



# **Part 4: Regulatory vision and priority materials**

**Extended Producer  
Responsibility in the Yukon:  
exploration and implementation  
considerations**

2021



This document is Part 4 of the “Extended Producer Responsibility in the Yukon: exploration and implementation considerations” prepared by the Government of Yukon to fulfill the 2018 recommendation by the Ministerial Committee on Solid Waste to explore Extended Producer Responsibility. Part 4 presents the regulatory vision for Extended Producer Responsibility in the Yukon, including priority material categories to manage under Extended Producer Responsibility framework.

## **1. Regulation vision**

### **1.1 Model**

#### Stewardship

Although the Yukon has a successful partnership with Alberta Recycling Management Authority (ARMA), Alberta is now beginning the journey of moving toward EPR, suggesting the stewardship model has a limited lifespan. As all other Canadian jurisdictions are pursuing or considering the EPR track, stewardship seems an obsolete model for the Yukon to consider expanding. With PROs operating in BC expressing interest in assisting the Yukon to develop EPR, it appears clear that moving in this direction is a preferred approach to support progressive waste management and is in line with the national CAP-EPR commitment made in 2009.

#### EPR

As a late adopter, the Yukon has the opportunity to collaborate with neighbouring jurisdictions to build harmonized EPR programs through partnerships with regulators and PROs. The expressed interest of existing PROs to operate in the Yukon was encouraging, suggesting that EPR is seen as a viable policy option for the territory.

The opportunity for Yukon producers to partner with existing PROs and for the Government of Yukon to harmonize with BC environmental regulators could help to address the Yukon’s limited government staff and resources to work on the required policies and regulations. Leveraging established EPR systems in Canada provides a

level of efficiency and foundational knowledge that could greatly help to facilitate adoption of EPR in the Yukon and respond to the industry's calls for consistent EPR policies across Canada.

In the spring 2021, Alberta Environment and Parks consulted stakeholders to shape EPR policy for PPP and HHW. This may raise another opportunity to collaborate with a neighbouring jurisdiction, especially if Alberta establishes an arms-length organization to administer or oversee the EPR programs. It is expected that, in general, Alberta will model its EPR policies after BC, offering opportunities to collaborate with as many as three jurisdictions.

## 1.2 Regulation

The primary EPR policy objectives for the Yukon are:

1. to reduce waste management costs for the territorial government, municipalities, and taxpayers and provide fiscal stability for recycling;
2. to increase amount of waste diverted from landfills (thus helping to achieve waste diversion and GHG reduction targets under *Our Clean Future*); and
3. to encourage a circular economy.

During this engagement exercise, considerable input was received on desired elements of an EPR regulation. Since at the time of the engagement, BC was the only neighbouring jurisdiction with the EPR regulatory regime in place; they provided most of the input from a regulatory administration viewpoint. Other stakeholders reflected on which aspects of the EPR regulations worked well for them or were a significant hindrance.

Two important policy framework decisions will have to be made in order to shape EPR regulation:

1. The current BC EPR model sets the targets within the stewardship plans. The plans are prepared by the PROs on behalf of the obligated producers and approved by the government. The targets are reviewed and updated every five years as part of a required update to the stewardship plan. In comparison, jurisdictions like Ontario, Quebec and, possibly Alberta in the future, prescribe targets directly in the regulations or in other policy documents. Timing for incremental increases of the targets is laid out in the regulation.

The stewardship plan model provides a high degree of oversight and flexibility in target setting; however, the plan reviews can take a lot of time and resources. Prescribing targets directly in regulation is administratively less burdensome, but it may be hard to change the targets quickly. It is especially a concern for new programs without an established performance record. Currently, the Yukon is leaning towards establishing targets via stewardship plans, because it is a well-understood mechanism employed by BC. The Yukon will watch Alberta's approach on target setting.

2. The main program oversight, stewardship plan review, and some or all enforcement activities for the established EPR programs may be performed directly by the government, such as done in BC, or via an arms-length organization as in Ontario, and being considered in Alberta. In the latter scenario, the government would decide the scope of the delegated duties. Establishment of an arms-length organization shifts some of EPR policy costs to the producers as these organizations are typically industry funded. However, for a small jurisdiction like the Yukon, these costs may be high relative to the overall program costs. This issue should be re-evaluated after Alberta's EPR policy details are clarified.

Regardless of the decisions made with respect to the two elements discussed above, there are core elements of the EPR regulations that will remain the same. The sections below describe the main points.

## Definitions

Incorporating definitions is an important part of creating an effective regulation.

Definitions need to be clear and unambiguous, with suggested terms to be captured including producers, obligated products, recycling, disposal, etc.

