



City of
Peterborough

To: Members of the General Committee

From: Jasbir Raina, Commissioner of Infrastructure and Planning Services

Meeting Date: February 13, 2023

Subject: Blue Box Transition to Producer (Circular Materials Ontario) Responsibility, Report IPSES23-002

Purpose

This report provides Council with an update and a recommendation on the transition of Ontario's Blue Box Program from the current program to one administered by Circular Materials Ontario ("CMO"), which will see the private sector take over full responsibility for Ontario's residential Blue Box Program.

Recommendation

That Council approve the recommendation outlined in Report IPSES23-002, dated February 13, 2023 of the Commissioner of Infrastructure and Planning Services (the "Commissioner") as follows:

That the City not execute Circular Materials Ontario's standard contract and that the Commissioner of Infrastructure and Planning Services notify Circular Materials Ontario of the City's decision.

Budget and Financial Implications

The transition of Ontario's residential blue box recycling collection and processing program in Peterborough is scheduled to start on January 1st, 2024. The transition may result in a reduction in the City's municipal recycling costs in the range of \$750,000 to \$1,500,000 per year, depending on fluctuating recycling costs and commodity revenue.

Commodity revenue from items collected under the blue box program have fluctuated due to substantial and on-going increases and decreases in commodity values. For example, the Price Composite index has moved between highs of \$166 per tonne to lows of \$82 per tonne within the past three years. Under the current program, commodity revenue is deducted from the more stable gross collection and processing costs, accordingly, the net proceeds received by the City have fluctuated widely and any short falls between revenue and costs have been absorbed by the City. All municipalities, under the current program, are exposed to same financial risk/reward scenario.

Background

The Province of Ontario passed the Waste-Free Ontario Act (WFOA), 2016 which includes the Resource Recovery and Circular Economy Act (RRCEA) and Waste Diversion Transition Act (WDTA).

This legislation promotes a circular economy in which products and packaging are designed to minimize waste and then be recovered, reused, recycled and reintegrated back into production. A key driver of the circular economy is the transition to Individual Producer Responsibility (IPR). IPR means that producers are responsible and accountable for collecting and managing their products and packaging after consumers have finished using them.

The RRCEA outlines a framework for IPR in the province and the Ontario government is responsible for designating materials for transition to IPR. The new Blue Box Regulation filed in April 2022 under the RRCEA moves the responsibility for funding and operating the blue box program from municipalities to the Producers of packaging, paper and similar products. Following the full IPR model, the Blue Box Regulation does not assign a role to municipalities in the future. Municipalities have advocated for this change for years and will see producers of packaging and paper products become fully responsible for the Blue Box Program. This applies to residential and other eligible sources including schools, long term care and retirement homes, but continues to exclude ineligible sources such as businesses (including DBIA's), places of worship, municipal buildings, daycares, commercial farms, charities, and campgrounds.

A Producer-controlled non-profit organization called Circular Materials Ontario (CMO) has assumed responsibility for operating the collection and receiving of Blue Box

materials across Ontario on behalf of all Producers, as well as post-collection management for most of the material in the province. Given the extensive scope of work and limited timelines to implement a province-wide collection system, CMO presented a standard offer (last revised July 4th, 2022) to all municipalities in Ontario requesting that they provide interim residence and facility collection services during their transition period. The transition to the IPR Blue Box program will be phased in across the entire Province of Ontario from 2023 to 2025 to ensure a smooth transition for municipalities and producers, so there is no interruption to service for residents. The City of Peterborough (City) has been assigned a transition date of January 1, 2024, by the province and will continue to have legislated and financial responsibility for providing recycling services until this date. For the City, the transition period is a two-year period between January 1, 2024 and December 31, 2025, before the Blue Box Regulation fully comes into force province-wide.

