



THE REGIONAL MUNICIPALITY OF NIAGARA
PUBLIC WORKS COMMITTEE
AGENDA

PWC 4-2021

Tuesday, April 13, 2021

9:30 a.m.

Meeting will be held by electronic participation only

This electronic meeting can be viewed on Niagara Region's Website at:

<https://www.niagararegion.ca/government/council/>

Due to efforts to contain the spread of COVID-19 and to protect all individuals, the Council Chamber at Regional Headquarters will not be open to the public to attend Committee meetings until further notice. To view live stream meeting proceedings, visit:
[niagararegion.ca/government/council](https://www.niagararegion.ca/government/council)

	Pages
1. <u>CALL TO ORDER</u>	
2. <u>DISCLOSURES OF PECUNIARY INTEREST</u>	
3. <u>PRESENTATIONS</u>	
4. <u>DELEGATIONS</u>	
5. <u>ITEMS FOR CONSIDERATION</u>	
5.1. <u>PW 17-2021</u> Approval of Public Works Single Source Purchase Order Requests and Purchase Change Order Requests Exceeding \$100,000	3 - 9
5.2. <u>PW 21-2021</u> Proposed Producer Responsibility Regulations for Hazardous and Special Products	10 - 43
5.3. <u>PW 5-2021</u> Approval of Statement of Contributions and Expenditures for Niagara-on-the-Lake Wastewater Treatment Plant	44 - 52

- 5.4. PW 20-2021 53 - 57
Processing of Source Separated Organics

6. CONSENT ITEMS FOR INFORMATION

- 6.1. PWC-C 17-2021 58 - 66
COVID-19 Response and Business Continuity in Public Works

7. OTHER BUSINESS

8. CLOSED SESSION

- 8.1. Confidential PW 19-2021
A Matter of Litigation or Potential Litigation and Advice Subject to Solicitor-Client Privilege and a Matter Concerning the Position to be Applied to certain Negotiations to be Carried on by the Municipality, under s.239(2)(e),(f) and (k) of the Municipal Act, 2001 - Material Recycling Facility Opportunity Review, Niagara Recycling Operations Agreement and Cellmark Claim
- 8.2. Confidential PWC-C 18-2021
A Matter of Confidential Commercial or Financial Information that, if disclosed, Could Prejudice or Significantly Interfere with the Competitive Position of the Region Related to Contractual Negotiations – Processing of Source Separated Organics
- 8.3. Confidential PW 15-2021
A Confidential Matter that is Subject to Proposed or Pending Land Acquisition or Disposition Position and/or Plan, Procedure Criteria or Instruction Applied to Negotiations – GO Station Development Strategy Update

9. BUSINESS ARISING FROM CLOSED SESSION ITEMS

10. NEXT MEETING

The next meeting will be held on Tuesday, May 11, 2021 at 9:30 a.m.

11. ADJOURNMENT

If you require any accommodations for a disability in order to attend or participate in meetings or events, please contact the Accessibility Advisor at 905-980-6000 ext. 3252 (office), 289-929-8376 (cellphone) or accessibility@niagararegion.ca (email).

Subject: Approval of Public Works Single Source Purchase Order Requests and Purchase Change Order Requests Exceeding \$100,000

Report to: Public Works Committee

Report date: Tuesday, April 13, 2021

Recommendations

1. That the Single Source Purchase Order Requests identified in Appendix 1 of Report PW 13-2021 **BE APPROVED**.

Key Facts

- At the Special Council meeting on July 30, 2020, Regional Council instructed staff that, “If any single source [Public Works] procurement [over \$5000] is deemed essential there must be approval first received by the Public Works Committee.”
- On August 18, 2020, the CAO provided Confidential Memorandum CONF-C 6-2020 providing key information in response to the July 30, 2020 staff direction. The memo identified that pursuant to a formal competitive procurement process, a change to the resulting contract (via the Change PO process) is required for any additional goods and/or services, which were not part of that formal process (consider Single Source additions). This includes most (if not all) instances where the “work” is underway when a Change PO request initiates.
- At the Council meeting on September 17, 2020, Regional Council approved an increase in the limit to \$100,000 above which approval must first be received by the Public Works Committee.

Financial Considerations

The included Single Source requests have approved funding in place from either Capital or Operating budgets in the respective divisions in Public Works.

Analysis

Niagara Region’s Procurement By-law 02-2016 as amended February 28, 2019 provides controls and methods that ensure, among other things, that the procurement processes undertaken to procure Goods and/or Services achieves, “best value for the Corporation”.

Pursuant to the formal procurement process, which culminates in contract award, there are occasions, when new information identified after award, requires further consideration of how these unforeseen additional requirements will impact the final project deliverable.

When this happens, staff consider the following alternative approaches to addressing the scope change:

1. Is the original project objective still achievable or should it be abandoned?
2. Can the project proceed as originally planned and this new information be deferred to a later time without reducing the integrity of the design, construction, etc.?
3. Is the current work at a point where it can be terminated, and a new competitive procurement for the additional scope items be initiated without excessive costs or negative impacts to the community from the delays?
4. Does the addition of this new work to the current assignment still achieve best value if Staff can validate that it represents fair value?

Staff note, that where a construction project is underway, the Ontario Occupational Health and Safety Act dictates that, "When an owner undertakes a project by contracting with more than one employer (contractor), the owner is undertaking the project and is the constructor." As a result, if Niagara Region were to initiate additional work on a project site at the same time by two contractors, Niagara Region would assume significant additional liability risk for the safety of all workers on the site. Ideally, the work of first contractor must be completed prior second contractor commencing.

Alternatives Reviewed

Staff have considered the following alternatives for each of the change order requests appended as Appendix 1:

- Closing out the current work. Abandoning the previous approach and re-considering strategy;
- Proceeding as originally planned and addressing the new information/change in scope at a later time through a competitive process; and,
- Terminating the current contract where possible and conducting a competitive procurement process to complete the work with the additional scope items added.

Staff conclude that none of the aforementioned options achieves the desired best value outcome without significant risk to the Region in terms of cost, delay and unavailability of critical infrastructure. Staff have assessed the financial impact of these additionally scoped items, deemed them fair and reasonable hence, the recommendation contained herein is presented for approval as it offers the best value for the Corporation given in the specific circumstances.

Relationship to Council Strategic Priorities

- Responsible Growth and Infrastructure Planning

Other Pertinent Reports

- CONF-C 6-2020, July 30, 2020 Closed Session - Update from Special Council Meeting
- PW 42-2020, September 8, 2020 - Approval of Various Single Source Public Works New Purchase Orders and Purchase Order Change Request
- PW 45-2020, October 13, 2020 - Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 47-2020, November 10, 2020 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 3-2021, January 12, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 7-2021, February 16, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000
- PW 13-2021, March 9, 2021 Approval of Public Works Single Source Purchase Requests Over \$100,000

Prepared and Recommend by:

Bruce Zvaniga, P.Eng.
Commissioner of Public Works (Interim)
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

This report was prepared in consultation with Dan Ane, Manager Program Financial Support and Bart Menage, Director Procurement and Strategic Acquisitions

Appendices

Appendix 1 Single Source Purchase Order Requests

Purchase Order Change Requests to Existing Contracts

1. 2018-RFP-41 St. Paul West CNR Bridge Replacement – Environmental Assessment and Design RFP

Request: Additional design supporting property acquisition, utility relocation, and heritage consultation with the City of St. Catharines

Consultant: Associated Engineering

Purchase Order Number: 0000052177

Increase original contract amount of \$318,466 (excl. HST) by \$2,800 for a new total of \$321,266.

Rationale for Increase

The request is for an extension to an existing contract.

Associated Engineering (AE) was retained through a competitive bidding process under Request for Proposal 2018-RFP-41. The additional fees are required to provide presentation material to property owners showing access solutions to their properties after the new bridge has been constructed.

In order to avoid potential property acquisition, AE has determined what would be required to provide access to #96 and #98 St. Paul St. West. In order to show each property owner what their new access will look like, 3D renderings will be prepared. The renderings are required to support the Real Estate Officer's negotiations with the affected property owners.

The accumulated changes throughout the project, including the current change, to the original Purchase Order is \$119,972 as summarized below:

i. Monitoring Well decommissioning and Heritage Impact Assessment	\$11,760
ii. Additional Public Information Centre	\$7,640
iii. Additional scope relating to St. Catharines underground works ...	\$41,406
iv. Additional survey for property impacts	\$5,973
v. Additional Geotechnical review for consolidation testing.....	\$19,880
vi. Street lighting design.....	\$11,547
vii. design associated with property acquisition, intersection design, additional utility relocation coordination, and heritage consultation	\$18,966
viii. Access driveway rendering	\$2,800

Alternatives Reviewed

- (i) Do nothing – Unknown cost exposures likely to occur during construction since these issues would need to be addressed during construction.
- (ii) New procurement:
 - Increased cost due to additional surveying for access designs and procurement delays, and with coordination between assignments.
 - Increased risk exposure to the Region as a result of the lack of project specific knowledge and decisions.
 - Increase in timeline (three to four months project delay)
 - Not considered a viable alternative.
- (iii) Extend current assignment to cover the additional services:
 - Compatibility with existing service since there is consistent professional and technical knowledge with the current professional services contract.
 - Mitigates the risk/cost exposure resulting from conflicting information.

Recommendation by Transportation Services

Approval of additional fees to support property acquisition.

Purchase Order Requests for Approval

2. Request: Sole Source of Bale Wire

Supplier: Accent Wire Tie

Sole source purchase of three (3) 48,000 lbs loads of bale wire which is required for baling recyclable products being sold to end markets at a total estimated cost of \$177,120 based on current market pricing (exclusive of HST).

Rationale for Purchase

This request is for the approval for a sole source purchase of bale wire which is required to meet daily operational needs at the Recycling Centre. Bale wire is used to bale recyclable products sold to end markets. Without bale wire, the Recycling Centre would not be able to continue to process incoming recyclables.

Due to market value fluctuations of steel, the pricing of bale wire is determined at the time a load is ordered.

Alternatives Reviewed

- (i) Do nothing: Without bale wire, the Recycling Centre would not be able to continue to process incoming recyclables.

- (ii) Procurement strategy is under review: Over the past 2 ½ years, six (6) Request for Quotation's (RFQs) were issued. Historically, only one bidder consistently responded to the RFQ. In 2019 and part of 2020, staff single sourced the purchase of bale wire to one bidder due to tariffs that were imposed by US, which created a shortage of material in the marketplace. In the latter half of 2020 and early 2021, staff issued several RFQs to test the market. Again, the same one bidder responded. Staff are continuing to look for other suppliers that can meet the bale wire specifications and will revisit issuing RFQs in 2022.

Funding Source

Funds for purchasing bale wire are included in the annual operating budget for Recycling Plant Operations.

Subject: Proposed Producer Responsibility Regulations for Hazardous and Special Products

Report to: Public Works Committee

Report date: Tuesday, April 13, 2021

Recommendations

1. That staff **BE AUTHORIZED** to submit comments on the proposed Hazardous and Special Products regulation to the Ministry of Environment, Conservation and Parks.
2. That staff **UPDATE** Public Works Committee upon the finalization of the Hazardous and Special Products regulation.

Key Facts

- The purpose of this report is to seek Council's support for staffs' submission on the proposed Hazardous and Special Products (HSP) regulation to the Ministry of Environment, Conservation and Parks (MECP) on behalf of Niagara Region.
- The proposed regulation would require Producers to establish a collection system, manage and properly dispose of materials collected, and report and keep program records.
- The proposed regulation has been posted to the Environmental Registry of Ontario for a 45-day public consultation from February 11, 2021 to March 28, 2021.
- Staff have conducted a preliminary review of the regulation and have included an overview of comments in this report.
- Under the proposed regulation, Niagara will transition from the current MHSW program to full producer responsibility on July 1, 2021 when the new regulation comes into effect. This will apply to designated materials only.

Financial Considerations

Under the current framework of the MHSW program, the total gross annual cost of Niagara Region's program, based on the 2021 budget, is approximately \$760,000, with various stewardship funding programs contributing 57% (\$433,000) of the total program cost. This results in an estimated 2021 net program cost to Niagara Region of approximately \$327,000 (43%) for operation of MHSW depots, collection, haulage and processing of these materials.

Under the proposed HSP regulation, if Niagara Region continues to collect the same materials, it is estimated that Niagara Region's annual cost will increase at least \$70,000 primarily due to having to pay for the disposal of propane tanks, fire extinguishers, aerosol cans, chlorofluorocarbons (CFC), and fluorescent tube lighting products.

Additionally, there is the potential that a portion of the funding that Niagara Region currently receives to operate the MHSW depots may be reduced as Producers / Producer Responsibility Organization's re-evaluate the current compensation model for the collection of paints and solvents. This will further increase future program costs.

Analysis

Background – Niagara Region Municipal Hazardous and Special Waste (MHSW) Program

Niagara Region has operated a MHSW program since the 1990's allowing residents to drop off household hazardous materials such as fertilizers, oil, paint, propane and a variety of chemical products.

