RPRA
Resource Productivity & Recovery Authority

2022 RRCEA Program Fees

Consultation Report

June 3, 2022

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Executive Summary

This report details the Resource Productivity and Recovery Authority's (RPRA) consultation process, the feedback received, and how RPRA incorporated the feedback into its decision-making on setting fees for its producer responsibility programs under the *Resource Recovery and Circular Economy Act, 2016* (RRCEA). RRCEA Program Fees for 2022 include fees for producers of Blue Box materials; hazardous and special products (HSP); information technology, telecommunications and audio visual equipment (ITT/AV) and batteries; lighting; and tires. Additionally, RPRA consulted on proposed revisions to its General Fee-Setting Policy.

Questions about this report can be emailed to consultations@rpra.ca.

RRCEA program fees are charges that producers pay to RPRA annually to cover its costs related to building and operating the registry and compliance and enforcement activities. The General Fee-Setting Policy guides how fees are set in accordance with a list of principles and objectives.

Producers obligated under RRCEA regulations are required to report their supply data and pay the associated fees to RPRA in 2022. This is the first year that lighting producers are required to report and pay fees to RPRA.

From March 10, 2022, to April 25, 2022, RPRA consulted on the proposed 2022 RRCEA Program Fees for producers and the revised General Fee-Setting Policy.

RPRA received nine written comments during the consultation, which are summarized in Appendix B of this report. All questions received during the consultation webinars and responses provided by RPRA are detailed in Appendix C of this report.

RPRA's fee-setting principles, cost allocation methodology, and fee model were reviewed by a third-party consultant before the consultation, and a summary of the consultant's report was published as part of the consultation. The review validated RPRA's cost allocation and fee model as reasonable, and suggested updates to RPRA's fee-setting principles. RPRA's revised fee-setting policy with updates to the fee-setting principles was approved as proposed during the consultation. The fee model - a fixed flat fee for small producers and a variable per kg or per tire rate for large producers – was also approved as proposed during the consultation.

In response to stakeholder feedback, the fixed small producer fee remains $75 for another year for all programs, rather than increasing to $100 as was proposed for consultation.

The final fees proposed for producers of HSP in categories A, B and E; tires; batteries and ITT/AV; and Blue Box materials did not change from what was proposed in the consultation.

The fees for HSP Categories C (mercury-containing barometers, thermometers, thermostats), and D (fertilizers) remain at 2021 rates rather than increasing as proposed for consultation to reflect both stakeholder feedback and new information received since the start of the consultation.

The final fee rate for lighting producers was lowered from 33 cents/kg to 22 cents/kg as a result of stakeholder feedback and new information received since the start of the consultation.

For more information on the final fees, review the 2022 fee schedule for all programs.

The 2022 RRCEA Program Fees were approved on May 19, 2022. RPRA posted the final fees to its website on June 3, 2022, and stakeholders were notified the same day.

Introduction

About RPRA

RPRA is the regulator created by the Ontario government to enforce the requirements of the RRCEA and the *Waste Diversion Transition Act, 2016* (WDTA).

The RRCEA establishes a resource recovery regime where producers are individually accountable and financially responsible for their products and packaging through their full life cycle, including recovering resources and reducing waste. The WDTA allows for the continuation of legacy waste diversion programs and sets out provisions to wind up those programs as directed by the Minister of the Environment, Conservation and Parks.

RPRA does not receive any government funding. The WDTA and RRCEA allow RPRA to set and collect fees to recover its costs from regulated parties. RPRA revenues come from two sources:

- WDTA: Charges to industry funding organizations (IFOs) and industry stewardship organizations (ISOs) for RPRA's oversight and wind-up of current waste diversion programs and the IFOs that operate the programs.
- RRCEA: Charges to parties required to register and report to RPRA under the RRCEA or *Environmental Protection Act* (EPA). Fees are used to cover the costs of developing and operating registry and digital reporting services, registrant support services for all programs, as well as RRCEA compliance and enforcement activities.

Before setting RRCEA program fees, RPRA must engage in public consultation for at least 45 days, and post the fees on its website for 30 days.

Principles for public consultation

RPRA's consultations are guided by the following best practice principles developed by the Organization for Economic Cooperation and Development:

Inclusiveness and openness: *Engage broadly with a wide variety of stakeholders, provide clear and understandable information, and make the consultation process accessible, comprehensible and responsive.*

Timeliness: *Engage stakeholders early before decisions are made and provide regular opportunities for engagement on key program and policy matters.*

Accessible and cost effective: *Consider a variety of tools and methods to gather feedback that promote efficient and cost-effective consultations.*

Balance: *Provide opportunities for diverse perspectives and opinions to be heard and considered.*

Transparent: *Record feedback, report back a summary to stakeholders, and synthesize feedback into programs and policies as appropriate.*

Evaluation: *Demonstrate the impact of public consultations on program delivery and policy development.*

Consultation

Process

Consultation on RPRA's proposed 2022 RRCEA Program Fees and revised General Fee-Setting Policy began on March 10, 2022 and ended 46 days later on April 25, 2022. A dedicated web page was created on RPRA's website with background information on the consultation, registration links for the webinars, and presentation materials.

On March 10, 2022, RPRA emailed its general mailing list (approximately 1,900 subscribers) announcing the consultation and providing information on how to participate. On March 11, 2022, RPRA also notified producers, PROs, and industry associations of affected programs. Stakeholders were invited to submit feedback on the proposed fees via email or by attending one of two webinars hosted on March 21 and March 22.

Additionally, on April 21, stakeholders representing the material groups impacted by the proposed 2022 RRCEA Program Fees were invited to present directly to RPRA's Finance and Technology Committee of the Board.

What we heard

RPRA received feedback through all its consultation channels:

- There were 128 participants in the webinar on March 21 and 166 participants in the March 22 session. Webinar presentations and recordings can be found here.
- Four key stakeholders representing producer associations presented at the Finance and Technology Committee meeting.
- Nine written submissions were received via email.