CMO has also started launching competitive Request for Proposals (RFPs) for longer term contracts as a back up plan during the transition period and beyond for areas where municipalities and existing contractors (i.e., the City of Peterborough's current recycling collection and processing contractor Halton Recycling / Emterra Environmental) do not accept CMO's standard offer. Due to several major risks associated with the standard contracts that CMO is offering to all municipalities, staff are recommending to Council that the City does not contract with CMO and to allow producers to take over responsibility of the blue box program when the City transitions January 1, 2024. Many other municipalities are taking the same approach. Examples of municipalities which have similar Council resolutions to the staff recommendation set out in Report IPSES23-002 supporting opting out of the blue box program include the County of Peterborough, City of Guelph, City of Hamilton, Dufferin County and Wellington County. Based on surveys completed by Continuous Improvement Fund (CIF) over 50% of Ontario municipalities are either not planning on contracting with CMO or are not willing unless there are satisfactory negotiations. Staff are asking for a Council approval to allow official notification to CMO so they can adequately prepare for the change to occur on January 1, 2024.

Determining how or whether non-residential properties, including businesses, churches, community centres and schools ("Ineligible Sources") will obtain curbside collection services will be the subject of a further staff report to Council once CMO has clarified its position.

Analysis

CMO asked municipalities to respond to their standard offer by completing a survey by July 15, 2022, to indicate whether or not they were interested in working with CMO during the transition period. Staff sent CMO a letter on July 13, 2022 (see Appendix A to this report) advising that the City had outstanding questions and concerns pertaining to the City's proposed new obligations and associated costs. At that time, staff were not in a position to bring a report to Council considering the ambiguity in the proposal.

Key concerns raised by staff include:

- Knowing where the designated “receiving facility” will be located, which remains outstanding and unknown at this time with a final decision not likely until Spring 2023;
- Meeting the Proposed 4% Contamination Threshold in the blue box. The City is presently at approximately 14% (plus);
- Understanding whether CMO will cover 100% of the City blue box program costs. This remains outstanding;
- Understanding the City’s additional record keeping requirements and attendance costs. This remains outstanding.

Staff met with CMO representatives on August 30, 2022, to discuss the letter and the City’s concerns and CMO did not commit to meeting any of the conditions or concerns raised in the letter. The following list highlights the major concerns with CMO’s contracts and rationale behind staff’s recommendation not to contract with CMO:

- A legal review of the CMO contract was completed by the City’s Legal Department which indicated that the contract had significant amount of financial and operational risk to the City. A considerable risk is that there are no provisions in the contract that give the City the ability to exit once it is signed but there are many provisions for CMO to be able to terminate the contract;
- Costs incurred by the City to continue operating the blue box program for curbside collection, depot collection, administration and promotion and education (P&E) if we contract with CMO from January 1, 2024 to December 31, 2025 will not be fully compensated. CMO is using a funding model based on 2020 program costs for all municipalities rather than paying actual costs, which are escalating quickly as we approach 2025. Under the current CMO proposal, the City would be responsible for all escalations in costs through 2025. Through further assessment and analysis by a leading industry consultant, Birett & Associates, the City’s anticipated compensation shortfall due to inflationary cost escalations is between \$764,000 to \$987,000 over the two-year transition period (see Appendix B to this report);
- If the City accepts the current CMO proposal there will be a significant amount of risk and liability, as well as large administrative burden placed on staff due to the conditions within the contracts including the requirements for a 4% contamination rate of recyclable materials. The City’s current contamination rate ranges from 12-14% and the City currently spends substantially more money on promotion and education (approximately \$3 to \$5 per household) to educate residents to reduce the contamination rate than what CMO is offering (\$1.50 per household). The City would be obligated to continuously provide CMO with remediation plans

if the contamination rate does not meet 4% and contribute any shortfalls for contamination remediation, and P&E support;

- Through the current CMO proposal, the City will not know the location of the CMO-designated receiving facility for the recyclable materials prior to having to sign a contract with CMO. Ultimately, the City would be responsible for all incremental transportation costs to the CMO selected processing facility. Depending on the location of the selected facility, the additional transportation liability could exceed \$1 million per year, which would not be supported by CMO;

Service Level Implications

Ineligible Properties – The City currently provides curbside recycling collection for approximately 1300 properties such as places of worship, schools, daycares, industrial, commercial and institutional (IC&I) properties and public space locations along current recycling routes as well as businesses within the Downtown Business Improvement Area (DBIA). Ineligible properties are presently able to drop off recycle material at the City recycling depot at 390 Pido Road. These non-residential sources are not included in the Individual Producer Responsibility (IPR) model and any costs to collect and process recycling material from these locations will not be covered under the new system. Upon transition, these properties would become responsible for securing private recycling collection and processing services.