Prior to 2016, Niagara's MHSW program was set up as a mobile monthly collection event, rotating through the various local area municipalities. A permanent MHSW depot has existed at the Niagara Road 12 Landfill site since 1996 where initially only residents from West Lincoln, Lincoln, Grimsby and Pelham could take their material. In 2014, this site was opened up to all residents of Niagara. In 2016, Niagara Region established permanent MHSW depots in Fort Erie, Thorold and Welland. At the Bridge Street Site in Fort Erie, residents are allowed to drop off select MHSW materials including paint, propane cylinders, vehicle batteries and used oil. As of 2016, the establishment of MHSW collection sites has allowed Niagara Region to eliminate monthly rotating MHSW collection events.

Background – Program Funding

- In 2006, the Ontario Minister of the Environment directed Waste Diversion Ontario to develop a waste diversion program for MHSW with Stewardship Ontario to oversee the program. Stewardship Ontario is a not-for-profit organization funded and governed by the brand owners, first importers and franchisors of the products and packaging materials managed under the MHSW program. The MHSW program began on July 1, 2008 with the directive that MHSW material be collected and recycled / disposed of in an environmentally sound manner. It was at this time that

Producers were first required to fund a portion of the costs that municipalities were incurring for the collection and handling of these materials.

- In 2015, Product Care Association became the Stewardship organization overseeing and providing funding (through the collection of fees from their members) for paints and coatings, aerosol and lighting material.
- In 2017, Automotive Materials Stewardship Inc. (“AMS”) was approved to be the Stewardship Organization for antifreeze, used oil filters and oil containers.
- Since 2017, over 85% of the funding Niagara Region receives for the operation of MHSW depots come from these two organizations, with Stewardship Ontario continuing to fund the remaining costs.
- The MECP has directed that the current MHSW program, operated by Stewardship Ontario under the Waste Diversion Transition Act, 2016, cease operation on June 30, 2021.

Review of Proposed Household Special Products Regulation

With the enactment of the *Resource Recovery and Circular Economy Act, 2016* (RRCEA), the Province is shifting to a full producer responsibility framework for products and packaging, thereby making producers and brand holders accountable for recovering resources and reducing waste associated with products. The Province identified four (4) waste diversion programs to transition to a producer responsibility model (used tires, electrical and electronics equipment waste, municipal hazardous waste and blue box program).

On February 11, 2021, the Province released the proposed HSP regulation under the Resource Recovery and Circular Economy Act (RRCEA), and posted it to the Environmental Registry of Ontario for a 45-day public consultation. [Proposed HSP Regulations](https://ero.ontario.ca/notice/019-2886) (<https://ero.ontario.ca/notice/019-2886>).

The proposed HSP regulation, designed to make producers responsible for the collection, haulage and processing disposal of hazardous waste material, is based on the framework of the current Municipal Hazardous or Special Waste (MHSW) program.

The draft regulation is comprised of nine (9) parts including collection and management, promotion and education, reporting and continuation of existing municipal collection sites.

The key details of the proposed new regulation would require Producers to:

- establish collection networks for consumers;

- manage all collected materials properly by following recycling and disposal procedures;
- provide promotion and education materials to increase consumer awareness on how and where they may dispose of HSP materials; and
- register, report and keep data records

Since July 2020, staff have provided input in the development of the regulation by attending MECP workshops, participating on the Municipal Waste Association (MWA) Municipal Hazardous and Special Waste (MHSW) Committee and providing feedback to both the MWA and Association of Municipalities of Ontario (AMO). Attached in Appendix “A” is AMOs responses to the MECP on the proposed regulation.

On February 11, 2021, the MECP released the proposed regulation for a 45-day public consultation period, from February 11, 2021 to March 28, 2021. Unfortunately, the 45-day consultation period did not allow staff the opportunity to bring forth this information to Committee/Council prior to the issuance of staff’s response to the Environmental Bill of Rights (EBR).

On March 2, 2021 and March 3, 2021, staff participated in meetings with AMO and MWA to facilitate feedback from municipalities in preparing AMOs response to the MECP on the proposed HSP regulation. Attached in Appendix “B” are staff comments to AMO for their draft response.

On March 4, 2021, Niagara Region provided input during a MECP organized municipal workshop where the MECP solicited feedback to be considered as part of finalizing the HSP regulation.

If Council disagrees with the position put forward by staff as outlined in this report, there is an opportunity to withdraw staff’s comments to the MEPC.

The sections below provide a summary of the key elements of the proposed new regulation and staff’s response.

Designated Materials

The proposed regulation identifies the designated materials which Producers are required to manage. Designated materials are the list of materials that are included in Categories A to D in the proposed HSP regulation. Producers will be responsible for the management of these materials including funding all of the costs associated with collection, haulage and processing.

Designated materials are grouped into the following four (4) categories:

Category A

- Non-refillable pressurized containers
- Oil filters

Category B

- Antifreeze
- Paints and coatings
- Pesticides
- Solvents
- Oil containers
- Refillable pressurized containers

Category C

- Barometers
- Thermometers
- Thermostats

Category D

- Fertilizers

Non-obligated Materials

All materials that are not covered under the proposed HSP regulation may be considered non-obligated i.e. Producers are not required to manage these materials.

At the current time, Niagara Region collects, hauls and processes the following non-obligated materials which are not covered under the proposed HSP regulation:

- Acids
- Aerosol Containers
- Bases (caustics)
- Cooking Oil
- Fire Extinguishers
- Insect Repellent
- Organic Peroxide

- Pharmaceuticals
- Pool Chemicals
- Propane Tanks
- Sanitizers, disinfectants
- Sharps
- Used Oil
- Vehicle Batteries
- Light Bulbs
 - Fluorescent Tubes
 - Compact Fluorescent
 - Halide Bulbs

Note: Light Bulbs - will be covered under the Electronic and Electrical Equipment regulation, effective January 1, 2023.

During consultation, the MECP has indicated that they intend to add more materials to the regulation in the future but have not identified in the proposed regulation which materials will be added nor any timelines when this may occur.

Transition Timeline

The proposed regulations allows Producers up to 18 months (July 1, 2021 - December 31, 2022) to transition and establish the required collection sites in order to meet the new regulation requirements. During the transition phase the current number of collection sites available in a local municipality must be maintained by the Producers so as not to impact residents of that municipality. It is anticipated that Producers will have municipalities continue collecting the designated material for most of the transition period.

During the transition phase Niagara Region will continue to collect all materials that it currently collects under the MHSW program including those in the proposed HSP regulations. Depending on the outcome of the final regulation, staff will evaluate the cost and impact to continue to collect both designated and non-obligated materials, and report back to Committee.

Management of HSP

In the current draft version of the proposed regulation, the MECP has only established collection targets for oil filters and non-refillable pressurized containers. There is no

requirement for Producers to collect a minimum percentage of the other designated materials. The MECP has included recycling efficiency targets meaning that when materials are collected they must be recycled to a prescribed percentage.

The lack of collection targets is a significant issue which municipalities have consistently identified during the various MECP consultations. As a result, there are no incentives for Producers to collect these materials to ensure that they are properly disposed and to prevent them from entering the waste stream i.e. landfilled.

Promotion and Education

Under the proposed regulation all Producers would be required to implement promotion and education programs. The Producers of certain products would be required to provide consumers with information on how to properly dispose (e.g. mercury containing devices) or use up such materials (e.g. fertilizers). Additionally, Producers would be required to inform consumers when a visible fee is charged at the point of purchase. Promotion and education would be web-based as well as through retailers selling these products.

Promotion and education is a key element since residents are accustomed to going to municipal MHSW depots to drop-off their hazardous materials. It is imperative that residents understand where and how they can drop-off hazardous materials in order to ensure that they are disposed of properly.

Registration, Reporting and Auditing

The proposed regulation requires Producers to register, report, audit, verify and properly maintain records. In order to determine program effectiveness it is important that Producers submit records on the amount of material collected, how much of it was recycled and how it was managed. Additionally, annual audits need to be completed in order to monitor performance on an annual basis as opposed to over a longer term e.g. three (3) years or longer.

Municipal Role

The current draft version of the proposed HSP regulation requires municipalities to continue accepting mercury containing devices such as thermometers and thermostats. This will require that municipalities operate a MHSW depot or another type of collection point. A number of municipalities have indicated they either do not have the ability and /

or willingness to accept mercury containing devices. Niagara Region currently accepts mercury containing devices at its MHSW depots.

Other than mercury, there are no other requirements for municipalities to accept designated materials. Municipalities will need to determine if they will continue accepting designated materials depending on the funding from Producers and non-obligated materials since producers are not required to provide funding for the collection and management of these materials.

Niagara Region Comments on Proposed Regulation

Niagara Region has provided previous comments via AMO on the proposed HSP regulation. Overall, the implementation of a producer responsibility framework for HSP is a positive step by the MECP, however, there are a number of issues that staff believe the MECP needs to address.

Niagara Region's comments are focused on a number of key items:

- Niagara Region supports AMO's request to the MECP to delay the implementation of the HSP regulation.
- In addition to the current list of designated materials, the proposed regulation should identify which materials will be designated in future and timelines of when they will be added. The list of designated materials should be consistent with AMOs submission to the MECP in July 2020.
- Collection targets for all materials should be established in order to provide incentive to Producers to collect and manage HSP. A lack of targets may result in materials being inappropriately disposed.
- Producers should be required to report on the amount of material collected and therefore management targets must be included in the regulation.
- Producers should be required to collect any designated HSP that has been illegally dumped or reimburse municipalities for collecting such materials.
- Robust promotion and education campaigns / activities are needed to inform the public on how materials are to be managed and to encourage participation.
- The proposed HSP regulation should not require municipalities to accept any designated materials e.g. mercury containing devices.
- Municipalities need to understand how many collection sites would be required in each jurisdiction.

- The requirement to record names and contact information at Niagara Region's MHSW depot may be labour intensive since we do not currently have an automated system to record this information.
- The collection of materials from municipal MHSW depots, by Producers, needs to occur more frequently than within three (3) months of being notified. A collection site may not have the space and/or collection containers to store materials up to three (3) months.
- Annual performance audits need to be completed in order to determine program effectiveness.

Next Steps

Staff will continue to work with AMO and through industry associations to ensure Niagara Region comments are being addressed. Staff will review the final draft version of the regulation once it is released in order to determine its impacts on Niagara Region. Staff will update committee and provide recommendations as appropriate.

Alternatives Reviewed

No alternatives were reviewed as part of this report.

Relationship to Council Strategic Priorities

This report supports Council's Strategic Priority of Responsible Growth and Infrastructure Planning.

Other Pertinent Reports

- WMPSC-25-2019 Municipal Hazardous or Special Waste Update

Prepared by:

Andrew Winters
Program Manager, Waste Disposal
Operations
Waste Management Services

Recommended by:

Bruce Zvaniga, P.Eng.
Commissioner of Public Works (Interim)
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

This report was prepared in consultation with Emil Prpic Associate Director of Waste Disposal Operations and Engineering and Dan Ane, Manager, Program Financial Support, Corporate Services, and reviewed by Catherine Habermehl, Director, Waste Management Services.

Appendices

Appendix A AMO's Comments on Proposed Regulations on Municipal Hazardous and Special Waste

Appendix B 2021-03-04 Draft Municipal Submission on Draft HSP Regulation

Sent via email to: charles.o'hara@ontario.ca

July 24, 2020

Charles O'Hara
Director, Resource Recovery Policy Branch
Ministry of the Environment, Conservation and Parks
Foster Building 8th Floor,
40 St Clair Ave W,
Toronto, ON M4V 1M2

Dear Charles:

**RE: Proposed Regulation for Municipal Hazardous or Special Waste under the
*Resource Recovery and Circular Economy Act, 2016***

The Association of Municipalities of Ontario ("AMO"), the City of Toronto, the Regional Public Works Commissioners of Ontario ("RPWCO") and the Municipal Waste Association ("MWA") collectively submit these comments on behalf of municipal governments regarding the Proposed Regulation for Municipal Hazardous or Special Waste ("MHSW") under the *Resource Recovery and Circular Economy Act, 2016* ("RRCEA"). We appreciate the opportunity to provide comments on this regulation.