The feedback received from all channels is summarized and categorized into themes below:

General fee or budget related

- Some stakeholders expressed concerns about the year-over-year increase in RPRA's budget including head count and associated costs
- One stakeholder noted the importance of setting the budget at an appropriate level to enable effective regulatory implementation
- Some stakeholders recommended that RPRA leverage the work being done by PROs (e.g., existing tracking systems, data collection, etc.) to help find efficiencies and reduce costs.
- Some stakeholders asked RPRA to consider bundling and discounting fees for producers who are obligated under more than one program
- One stakeholder emphasized their members' desire for fee stability year-over-year
- Some stakeholders expressed concern with a lack of detail regarding the cost allocation methodology and program budgets. One requested to see details of the breakdown of their program's allocation (direct vs. shared costs), and another asked RPRA make information available that shows the changes in program allocations year-over-year
- One stakeholder requested that surplus revenue be returned in-year as cash to fee payors within the program that accumulated a surplus, rather than applying a surplus to the program's cost recovery target for the following year
- Some stakeholders expressed concerns that compliant fee payors are shouldering the fees of free riders

Fee-setting methodology

- One stakeholder expressed concerns that a weight-based variable fee unfairly burdens producers of heavier materials
- Some stakeholders stated a preference for flat fees rather than variable fees tied to volume of material supplied
- Two stakeholders requested that RPRA maintain the small producer fee at $75, citing the financial burden for small business, rather than raising it to $100 as proposed during the consultation; one stakeholder supported raising the small producer fee
- One stakeholder expressed concern about potentially being required to contribute more to the registry's foundational elements than producers in other programs.

Proposed fees for Blue Box materials

- Some stakeholders expressed preference for a discount for producers supplying into more than one material category based on volume
- One stakeholder was interested in RPRA investigating an amalgamated cost recovery target for all producers obligated under the RRCEA, rather than program-specific cost recovery targets

Proposed fees for HSP

Category A & B material producers:

- One stakeholder expressed concern that a weight-based fee unfairly burdens paints and coatings, as the heaviest sub-material category, and would prefer unit-based fees or fees calculated for each sub-material group
- The same stakeholder is concerned that RPRA costs to producers for the HSP program are higher than the costs assessed to stewards in the now wound-up Municipal or Hazardous Special Waste (MHSW) Program operated by Stewardship Ontario and ISOs

Category C material producers:

- Stakeholders representing companies that are producers of legacy mercury-containing products questioned whether the 100% increase in fees is warranted. They pointed out that the cost of the mercury recovery program currently operating across Canada is small, and noting that RPRA's proposed flat fee would double costs for the five participating Ontario producers

Category D material producers:

- A stakeholder representing fertilizer companies expressed concerns with the proposed 25% increase to RPRA's fee compared to 2021, especially given that RPRA stated that the overall the cost recovery target for Categories C, D and E HSP producers was adjusted downward to account for lower-than-expected effort to support and enforce producer requirements for these categories

Category E material producers:

- A stakeholder representing propane producers requested the large producer fee be halved, noting that they currently run a 'closed loop' system where refillable propane cannisters are already close to 100% recovered

Proposed fees for lighting

- A stakeholder representing a subset of lighting producers is concerned that the per kg fee for lighting is high relative to other program fees, and questioned why the Lighting Program is treated as a separate program from ITT/AV. The stakeholder suggested it was inconsistent with RPRA's approach to the HSP program, where a number of different material categories in the same regulation are combined into one program and assigned fees based on an amalgamated cost recovery target.

RPRA's regulatory function

- One stakeholder noted RPRA's growing regulatory oversight function and responsibilities during the transition from legacy waste diversion programs to the implementation of new regulations under the RRCEA, and encouraged RPRA to set fees that ensure RPRA is appropriately resourced to fulfill the full scope of its regulatory mandate.
- There were some comments suggesting RPRA needed to take more action on free riders (i.e., obligated parties that avoid registration and reporting, including paying fees to RPRA), and one suggestion that any costs related to enforcement actions for non-compliance should be charged to those who are out of compliance.

Feedback that was not relevant to this consultation has been excluded from the summary.

For a list of stakeholders that submitted written feedback and presented at RPRA's Finance and Technology Committee meeting, see Appendix A of this report.

Appendix B outlines RPRA's responses to comments that arose during the consultation.

For a list of all questions received and answers provided, see Appendix C.

Evaluation

To help RPRA improve future consultations and communications, participants were invited to complete a short survey following the consultation webinars. Of the 294 webinar attendees, 86, or 29%, completed the survey.

In response to the question, "Overall, how would you rate the consultation?", 80% of respondents ranked the session "Excellent", "Good" or "Average" (based on a scale of Excellent, Good, Average, Fair, Poor).

38% of respondents said the information provided by the presenter was "Extremely or Very helpful", and 53% said it was "Somewhat helpful". The remaining 9% said it was "Not so helpful".

Majority of respondents (91%) ranked the presentation slides of the webinars as "Excellent", "Good" or "Average". 85% of respondents ranked the question and answer portion as "Excellent", "Good" or "Average"

Conclusion

The 2022 RRCEA Program Fees for producers of tires, batteries and ITT/AV, HSP, Blue Box materials, and lighting were approved on May 19, 2021. RPRA posted the final fees to its website on June 3, and stakeholders were notified the same day.

RPRA appreciates the thoughtful feedback provided through the consultation process and considered each submission in setting the fees.

In response to stakeholder feedback, the fixed small producer fee will remain $75 for another year for all programs, rather than increasing to $100 as was proposed for consultation.

The final variable fee rates proposed for producers of HSP categories A, B and E; tires; batteries and ITT/AV; and Blue Box materials did not change from what was proposed in the consultation.

The fees for producers of HSP Categories C (mercury-containing barometers, thermometers, thermostats), and D (fertilizers) were kept the same rather than increased as proposed for consultation, to reflect stakeholder feedback and new information received since the start of the consultation.