1. Definition of an **obligated producer** was high on a list to harmonize to ensure the same parties are obligated in different jurisdictions. The cascading definition of the producer (similar to BC) was recommended by most stakeholders to provide fair treatment and help ensure compliance. The definition outlines the following cascading order: manufacturer, owner or licensee of a trademark, and first importer. The theory is that parties higher on the definition chain have more ability to influence product and packaging design, so it is important that the parties highest on the hierarchy are designated as obligated producers. It was also noted that franchises also need to be recognized within the hierarchy.
2. Another definition frequently recommended to be harmonized is the **obligated products** within a product category. Ensuring that the same products are obligated in the Yukon as in the neighbouring jurisdiction would allow for PROs to easily expand their operations on behalf of the obligated producers. In general, it is recommended to craft broad product category definitions with specific exemptions, if required, rather than include prescriptive lists of specific items. The broad definitions assist with incorporating new and emerging products that were not on the market at the time of drafting the regulation.
3. Acceptable **management options** for products follow a waste management hierarchy in the BC regulation. The options (reduction, reuse, recycling, disposal) need to be clearly defined to allow effective tracking and reporting of the desired management outcomes.

As recycling is a key target outcome, its definition is particularly important. A current standard definition, such as that provided by the Canadian Standards Association

(CSA), through CSA Group SPE-890-15 - A Guideline for accountable management of end-of-life materials, serves well to clarify the definition of recycling. This definition is as follows:

**Recycling** – any operation by which end-of-life products or materials are reprocessed into new products, materials, or substances (solids, liquids, or gases), whether for original or other purposes, to replace virgin equivalents of that material.

It is important to note that CSA is currently in the process of updating its recycling definition.

#### Roles and responsibilities

- 1 The main roles of the Government of Yukon will be to conduct stakeholder consultation and engagement, develop a regulation and supporting guidance, monitor the performance of producers and products obligated under the regulation, and enforce participation of obligated producers under the regulation. As discussed above, some of these functions may be delegated to an arms-length organization.
- 2 The primary obligation of producers is to achieve the outcomes outlined in the EPR Regulation, as evidenced by completing required reporting. This may be supported by establishing and implementing approved stewardship plans. It is also expected that producers will participate in consultation and engagement processes, and work with stakeholders to develop an efficient system.

The BC regulation exempts small PPP producers (gross revenue below \$1M in BC, generation of less than one tonne of PPP materials, or a single point of retail in BC) from the obligations. This exemption may be included in the Yukon regulation; however, it is likely not to exempt producers with a single point of retail in the jurisdiction, as it does in BC. The revenue and waste amount thresholds may also be different.

- 3 Current recycling processors and other service providers do not have legislated roles in the EPR regulation. It is expected that they will establish working relationships with producers and PROs to fulfill their producer responsibilities.
- 4 Consumers are not expected to have a legislated role in the EPR regulation. It is expected that they will participate in the consultation and engagement processes and in the waste management efforts organized by the producers or PROs. As consumers, they may bear increased costs of certain products to fund the regulated EPR system. This is consistent with the polluter pay principle of assigning full costs directly to the product users instead of to all taxpayers.

#### Targets and outcomes

It is clear that best practice for EPR regulation is outcomes-based. A number of potential targets were mentioned in the consultation, but the Yukon will need to determine its priority targets. The targets are expected, and encouraged, to be different for each product category to reflect individual realities and expectations. It is expected that targets also be based on consultation with producers/PROs.

1. **Collection targets** are expected to be set in approved stewardship plans, regulation or guidance documents. They will specify the per cent of the product or material to be collected in relation to the amount put on the market. The collection rate may be weight/volume-based or quantified based on a number of units, and must consider the uniqueness of use of certain products, such as those that are consumed in use. A logical starting point for collection targets are targets outlined in the BC regulation (75% recovery). The targets are expected to be progressive within a certain time period.
2. **Reuse and recycling targets** will be set to encourage collected product to be managed at the highest levels of the waste management hierarchy. Recycling targets represent one of the most important measures of a program's environmental

success. Reporting needs to outline the full details of disposal of all collected material in a clear and transparent way.

3. One of the most important considerations in a geographically remote and sparsely populated jurisdiction is **accessibility**. The accessibility of EPR programs is typically dictated via requirements to service communities of a certain population size and/or provide collection services to residents within a certain driving distance. Taking into consideration generally small community sizes in the Yukon, the accessibility targets are expected to be very different from those in southern jurisdictions. The guiding principle is to preserve existing levels of service currently available in the territory and improve where possible. Delivering the desired level of service may be facilitated by PROs through innovative service models suited to unique Yukon logistics.
4. Producers are expected to engage in education and communication campaigns to provide information to consumers about EPR programs and to encourage consumer participation in the programs. **Consumer awareness** targets may be established to facilitate these processes.

#### Measurement and reporting

Measurement and reporting are the responsibility of the producer or PRO on behalf of the producer. The government needs to outline reporting expectations that then lead to measurement of program performance. Aligning reporting requirements to those in BC and, possibly in Alberta, will reduce the administrative burden on the obligated producers/PROs.