Summary of recommendations:

- Continue to support transition of all Ontario's waste diversion programs over to full producer responsibility under the RRCEA.
- Transition and expand on the current list of MHSW currently captured in [O. Reg. 387/16](#) under the *Waste Diversion Transition Act, 2016* (WDTA) and do so in two distinct phases with implementation dates established in the regulation:
 - Phase 1 (July 1, 2021): Paint and coatings, expanded pesticides category, solvents, expanded fertilizer category, used oil filters, oil containers (under 30 litres), pressurized containers, anti-freeze, aerosols, portable fire extinguishers, mercury containing devices, fluorescent light bulbs (if not in the Electrical and Electronic Equipment (EEE) regulation), and all associated containers of the above.
 - Phase 2 (January 1, 2023): pharmaceuticals and sharps, automotive additives and cleaners, automotive additives and cleaner containers, fuels, miscellaneous flammable materials, oxidizers, corrosives – acids, corrosives – caustics, fuels, reactive chemicals, used oils and lubricants.
- For new materials being designated it is understood that the government may not have data to establish collection targets, however, this can be overcome by:

- Establishing the same accessibility requirements as other MHSW; and,
- Establishing a recycling efficiency target that ensures the products collected are properly managed similar to other MHSW.
- Establishing robust public education and communication requirements for producers to ensure consumers understand how and where to properly dispose of designated products and packages.
- Management targets in the first year should be established at levels that at least meet current performance with continued improvement sought in future years.
- Where applicable, continued promotion of targets that place an emphasis on higher end uses and foster the development of a strong circular economy that creates jobs within the province while reducing Ontario's greenhouse gas emissions.
- Support for the development of incentives for producers to market MHSW products with recycled content (paint).
- Municipalities are supportive of the approach taken on visible fees within the Used Tire Regulation that include reporting, auditing and promotion and education and requirements on producers that charge consumers a resource recovery fee, which allows for consumer transparency and flexibility for the producer.
- Requirements related to promotion and education are essential especially for consumables. Producers should be responsible for, at a minimum, delivering one piece of educational material directly to every household on an annual basis.
- Service providers, including collectors, haulers and processors, be required to register, record keep and report. This provides for an additional oversight and compliance function relative to recycling standards for waste service providers for designated materials.
- The Canadian Standards Association's Guideline - SPE-890-15 - A Guideline for accountable management of end-of-life materials provides the parameters by which the government can ensure standardized reporting and proper oversight. The sector supports the use of this guideline with quarterly reporting and annual third-party, independent audits.
- An RRCEA regulation on administrative monetary penalties should be enacted as soon as possible to ensure all participants understand the consequences of failing to comply.
- The Province should institute a program to compensate municipalities for the cost of legacy MHSW materials that are un-stewarded.

Overview and Facts

Municipal governments play an important role as the final backstop to ensure many hazardous or problematic products do not end up in the environment. This includes keeping these products out of solid waste landfills, stormwater sewer systems and the wastewater system. Further, many municipal governments have requirements to establish collection systems for these materials as part of their waste disposal approvals from Ministry of Environment, Conservation and Parks. Municipal depots and collection event days become the destination of various products that are cleaned out of basements, garages, or medicine cabinets. The costs associated with collecting and managing these materials is a significant burden as compared to other materials collected by municipal governments. Despite many of these materials not having stewardship programs, municipal governments have collected them to reduce environmental degradation from improper disposal.

The current list of materials included in Ontario’s municipal hazardous and special waste programs only make up a fraction of what municipalities are collecting and forced to manage. By way of example, the following four Figures illustrate the percentage of miscellaneous organics (e.g. wood glue, drywall patch, wood sealer etc.), pesticides, fertilizers and aerosols that are the responsibility of municipal governments as opposed to the companies that produce them. These Figures are based on lab pack analysis completed over the last five years and used to determine the cost split between producers and municipal collection sites. Producers have adapted a number of these products, and as a result an increasing amount of material does not meet the current definition. While the initial definitions were problematic as they excluded a large amount of materials, more burden is being placed upon municipal governments to pay for the end-of-life management of these materials.

Figure 1 - Responsibility Based on Lab Pack Analysis for Misc. Organics

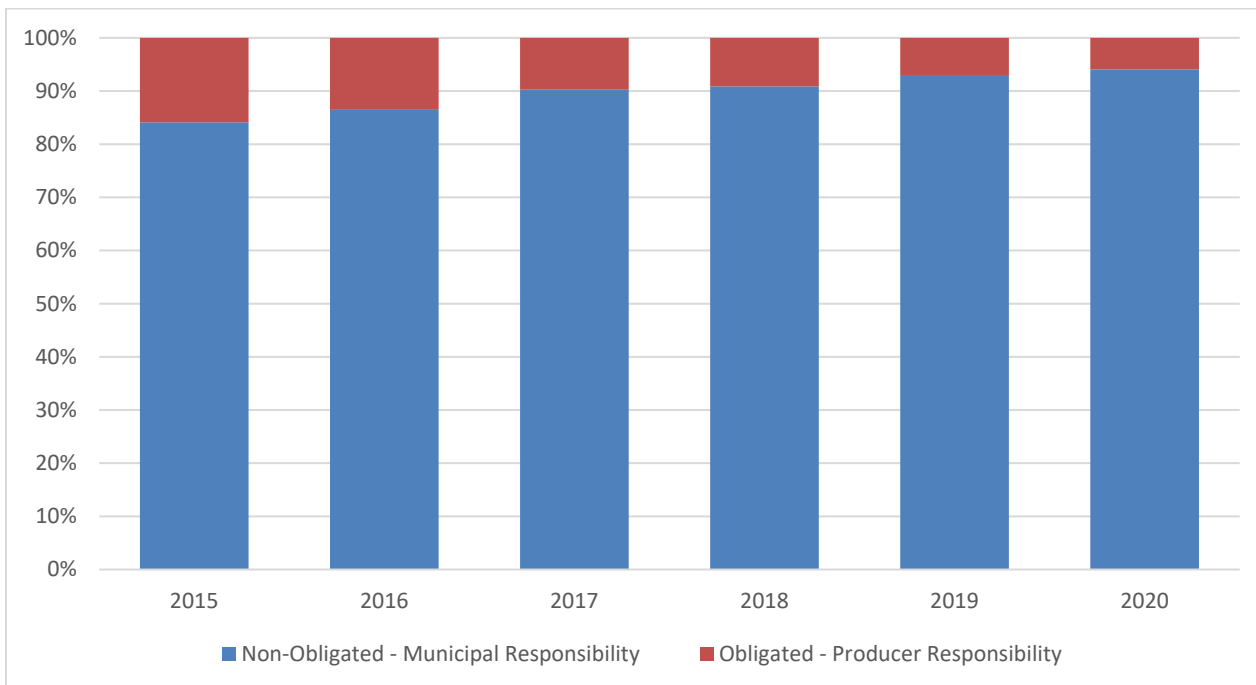


Figure 2 - Responsibility Based on Lab Pack Analysis for Pesticides

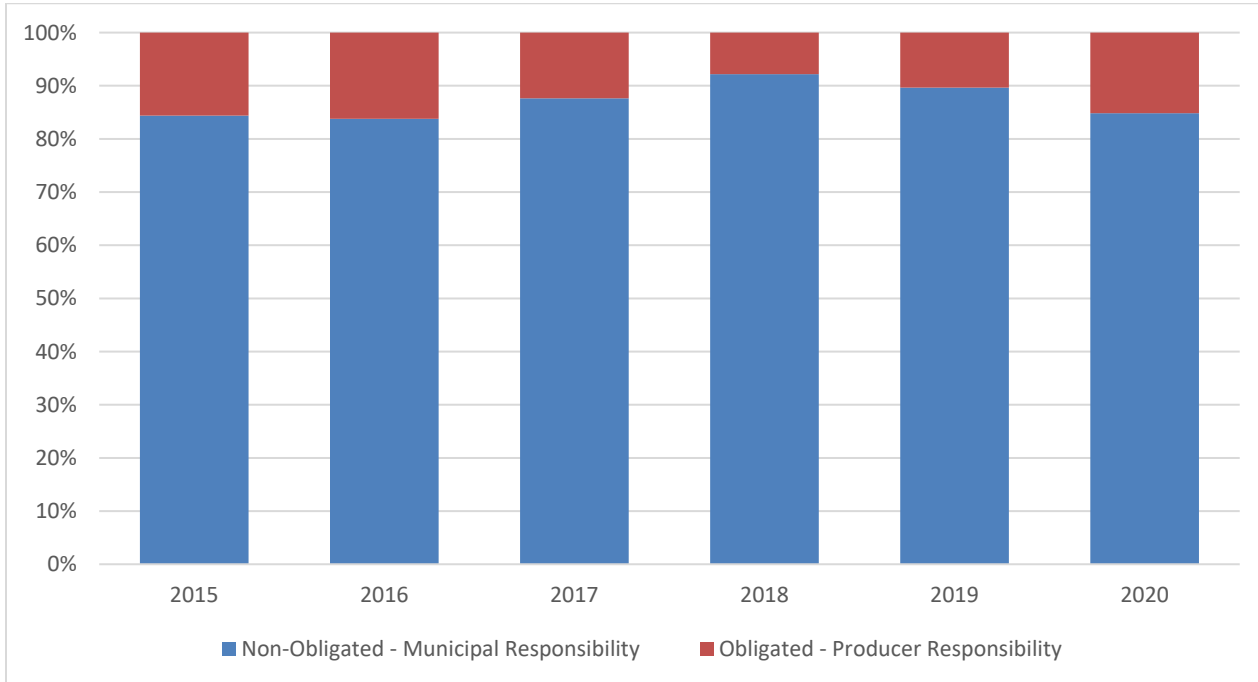


Figure 3 - Responsibility Based on Lab Pack Analysis for Fertilizers

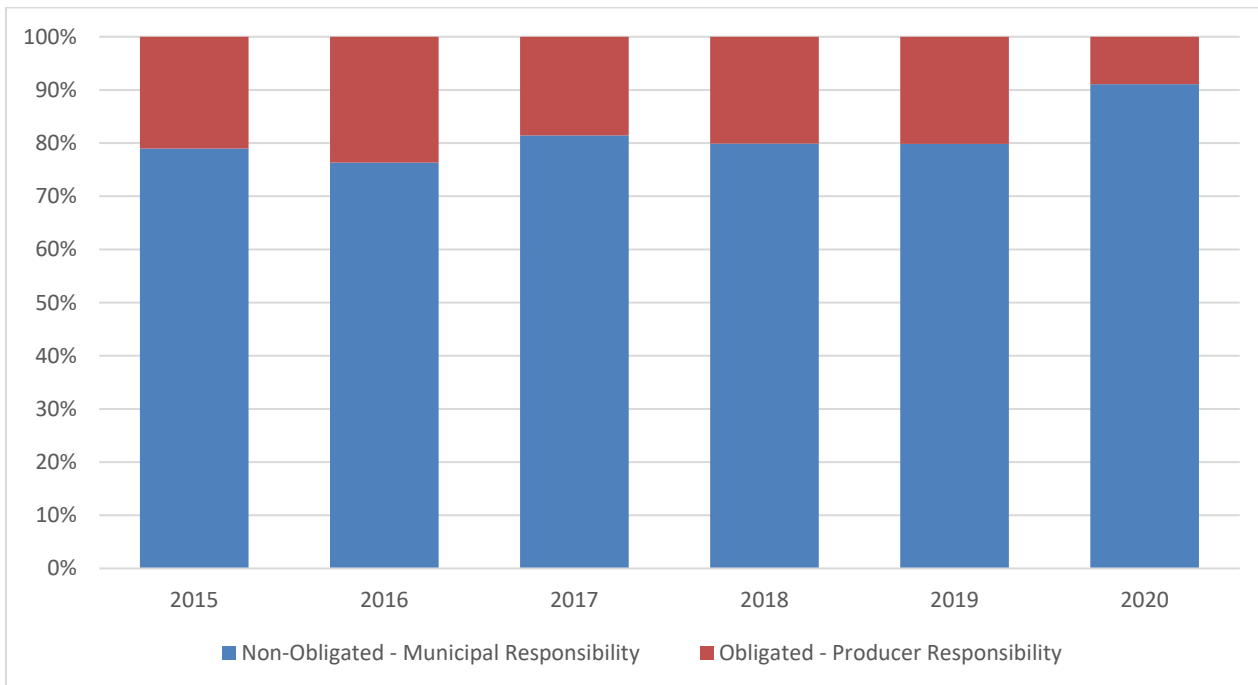
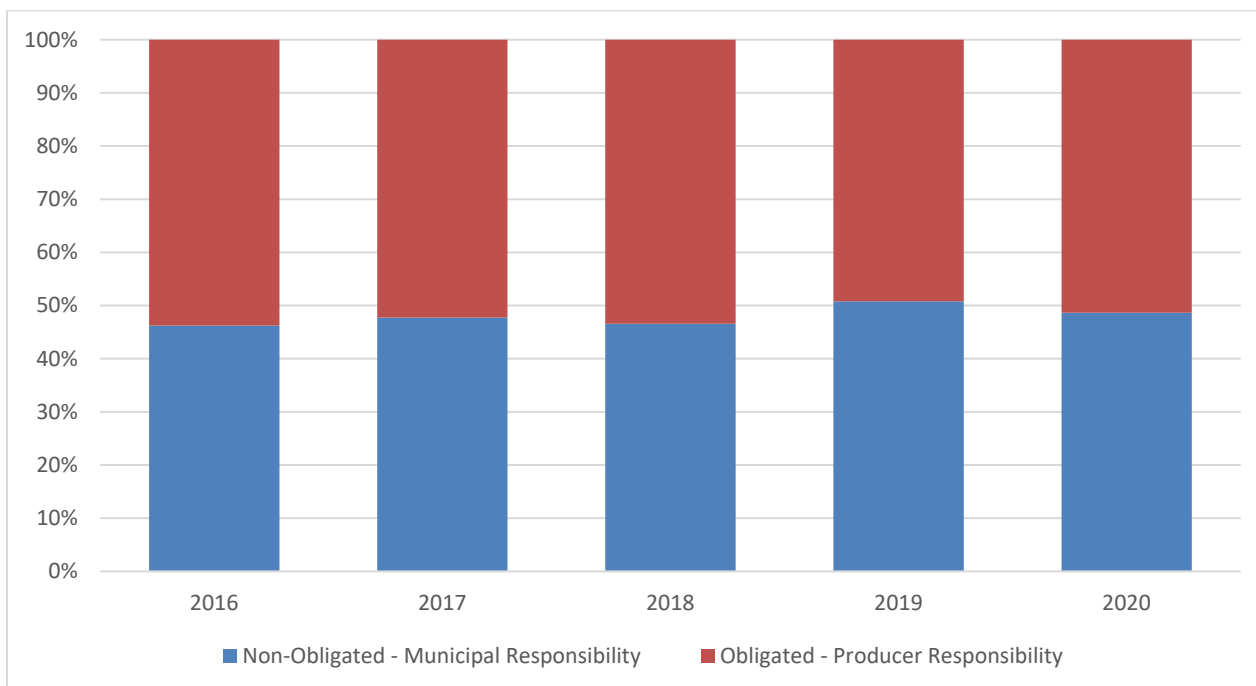