The final fee for lighting producers was lowered from 33 cents/kg to 22 cents/kg as a result of stakeholder feedback and new information received since the start of the consultation.

Stakeholder feedback about the perceived shortcomings of assigning a variable fee based on weight were considered. RPRA has maintained a mixed variable and flat fee model because:

- It protects small businesses from undue financial burden
- It is aligned with the objectives of the government's producer responsibility regulatory framework to hold producers individually accountable and financially responsible for the products and packaging they supply into the market
- It does not lead to any competitive impacts for producers selling the same products

RPRA's operations are beginning to shift from developing and launching registration campaigns and registry projects for multiple new programs, which brought significantly different new costs annually, to a focus on sustaining and improving existing programs, resulting in more predictable costs year-over-year. As RPRA transitions to this steadier state for current programs, our increased ability to predict costs should translate into more stable and predictable fees for registrants. Potential changes to fee models and/or the cost allocation methodology would be consulted on with stakeholders at that time.

RPRA is committed to transparency in its fee-setting process. Additional detail on the cost allocation methodology and all program cost recovery targets will be provided proactively in future fees consultation.

See Appendices B and C for more detailed responses to stakeholder feedback about variable weight-based fees.

Appendix A: Stakeholders that submitted feedback

The nine written submissions were submitted by the following stakeholders:

- Canadian Federation of Independent Business
- Costco
- Electro-Federation Canada
- Electronic Products Stewardship Canada
- Fertilizer Canada
- Food, Health & Consumer Products of Canada
- Heating, Refrigeration and Air Conditioning Institute of Canada
- Retail Council of Canada
- Tire and Rubber Association of Canada

The following four stakeholders representing producer associations presented at RPRA's Finance and Technology Committee meeting:

- Shelagh Kerr, Electronic Products Stewardship Canada
- Marcelline Riddell, Canadian Propane Association
- Gary LeRoux, Canadian Paints and Coatings Association
- Julie Kwiecinski, Canadian Federation of Independent Business

Appendix B: Response to stakeholder comments

RPRA considered all feedback received during the consultation period. Key comments received and RPRA's responses are included below and categorized into the following themes:

- General fee and budget related
- Fee-setting methodology
- Proposed fees for Blue Box materials
- Proposed fees for HSP
- Proposed fees for lighting
- RPRA's oversight
- Registry services and functionality

General fee and budget related

- Some stakeholders expressed concerns about the year-over-year increase in RPRA's budget including head count and associated costs
- One stakeholder noted the importance of RPRA setting its budget at a level sufficient to enables effective regulatory implementation.
- Some stakeholders recommended RPRA leverage the work being done by PROs (e.g., existing tracking systems, data collection, etc.) to help find efficiencies and reduce costs.
- Some stakeholders expressed preference for a discount for producers supplying into more than one material category based on volume
- One stakeholder emphasized their members' desire for fee stability year-over-year
- Some stakeholders expressed concern with the lack of transparency and detail regarding the cost allocation methodology and the breakdown of program allocations. One requested to see details of the breakdown of their program's allocation (direct vs. shared costs), and another asked that RPRA make information available that shows the changes in program allocations year-over-year
- One stakeholder requested that surplus revenue be returned in-year as cash to fee payors within the program that accumulated a surplus, rather than applying a surplus to the program's cost recovery target for the following year
- Some stakeholders expressed concern that compliant fee payers are shouldering the fees of free riders

RPRA's response

As an administrative authority of the Government of Ontario, RPRA does not receive any government funding and funds its operations solely through fees charged to registrants. RPRA operates on a cost-recovery basis and its budget reflects costs necessary to deliver its legislated mandate. RPRA budgets are set through the annual business planning process, which is overseen by RPRA's Board. The ministry has an opportunity to review and comment on a draft plan before the final plan is approved by the Board. Additionally, RPRA consults stakeholders throughout the business planning process via the newly established Industry Advisory Council and the Service Provider Advisory Council.

RPRA has well-developed financial control policies and processes in place to ensure all spending decisions have appropriate oversight and approvals, and a procurement policy that aligns with best practices to ensure services and products are obtained at market competitive rates. RPRA also publicly reports on its activities, including presenting audited financial statements, through its Annual Report published June 1 each year and its Annual Public Meeting held in June of each year. Increases in budget and a growing staff compliment are required to deliver RPRA's growing mandate, which now includes overseeing five regulations under the RRCEA (Batteries, EEE, Tires, HSP, and Blue Box) and building and administering two digital reporting services for the EPA-regulated excess soil and hazardous waste programs.

RPRA seeks to align registry and compliance-related activities with the business practices of PROs and other registrants where possible to make procedures easier and more efficient (e.g., with respect to audit procedures). However, PROs and RPRA have fundamentally different mandates and therefore system requirements. RPRA regulates producers and service providers to ensure compliance. PROs are businesses operating in a competitive market providing services to producers to help them meet their performance obligations. It is not practical or appropriate for RPRA to rely on PROs to deliver any part of its mandate or utilize their systems instead of its own registry. RPRA's compliance and enforcement mandate requires reporting systems designed to meet the detailed requirements of regulations issued under the RRCEA and support its compliance-related activities.

At this time, there are no fee deductions for producers that participate in multiple programs. Even though a producer may be obligated under multiple programs, each program is different – communicating regulatory requirements, administering the registry portals, validating each supply report or other submission, developing registry procedures, identifying free riders, and conducting other risk-based compliance and enforcement activities. Regulations establishing the programs have different requirements for producers in terms of registering, reporting and other obligations, and therefore different requirements for RPRA. Each program's registry portal is purpose-built to facilitate producer registration and reporting requirements outlined in the regulations, and RPRA compliance activities for each regulatory program.

RPRA's operations are beginning to shift from developing and launching registration campaigns and registry projects for multiple new programs at once, which brought significantly different new costs annually, to a focus on sustaining and improving existing programs, resulting in more predictable costs year-over-year. As RPRA transitions to this steadier state, our increased ability to predict costs should translate into more stable and predictable fees for registrants over time.

