

## Ontario Draft Regulations for Batteries Resource Recovery & Circular Economy Act Key Considerations for Producers

June 7, 2019

To assist Call2Recycle members and obligated parties with their review of the draft battery and electronic [regulations](#), Call2Recycle has prepared the following key considerations document. This document does not replace the content of the regulation and we encourage obligated producers to review each draft regulation for complete information.

Call2Recycle comments and feedback on the draft Ontario regulation for batteries is based on 22 years of extensive consumer battery recycling experience across North America on behalf of more than 300 companies, including battery, power tool, computer and other consumer goods manufacturers and retailers. Call2Recycle feedback is consistent with policy recommendations submitted to the Ministry on March 12, 2019, as part of the Ministry's consultation process. All feedback highlights the importance of battery-centric regulations aligned with the four other provinces already administering battery regulations.

Call2Recycle supports the Ministry objectives of increasing waste diversion, recovering resources, increasing sustainability and improving environmental outcomes. We are committed to ensuring that all used consumer batteries in Ontario are collected and managed at their end-of-life in a safe and environmentally sound manner. We also support the benefits of an extended producer responsibility model and the associated circular economy.

The Ontario draft regulation for end-of-life battery management is complex and inconsistent with established regulations and business practices in other provinces. We are concerned these regulations will lead to confusion for the consumer and significant expense for producers to manage and administer.

Following are key considerations for battery producers and obligated parties along with Call2Recycle recommendations to help guide feedback to the Ministry, a more successful implementation of the regulation and minimal disruption to battery producers and obligated parties:

### 1. Battery Definition

- a. Call2Recycle supports the inclusion of rechargeable batteries in the regulation and small sealed lead acid batteries specifically but only where an established collection network does not exist.

The addition of rechargeable batteries to the regulation will increase overall battery diversion in Ontario and reduce consumer confusion given that most consumers do not differentiate between single-use and rechargeable battery types. In addition, some rechargeable batteries contain materials that can be potentially hazardous to the environment if they enter the waste stream. Beyond material reclamation, there are significant environmental benefits to diverting rechargeable batteries from landfill.

Including rechargeable batteries in the regulation also ensures fairness and equitability and will ultimately limit free-rider activity. Consumer rechargeable batteries are already entering the existing recycling stream in Ontario. Single-use battery producers should not have to pay for the end of life management of rechargeable batteries.

- b. Large batteries (including car batteries such as lead acid batteries) have been added to the battery regulation. No established collection network exists for lead acid car batteries. As the regulations are written for those who sell automotive and marine batteries they would be responsible to manage end of life and comply with the regulations.
- c. Embedded batteries in products have been added after considering weight and the Electronics category.

**Recommendation:** Call2Recycle recommends the inclusion of rechargeable batteries as defined in the draft regulation and the exclusion of EV batteries from the regulation.

## 2. Producer Definition

Call2Recycle supports the inclusion of online/web-based retailers to create a level playing field and equity. However, the hierarchy in determining the obligated producer is confusing, including reference to a domicile on a Canadian basis in one instance vs. an Ontario basis in all others. Also, it is difficult—and perhaps subjective—to consistently identify the “brand holder most directly connected to the production of the battery.” For example, if a Small Sealed Lead Acid (SSLA) battery is marketed by one North American company but the battery is manufactured by a branded Chinese company not resident in Ontario, it is not clear who has the responsibility.

This approach is inconsistent with other provinces, obligating some producers who otherwise are not traditionally obligated (e.g. international manufacturers with offices in Canada, regardless of Canadian location of their product importers) and retailers (e.g. retailers that sell automotive and marine batteries would be responsible to manage end of life and comply with the regulations.) Other provincial legislation does not stipulate for multiple brand holders.

In British Columbia, given the complexity of the battery marketplace, the regulation clarifies the role of franchisers and franchisees: “If a franchisor and a franchisee operating under a franchise agreement are producers in relation to the same product, the duty set out in subsection (1) (a) must be carried out by the franchisor.”

**Recommendation:** This section should be clarified. Call2Recycle recommends regulations align with the four other provinces already administering battery regulations.

### 3. Battery Collection

Related to the definition of batteries, the regulation stipulates a weight threshold for determination of the obligated entity. In other provinces the obligated entity is determined according to a pragmatic product category basis such as Power Tools or Smoke Detectors. The new definition implies a number of complex issues for obligated parties including the retailer, the battery manufacturer, the online producer and the importer.

Requirements would vary for each type of producer:

For example, for retailers:

- a. Managing, reporting and auditing according to the draft regulation may become extremely challenging and very expensive. In this case, the list of products would be endless: watches, greeting cards, running shoes, air fresheners, toys, thermostats, flashlights, lights, coolers, construction equipment – such as stud finders, faucets, motion sensors, etc. would have to be included.
- b. It also appears that if the retailer sells batteries, they must accept all batteries irrespective of whether they sell the brand or SKU. This would suggest a hardware retailer would have to take back car batteries or a Dollar Store retailer would have to take back power tool batteries.
- c. For retailers who collect batteries, the collection reporting at the detailed cell chemistry level would be required. Currently, volume is measured by weight and chemistry at a high level only.

For battery manufacturers:

- a. The primary manufacturer and/or first importer of batteries would be obligated for all branded batteries regardless of whether you are importing all of them or not. Note that the primary importer is the first importer having an “office in Canada” regardless of whether or not you have an office in the province of Ontario. This is unique to the Ontario regulation.