Figure 4 - Responsibility Based on Lab Pack Analysis for Aerosols



Municipal governments understand that some of the producers of these products are advocating that they should not be included in producer responsibility regulations as they have functioning diversion initiatives already in place. However, an assessment of 2019 data for eight Ontario municipalities representing about a quarter of Ontario’s population indicates consumers are bringing high quantities of these materials to municipal depots and collection event days. When extrapolated Province-wide this data showed that Ontario municipalities collected over 52,500 kg of pharmaceutical waste and 20,000 kg of sharps and 170,000 kg of propane cylinders in 2019. If these programs were functioning well, municipalities would not be forced to manage this amount of materials.

For pharmaceuticals and sharps, municipal governments strongly believe the current Ontario Medications Return Program (OMRP) and the Ontario Sharps Collection Program (OSCP) are underperforming. These programs were regulated under Ontario Regulation 298/12 “Collection of Pharmaceuticals and Sharps – Responsibilities of Producers”, which was a stop gap measure introduced as new producer responsibility legislation was under development. Municipal governments do not believe this regulation has been properly overseen by the Province in a manner similar to Regulation 102/94 and 103/94, which were meant to increase recycling in the industrial, commercial, and institutional sectors.

Municipal hazardous or special material needs to be managed properly. It continues to arrive in large volumes to municipal depots and event days on an annual basis due to many reasons, including expiry dates and excess quantities not needed. Table 1 and 2 provide a breakdown of quantity and costs for some of these non-obligated MHSW materials for both a large regional urban municipality as well as a regional rural municipality. Important to note these costs are based on management and do not include collection cost, nor promotion and education.

Table 1 - MHSW Management Costs from a Large Regional Urban Municipality (Based on [O. Reg. 387/16](#) Phases)

	Total Management Costs	EPR Funding	Municipal Costs	% Covered
Phase 1	\$1,218,413	\$879,888	\$338,524	72%
Phase 2/3	\$275,214	\$0	\$275,214	0%
Total	\$1,493,627	\$879,888	\$613,738	59%

Table 2 - MHSW Management Costs from a Regional Rural Municipality (Based on [O. Reg. 387/16](#) Phases)

	Total Management Costs	EPR Funding	Municipal Costs	% Covered
Phase 1	\$106,226	\$36,016	\$70,210	34%
Phase 2/3	\$21,993	\$0	\$21,993	0%
Total	\$128,219	\$36,016	\$92,203	28%

Phase 1 materials represent a significant amount of paint that would be funded by producers but also includes large amounts of pesticides, and fertilizers (see Figures 2 and 3) not obligated which would account for the municipal costs. Phase 2 and 3 materials include materials such as misc. flammables, portable fire extinguishers and mercury containing devices.

Municipal governments advocate that the responsibility to manage all these materials should be that of the producers that manufacture these products rather than the municipal taxpayer and ratepayer. This responsibility includes ensuring that consumers purchase the appropriate amount, use all of the product and ensures that any remaining product and the packaging are properly managed at end of life. These companies have a much more direct relationship with the consumer rather than municipalities, who are forced to address the 'end of the pipe'. Government policies like producer responsibility have an opportunity to create efficient market signals. Burden will only be increased on the municipal taxpayer and ratepayer if the Province decides to retract rather than expand producer responsibility.

Defining Responsible Person

Municipal governments recommend that the definition of "responsible producer" should take a similar cascading approach to [Ontario's Used Tires Regulation](#), [BC's PPP program plan](#), and in [Stewardship Ontario's draft amended Blue Box Program Plan](#) (e.g. brandholder, first importer, marketer [resident and not]).

Designating Materials

The proposed Regulation should ensure that all the materials currently captured in [O. Reg. 387/16](#) under the *Waste Diversion Transition Act, 2016* (WDTA) are included in the new regulation. The Table below includes all the consumables and containers/products that should be included. Each continues to represent a significant portion of what is being returned to municipal depots and needs to be managed properly at the end-of-life.

Two stages are being recommended:

- Phase 1 (July 1, 2021): Paint and coatings, expanded pesticides category, solvents, expanded fertilizer category, used oil filters, oil containers (under 30 litres), pressurized containers, anti-freeze, aerosols, portable fire extinguishers, mercury containing devices, fluorescent light bulbs (if not in the EEE regulation), and all associated containers of the above.

- Phase 2 (January 1, 2023): pharmaceuticals and sharps, automotive additives and cleaners, automotive additives and cleaner containers, fuels, miscellaneous flammable materials, oxidizers, corrosives – acids, corrosives – caustics, fuels, reactive chemicals.

Further detail on the materials and the proposed phases are included in Appendix A.

Phase 1 transitions materials that are already designated while expanding to include a broadened pesticides and fertilizer categories as the previous definitions did not account for the types of materials being returned.

Municipal governments do not believe there is rationale to exempt products such as fertilizers and propane cylinders, which as identified earlier, are being dropped off by residents in large quantities.

It is also recommended the government extend the designated material to include those that were a part of the Recycling Council of Ontario MHSW program, which reimbursed municipalities for certain Municipal Hazardous or Special Waste (MHSW) materials. This includes aerosols, portable fire extinguishers, mercury containing devices, and fluorescent light bulbs (if not in the EEE regulation). The data has already been captured by the Ministry as part of this program, and makes these materials easier to designate.

The definition of pesticides should be expanded to include Schedule IV of the Pest Control Products Regulation¹ as this represents the bulk of retail pesticides that residents currently return to municipal depots. As noted earlier, based on producer lab pack analysis, currently 85-90% of all pesticides returned are non-obligated. Automotive additives and cleaners and their containers have been included as they are similar to other materials like used oil containers and anti-freeze that are already being collected.

Phase 2 includes the bulk of other materials being collected via municipal depots. As noted above, municipalities continue to receive large volumes of these products back through their municipal depots – including increasing amounts of products that are not obligated but need to be properly managed at the end-of-life.

Including these materials would help to align with other provinces like British Columbia, Quebec, and Manitoba, which include a broader range of flammable, corrosive and toxic materials and their containers. Currently based on the total residential MHSW materials that municipalities manage at their household hazardous depots, 20-30% of materials by tonnage are un-stewarded and must be subsidized by the property tax base or by the public directly.

We would also recommend that the Province institute a program to compensate municipalities for the cost of legacy MHSW materials that remain un-stewarded.

Management and Standards

Producers should be required to report on the amount of materials collected (e.g. consumables and products/containers separately) and how all of the collected materials were managed.

It is acknowledged that the goal for some of these materials is to simply ensure they are used up properly rather than disposed of. The Table below outlines the recommended targets (including new and stockpiled items).

¹ Available at Pest Control Products Regulation - <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-124/index.html>

Categories	Reporting on Collection	Target on Collection	Reporting on Management	Target on Management
Paints and Coatings	✓	✗	✓	80%
Paint and Coatings Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Solvents	✓	✗	✓	Best efforts to improve outcomes
Solvent Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Oil Filters	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Oil Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Used Oil and Lubricants	✓	✗	✓	Best efforts until targets set
Antifreeze	✓	✗	✓	80%
Antifreeze Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Pressurized Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Fertilizers	✓	✗	✓	Best efforts to improve outcomes
Fertilizer Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Pesticides	✓	✗	✓	Best efforts to improve outcomes
Pesticide Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Aerosols	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Portable Fire Extinguishers	✓	Best efforts until targets set	✓	Best efforts until targets set
Pharmaceuticals	✓	✗	✓	Best efforts to improve outcomes
Sharps	✓		✓	Best efforts to improve outcomes
Mercury Containing Devices	✓	Best efforts until targets set	✓	Best efforts until targets set
Automotive additives and cleaners	✓	✗	✓	Best efforts until targets set
Automotive additives and cleaner containers	✓	Best efforts until targets set	✓	Best efforts until targets set
Fuels	✓	✗	✓	Best efforts to improve outcomes
Miscellaneous Flammable Materials	✓	✗	✓	Best efforts until targets set
Oxidizers and Containers	✓	✗	✓	Best efforts until targets set

Categories	Reporting on Collection	Target on Collection	Reporting on Management	Target on Management
Corrosives- Acids	✓	✗	✓	Best efforts until targets set
Corrosives – Caustics	✓	✗	✓	Best efforts until targets set
Reactive Chemicals	✓	✗	✓	Best efforts until targets set

Promotion and Education

MHSW materials are hazardous waste by definition and the proper management of materials and containers is of paramount importance. The basis for proper management begins with an educated consumer relative to the human health and safety and environmental risks associated with MHSW products, and clear direction on how to dispose of the material into a collection system that is convenient to use and widely available for designated products and containers.

Promotion and education activities should at a minimum inform the public of how materials can be managed, to encourage participation, and to motivate consumers to adopt and maintain the desired environmental behaviour. We suggest that a social marketing campaign focuses on two major messages:

- Manage MHSW appropriately and do not dispose of with regular waste; and
- The “B.U.D.” message:
 - Buy only what is needed
 - Use it up or (if a resident can’t, consider giving it to a neighbour or family member to use, or deliver it to a MHSW Drop-off in the original container so that other Ontarians may use it), and
 - Drop off the rest at a local drop off site to be recycled, reprocessed or safely disposed of.

In addition, due to the human health and safety and environmental risk associated with MHSW products and the absence of material management targets, producers should be required to provide at least one direct educational piece to every household once per year. This outreach could be through direct promotion and education engagement with households or could be through waste collection calendars and other educational materials in conjunction with municipalities.

Collection and Consumer Accessibility

Collection requirements and targets are pivotal for MHSW materials. Residents need convenient and easy access to collection points to ensure these materials are managed properly and are not simply disposed of down the drain, into municipal solid waste landfills or incorrectly managed through the Blue Box program.

For automotive products, the regulation should establish similar accessibility rates to those in the Used Tire Regulation, which captures a similar collection system of municipal depots and auto shops².

² See sections 5 – 10 - <https://www.ontario.ca/laws/regulation/r18225#BK7>

For pharmaceuticals and sharps, the regulation should increase the accessibility requirements in place in O. Reg. 298/12: Collection of Pharmaceuticals and Sharps to address the large volume of materials still being returned to municipal depots.

For the rest of the materials, which are largely captured by municipal depots and special events, it would be reasonable to follow similar accessibility rates to the draft electronic and electrical equipment regulation.³

Fundamental to the new regulation is the requirement that accessibility and collection not be curtailed or impeded when producers are approaching or have met any management targets before the end of the reporting year. In this case, the regulation must require that all materials and containers collected must be managed and recycled with the costs being borne by producers. This requirement should mirror similar requirements in the Tire Regulation.

Producers should be required to report on the amount of materials collected (e.g. products and containers separately) and how all of the collected materials and their containers were managed.

If the accessibility requirements and collection targets for containers in some categories are robust, then there may not be a need to specify management targets for certain products. In some categories, collection targets for containers and accessibility requirements will lead to excess consumable materials being collected. These materials will require management by the producer if the regulatory concept around accessibility and collection described above is adopted. These material categories would include paint, pesticides, solvents, fertilizers, pressurized containers, aerosols, sharps and pharmaceuticals. Where no material collection or management target has been established, it is essential that Resource Productivity and Recovery Authority (RPPRA) oversight include assessing producer performance for collection and material management against historical norms to ensure there is no 'slippage' and progressive annual increases in both collection and management volumes are achieved.

Registration Reporting and Auditing

Municipal governments appreciate how important it will be to collect and track data to assess progress towards objectives and continuous improvement.