RPRA consults stakeholders during throughout the annual budget development and business planning process via the Industry Advisory Council, and Service Provider Advisory Council. In response to requests for greater transparency around program allocations, RPRA will make annual program allocations readily available, along with a plain language summary of our cost allocation methodology, as part of future fee consultations.

RPRA's practice of carrying program surpluses or deficits and applying it to the cost recovery target for that program in following years ensures the full amount of any surplus in revenue is returned to producers via a discount on future fees, and any deficit is recovered in future years. Returning cash to producers who as a group paid more than the revenue recovery target for their program or seeking additional payments from producers in-year would require substantial administrative effort, which would increase costs.

Fee rates are based on estimates of the total number of producers and tonnage obligated under the program. When previously unregistered free riders are identified and required to comply, they must pay fees owed to RPRA for the years they were out of compliance. If additional unanticipated fees are recovered in-year because free riders are identified, these fees will go to offset fees paid by all producers in the following year. As a result, compliant producers should not end up absorbing more than their fair share of costs.

Under the RRCEA, RPRA can also issue administrative penalties under the RRCEA once an administrative penalties regulation is in place (there is currently no regulation in place). The penalty amount has two components: the base penalty amount that would be set out in a regulation, and an economic benefit penalty that would have no pre-set maximum. The economic benefit penalty is intended to recover whatever costs were delayed or avoided, or whatever gains were accrued, by the person subject to the penalty.

Fee setting methodology

- One stakeholder continues to express concern that weight-based variable fees unfairly burden producers of heavier materials
- Some stakeholders continue to state a preference for flat fees rather than variable fees tied to volume of material supplied, in part because in their view flat fees better reflects the cost to support each producer.
- Stakeholders requested that RPRA maintain the small producer fee of $75, citing larger burden for small business, rather than raising it to $100 as proposed during the consultation; one stakeholder supported raising the small producer fee.
- One stakeholder expressed concern about being required to contribute more to the Registry's foundational elements than producers in other programs.

RPRA's response

RPRA acknowledges that the amount of supply into Ontario does not determine the amount of oversight effort required for a regulated material and that weight places relatively more burden on producers supplying heavier materials where programs include materials of different densities.

However, weight-based variable fees support the fee-setting principles of simplicity and equity. A variable weight-based fee protects small producers from undue burden. They can be applied consistently to material categories with multiple material types, including materials that do not have a common unit measure (the diverse materials in the HSP and Blue Box programs, for example). Weight-based variable fees also align with all regulations that require supply to be reported in weight (except the Tires Regulation, which requires reporting in units and weight). Weight-based fees ensure that producers of the same products face the same costs on a per product basis, so that the fee has no competitive impact on the consumer markets producers operate in.

Instituting single flat or tiered flat fees would benefit large producers at the expense of small businesses. Assigning variable fees to producers based on weight of supply is aligned with the objectives of the government's producer responsibility regulatory framework to hold producers individually accountable and financially responsible for the products and packaging they supply into the market. A flat fee below a certain supply volume or annual revenue ensures all producers pay a minimum amount.

In response to stakeholder concerns, RPRA is maintaining the small producer fee at $75 for another year, rather than raising it.

Foundational components of the registry are shared equally by all RRCEA programs. Accordingly, although registry payments for foundational components will fluctuate year-over-year as new programs start paying fees, over the 10-year amortization period for those components, each program will be allocated the same amount.

RPRA provided an explanation of its cost allocation methodology and fee model during both consultation webinars and will ensure this information is made available in future fee consultations.

Proposed fees for Blue Box materials

- Some stakeholders expressed preference for a discount for producers supplying into more than one material category based on volume
- One stakeholder was interested in RPRA considering a proposal to determine future fees using an amalgamated cost recovery target for all producers obligated under the RRCEA, rather than program-specific cost recovery targets.

RPRA's response

RPRA's response with respect to providing discounts for producers supplying into more than one material category is set out above (see "General fee and budget" section).

RPRA commissioned an external review of its cost allocation methodology and fee model from Optimus SBR. A summary of Optimus' final report was included in the consultation and can be viewed on RPRA's website. As part of this review, RPRA considered, with the aid of Optimus, alternative methodologies for cost allocation. Optimus concluded that an amalgamated cost recovery target for all RRCEA producers would be worth considering when RPRA programs and processes have reached a steadier state. When all provisions of all current RRCEA regulations are in force, and registry and digital reporting services are operational, RPRA will again review the cost allocation methodology and investigate whether alternative approaches could result in more efficient or predictable fees, or better align with RPRA's fee-setting principles.

Proposed fees for HSP

Category A & B material producers:

- One stakeholder stated weight-based fees unfairly burden paints and coatings, as the heaviest sub-material category, and would prefer unit-based fees or fees calculated for each sub-material group
- The same stakeholder is concerned that RPRA costs to producers for the HSP program are much higher than the costs assessed to stewards in the now wound-up MHSW program.

Category C material producers:

- A stakeholder representing producers of legacy mercury-containing products expressed concerns that the increase in fees is not warranted. The stakeholder pointed out that the cost of the current mercury recovery program that is administered across Canada is approximately $300K/year, noting that RPRA's proposed flat fee would result in doubling of costs for the five participating Ontario producers

Category D material producers:

- A stakeholder representing fertilizer companies expressed concerns with the proposed 25% increase to RPRA's fee compared to 2021. The stakeholder also requested clarity on why the fee is proposed to increase when overall the cost recovery target from Category C, D and E HSP producers was adjusted downward to account for lower-than-expected effort required on the part of RPRA to support and enforce producer requirements for these categories

Category E material producers:

- A stakeholder representing propane producers presented to RPRA's Finance and Technology Committee on April 21. The stakeholder requested the large producer fee be halved, noting that they run a 'closed loop' system by which refillable propane cannisters are already close to 100% recovered

RPRA's response

RPRA's response with respect to the use of weight-based fees is set out above (see Fee-Setting Methodology section).