For online retailers and importers:

- b. Online retailers will be responsible for complying with regulations for potentially obligated imported brands.

**Recommendation:** Obligated parties should review this section of the draft regulation in detail. Products to be included should require a significant volume of easily removable batteries for ongoing use (i.e. power tools, flashlights, smoke detectors).

## 4. Collection Network Requirements

The regulation stipulates that if there are one or more retail locations that supply the producer's batteries or products with which batteries were provided, the producer has to operate a collection site in at least 75 per cent of the number of retail locations in the given municipality or territorial district. This accessibility rate is extremely high.

The regulation also states that:

- Non-retail collection sites must accept all batteries. We are not sure why this must be the case.
- Collection facilities must operate during regular business hours, which is not always feasible.

The population thresholds for presence in a region are far too low. Call2Recycle has always supported service to remote areas but providing full-time servicing collections for a population of 1,000 is not always practical. In rural areas it is sometimes impossible to identify a collection site or guarantee the safety and protection of collection boxes. This will also lead to complexity and significant costs with minimal environmental outcome.

**Recommendation:** Call2Recycle recommends that Ontario battery collection network requirements align with the other four provinces regulating end-of-life battery management. For example, BC regulation requires non-retail collection facilities be located within 4 kilometres by road from the retailer's premises if the retailer's premises are located in a municipality that has a population greater than 25,000, or within 10 kilometres by road from the retailer's premises if the retailer's premises are located outside a municipality that has a population greater than 25,000."

## 5. Audit, Reporting, etc.

Retailers/Producers are going to have to register, track, report and provide audits directly to the Authority as opposed to other jurisdictions where the authorized stewardship program discharges

this on their behalf. This may lead to significant complexities and costs without any impact on environmental outcomes.

**Recommendation:** Call2Recycle recommends that audit and reporting requirements be aligned with the other four provinces currently administering battery regulations and that these requirements fall under the responsibility of the selected Producer Responsibility Organization (PRO).

## 6. Electronics Regulation

The electronics categories have been expanded to include power tools and small appliances and other devices. This is inconsistent with other jurisdictions and ignores the life cycle of a product. For example, a power tool is likely going to last many years, but the battery may only last a few years, and this is the item that needs to be recycled for safety, environmental and weight reasons.

Furthermore, there are no diversion targets for these products which means a marketplace will not develop and collections will be negligible. This puts into question the environmental benefit of this policy.

**Recommendation:** Call2Recycle recommends removing some of these categories from electronics and including them in the battery regulation as with other similar products, as appropriate.

## 7. Diversion Rates:

The single use diversion rate has been set at approximately 40 per cent and will be increasing to 50 per cent. This is achievable but very aggressive. The rechargeable diversion rate is set at 87 per cent (we believe this to be a higher factor due to the inclusion of car batteries). Battery producers will want to see small rechargeable batteries set at the same level as single use batteries. Call2Recycle supports the need for “targets”, but they must be realistic and allow for time to continue to build consumer awareness.

**Recommendation:** Call2Recycle recommends that diversion targets for rechargeable batteries be reduced and aligned with diversion rates for single-use batteries.

## 8. Resource Recovery Charges

It is unclear how “visible fees” would work on standalone batteries where there are two obligated entities. For example:

- a) On a national brand the obligated entity is very likely going to be the brand owner since they are domiciled and/or importer into Ontario. Accordingly, for the retailer selling national-brand AA single-use batteries, the visible fee would presumably be remitted back to the obligated entity. The obligated entity would then remit this to their stewardship program.
- b) For the private label brand, the obligation would fall to the retailer. Accordingly, if you have a private label RCC member, the private label retailer would remit directly to their stewardship program.

Having two obligated entities creates complexity and costs. In addition, this could lead to the potential for visible fees on private label AA batteries but not on the national brand. We anticipate this would create significant consumer confusion, consumer calls and frustration for all parties involved.

**Recommendation:** Obligated parties should seek a clear interpretation from the Ministry regarding this process and associated complexities including for products with embedded batteries.

## 9. Managed Battery Criteria

The determination of battery processing efficiency is/has been subject to different interpretations. For example, consideration should be given to recycling/use beyond the “first gate” such as soil enrichment. In this case, recovered material can be recovered and re-used only once as compared to a process where recovered metals are re-used to make new products and the re-recovered metals are used again.

**Recommendation:** Consistent with other provinces, Call2Recycle recommends the regulation allows industry to develop and set standards based on international and harmonized best practices.

### What you Can Do?

If you manufacture, market or sell any of the products listed, these regulations will undoubtedly have a significant impact on you and your business. We encourage you to take the time to understand what’s been announced and how this may affect your organization:

<https://ero.ontario.ca/notice/019-0048>

We also encourage producers to provide draft regulation feedback and concerns either directly or through your trade association by June 23, 2019 to the Ministry of the Environment, Conservation and Parks per the direction on their website located here:

<https://ero.ontario.ca/user/login?action=comment&destination=/comment/reply/node/1654/comment>

Please contact Fiona Johnston at Call2Recycle if you have any further questions about the feedback and recommendations contained in this document.

[FJohnston@call2recycle.ca](mailto:FJohnston@call2recycle.ca) (416) 307-2854