We are however concerned with compliance in the first year of the regulation. It is difficult to determine if Producer Responsibility Organizations (PROs) and producers under the current Tires regulation are meeting their obligations. The concern is that if the required audit uncovers problems, those problems will not be known until over a year after the regulation came into force. By that point, the market may have been substantially disrupted and it may be difficult to rectify problems created. Additional forms of interim auditing within the first year would help to ensure the right market conditions are established at the onset of the program.

It would also be helpful to make sure the regulation on administrative monetary penalties is enacted as soon as possible to ensure all participants understand the consequences of failing to comply.

³ See sections 6 – 10 - https://prod-environmental-registry.s3.amazonaws.com/2019-04/Electrical%20and%20Electronic%20Equipment_Consultation%20Version%20April%2026%202019.pdf

Additionally, while not specific to the draft Regulations, the Province should consider having the Resource Productivity and Recovery Authority (RPRA) perform periodic waste composition audits across the Province to assess performance of the program.

Thanks for the opportunity to provide input on this important Regulation. We would be happy to answer any questions you have or provide further details.

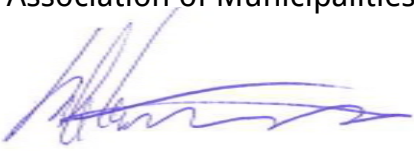
Sincerely,



Dave Gordon
Senior Advisor, Waste Diversion
Association of Municipalities of Ontario



Annette Synowiec
Director, Policy, Planning & Outreach
Solid Waste Management Services
City of Toronto



Mark Winterton
Chair, Regional Public Works
Commissioners of Ontario



Melissa Kovacs-Reid
Chair, Municipal Waste Association

cc: Atif Durrani, Manager, Policy Development, Resource Recovery Policy Branch, Ministry of the Environment, Conservation and Parks

Appendix A: Proposed Phase 1 and 2 Material Categories:

Categories	Definitions	Stage
Paints and Coatings	All materials that are designed and intended to be used to coat a surface including but not limited to Architectural paints, automotive paints, furniture paints, undercoating's, bitumen-based driveway sealers, roof patches, tars, high heat paints, wood stains, varnishes and sealers, foundation coatings, industrial paints etc.	1
Paint and Coatings Containers	All forms of containers that are used to contain paints and coatings	1
Solvents	Thinners, mineral spirits	1
Solvent Containers	All forms of containers that are used to contain solvents	1
Oil Filters	All sizes of oil filters after they have been used for intended purpose	1
Oil Containers	All size of oil and lubricant containers that were used for the purpose of containing lubricating oil	1
Used Oil and Lubricants	All types of oils and lubricants designed and intended to lubricate any engines including but not limited to automotive oils, small engine oils, chain oils, hydraulic fluids, power steering fluids, brake fluids etc.	2
Antifreeze	All materials that are designed and intended to be used as a coolant or anti-freezing agent including but not limited to automotive antifreeze, RV antifreeze, plumbing antifreeze, coolants etc.	1
Antifreeze Containers	All forms of containers that are used to contain Antifreeze and coolants	1
Pressurized Containers	All refillable and non-refillable pressurized containers including but not limited to propane cylinders, oxygen cylinders, acetylene and other forms of compressed gasses	1
Fertilizers	All forms of fertilizers designed and intended to be used for the purpose of encouraging the growth of plants (certified compost should be excluded)	1
Fertilizer Containers	All durable containers that contained fertilizers	1
Pesticides	All materials with chemical compositions designed and intended to kill or repel pests, insects, vectors, vermin and invasive plants, including but not limited to pesticides, herbicides, fungicides, insect repellants, insecticides, Algicides	1
Pesticide Containers	All durable containers that contained pesticides	1
Aerosols	All forms of aerosols including but not limited to paint aerosols, body sprays, hair sprays, insect repellants, etc.	1
Portable Fire Extinguishers	All size and chemical formulas of portable fire extinguishers	1
Fluorescent light bulbs	If not included in the EEE regulation should include all sizes of Fluorescent light bulbs including Compact Fluorescent lights etc.	1
Pharmaceuticals	All forms of materials designed for the intended purpose of improving the health and wellness of humans and animals including but not limited to over the counter and prescribed medications, vitamins, cold medications, supplementals etc.	2
Sharps	All forms of devices that are designed and can break the skin. Including but not limited to needles, syringes, diabetic lancets, glucose sensors, acupuncture needles, straight razors from all potential residential sources and public spaces.	2
Mercury Containing Devices	Including but not limited to thermometers, thermostats, Barometers and all other mercury containing switches or devices	1
Automotive additives and cleaners	Including but not limited to Diesel exhaust Fluid, Brake fluid, and other fuel cleaners and additives	2
Automotive additives and cleaner containers	All containers that contained automotive additives and cleaners	2
Fuels	Including but not limited to Kerosene, gasoline, diesel, camping fuels, mixed fuel blends for small engines.	2
Miscellaneous Flammable Materials	All products that by chemical formulation have the inherent risk of being flammable if not included in any of the other categories. Including but not limited to Adhesives, contact cements, glues, epoxies, caulking, fiberglass resins, polishes, waxes, water proofing solutions, acetone, nail polish remover etc.	2

Categories	Definitions	Stage
Oxidizers	All products that by chemical formulation have the characteristics or being an oxidizer including but not limited to Peroxides, bleach, Oxidizer cleaners, organic peroxides (Methyl Ethyl Ketones), Hardeners, Some Pool Chemicals and Some Photo Chemicals	2
Corrosives- Acids	All products that have a pH between 0 – 7 including but not limited to Acid cleaners, rust removers, masonry cleaners, deck washers, boric acid, muriatic acid, pH down, some photo chemicals, furniture and paint strippers	2
Corrosives – Caustics	All products that have a pH between 7.5 – 14 including but not limited to Caustic cleaners, soaps, etching solutions, oven cleaners, toilet and drain cleaners etc.	2
Reactive Chemicals	Products that are by their chemical characteristics reactive to light, water or vibrations including but not limited to sodium metal, phosphorus, lithium, organic peroxides, picric acid, calcium carbide	2
Fireworks and Flares	As identified	2



March 26, 2021

Allison Deng
Senior Policy Advisor, Resource Recovery Policy Branch
Foster Building 8th Floor,
40 St Clair Ave W,
Toronto, ON
M4V 1M2

Dear Ms. Deng:

RE: ERO # 019-2836: Proposed producer responsibility regulation for Hazardous and Special Products (HSP)

The Association of Municipalities of Ontario (“AMO”), the City of Toronto, the Regional Public Works Commissioners of Ontario (“RPWCO”) and the Municipal Waste Association (“MWA”) collectively submit these comments on behalf of municipal governments regarding Proposed producer responsibility regulation for Hazardous and Special Products (HSP).

We appreciate the opportunity to provide comments on this proposed regulation.

Summary of recommendations:

- Continue to support transition of all Ontario’s waste diversion programs over to full producer responsibility under the RRCEA, however we urge the government to delay implementation to ensure this regulation is properly drafted and all parties have time to properly plan. This will mean the need to extend the current program timelines but believe it to be prudent given the potential for issues with this regulation and the lack of time to plan.
- The regulation should designate the materials municipal governments recommended in our July 2020 submission:
 - Phase 1 (July 1, 2021): Paint and coatings, expanded pesticides category, solvents, expanded fertilizer category, used oil filters, oil containers (under 30 litres), pressurized containers, anti-freeze, aerosols, portable fire extinguishers, mercury containing devices, and all associated containers of the above.
 - Phase 2 (January 1, 2023): pharmaceuticals and sharps, automotive additives and cleaners, automotive additives and cleaner containers, fuels, miscellaneous flammable materials, oxidizers, corrosives – acids, corrosives – caustics, fuels, reactive chemicals, and lubricating oils.

Association of Municipalities of Ontario
200 University Ave., Suite 801
Toronto ON M5H 3C6 Canada
Tel: (416) 971-9856
Fax: (416) 971-6191
Toll-free in Ontario: 1-877-426-6527

RPWCO
c/o 1266 McDougall Street
Windsor ON N8X 3N7
Tel: (519) 255-6247 x 6356
Fax: (519) 973-5476

Municipal Waste Association
PO Box 1894
Guelph ON N1H 7A1
Tel: (519) 823-1990
Fax: (519) 823-0084

City of Toronto
100 Queen St. W.
25th Floor, East Tower
Toronto, ON, M5H 2N2
Tel: (416) 392-9095
Fax: (416) 392-4754

Note municipal governments strongly disagree with the exclusion of refillable propane cylinders and the lack of management requirements for fertilizers. For new materials being designated it is understood that the government may not have data to establish collection targets, however, this can be overcome by:

- Establishing the same accessibility requirements as other HSP;
 - Establishing a recycling efficiency target that ensures the products collected are properly managed similar to other HSP; and,
 - Establishing robust public education and communication requirements for producers to ensure consumers understand how and where to properly dispose of designated products and packages
- Section 8 of the proposed regulation that provides producer exemptions should be removed.
 - Producers should be required to report on the amount of materials collected (e.g. consumables and products/containers separately) and how all of the collected materials were managed. Management targets should be in place for all containers based on a 3-year average of the current program performance, which will help to drive unused consumable products back to sites where they can be properly managed.
 - Fertilizers should have management requirements, specifically a 100% recycling efficiency rate.
 - Antifreeze and mercury containing devices recycling efficiency rates should start in 2022 not 2023.
 - Due to the human health & safety and environmental risk associated with HSP and the absence of material management targets, producers should be required to provide at least one direct educational piece to every household once per year. This outreach could be through direct promotion and education engagement with households or could be through waste collection calendars and other educational materials in partnership with municipalities.
 - Section 23(1)1 should be amended as not all municipal collection sites are able or willing to accept mercury containing devices.
 - Municipalities are supportive of the approach taken on visible fees within the Used Tire Regulation that include reporting, auditing and promotion & education and requirements on producers that charge consumers a resource recovery fee, which allows for consumer transparency and flexibility for the producer. Municipalities do have concerns, given previous issues that the complexity of this regulation will lead to consumer fees being charged inappropriately, especially given the rushed timeline.
 - Municipal governments are concerned with the complex approach being proposed to determine accessibility requirements. It is not clear what number

of sites and events that would be required in each jurisdiction and how that compares to what exists currently.

- Municipal collection sites and events should be exempted from the requirements in section 13(1)(6).
- Section 11(1) should be amended to require producers to collect materials that have been illegally dumped.
- Performance audits should be required on an annual basis to reduce risks and promote continuous improvement.
- There appear to be a number of drafting errors in the draft regulation that include, but are not limited to the following:
 - Section 10(2) 1i appears to be missing the word 'producer';
 - Section 13 and 14 do not clearly delineate the difference between collection sites and collection events;
 - Appears that section 26 might be missing the need to report supplied data past 2021;
 - Section 30 includes a question mark.
- An RRCEA regulation on administrative monetary penalties should be enacted as soon as possible to ensure all participants understand the consequences of failing to comply.

Need for Delay

Given the amount of issues with the regulation in its drafting and with policy decision made within it, municipalities are seeking a delay in implementation until January 1, 2022. This will provide additional time for the Ministry to consult with stakeholders over the next two months to get the regulation right and provide four months for all stakeholders to properly plan based on the final regulation.

Proposed Timeline:

Amend draft and finalize HSP Regulation	June 30, 2021
Existing MHSW program ends	December 31, 2021
New RRCEA regulation starts	January 1, 2022

Contingency funds were built into the wind-up plan for this type of occurrence and the programs can be extended to ensure the continued management of these materials. While we understand this is not the ideal decision, we are also keenly aware of problems created in the past when complicated recycling programs were rushed. It is important we get the fundamentals right and provide time for planning.

Designated Materials

Municipal governments are disappointed so few of our comments on what materials should be designated were incorporated in the draft regulation, given the amount of detail that was provided in our initial submission dated July 24, 2020 (see appendix).

The regulation appears in spirit to transition a status quo list for:

- Pesticides, which represent less than 20% of the types of pesticides municipalities manage;
- Solvents, which represent less than 10% of the types of miscellaneous organics municipalities manage;
- Aerosols, which represent ~55% of the types of aerosols that municipalities manage.

The Provincial government has discussed expanding the designated lists for over a decade. We appreciate that the notice on the ERO references future consultations to add further designated materials, however, municipal governments had hoped that the Ministry would provide a schedule for new materials to be added or for data to begin to be captured for these other material types. Given the nature of these products, this expansion should be a priority.

We are pleased to see the addition of barometers, thermometers and thermostats. However, these materials do not reflect all of the mercury containing devices that municipalities manage such as mercury switches and other devices.

The regulation has also removed responsibility from some existing materials such as refillable propane cylinders. As noted in our previous submission, municipal depots received 170,000 kg of propane cylinders in 2019 which would equate to over 20,000 20-pound propane cylinders. Most return-to-retail centres do not accept cylinders if they are not being exchanged for new ones and there is a significant concern there would not be the space in current retail infrastructure to manage these materials. The additional cost this would add to municipal costs is in excess of roughly 10 times any savings that might be attributed to the addition of certain mercury containing devices.