Recycling Collection and Processing Contract – Curbside collection, depot collection and processing of recyclables in the City is currently contracted to Halton Recycling / Emterra Environmental. The contract commenced on November 1, 2019 and remains in effect until October 31, 2026. The City has provisions built into the contract to be able to terminate early or negotiate terminating some items in the contract. The City may want to keep some items within the contract for example, collection from ineligible Properties.

Promotion, Education and Customer Service – Producers will be responsible for informing residents about the transitioned Blue Box program beginning January 1, 2024. As a service to our residents, and in the interest of Waste Diversion, the City will provide promotion and education material leading up to the transition to keep residents informed into 2024. Experience in other provincial jurisdictions (i.e., BC) that implemented similar programs found that residents continue to seek out information from their municipal office, well beyond the transition date (i.e., eight years) resulting in municipalities having to continue to incur extensive costs to provide peripheral public education support.

Diversion Rate – Currently the City diversion rate (53%) is tracked as a percentage of the total materials collected and processed including blue box recyclables, yard waste, HHW, WEEE, bulkies, scrap metal, textiles, polystyrene, tires and construction waste. Under the new regulation, producers will not be required to provide municipal level collection data for residential blue box material, leaving municipalities with insufficient data to calculate accurate waste diversion statistics. The City will see more emphasis

on performance indicators and strategies that focus on the diversion of organics (i.e., GROW Peterborough) and other divertible materials beyond the blue box.

Summary

A transition is underway for the Ontario Blue Box Program to Producer (Circular Materials Ontario) Responsibility. CMO presented a standard contract to all municipalities in Ontario requesting that each municipality provide interim collection services during the transition period. Considering the proposal downloads significant responsibility, and undue risk, it is recommended that the City not contract with CMO to provide collection services during the blue box transition period.

Submitted by,

Jasbir Raina, CEng., M.Tech, MBA, PMP, MIAM
Commissioner, Infrastructure and Planning Services

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Attachments:

Appendix A –	CMO Transition Survey Response Letter
Appendix B –	Birett & Associates – Circular Materials Contract Offer review.



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July 13th, 2022

Allen Langdon
President & CEO
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Emailed to: allen.langdon@circularmaterials.ca

Re: Blue Box Program
CMO Transition Survey Response
Master Service Agreement (MSA) and Statement of Work (SOW),

Dear Mr. Langdon,

While the City of Peterborough (the City) has been an active and informed participant in discussions led by Circular Materials Ontario concerning a new Master Service Agreement (MSA) for blue box programs, the City still has outstanding questions pertaining to the City's proposed new obligations and the costs associated with those obligations. Accordingly, while the City is open to further discussions with CMO, staff is not in a position to (1) complete the CMO Transition Survey or (2) bring a report to City Council with any recommendations concerning the new MSA. The specific concerns which are preventing the City from completing the CMO Transition Survey include, but are not limited to:

1. **Knowing where the designated “receiving facility” will be located.**
Present timelines anticipate CMO announcing the location of the receiving facility for the City, within the C7 catchment area, in the first third of 2023. Any change from the City's current receiving site on Pido Road, Peterborough would affect our contract with our service provider (Emterra) and has the potential to increase our costs, including transportation costs and tipping fees. These impacts, and others, will likely require the City and Emterra to renegotiate their contract, with the attendant risks and costs. Unless staff knows whether CMO will agree to pay the City all cost increases incurred by the City under a renegotiated contract with Emterra staff cannot properly inform City Council about the associated costs.
2. **Meeting the Proposed 4% Contamination Threshold**
The City's current blue box contamination rate fluctuates between approximately 12 and 15%. Although CMO has eliminated the associated liquidated damages from the revised Statement of Work (SOW), we are concerned about the remaining obligation to implement an unfunded contamination abatement plan. City staff and City Council will need to understand the cost implications of any failure to meet the 4% contamination threshold. We are not aware that any other jurisdiction (E.g., British Columbia) has reached a 4% contamination threshold and so we are, naturally, concerned with the unallocated promotion, education and enforcement costs, not to mention additional landfill costs created by rejected recyclable material.