RPRA costs to HSP producers are higher than the regulatory oversight costs stewards were charged by RPRA (and WDO previously) under the legacy MHSW Program. This is true for all RRCEA programs compared to regulatory oversight costs under the legacy programs operated by IFOs and ISOs. The scope of regulatory oversight by WDO and then RPRA under the legacy waste diversion programs is much more limited than the scope of RPRA's regulatory mandate under the RRCEA, which includes undertaking compliance and enforcement activities and building and operating the registry.

RPRA does not have a methodology for setting individual program budgets for each sub-category of material within each program. Such an allocation approach would introduce substantial additional complexity and effort, which would further raise program costs.

Overall, RPRA reduced the cost recovery target for category C, D, and E producers compared to 2021. However, RPRA's proposed fees for Categories C and D increased because its estimate of the number of obligated producers in each of those two categories was also adjusted downward significantly. This resulted in substantial increases in the proposed per producer fee in those two categories. However, in light of stakeholder concerns about substantial year-over-year increases, the relatively small scope of these two programs overall, and the fact that work is ongoing to confirm both the number of producers obligated in each of these material categories and the amount of effort required of RPRA to administer them, RPRA will be holding fees in these two programs steady for another year.

2022 fees in Category E will also remain steady for another year at 2021 rates, including the small producer fee which will be held at $75 rather than increased to $100 based on stakeholder feedback. Stakeholder feedback requesting the large producer fee be reduced because refillable propane cylinders currently operate in a closed-loop system could not be considered as the HSP Regulation requires that RPRA conduct regulatory activities for this material category. RPRA estimates that approximately 20 producers will report supply of category E HSP in 2022.

Proposed fees for lighting

- A stakeholder representing eight large producers of lighting is concerned that the Lighting Program's per kg fee is high relative to other programs' fees, and questioned why lighting is treated as a separate program from ITT/AV, and why its costs are allocated separately from ITT/AV. The stakeholder suggested it was inconsistent with RPRA's approach to the HSP Program, where a number of different material categories in the same regulation are combined into one program and assigned fees based on an amalgamated cost recovery target.

RPRA's response

Although lighting producers are obligated in the same regulation as ITT/AV producers, the programs are different. The ITT/AV program is primarily a legacy program transitioned from the Waste Electrical Electronic Equipment Program operated by Ontario Electronic Stewardship under the WDTA. Lighting, on the other hand, is entirely new:

- Lighting covers a new set of products not previously regulated under the WDTA
- Lighting obligates a new set of producers, not an existing steward group
- Lighting program has its own registry portal that will begin to be amortized on a different schedule from the ITT/AV portal

In addition, the Lighting Program will require substantial startup effort in 2022 and 2023 that is not in any way related to the current state of the ITT/AV Program. Lighting is also being implemented on an entirely different schedule from the ITT/AV Program, which has been running since 2020.

For all of these reasons, there is little operational overlap in the Lighting and ITT/AV programs within RPRA. It is also expected that, as a wholly new producer responsibility program that is unrelated to a legacy WDTA program, the needs of the Lighting Program will be substantially different from ITT/AV and the other transitioned legacy programs during start-up. In short, the fact that lighting and ITT/AV products are covered in the same regulation is incidental, and has no bearing on how the programs are administered and the costs they incur.

In contrast, the HSP Program is a legacy program transitioned from the longstanding MHSW program under the WDTA. All HSP materials were transitioned at the same time, under the same Minister's direction, with the same implementation timeline, and subject to the same registry procedures. Like lighting, the one wholly new HSP material, mercury, is treated separately for the purposes of cost allocation and fee-setting.

RPRA's regulatory function

- One stakeholder noted RPRA's growing regulatory oversight function and responsibilities during the transition from legacy waste diversion programs to the RRCEA and the implementation of new regulations under the RRCEA. The stakeholder encouraged RPRA to set fees that ensure RPRA is appropriately resourced to fulfill the full scope of its regulatory mandate.
- There were some comments suggesting RPRA needed to take more action on free riders (i.e., obligated parties that avoid registration and compliance, including paying fees to RPRA), and one suggestion that any costs related to enforcement actions for non-compliance should be charged to those who are out of compliance.

RPRA's response

RPRA operates on a cost recovery basis and sets fees required to support activities necessary to fulfill its legislated mandate. RPRA seeks to operate cost-effectively and demonstrate value-for-money.

Fee rates are based on estimates of the total number of producers and tonnage obligated under the program. When previously unregistered free riders are identified and required to comply, they must pay fees owed to RPRA for the years they were out of compliance. If additional unanticipated fees are recovered in-year because free riders are identified, these fees will go to offset fees paid by all producers in the following year. As a result, compliant producers should not end up absorbing more than their fair share of costs.

Under the RRCEA, RPRA can also issue administrative penalties under the RRCEA once an administrative penalties regulation is in place (there is currently no regulation in place). The penalty amount has two components: the base penalty amount that would be set out in a regulation, and an economic benefit penalty that would have no pre-set maximum. The economic benefit penalty is intended to recover whatever costs were delayed or avoided, or whatever gains were accrued, by the person subject to the penalty.

Bringing free riders into compliance is a key focus of RPRA's compliance program. RPRA's Compliance and Registry team has had a number of successes identifying both large and small free riders, bringing them into compliance and requiring them to pay fees owed. RPRA continues to devote resources to identifying and responding to high-priority free rider cases in 2022.

Registry services and functionality

- One stakeholder requested that RPRA enable PROs to pay fees and report supply on behalf of producers and also requested that CRA business numbers be included on RPRA's lists of registered producers. The stakeholder also suggested that a "Brand Registry" be developed to help retailers determine whether they are obligated as a producer under the RRCEA

RPRA's response
These suggestions relate to compliance and registry operations, rather than the fee-setting consultation, so are not being addressed in this fee consultation report. However, they have been provided to the Registrar for consideration.