The proposed regulation has also exempted fertilizers. Fertilizer producers will be required to encourage consumers to use up all their fertilizer and not return it to municipal depots and/or events. We note that fertilizer producers have committed to doing this for over a decade, yet municipalities continue to receive large volumes of this material. Based on Product Care's last three annual reports (e.g., 2017-2019), Ontario municipalities have consistently received over 25 tonnes of fertilizers (see Table below). Note designated fertilizers being dropped off at municipal depots over the last years are increasing. A good portion of this fertilizer has been exposed to moisture and is a solid mass that cannot be applied or has expired.

	2017	2018	2019
Amount of currently designated fertilizers received by municipalities	26 tonnes	27.3 tonnes	28.5 tonnes

Based on the current exemptions, this regulation moves Ontario further away from a producer responsibility regime and instead adds more cost on municipal governments (see example in Table 1).

Table 1 – Cost impact for one municipality based on Designated Material Changes

Changes to Designated Materials	Cost Saving / Increase
Removal of currently obligated refillable propane	\$123,000 (cost increase)
Removal of currently obligated fertilizers	\$1,200 (cost increase)
Addition of certain mercury containing devices	-\$12,000 (cost savings)
Total	\$112,200 (cost increase)

Municipal governments advocate that the financial and operational responsibility to manage all these materials should reside with producers that manufacture these products rather than the municipal taxpayer. This responsibility includes ensuring that consumers purchase the appropriate amount, use all of the product and ensures that any remaining product and the packaging are properly managed at end of life. These companies have a much more direct relationship with the consumer rather than municipalities who are forced to address the 'end of the pipe'. Government policies like producer responsibility have an opportunity to create efficient market signals. Burden

will only be increased on the municipal taxpayer if the Province decides to retract rather than expand producer responsibility.

Recommendation 1: The regulation should designate the materials municipal governments recommended in our July 2020 submission:

- Phase 1 (July 1, 2021): Paint and coatings, expanded pesticides category, solvents, expanded fertilizer category, used oil filters, oil containers (under 30 litres), pressurized containers, anti-freeze, aerosols, portable fire extinguishers, mercury containing devices, and all associated containers of the above.
- Phase 2 (January 1, 2023): pharmaceuticals and sharps, automotive additives and cleaners, automotive additives and cleaner containers, fuels, miscellaneous flammable materials, oxidizers, corrosives – acids, corrosives – caustics, fuels, reactive chemicals, and lubricating oils.

Note municipal governments strongly disagree with the exclusion of refillable propane cylinders and the lack of management requirements for fertilizers.

For new materials being designated it is understood that the government may not have data to establish collection targets, however, this can be overcome by:

- Establishing the same accessibility requirements as other HSP;
- Establishing a recycling efficiency target that ensures the products collected are properly managed similar to other HSP; and,
- Establishing robust public education and communication requirements for producers to ensure consumers understand how and where to properly dispose of designated products and packages.

Definition of Producer

Municipal governments are unclear as to why different terminology is being used for this regulation versus the Blue Box regulation. Noting that marketplace facilitator / seller terms are used in the Blue Box regulation and not this regulation. Municipalities want to understand the difference in approaches to ensure online sales are properly captured.

It is unclear of the need for producer agreements established in section 6 of the regulation. Municipal governments want to ensure that individual producers remain liable.

Exemptions

Municipal governments fundamentally disagree with removing responsibility from companies that only contribute a 'small amount' of hazardous or special products into the market. All producers should be responsible for these materials given their hazardous nature and potential for environmental harm. The exclusion of these

materials also causes potential issues with understanding the amount of material supplied into the market and impacts diversion targets. These exemptions are not in place for the current program plan and municipal governments are not aware of other policies that provide these exemptions for the management of hazardous materials.

Recommendation 2: Section 8 of the proposed regulation should be removed.

Collection, Management and Recycling Efficiency Targets

Municipal governments have substantial concerns with how targets have been established in the proposed HSP regulation as it provides little incentive for producers to ensure materials are being properly managed at the end-of-life (see Table 2). It does not currently appear that there are any requirements for the recycling of any containers, except for oil containers. As a result, these containers can simply be disposed of. There are no requirements to collect any amount of products that are meant to be consumable, other than recycling efficiency rates based on the amount of material collected. There needs to be pressure on producers to capture these materials so they do not end up being disposed of inappropriately. Municipal governments have consistently raised continual concerns about this with the pharmaceutical and sharps regulation.

Table 2 – Targets for Designated Materials in Proposed HSP Regulation

Designated Material	Collection Target based on supplied 3 year average	Management Target based on supplied 3 year average	Recycling Efficiency Rate Based only on what is collected
Antifreeze	None	None	100% - 2023 & forward
Antifreeze Containers	None	None	Unclear
Paints and Coatings	None	None	70% - 2022 & forward
Paints and Coating Containers	None	None	Unclear
Pesticides	None	None	10% - 2022 & forward
Pesticides Containers	None	None	Unclear
Solvents	None	None	10% - 2022 & forward
Solvents Containers	None	None	Unclear
Oil Filters	None	100% (& oil residue) for each	None

Designated Material	Collection Target based on supplied 3 year average	Management Target based on supplied 3 year average	Recycling Efficiency Rate Based only on what is collected
		performance period	
Oil Containers	None	None	100% - 2022 & forward
Refillable Pressurized Containers	None	None	100% - 2022 & forward
Non-Refillable Pressurized Containers	None	20% - July 2021 to end 2022 25% - 2023 & 2024 30% - 2025 & forward	None
Certain Mercury Containing Devices	None	None	100% - 2023 & forward
Fertilizers	None	None	None

Recommendation 3: Producers should be required to report on the amount of materials collected (e.g. consumables and products/containers separately) and how all of the collected materials were managed. Management targets should be in place for all containers based on a 3-year average of the current program performance, which will help to drive unused consumable products back to sites where they can be properly managed.

Recommendation 4: Fertilizers should have management requirements, specifically a 100% recycling efficiency rate.

Recommendation 5: Antifreeze and mercury containing devices recycling efficiency rates should start in 2022 not 2023.

Promotion and Education

HSP materials are hazardous waste by definition and the proper management of materials and containers is of paramount importance. The basis for proper management begins with an educated consumer relative to the human health & safety and environmental risks associated with HSP products and clear direction on how to dispose of the material into a collection system that is convenient to use and widely available for designated product and containers.

Promotion and education activities should at a minimum inform the public of how materials can be managed, to encourage participation, and to motivate consumers to adopt and maintain the desired environmental behaviour. Similar to the Tires program,

it would be helpful if consumers can access a look up tool to find the nearest collections sites for safe disposal of these materials.

Recommendation 6: Due to the human health & safety and environmental risk associated with HSP products and the absence of material management targets, producers should be required to provide at least one direct educational piece or communications campaign in each community on an annual basis. This outreach could be through direct promotion and education engagement with households or could be through waste collection calendars and other educational materials in partnership with municipalities.

Recommendation 7: Section 23(1)1 should be amended as not all municipal collection sites are able or willing to accept mercury containing devices.

Recommendation 8: Municipalities are supportive of the approach taken on visible fees within the Used Tire Regulation that include reporting, auditing and promotion & education and requirements on producers that charge consumers a resource recovery fee, which allows for consumer transparency and flexibility for the producer. Municipalities do have concerns, given previous issues that the complexity of this regulation will lead to consumer fees being charged inappropriately, especially given the rushed timeline.

Collection and Consumer Accessibility

Municipal governments are concerned with the complexity of how accessibility requirements are being determined. It is not clear to municipal governments on the number of sites and events that would be required in each jurisdiction and how that compares to what exists currently. We also do however have concerns related to section 13(6) which would require municipal sites or events to record a person's name, contact information, any unique identifier assigned by the Registrar and the weight of hazardous or special products accepted if the person drops off 25 kg or more materials in a day.

This would be highly problematic for most municipal sites/events as:

- Most would not have access to weight scales;
- Would require municipal staff to be available to sort designated and non-designated materials to understand if the weight had been established;
- Most municipal sites would not have the staff or time to efficiently complete this work based on use of sites;
- Many residents bring in a substantial amount of materials at one time so many would exceed the limit of 25 kg (which would be equivalent to a few paint cans);
- Many sites would have concerns about taking this information due to privacy concerns.

It is not understood the rationale for these requirements as municipal sites already have requirements in their Environmental Compliance Approval about who are permitted to use their sites and the amount of hazardous waste they can collect and store onsite. These requirements were removed for this reason in the Used Tire regulation for municipal and provincial sites.

Collection requirements should be in place not just post-collection, but post-consumer. This will help motivate producers to ensure proper accessibility to motivate consumers to properly manage their materials.

Recommendation 8: Municipal collection sites and events should be exempted from the requirements in section 13(6).

Recommendation 9: Amend section 11(1) to require producers to collect materials that have been illegally dumped.

Annual performance audits

Producers should be required to perform annual performance audits, as is being proposed for Ontario's beverage container deposit return systems. The current proposal requires performance audits every three years, which increases risks and does little to actually reduce any administrative burden (i.e., it simply condenses three years of audits into one year). Furthermore, there would be no publicly available data to monitor producer performance through the 2023 through 2029 period (six years) making it difficult to identify potential problems and to make any program adjustments required.

Recommendation 10: Performance audits should be required on an annual basis to reduce risks and promote continuous improvement.

Administrative Penalties Regulation

Recommendation 11: It would also be helpful to make sure the regulation on administrative monetary penalties is enacted as soon as possible to ensure all participants understand the consequences of failing to comply.

Housekeeping

Recommendation 12: There appear to be a number of drafting errors in the draft regulation that include, but are not limited to the following:

- Section 10(2)1i appears to be missing the word 'producer';
- Section 13 and 14 do not clearly delineate the difference between collection sites and collection events;
- Appears that section 26 might be missing the need to report supplied data past 2021;

- Section 30 includes a question mark.

Thanks for the opportunity to provide input on this important Regulation. We would be happy to answer any questions you have or provide further details.

Sincerely,

AMO, Toronto, RPWCO, MWA

DRAFT

Subject: Approval of Statement of Contributions and Expenditures for Niagara-on-the-Lake Wastewater Treatment Plant

Report to: Public Works Committee

Report date: Tuesday, April 13, 2021

Recommendations

1. That the draft audited statement of contributions and expenditures for Niagara-on-the-Lake (NOTL) Wastewater Treatment Plant (Appendix 1), **BE APPROVED**;
2. That staff **BE DIRECTED** to co-ordinate with the auditor to finalize the statement as presented; and
3. That this report **BE FORWARDED** to the Region's Audit Committee and to The Ministry of Infrastructure and Communities for information as required.

Key Facts

- The purpose of the report is to obtain approval of the audited statement in order to satisfy the funding requirements and release the remaining 10% portion of the agreed funding.
- The audited statement is in accordance to the provisions of the financial reporting provisions in the agreement between the Ministry of Infrastructure and Communities and the Niagara Region.
- As per Financial Reporting and Forecasting Policy (C-F-020), other financial statements performed for funding purposes, will be recommended for approval to Council by the standing Committee with oversight of the program. Upon approval by Council, the department Commissioner, or delegated authority, and the Treasurer will be authorized to sign the auditor's representation letter to obtain the auditor's signed report. The approved statements will then be forwarded to Audit Committee for information.

Financial Considerations

The draft audited statement of contributions and expenditures for NOTL Wastewater Treatment Plant has been prepared in accordance with the financial reporting provisions in the agreement between the Ministry of Infrastructure and Communities and the Niagara Region dated March 19, 2015 and amended on March 22, 2017 and April 9, 2019 (the agreement).

A copy of the draft audited statement of contribution and expenditures for NOTL Wastewater Treatment Plant for the period of the project is attached (Appendix 1).

The statement of contributions and expenditures for NOTL Wastewater Treatment Plant is prepared specifically for the purpose of meeting the requirements outlined in the agreement and may not be suitable for other purposes.

Analysis

The Region's auditors, Deloitte, completed the audit of the financial information in the statement of contributions and expenditures for NOTL Wastewater Treatment Plant. The auditors have indicated that, in their opinion, the financial information for the period of the project is prepared, in all material respects, in accordance with the financial reporting provisions in the agreement.

The statement shows that the project had \$43.7 million in eligible expenditures to support the maximum funding received \$14.4 million during the claim period.

Alternatives Reviewed

The audited statement of contribution and expenditures for NOTL Wastewater Treatment Plant is prepared in accordance with the agreement; therefore no alternative is available.

Relationship to Council Strategic Priorities

Providing formal financial reporting to Council and the public supports the Council Strategic Priority of Sustainable and Engaging Environment.