3. **Understanding Whether CMO will cover 100% of the City's Blue Box Program costs.**

There remain numerous associated obligations in the MSA and related SOWs which expose the City to direct financial risk which warrant further discussion with CMO. At a high level, we are concerned that any cost incurred by a service provider which is not covered by CMO, will be a cost incurred by a municipality. The City needs to understand the extent of its potential cost exposure associated with Datacall capping administrative costs, cost escalation being limited to only the increases envisioned in CMO's CPI formula, under-funding of Promotion & Education costs, and the un-funded risk associated with exceeding the 4% contamination threshold (including but not limited to enforcement costs), the impact of transferring any potential environmental benefits (E.g., carbon credits) from the City to CMO and the impact of the required capital costs required to keep the program operating. Until we have clarity on those matters, staff cannot write a meaningful Council Report.

4. **Understanding the City's additional record keeping requirements and the attendant costs.**

The draft revised contract appear to contain significant additional monthly record-keeping and annual reporting requirements, which will impose additional obligations and costs onto municipalities without any apparent compensation.

Conclusion

Third-party assessment of CMO's MSA and SOW for the Ontario Waste Management Association (OWMA) by Borden Ladner Gervais (dated, June 7, 2022) identified an extensive array of considerations that raised multiple concerns for municipalities. Additionally, the Association of Municipalities of Ontario (AMO) undertook an extensive review of the draft MSA and SOW, which has also raised numerous concerns requiring extensive municipal due diligence, including time for municipalities to obtain their own legal advice. The City shares and adopts the significant concerns raised by both BLG and by AMO.

Extended Producer Responsibility is intended to put the onus on the producers of blue box material to pay the cost of operating the blue box program. We understand that the Blue Box program is intended to be cost-neutral for municipalities. We are concerned that the MSA and the SOW do not achieve that goal and do not allocate the obligations under the **Resources Recovery and Circular Economy Act, 2016** and the **Blue Box Regulation** appropriately.

Only when the cost implications, legal implications and risk management considerations are fully understood will City staff be in a position to present Council with a comprehensive report and seek Council's direction on the MSA.

Until then, City staff cannot respond to CMO Transition Survey. We do, however, wish to invite CMO to meet with City staff to explore, refine and, hopefully, resolve all outstanding issues related to the MSA.

Please contact the undersigned directly at 705-931-5147 (cell) should you have any further questions or requests at this time.

Sincerely,
City of Peterborough

Dave Douglas

Dave Douglas
Manager – Waste Diversion Section
Infrastructure & Planning Services

c. Nicole Fischer, Chair, CMO



**Birett
& Associates**

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November 08, 2022

Dave Douglas
Manager, Waste Diversion Section
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Dear Dave,

Re: Circular Materials Contract Offer

Per your request, Birett and Associates has completed an updated analysis of the Circular Materials (CM) offer to eligible communities. While the contractual terms and conditions of the associated Master Services Agreement and Statements of Work (SOW) have not been finalized, the Municipal Payment Calculation Model remains unchanged since August 19, 2022.

Base Cost Estimates

Based on the current version of the model and a comparison of the City's 2020 and 2021 Datacall reports, we estimate that if the City were to contract with CM it would experience a compensation short fall of between \$764,000 to \$987,000 over the period from its transition date of January 01, 2024 to December 31, 2026.

Our calculations assume that CM would contract with the City to provide waste collection and related services from the City's transition date through to year end 2026. The contract services would include residential and facility Blue Box curbside collection services, depot-based collection, and associated promotion and educational (P&E) services. At the present time, there is insufficient information about how the public space recycling program will function to fully understand the extent to which CM's proposed compensation level would cover the City's actual operating costs. These costs have not been included in our calculations for this reason.