Appendix C: Questions and answers

Below are the questions received during the consultation webinars and RPRA's responses. Questions have been organized by the topics below, and questions not relevant to this consultation have been excluded. Some questions were edited for length and clarity, and similar questions were grouped together.

- General fee and fee-setting related
- RPRA's role
- Reporting requirements and deadlines
- Proposed fees for batteries, ITT/AV, and lighting
- Proposed fees for Blue Box
- Proposed fees for HSP
- Proposed fees for tires

General fee and fee-setting related

Question	Response
Why was Optimus SBR chosen?	Optimus SBR was selected through an open and competitive procurement process that RPRA administered in the fall of 2021.
What comparator organizations did Optimus SBR use in their review?	Optimus used Alberta Recycling Management Authority located in Alberta and Producer Register Limited located in Ireland as comparator organizations when conducting their review. Optimus assessed a number of other regulatory authorities, but deemed their mandates and operational practices too different to serve as comparators for RPRA.
What is the Optimus definition of "reasonable"?	The Optimus SBR report elaborates on their analysis of the Cost Allocation Methodology on page 7 of the "Overview, Scope and Summary of Findings," available on the consultation webpage: "RPRA worked to identify new data sources that could be used to more precisely allocate costs to programs. This refined Cost Allocation Methodology proposed for 2022 is reasonable, is based on the best data available, and is consistent with the fee-setting Guiding Principles." The report also elaborates on their analysis of RPRA's Fee Model on page 5: "Based on Optimus SBR's assessment, it is reasonable that the current state Fee Model of a 2-tiered flat fee and fixed rate could be applied for 2022 and in the future state. In general, applying a flat fee of $75 consistently across all programs keeps the fees paid by small producers consistent and avoids excess burden on small producers (simplicity and equity considerations). Having a fixed rate based on unit or weight reflects large producers' share of regulated products and packaging supplied into the Ontario marketplace (equity considerations)."
Are weights reported for fees inclusive of weights used as deductions for reuse and recycled content?	Producers are required to report their total supply and any applicable deductions. Fees are based on the total weight of material supply after applicable deductions.

Can RPRA share the RRCEA budget broken down by material group and/or program?	The total RRCEA cost recovery target is approximately $12.81M and is allocated to RRCEA programs as follows: • Lighting: $1,660,000 • Tires: $1,990,000 • ITT/AV and Batteries: $3,730,000 • HSP: $1,950,000 • Blue Box: $4,070,000 During the consultation, the allocation to Lighting was adjusted due to in-year changes to RPRA's forecasts and the inputs into the allocation methodology. For all programs, differences between budgeted and actual expenditures will be trued-up in future years.
Can RPRA provide the recovery target numbers (total costs to be recovered through the WDTA and RRCEA program fees) for 2019 and 2020?	In 2020, the cost recovery target used for setting fees was $5.9 Million for the WDTA, and $4.65 Million for RRCEA program fees. In 2019, the cost recovery target used for setting fees was $6.7 Million for the WDTA, and $1.75 Million for RRCEA program fees.
In RPRA's 2022 Cost Allocation Methodology, RPRA states that "over program lifetimes, all programs are expected to incur an equal amount of the Registry foundation common costs", what is meant by "over their lifetimes?" and how long is this timeframe? RPRA states that there are payroll costs to apply forecasted indirect costs equally across all programs that incur them, and to apply forecasted shared service expenses to programs that incur them. What is the difference between these payroll costs?	The amortization period for registry foundational costs is 10 years, therefore, registry foundational costs are spread out over a ten-year period from the first year of the project. Programs that started earlier in the 10-year period are allocated incrementally smaller shares of these costs over time compared to newer programs, so that at the close of the 10-year period, all RRCEA programs will in total have recovered equal shares of the Registry foundational costs. Payroll expenses labeled as forecasted indirect costs to be allocated equally across all programs that incur them represent salaries and expenses for staff that work across programs and departments, such as administration and finance staff, and are therefore an indirect cost for any one program that use their services. Payroll expenses labeled as forecasted shared service expenses to be allocated to programs that incur them represent registry (program)-specific IT resources; compliance and registry support; and compliance inspections, and are either allocated equally, or in proportion to the number of fee-paying producers or number of registrants.
Has RPRA looked at simplifying the fees by having a single flat fee per registrant, who may be subject to more than one program?	Several alternative fee models were considered and assessed against the proposed fee-setting principles by RPRA and Optimus SBR. For more information on Optimus's review of RPRA's Cost Allocation Methodology and Fee Model, view Optimus SBR's summary of findings report. A single flat fee per registrant would not align with RPRA's fee-setting principle of equity, because it would place disproportionately greater financial burden on smaller producers. For example, consider a large producer who supplies 200,000 kgs vs. a small producer who supplies 20,000 kgs paying the same flat fee, the smaller producer's costs per kg supplied would be ten times greater than the larger producers costs per kg.
In the alternative fee models explored by Optimus SBR, RPRA states that an amalgamated fee model, which would combine all RRCEA registry program costs and recover them across all	This depends on the timing of potential additional government direction, RPRA's mandate, and the successful implementation of existing registry projects and program start-ups.