Other Pertinent Reports

None

Prepared by:

Melanie Steele, MBA CPA CA
Associate Director Reporting & Analysis
Corporate Services

Recommended by:

Bruce Zvaniga, P. Eng.
Commissioner of Public Works (Interim)
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

This report was prepared in consultation with Dan Ane, Manager Program Financial Support

Appendices

Appendix 1 Draft Statement of Contributions and Expenditures for NOTL Wastewater Treatment Plant

Statement of Contributions and Expenditures

The Regional Municipality of Niagara
Niagara-on-the-Lake Wastewater Treatment Plant Project

December 31, 2017

Draft

The Regional Municipality of Niagara

Niagara-on-the-Lake Wastewater Treatment Plant Project
December 31, 2017

Table of contents

Independent Auditor’s Report..... 1
Statement of Contributions and Expenditures..... 3
Notes to the Statement of Contributions and Expenditures..... 4

Draft

Independent Auditor's Report

To Infrastructure Canada

Opinion

We have audited the accompanying Statement of Contributions and Expenditures (the "Statement") of the The Regional Municipality of Niagara (the "Region") - Niagara-on-the-Lake Wastewater Treatment Plant Project (the "Project") for the period from March 19, 2015 to December 31, 2017 (the "Period"), including a summary of significant accounting policies.

In our opinion, the Statement of the Region with respect to the Project for the period is prepared, in all material respects in accordance with the financial reporting provisions in the Agreement between Her Majesty the Queen in right of Canada, as represented by the President of the Queen's Privy Council for Canada, Minister of Infrastructure and Communities (formerly known as, Minister of Infrastructure, Communities and Intergovernmental Affairs) and The Regional Municipality of Niagara, dated March 19, 2015 and amended on March 22, 2017 and April 9, 2019 (collectively, the "Agreement").

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards ("Canadian GAAS"). Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Statement* section of our report. We are independent of the Region in accordance with the ethical requirements that are relevant to our audit of the Statement in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Emphasis of Matter - Basis of Accounting

We draw attention to the fact that the Statement has been prepared in accordance with the Agreement. The Statement is prepared to assist the Region in complying with the financial reporting provisions of the Agreement. As a result, the Statement may not be suitable for another purpose. Our opinion is not modified in respect of this matter.

Responsibilities of Management and Those Charged with Governance for the Statement

Management is responsible for the preparation of the Statement in accordance with the Agreement, and for such internal control as management determines is necessary to enable the preparation of the Statement that is free from material misstatement, whether due to fraud or error.

Those charged with governance are responsible for overseeing the Region's financial reporting process.

Auditor's Responsibilities for the Audit of the Statement

Our objectives are to obtain reasonable assurance about whether the Statement as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian GAAS will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in

the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this Statement.

As part of an audit in accordance with Canadian GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the Statement, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Region's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates, if any, and related disclosures made by management.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Chartered Professional Accountants
Licensed Public Accountants
_____, 2021

Draft

The Regional Municipality of Niagara

Niagara-on-the-Lake Wastewater Treatment Plant Project

Statement of Contributions and Expenditures

Project claim start date to December 31, 2017

	Estimated	Actuals		
	Total Expenditures	Eligible Costs	Ineligible Costs	Total Expenditures
EXPENDITURES:				
Design and Drawings	3,220,000	2,620,777	-	2,620,777
Site Preparation	2,280,000	1,177,886	-	1,177,886
Construction Costs	37,000,000	39,888,253	-	39,888,253
Occupancy - Office Furniture and Lab Equipment	500,000	-	-	-
Ineligible Costs	293,030	-	4,233,149	4,233,149
TOTAL EXPENDITURES	43,293,030	43,686,916	4,233,149	47,920,065

Government of Canada Contributions	Estimated	Actuals		
	Contributions by Canada	Claim Amount Paid	Holdback Amount	Total Contributions
Milestone Claim #1	1,073,333	2,417,200	-	2,417,200
Milestone Claim #2	760,000	5,311,972	-	5,311,972
Milestone Claim #3	12,000,000	2,792,184	-	2,792,184
Milestone Claim #4	333,333	2,462,644	482,864	2,945,508
Milestone Claim #5	166,667	-	959,803	959,803
TOTAL	14,333,333	12,984,000	1,442,667	14,426,667

The Regional Municipality of Niagara

Niagara-on-the-Lake Wastewater Treatment Plant Project

Notes to the Statement of Contributions and Expenditures

December 31, 2017

1. Summary of significant accounting policies

The statement is prepared in accordance with the agreement dated March 19, 2015 between Her Majesty the Queen in Right of Canada, as represented by the President of the Queen's Privy Council for Canada, the Minister of Infrastructure and Communities and The Regional Municipality of Niagara as well as Amending Agreement No 1, dated March 22, 2017 and Amending Agreement No 2, dated April 9, 2019. These amounts reported in the Statement of Contributions and Expenditures do not represent the full cost of the project but only the costs incurred during the period of March 19, 2015 to December 31, 2017.

Significant accounting policies are as follows:

a) Revenue and expenses

Revenue is recorded when received.

Eligible expenditures are recorded in the period incurred, in accordance with the eligibility criteria described in the agreement.

b) Tangible capital assets

Tangible capital assets acquired are reported as expenditures in the period incurred, amortization is not recorded.

c) Use of estimates

In preparing the Statement of Contributions and Expenditures, management is required to make estimates and assumptions that affect the reported amounts of expenditures. Actual results could differ from those estimates.

2. Funding agreement

The Minister of Infrastructure and Communities funded one third of eligible project expenditures up to the maximum funding of \$14,426,667. Contributions by The Ministry of Infrastructure and Communities will be payable in accordance with the terms and conditions of the agreement and may be clawed back if total financial assistance received or due in respect of the total project costs exceeds the total eligible expenditures incurred.

3. Estimated total expenditures and contributions by Canada

The estimated total expenditures and contributions by Canada are presented as per Section B.2 Project Milestones and Cash Flow of the original agreement dated March 19, 2015.

Subject: Processing of Source Separated Organics

Report to: Public Works Committee

Report date: Tuesday, April 13, 2021

Recommendations

1. That Staff **BE AUTHORIZED** to enter into negotiations with Walker Environmental Group Inc. for the expansion of the current Source Separated Organics Processing facility.
2. That Staff **REPORT** back to Regional Council, following negotiations with Walker Environmental Group Inc., with recommendations.

Key Facts

- Currently, Niagara Region has total available annual capacity to process up to 39,700 tonnes of Source Separated Organics (SSO) which is comprised of 34,000 tonnes of SSO and 5,700 tonnes of bulking material (yard waste materials) through its contract with Walker’s Environmental Group Inc. (WEG) (formerly known as “Integrated Municipal Services Inc.”) until March 31, 2029.
- SSO is yard and food waste collected together in the Green Bin program.
- From 2017 – 2019, Niagara Region generated on average, approximately 29,050 tonnes of SSO annually. In 2020, a total of 34,650 tonnes of SSO were generated which includes the impacts of both the COVID19 pandemic and the transition to Every Other Week (EOW) garbage collection.
- Based on projections, it is expected that in 2021 a total of 42,000 tonnes of SSO will be generated. Additionally, as the EOW waste collection program matures, it is anticipated that approximately 44,000 tonnes of SSO will be produced by Niagara residents within the next ten (10) years.
- WEG has indicated that they have the ability to process Niagara’s 2021 total SSO tonnage, however, additional processing capacity will be required beyond 2021.
- Confidential Memorandum PWC-C 18-2021 accompanies this report, which supports the recommendations contained within this report.

Financial Considerations

The 2021 budget for processing SSO material is \$3.275 million. The budget assumed a similar per tonne rate for any amounts to be processed in excess of the 34,000 SSO tonnage maximum (excluding leaf and yard bulking material) when developed. Since

the 2021 budget was developed in Q3 2020, SSO total tonnage projections have been revised to 42,000 due to ongoing COVID impacts and EOW waste collection transition. WEG has indicated that they can process Niagara's 2021 SSO tonnage.

To prepare and address future composting processing needs, staff researched other municipalities' programs. Over the last few years, a number of municipalities have secured processing capacity for SSO and processing rates have varied between \$100/tonne to \$150/tonne, not including haulage. Additionally, haulage costs have ranged from \$20/tonne to \$25/tonne. Staff are aware of one recent procurement where the cost bid was \$100/tonne including processing and haulage; however, the scope of work included processing tonnage in the range of 30,000 tonnes annually.

Based on the rates noted above, it is estimated that the total processing and haulage cost for Niagara to process an additional 8,000 SSO tonnes would be \$960,000 to \$1,360,000 annually. The 2021 budget included \$222,000 for tonnages in excess of the current contractual limits. Therefore, the approximate gross annual impact on future budgets of this approach is between \$738,000 - \$1,138,000 (or 1.82% - 2.8% of the Waste Management 2021 requisition) excluding cost avoidance impacts as noted below.

Niagara Region realized approximately \$1M annually in cost avoidance on the collection contracts when every-other-week garbage collection was introduced in October 2020. In addition to realizing this cost avoidance, diverting approximately 12,000 tonnes per year of additional SSO will extend Niagara Region's landfill life. The annual value of not sending organics to landfill is in the range of \$981,000 per year which is based on the tipping fee at Region landfills and not paying for landfilling at the WEG landfill. Additional benefits include reduced monitoring requirements, decrease in the amount and strength of leachate being generated, and potential reduction in the contaminating lifespan of a landfill.

Analysis

Niagara Region introduced a SSO collection program in 2003 / 2004. SSO is organic material that is comprised of food waste and leaf and yard material which is collected through the Region's Green Bin program. Since 2009, WEG has processed the Region's SSO at their Townline Road composting facility in Thorold. The current contract between WEG and Niagara Region expires on March 31, 2029. Under the terms of the contract, the Region is obligated to provide WEG a minimum of 29,700 tonnes of SSO while WEG is required to process up to 39,700 tonnes of SSO of which 5,700 must be bulking material. As a result, the WEG composting facility is capable of

processing 34,000 tonnes of SSO, annually. From 2017 – 2019, Niagara Region generated on average 29,050 tonnes of SSO annually. In 2020, a total of 34,650 tonnes of SSO was generated by Niagara residents. The two main drivers for the tonnage increase in 2020 were the COVID 19 pandemic with more people staying at home, and transitioning to EOW waste collection in mid-October. It is estimated that the pandemic, which began in March, added 2,800 tonnes while EOW waste collection contributed 2,100 tonnes in 2020.

Forecasting into 2021, it is now anticipated that Niagara will generate 42,000 tonnes of SSO. There are two primary factors driving this forecasted increase in SSO tonnage. It is assumed that the COVID-19 pandemic will impact SSO tonnages throughout 2021 resulting in an additional 3,400 tonnes of SSO. The first three months (November 2020 through January 2021) of the EOW program indicates that residents are actively participating in the program. It is estimated that in 2021 EOW will result in an additional 8,500 tonnes of SSO or a 29% increase over the baseline 29,050 tonnes.

Regional staff also reviewed the amount of SSO that Niagara may generate in order to project processing needs beyond 2021. The analysis examined the amount of SSO that was generated per person in seven comparator Ontario municipalities which have established EOW collection programs. On average, the municipalities generated 57Kg of SSO per person (range of 42Kg – 84Kg / person) in 2019.

Based on an August 2020 growth report to the Ontario Ministry of Municipal Affairs and Housing, it is being projected that Niagara's population in 2031 will be 549,000 or the equivalent of an annual increase of 1.2%. Using the 57Kg / person rate it is estimated that in ten (10) years Niagara will be generating 44,000 tonnes of SSO.

Niagara Region has the option of procuring additional capacity at an alternate facility. This option would need to consider both processing and haulage costs since these facilities are generally located outside of Niagara region. If Niagara was to send its SSO outside of Niagara, some type of transfer facility would be required. Further analysis will be undertaken by Staff to formalize a cost estimates for this option, if required. Third party processor contracts are normally "put or pay" agreements meaning that the Region would be committed to delivering or paying for a minimum amount of SSO material. Niagara Region's current processing contract has a "put and pay" provision.

Staff have completed both an industry and municipal scan in order to determine the potential costs of sending SSO to an alternate processing facility in Ontario. A number of municipalities have sought SSO processing capacity over the past twelve (12) to twenty-four (24) months and the range in processing rates has been between \$80/tonne

to \$151/tonne plus haulage. A market scan of processing facilities indicated that prices ranged between \$110/tonne to \$130/tonne. A key factor in pricing is both the length of the contract and tonnage (note: these rates differ slightly compared to those found in the Financial Considerations section which used the wider spread in costs that municipalities experienced). Since Niagara Region only requires a modest amount of processing capacity it is likely that the Region would pay at the higher end of the range. The current industry average haulage cost is approximately \$20/tonne. Niagara Region would also need to factor in the construction of a transfer facility, should SSO be shipped outside of Niagara. The total price to process SSO may vary depending upon different factors including the level of contamination and amount of food waste compared to leaf and yard in the SSO material while distance is the primary driver for haulage costs.

