not represent retailers of automobiles, although we do represent retailers of both auto parts and service. RCC is not aware of one of our members selling electric vehicle batteries: accordingly, we do not believe we are a stakeholder in this aspect of the intentions paper.

We have engaged with government extensively about recovery of electric bicycles and scooters and remain willing to participate in those discussions.

RCC is convinced that e-cigarettes, similar vaping products and motorized yard decorations can be successfully managed under one of the nine existing stewardship plans for electronic products. However, we note that the group of obligated producers may not be represented in the membership of the existing program collectives, as is the case with electric bicycles and scooters, and this may limit the interest of a stewardship agency in taking on the product. RCC does not

support creating a stand-alone stewardship agency to manage niche products, as the resultant eco-fee would be disproportionate to the cost of the product.

Generally, RCC's preference is that all components be managed as part of the stewardship plan for the product of which the component is a part.

Residual Product Category Expansion

The items mentioned in the residual product category expansion are broad and likely require stakeholder consultations on each individual item because of the diversity of the obligated producers, stewardship agency and potential collection avenues. RCC's recommendation is that the items with higher environmental impact be addressed before those with lower environmental impact.

Several of these items likely have very limited volumes available for collection. That could complicate a collection system and dramatically increase costs.

Likewise, several of the products listed have different formulations in products used in households versus product formulations for industrial or agricultural use. Also, for products such as coatings, sealants, additives, and, fertilizers and pest control programs, existing private entities provide services to manage the end-of-life of those products. Our view is those are more appropriate pathways for industrial and agricultural products.

1. RCC was not able to identify an end-of-life management program for flares and note that most available collection pathways would not likely accept these products.
2. Large fuel containers are often provided by distributors or retailers with the container on deposit. The containers are collected and refilled when the contents are exhausted. To RCC, encouraging reusable containers would be a better outcome than attempting to manage single-use containers for low-volume and volatile products.
3. There are existing voluntary collection systems both for veterinary medicines and sharps. It is important to protect those systems: in addition, the voluntary systems may help inform appropriate paths for the products. RCC is not convinced that a traditional EPR model will address local government concerns about sharps – particularly those discarded in public spaces.
4. Before adding new residual products, we recommend the Government first assess the current management of end-of-life of empty containers by consumers. More data would provide Government with useful information before obligation.

Options for Management of Marine Debris

Removal of marine debris along the 25,725 kilometres of British Columbia's shoreline is a priority for all British Columbians.

Most of the existing debris has accumulated over decades from a variety of industrial and foreign sources. In our view, extended producer responsibility does not form part of a solution for the existing debris because doing so would result in eco-fees on commercial and consumer marine and fishing products that would drive those sales out of our jurisdiction and underground.

RCC is of the opinion that extended producer responsibility may be an appropriate policy option to help prevent new marine debris. However, there is a complete lack of data available about what is happening to that waste at present – which complicates any analysis of a potential obligation of these products. Conversations around the cost of such a system, and how it is inevitably passed on to consumers in the form of eco-fees for products such as fishing rods, must be undertaken before obligation is seriously considered.

For the existing waste, RCC suggests that Government continue to partner with other non-profit entities to remove the decades-old backlog of marine debris. For new waste, because the majority of the regional districts impacted are less populated, it may be necessary for the Province to fund

study of the current methods of disposition of waste prior to consultation with impacted producers over management of that end-of-life material.

Conclusion

Overall, RCC is convinced to ensure the success of B.C.'s recycling regime, Government needs to take a few steps:

1. The financial underpinnings of B.C.'s extended producer regime, and fairness to businesses employing hundreds of thousands of British Columbians, urgently requires that Government amend the definition of producer to include goods sold into British Columbia from outside. It is deeply disappointing to RCC and our members that this consultation did not address this subject -- the most critical issue impacting the future of our system.
2. Data is critical to inform the system. On too many of these issues Government is asking stakeholders to provide informed opinions where little data exists. Government, either directly, or through regional district and existing stewardship agencies, needs to redress the lack of data. Good data will transparently inform us about the magnitude of the problem, current conduits by which the products or packaging are managed, and pitfalls to various potential resolutions.
3. Far too frequently in the Intentions Paper, Government has described business as the solution to the problem. Most B.C. stewardship entities, as envisioned under B.C. Recycling Regulation guidance material, are registered not-for-profit corporations.

4. Government needs to remember that stewardship agencies created by obligated producers of one set of products might be, at least initially, reluctant to manage the end-of-life of similar producers manufactured and sold by other producers. Government needs to work with willing partners to overcome those hurdles.
5. British Columbia should be careful to ensure consistency of standards and regimes with other provinces to ensure that outcomes are comparable, there is ease of compliance for regulated parties, and that the system builds a strong level of citizen understanding and participation.

RCC and our members have consistently worked, in good faith, with the B.C. Government to advance B.C.'s recycling regime – the leader in North America. RCC has a wealth of experience with a variety of systems and agencies across Canadian jurisdictions which help inform our input to Government: RCC is a unique trade association in that respect. We remain committed to building the best environmental outcomes with the most efficient and effective operations – that operate at low cost for consumers. Thank you for inviting our input.

For further information, please contact Greg Wilson, Director, Government Relations (B.C.), Retail Council of Canada, (604) 736-0368 or gwilson@retailcouncil.org.