RRCEA producers, regardless of programs may be considered again when RPRA's year-over-year activities are more stable. In which year does RPRA envision stability?	
Has a net cost concept been considered to set material fees? Extended producer responsibility fees should reflect the revenue that is generated by the sale of materials for reprocessing.	A fee-setting approach that takes into consideration the revenue producers generate from the sale or processing of their recovered obligated materials has not been considered to date. RPRA is open to hearing about alternative approaches to fee-setting. However, such an approach would require RPRA to collect information (about producer revenue) that is not currently required to be submitted to RPRA under the RRCEA or WDTA.
Wouldn't it be easier for RPRA to just charge the fees to PROs instead of Producers, this way it could simply be incorporated into the Eco-Fees paid by Producers?	The decision to make producers pay fees to cover RPRA's costs was made to reflect the fact that the *Resource Recovery and Circular Economy Act, 2016* (RRCEA) is based on a producer responsibility framework. Although producers may hire PROs or service providers to help meet their obligations, the responsibility to comply with the RRCEA rests with the producer. Making producers responsible for the costs of administering RRCEA programs aligns with this framework. Not requiring fees from PROs or service providers also supports competitive markets for resource recovery services by reducing barriers to entry. Charging fees only to producers is also more efficient than charging PROs and service providers, which reduces RPRA's overall costs. The registry does allow PROs to pay fees on behalf of producers, and producers and PROs are free to enter into whatever arrangements they choose regarding the payment of RPRA fees.
Are the proposed changes to RPRA's fee-setting principles part and parcel of the proposed program fees?	Yes, as part of our consultation on proposed 2022 RRCEA Program Fees we are also consulting on the proposed changes to our General Fee-Setting Policy, which include revisions of our fee-setting principles to improve clarity. The proposed fees are consistent with both the current fee-setting principles and the proposed fee-setting principles.

RPRA’s role

Question	Response
What is RPRA's estimate on non-registered producers who are not contributing to program costs? What current efforts is RPRA implementing to ensure all producers are registered and contributing to program costs?	RPRA is responsible for ensuring obligated parties meet their requirements under the regulation, which include registering with and reporting to RPRA. Our approach to compliance begins with direct communications with obligated parties and informing them of their requirements and deadlines before compliance and enforcement measures are escalated. Bringing free riders – obligated companies that have not registered or reported to RPRA – into compliance is a key focus of RPRA’s compliance program. RPRA’s compliance and registry team has had a number of successes identifying both large and small free riders, bringing them into compliance and requiring them to pay fees owed. RPRA continues to devote resources to identifying and responding to high-priority free rider cases in 2022. In 2021, over 900 producers across RRCEA programs who hadn’t registered by deadline were contacted by RPRA and brought into compliance. Our compliance team is empowered with a full suite of enforcement powers, including conducting inspections and audits, undertaking investigations, issuing compliance orders, and prosecuting willful and persistent non-compliant parties. RPRA expects to be able to issue administrative monetary penalty orders in the near future, pending the government’s finalization of the applicable regulation. Fee rates are based on estimates of the total number of producers and tonnage obligated under the program. When previously unregistered free riders are identified and required to comply, they must pay all fees owed to RPRA for the years they were out of compliance. If additional unanticipated fees are recovered in-year because free riders are identified, these fees will go to offset fees paid by all producers in the following year. As a result, compliant producers do not end up paying more than their fair share of costs.
Will PROs replace RPRA?	PROs perform functions that are fundamentally different from RPRA’s statutory mandate under the RRCEA. A PRO is a business established to contract with producers to provide collection, management, and administrative services to help producers meet their regulatory obligations under the RRCEA. PROs are not regulatory bodies; they have no enforcement powers. RPRA is the regulator mandated by the Government of Ontario to administer the *Resource Recovery and Circular Economy Act, 2016* (RRCEA) and the *Waste Diversion Transition Act, 2016* (WDTA), and their associated regulations. Under these regulations, we support businesses to comply with individual producer responsibility (IPR) requirements for producers of Tires, Batteries,

	Electrical and Electronic Equipment, Hazardous and Special Products and Blue Box materials; and undertake enforcement actions when required. Additionally, RPRA's mandate includes the development and operation of digital reporting services as directed by the Minster for EPA programs beyond producer responsibility; responsibility for compliance for these programs remain with the ministry.
If producer fees need to finance the operating cost of RPRA, what is the incentive for producers to strive for circular economy and waste reduction? (The fee per kg will go up if the total amount of waste would go down).	RPRA is the regulator mandated to administer the RRCEA and WDTA. RPRA sets fees to recover its costs. RPRA enforces producer compliance with resource recovery targets, which are mandatory and enforceable. The costs to manage obligated materials may also provide an incentive to reduce the amount of waste produced. These costs are determined by market forces and charged via PROs and service providers.
Where does environmental impact of the commodity play into the fee schedule determinations/setting? Or current recycling rates of producers?	Environmental impact and current recycling rates aren't incorporated into the fee model. RPRA sets fees to recover its costs. The RPRA fee is a small component of the overall cost of meeting resource recovery obligations under the RRCEA. Most incentives to reduce environmental impact and improve resource recovery efficiency derive from the overall producer responsibility framework, which requires producers to meet mandatory and enforceable resource recovery targets and creates a competitive environment for producers to incorporate resource recovery into product and packaging design in order to reduce waste.
Is the RPRA fee additional to the Stewardship Ontario fee or a part of it?	Stewardship Ontario fees cover costs related to operating the legacy Blue Box Program under the WDTA, whereas RRCEA program fees cover RPRA costs related to compliance and enforcement and the registry portal for the new Blue Box Program under the RRCEA. During the transition of the Blue Box Program, stewards will be simultaneously obligated under the Blue Box Program Plan under the WDTA and the Blue Box Regulation under the RRCEA. This will require fees to be paid to both Stewardship Ontario and RPRA.

Reporting requirements and deadlines

Question	Response
Since the consultation is ending on April 25th, is the reporting for Blue Box, ITT/AV and Batteries still due April 30th or is it being delayed? When will RPRA announce reporting extensions?	RPRA recognizes that additional time is needed for producers to submit their supply data in 2022. Deadlines to submit supply data reports are as follows: • Batteries, ITT/AV, and Tires Producers – July 4, 2022 • HSP and Blue Box Producers – October 31, 2022 RPRA will notify producers by email when their registry portal opens for supply reporting.
I report under Stewardship Ontario, do I need to submit 2021 data to Stewardship Ontario or to RPRA?	During the transition of the Blue Box Program, producers are obligated under the Blue Box Program Plan under the WDTA, which require them to report and pay fees to Stewardship Ontario, as well as the new Blue Box Regulation under the RRCEA, which require producers to registering, report and pay fees to RPRA.