The EPR regulation is expected to require third party audits of program performance and finances.

#### Oversight and enforcement

Ultimately, the Government of Yukon is responsible for enforcement of the regulation. However, the reality of how this happens varies between jurisdictions.



In BC, the Ministry of Environment and Climate Change Strategy has an EPR group that reviews and approves stewardship plans from each PRO. They also work with producers and PROs to review programs and targets. In some other jurisdictions, the government delegates certain authorities to arms-length organizations. They are typically industry funded, but report to the government. These third-party oversight bodies manage stewardship plans in accordance with government guidance. Alberta is expected to follow the arms-length oversight model.

It will be an important consideration for the Government of Yukon either to undertake this role within the Department of Environment or to delegate to an arms-length organization.

#### Changes required to the *Environment Act*

Currently, the *Environment Act* has provisions to enact regulations that enable establishment and regulation: registration, accreditation, monitoring and enforcement of EPR programming. It is possible to designate arms-length organizations operating outside of the territory or establish such organizations in the Yukon. However, government will likely not be able to discharge the enforcement of penalties on non-compliant producers to arms-length organizations.

Regulation of online retailers may require an amendment to the act, while additional legislative limits to EPR regulation may be revealed when legislative drafting occurs. However, these are not anticipated to have significant impacts on the EPR vision.

### **1.3 Other considerations**

#### Free riders

Free riders are obligated producers that are not registered with a PRO and are not fulfilling their obligations under an EPR regulation. The PROs typically make first efforts to identify free riders and attempt to have them register with the PRO. If that does not

work, the Government of Yukon needs to undertake enforcement of free riders (in cooperation with the oversight body if there is one).

#### Addressing online and out-of-territory producers

Although all jurisdictions deal with challenges associated with incorporating online sales, it is particularly important to the Yukon, where online sales are more significant. Out-of-territory producers may be obligated; however, enforcement outside of the Yukon's boundaries presents challenges.

Working with existing PROs and regulators will be key to establishing effective strategies to capture these products within the system.

#### Legacy products

Products that are no longer sold, e.g., an old style of a lightbulb or an old phone model, are considered legacy products. It is generally accepted that legacy products are included in the EPR program and factored into costs. Essentially, obligated products are included, regardless of when they were sold. This may result in PROs setting higher fees on products currently on the market at the beginning of the EPR program to build a reserve to support issues such as legacy products, and then decrease the fees over time. It will be important to consult with producers on this issue to ensure there are not significant unintended consequences.

The alternative is for the government, rather than producers, to fund legacy products from within the Government of Yukon's operating funds.

#### Streetscape/public space collection

Collection of PPP from streets, parks, and other public spaces, also referred to as streetscape collection, has been a challenge in other jurisdictions, suggesting that there may need to be innovative approaches to capturing this material within a PPP EPR program. Alternately, staged implementation that does not initially include this source of waste generation may be a reasonable alternative. Discussions with existing PROs

like Recycle BC will provide additional insight into the viability of including public space collection options.

## 1. Priority materials listing for the Yukon

Based on the stakeholder feedback and historical waste management planning efforts in the Yukon, the following factors should be considered to identify priority materials for EPR programs:

- volume/landfill space saved;
- environmental risks if mismanaged and toxicity of waste;
- costs to collect and recycle;
- commodity prices for recycled materials;
- ease of program implementation;
- social licence/concern;
- waste visibility (e.g., litter);
- recycling feasibility; and
- cost impacts to industry, government and consumers for EPR transition.

The financial viability of the existing non-regulated recycling program for PPP is an ongoing concern. It is currently funded by a combination of municipal and territorial diversion credits, and both recycling processors applying profits from some areas of its enterprise to subsidize net negative recycling programs. Raven Recycling has expressed concerns about capital funding and indicated it may not be able to operate all of the non-regulated recycling programs reliably into the future under the current financing model.

Based on the previous prioritization exercises, the current state of the territory's recycling, and feedback from the stakeholders consulted, the following are the priority materials for EPR programs in the Yukon:

1. PPP.
2. HHW.

### 3. Used oil.

PPP and HHW are also the materials Alberta has identified as priority materials for EPR.

BCUOMA has repeatedly expressed interest in working with the Yukon to develop an EPR program for used oil, antifreeze, oil filters and containers. They noted an EPR regulation capturing used oil materials, or commitment to developing one in the Yukon, would be the impetus needed for them to incorporate Yukon businesses into their service delivery.

Materials currently managed through the existing stewardship programs, including beverage containers, tires, e-waste and small electronics, will continue to be managed as such for the short term. However, these programs should be transitioned to EPR when possible in the future. This will allow for greater flexibility for fee setting and expanding the basket of obligated products to keep up with the new products on the markets.