Post Transition Period (2024-25) Comparison of CMO Funding Model vs. City of Peterborough Projected BB Costs											
Year	CMO Collection	CMO Depot	CMO Admin	CMO P&E	CMO Total	City Collection	City Depot	City Admin	City P&E	City Total	Difference
2024	\$2,276,211	\$121,681	\$73,648	\$58,358	\$2,529,898	\$2,532,881	\$143,242	\$102,863	\$117,001	\$2,895,987	-\$366,089
2025	\$2,425,530	\$128,252	\$78,465	\$59,000	\$2,691,247	\$2,714,771	\$148,210	\$104,352	\$121,419	\$3,088,752	-\$397,505
Total:	\$4,701,741	\$249,934	\$152,113	\$117,358	\$5,221,146	\$5,247,652	\$291,452	\$207,215	\$238,421	\$5,984,739	-\$763,593

To arrive at our estimate, we used CM's current payment calculation model but note the following issues:

Stop Count Variance

The CM model relies on stale dated RPRA Datacall information to populate the model. It relies on the average of years 2018 to 2021 to arrive at the growth rate for eligible households. This approach appears to underestimate the City's true growth rate by about 2% per year. The contract with CM does permit contractors to adjust housing counts but the City would need to incur additional costs updating its housing lists to justify the variance if it is to avoid being short changed. Past experience suggests that development of an accurate GIS database of stops can cost as much as \$45,000 for a community the size of the City.

Cost Escalation Variance

CM assumes an 80:20 ratio of CPI and diesel for its annual cost escalation whereas the City's contract with Emterra uses a 70:30 ratio. As a result, the City would be less exposed to CPI increases but more exposed to fuel escalation over the term of the contract. CM also assumes a CPI rate of 3% and a fuel escalation rate of 15%. While the CM contracts will escalate prices based on actual CPI and fuel, using the noted assumptions results in a potential underestimation of the actual short fall. Using, for example, the current CPI rate of over 7% and 24% increase in diesel fuel costs (as of September 2024), this variance would result in an additional short fall of over \$41,000 over the two-year contract term. Additionally, the current contract offer from CM applies the cost escalator January 1 one year after the start of the contract, and the City's contract with Emterra has a November 1 escalation date which could result in an additional short fall of approximately \$15,000 over the two-year term.

Depot and Promotional Cost Issues

As previously noted in our initial assessment of the CM contracts, CM's depot collection contract assumes a 25% ineligible proportion which is not reflective of the City's operation and would need to be negotiated or the City could incur an additional short fall of approximately \$73,000. As you are aware, CM also only offers \$1.50 per household in compensation to cover promotion and education (P&E) activities which represents a significant compensation short fall compared with the estimated \$2.85 per household the City is currently spending. Moreover, CM does not cover P&E costs for depot operations in communities where curbside collection is offered, such as in the City. CM has also verbally stated that it expects those funds to be spent on contamination abatement in communities that exceed the allowable contamination limits of the contracts. As a result, the City could face a compensation short fall of an additional \$117,000 over two years if it is compelled to spend the entirety of the CM compensation on contamination abatement.

Administrative Cost Variances

As you are aware, CM has opted to continue the unsubstantiated RPRA Datacall practice of capping administrative costs at 3% of net costs. While it is not in the scope of this analysis to determine the actual program related overhead costs for the City, previous work undertaken by the Continuous Improvement Fund suggests this number is likely closer to 6% to 8% of program costs. It is also

anticipated that the additional reporting requirements of the new program will result in additional unfunded labour costs similar to the current Municipal Hazardous or Special Waste program. As a result, the City could easily end up subsidizing the program by over \$50,000 over the two-year term of the contract.

Best regards,

A handwritten signature in blue ink, appearing to read 'M. Birett', with a stylized flourish at the end.

Michael J. Birett
Managing Partner
Birett & Associates