	Blue Box producers are required to submit their 2021 supply data to RPRA by October 31, 2022. In May 2022, RPRA approved Stewardship Ontario's revised steward fee-setting methodology during the Blue Box Program transition period. The revised methodology eliminates the need for most stewards to report supply-to-market data to Stewardship Ontario starting in 2022. The revised methodology will persist to the end of the Blue Box Program transition period at the end of 2025.

Proposed fees for Batteries, ITT/AV, and Lighting

Question	Response
Why is lighting being separated out from the fee rates under the EEE regulation? ITT/AV and Batteries started at different times and are separate regulations but have been grouped together, while Lighting is under the same regulation as ITT/AV and it has been separated out.	As in 2020 and 2021, cost recovery targets for ITT/AV and Batteries are combined in 2022 to alleviate what would otherwise be a too-high fee burden on Batteries producers. There is significant regulatory overlap between Batteries and ITT/AV to warrant grouping the two programs: • The Batteries and EEE regulations reference each other • ITT/AV-embedded batteries must be managed if collected under the Batteries regulation • Many EEE producers are Batteries producers • Regulatory operational overlap (e.g. registration and registry procedure activities) were also factors in the decision to combine these two programs for fee-setting purposes Although Lighting producers are obligated in the same regulation as ITT/AV producers, the programs are different. The ITT/AV program is primarily a legacy program transitioned from the WEEE Program under the WDTA. Lighting, on the other hand, is entirely new: • Regulation covers a new set of products with no overlap with ITT/AV producers • Regulation obligates a new set of producers with no expected overlap with ITT/AV producers • Lighting program has its own registry portal that will begin to be amortized on a different schedule from the ITT/AV portal In addition, the lighting program will require substantial startup effort in 2022 and 2023 that is not in any way related to the current state of the ITT/AV program. And, in general, the lighting program is being implemented on a different schedule from the ITT/AV program, which has been running since 2020.
Are we going into specific types of lighting?	No, this webinar is solely focused on RPRA's proposed 2022 RRCEA Program Fees and General Fee-Setting Policy. The proposed fee for Lighting applies to all lighting obligated under

	the EEE Regulation. RRPA will continue to share information on lighting and regulatory requirements as it becomes available.
Lighting is going to increase RPRA's cost by 12%. Does RPRA disclose the break down of this cost?	Details of the breakdown of the Lighting Program cost recovery target was provided directly to the questioner after the webinar. Future fee consultations will provide these breakdowns proactively.
What is the ITT/AV volume that you are estimating for 2021 and forecasting for 2022?	The supply volume predicted in 2022 is consistent with the actual supply data reported to us in 2021: • 7 small producers (up to 6360 kg): approx. 18,000 kg • 158 large producers (>6360 kg): approx. 55,000,000 kg

Proposed fees for Blue Box

Question	Response
You note that the fees are based on approximately 1,350 Blue Box producers, but on RPRA's list of registered Blue Box producers there are 925 producers registered. What accounts for this difference?	The number of producers listed on RPRA's website is reflective of how many have registered up to that date. RPRA updates this list on a monthly basis. 2021 was the first year Blue Box producers were required to register with RPRA. RPRA estimates that ultimately 1,350 Blue Box producers will register.

Proposed fees for HSP

Question	Response
Will Category E have a flat fee in 2022 as do all other categories?	Yes, HSP Category E materials have a proposed flat fee of $1,000. For Categories C, D, and E, RPRA has proposed a flat fee of $100 for producers whose annual revenue is less than $2 Million in Ontario. The revenue cut-off was added in 2021 to protect small producers from excessive burden and to ensure that large producers pay fees that reflect the relative quantity of material they supply into the Ontario marketplace.
Why are Category C producers paying a fee based on revenue when mercury-containing products have not been made/sold in 10+ years?	Producers who have produced mercury-containing devices in the past have obligations to collect, manage, operate a promotion and education program, and report those devices according to the obligations outlined in the HSP Regulation. Producers with obligations under the HSP Regulation are required to pay a flat fee to cover RPRA's costs related to building and operating the Registry and compliance and enforcement activities. The $2 Million revenue threshold for paying a smaller flat fee is meant to protect small producers from undue burden, and is based on overall revenues, not revenues associated with the sale of mercury containing devices.

Proposed fees for Tires

Question	Response
Is the increase in the tire fee for large producers expected to be passed on to the shops and Dealerships who sell tires? We currently pay, and charge the end	Businesses have the choice to recover the cost of recycling their products by incorporating those costs into the overall cost of their product (as they do with other costs, such as materials, labour, other regulatory compliance costs, etc.), or by charging it as a separate fee to consumers.

user (retail customer), $4.00 per tire. What is this $4.00 made up of?	RPRA does not require businesses to charge separate fees, nor do we set the amount of the fee to be charged. The fee amount is decided by the business and must reflect the actual cost of recycling that product (e.g., the cost of collecting, reusing and/or retreading used tires). The Tires Regulation also does not require the use of these fees, but it does have specific rules about how a visible fee is communicated to consumers, and how tire retailers and producers must document and report on their use of visible fees. Refer to the compliance bulletin **Charging Tire Fees to Consumers** for details.
Why is there a difference between the number of small and large tire producers according to the 2022 fees proposal, and what is reported on the RPRA website?	The number of producers listed on RPRA's website is reflective of how many have registered up to that date. When we set out to propose an estimated fee for RRCEA program producers, we use the best information we have available at the time to predict the supply that will be reported and the number of producers that will be registered in 2022. If more recent data is available before final fees are set, that data will be used to set the final fees. At this point in the year, any tire producers who have yet to register are likely to be small, and would therefore pay the flat rate of $100 in 2022. Thus, the revenue generated from additional small producers is not expected to have an effect on the final fee rate per kg for large producers.