There are two potential challenges if Niagara Region decides to go out to market. 1) securing capacity at a reasonable price for low tonnage (8,000), and 2) processing operations within a reasonable driving range to Niagara that only accept food waste and cannot process SSO and yard waste collected together.

Prior to awarding the new collection contracts, staff analyzed different SSO and yard waste collection scenarios to determine which scenario was the most cost effective when reviewing the total system costs. Based on a review of collection costs as well as processing costs under each of the scenarios, status quo (commingled SSO in the Green Bin and eight (8) separate yard waste collections during peak times) was still the most cost-effective scenario.

Based on the information noted above and the information contained in memorandum Confidential PWC-C 19-2021, staff are recommending that Niagara Region enter into negotiations with Walker Environmental Group Inc. to expand their current processing facility. Staff consider that the requested negotiations align with section 19(a) (vi) of Niagara Region's Procurement By-law No. 02-2016, as amended, which provides that: "Negotiation may be used for the Purchase of Goods and/or Services when any of the following criteria apply: the extension of an existing Contract would be more effective."

Alternatives Reviewed

1. Niagara Region build their own SSO processing facility. This would require time to receive approval from the Ministry of Environment, Conservation and Parks (roughly a year, plus for approvals) and, depending upon type of facility, would require capital funds for the 8,000 tonnes. Another 18-24 months would be required to competitively design and construct a facility. Under this scenario, an operator would be required to

process the material into compost. Given the costs implications and timing of this alternative, staff are not recommending this option be further explored.

2. It should be noted that staff are in discussions with Miller Waste, who own and operate the biogas facility in Grimsby, to determine if this facility can process some of Niagara's food waste during the winter months (when yard waste is not prevalent). This secondary processing outlet would help provide additional local processing capacity. Staff will include further information in a subsequent report to Committee.

Relationship to Council Strategic Priorities

This report supports Council's Strategic Priority of Responsible Growth and Infrastructure Planning.

Other Pertinent Reports

- PW-C 2-2021
- PW 21-2020
- PWA 40-2011

Prepared by:

Emil Prpic
Associate Director, Waste Disposal
Operations & Engineering
Waste Management Services

Recommended by:

Bruce Zvaniga, P.Eng.
Commissioner of Public Works (Interim)
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

This report was prepared in consultation with Dan Ane, Manager, Program Financial Support, Corporate Services, and reviewed by Donna Gibbs, Director Legal and Courts Services and Catherine Habermehl, Director, Waste Management Services

MEMORANDUM

PWC-C 17-2021

Subject: COVID-19 Response and Business Continuity in Public Works

Date: April 13, 2021

To: Public Works Committee

From: Bruce Zvaniga, P.Eng., Commissioner of Public Works (Interim)

As reported previously, Public Works has remained focused on keeping the critical public infrastructure operational while responding to the COVID19 pandemic. Departmental staff continue to ensure that the community has: safe drinking water, reliable wastewater systems, recycling and waste collection/disposal, regional specialized and regular transit and a well-maintained regional road system. Public Works staff recognize and are dedicated to the essential role they play ensuring that healthcare, social services, emergency responders and the community-at-large can depend upon the reliable availability of these core municipal services.

Public Works leadership is actively participating in the Municipal Emergency Control Group. Working with all other departments, the Business Continuity Plan and staff redeployment strategy is monitored and adjusted to respond to changing conditions.

The Department Leadership team continues to actively participate in virtual meetings with their counterparts in the Local Area Municipalities, and provincial committees to share our successes and learn how others have overcome challenges.

The following provides a brief highlight from each of the four (4) divisions on their respective status, service changes, actions taken and future outlook.

Water & Wastewater Services

Current Status of Operations

The focus continues to be providing high quality safe and reliable water and wastewater services to the residents of Niagara while continuing to implement the necessary safety

and social distancing protocols in accordance with Niagara Region Public Health directives and Ontario Regulations.

Both the Drinking Water and Wastewater Quality Management Systems (QMS) remain active. Capital infrastructure projects are deemed essential and continue to be delivered.

Capital Projects in design, construction and environmental assessment phases continue to move forward. All meetings are held virtually whenever possible.

All W-WW staff, contractors and consultants continue to be reminded of their obligations to comply with the Niagara Region mask by-law and other pandemic mitigation policies and procedures.

Service/Operational Change

The following mitigation measures have been adopted at all W-WW locations as of March 1, 2021 “Red–Control” zone:

- All non-essential staff must work from home wherever possible and limit any on-site work to essential tasks only; designation of essential staff is at the discretion of the manager based on business needs identified in the Business Continuity Plan.
- Closure of all plant meeting rooms to non-essential in-person meetings. All essential in-person meetings must adhere to posted occupancy limits.
- Essential outdoor site tours must be limited to a maximum of five (5) people with all participants wearing face coverings where physical distancing cannot be maintained.
- Cancellation of all non-essential indoor site visits.
- All in-person mandatory Health and Safety training has been reinstated; all other training continues to be offered via virtual learning.
- Deferral of non-essential drone flights and Matterport (360 View) scanning.
- Deferral of all non-essential contracted services.
- Limiting operations/maintenance staff from working/moving between multiple W-WW facilities to an as needed basis at the discretion of the operations and/or maintenance managers.
- Provision of manager’s vehicles will be made for staff as per business need and at the discretion of the operations and/or maintenance managers.
- Using Regional courier to send items between facilities instead of in-person drop off as much as possible

- Re-adoption of no-contact drop-off/pick up for courier, deliveries, uniforms and lab supplies if not currently being practised

Operational Outlook

- The focus continues to be on the maintenance of all key components, the sustainable supply of key chemicals and materials and most importantly on the well-being of the staff managing these essential systems.

Transportation Services

Current Status of Operations

Essential bridge, culvert and roadway works, forestry, traffic control, pavement markings and signage are critical services that continue to be provided.

Design, construction management and environmental assessments continue from engineering staff and consultants.

Staff continue to monitor all material shipments, supplies and construction contracts experiencing delays to understand larger impacts to ongoing construction project schedules.

Service/Operational Changes

Transportation continues to operate with the following measures which were implemented January 14, 2021:

- Transportation staff have been redeployed to assist with pandemic needs as required.
- Staff able to perform work duties from home must do so and limit any on-site work to essential tasks only.
- Essential work as outlined by the Province and identified by Management in the Transportation Business Continuity Plan will continue in accordance with the State of Emergency Declaration.
- Essential construction projects and contracted services are under review based on information coming from the Province and staff, contractors, constructors, etc., will be notified as required.
- All non-essential in-person meetings are cancelled until further notice.

- Closure of all Transportation facilities and yards to visitors. Visitors requiring stock items from our stores at Thorold Service Center must now call Fleet Services Department, Materials Technician Leadhand at **905-227-2220, press 2** in order to place and arrange for curbside pick-up only.
- Essential construction project on-site meetings (per bullet 3) must be limited to a maximum of five (5) participants wearing face masks until further notice.
- In-person training has commenced meeting all safety guidelines
- Staggered shifts and locations are under review and will be implemented as deemed necessary.

Staff continue to follow existing measures diligently and already in practice:

- Pre-screening is mandatory before entry into a Regional work location.
- Stay home if you have any of the symptoms and contact manager.
- Sanitation of workstations, regional property and vehicles per procedures put in place.
- Maintain physical distancing and mask wearing, especially in break rooms, vehicles and shared spaces

Operational Outlook

- Essential and critical project interpretation based on Provincial announcements will affect the delivery of projects and levels of service to residents of Niagara region. This continues to be under review. The Business Continuity Plan with Redeployment Strategy of staff for the Division will be administered accordingly.
- Contracts are continuing to be monitored by staff with regards to any shortages (supplies and trades) and updates will be highlighted.

Waste Management Services

Current Status of Operations

- Waste Management services and programs continue to be offered in accordance with Niagara Region Public Health directives and Ontario Regulations. The following modifications remain in place: Staff who are able to perform work duties from home have been asked not to attend their work location. On-site work has been limited to essential tasks only.

- Essential work as outlined by the Province and identified in the Waste Management Business Continuity Plan will continue.
- Essential site tours outdoors must be limited to a maximum of five (5) with all participants wearing face coverings where physical distancing cannot be maintained.
- Cancellation of all non-essential indoor site visits.
- Continuation of operational modifications at public drop-off depots to ensure appropriate social distancing.
- Enhanced cleaning at all Waste Management Facilities
- Recycling bin distribution centres are now open; however, modifications are still in place to limit in-person interactions. Residents are encouraged to visit Niagara Region's website for [waste management service/program updates](#).

Strategic initiatives are continuing such as the MRF Opportunity Review, administration of new collection contracts and services levels, Strategy Plan, construction projects, and operational tenders.

Operational Outlook

- Continue to provide waste management services as an essential service.
- Review contingency plans with contractors to ensure plans are updated and current.
- RFP will be issued for the division's Long-term Strategic Plan Q2.
- NRFP MRF Opportunity Review will be issued Q2.
- Preparation for the start of the new Humberstone contract.

Niagara Region Transit/Specialized Transit & GO Implementation

Current Status of Operations

There have been no additional changes to Niagara Region's transit services as a result of the Provincial Government's restrictions. Since November 23, 2020, every transit service in Niagara has reduced its onboard passenger capacity to 50% of the vehicle's seated capacity rating. For Niagara Region, this includes NRT, NST and NRT OnDemand. After additional consultation with the IMT Working Group, these capacity changes will remain in place for an indefinite period of time, however further reductions are not recommended at this time.

Effective March 15, 2021, Niagara's transit services are providing free transit to/from vaccination appointments. This includes all three of Niagara Region's transit services

NRT, NST and NRT OnDemand. Riders are required to show proof of their appointment prior to boarding in order to be eligible for the free trips. Transit related questions are being managed by each individual service provider, while vaccination related questions are referred to Public Health.

Niagara Region Transit (NRT) is operating at a reduced level of service when compared to a typical January through April schedule. This is due to Brock University being 95% online, and Niagara College having significant enrollment reductions combined with many online programs and lower Niagara-based student residency:

- 7:00 a.m. - 11:00 p.m. operating hours effective Sept 7 (back up from 7:00 a.m. - 9:00 p.m. from May 4 to Sept 6)
- Hourly service (60 minutes) on most routes except 40, 45, 60 and 65 as those are typically well utilized student routes.
- The only Express routes currently running are the 60A, 65A but only during typical morning and afternoon peak periods to help prevent potential crowding.

Niagara Specialized Transit (NST) continues operating at the normal level of service, except for trips whose origins or destinations are to/from a location with reported cases of COVID-19 are not being provided. Reducing hours of operation is not a necessity in this case as Niagara Region only pays for trips delivered, rather than an hourly rate. Overall, NST trip requests are significantly reduced, however NST continues to deliver all requested trips within the capacity available. Ridership has continued to show small signs of recovery but still sits at approximately 50% of typical usage.

NRT OnDemand service operates in Grimsby, Lincoln, Pelham, Wainfleet and West Lincoln from Monday to Saturday, 7 a.m. - 10 p.m. and in Niagara-on-the-Lake from 7 a.m. - 7 p.m. Staff are monitoring the ridership levels. Since moving out lockdown, ridership has begun to recover and is comparable to NST.

Mandatory mask usage is required as per the Region's Face Covering By-law.

Service/Operational Changes

Despite the reduction of vehicle capacity, there is no need to return to rear door boarding as each vehicle has a partition separating the operator/driver from the passengers.

The "Rear door boarding" policy enacted on March 23 to temporarily limit driver contact and respect physical distancing has been lifted on July 2. Because Niagara's transit providers have installed plexi-glass bio-barriers across the entire fleet of vehicles to protect bus operators, even if COVID-19 numbers increase, there will not be a need to return to rear door boarding and thus fare collection will be maintained as well.

A lower than typical service level began on January 4, however staff attempted to maintain an adequate amount of service as the student demand from Niagara College was unclear.

Significant Initiatives or Actions undertaken

- All NRT, and NST fleet vehicles continue to be professionally cleaned/disinfected/sanitized well beyond regular protocols, and Aegis antimicrobial spray was applied to all interior surfaces. This work was completed by the local transit service providers as they manage and operate the NRT fleet as part of their own.
- Due to the low volume of trips, BTS has made every effort to deliver trips with only a single occupant in each vehicle, although this has not been formalized as a public policy.
- NRT OnDemand does not permit the use of the front passenger seat in order to maintain distance between the drivers and passengers.
- Free transit to/from vaccinations

Operational Outlook

1 month

- Staff will continue to monitor the COVID-19 numbers and categorization for Niagara. Service adjustments may be required as the situation worsens, however the current belief held by the IMT Working Group is to continue offering existing service for essential workers.
- NRT staff continue to review ridership data closely in order to determine appropriate levels of service.
- Staff continues to work with Brock University and the Brock University Student Union to maintain the U-Pass Program for the 2020-2021 academic year. Niagara College terminated the U-Pass agreement in response to COVID-19 and thus students will continue purchasing monthly passes.

3 months

- Staff has set the schedules for May through August 2021 at the same consistent service level as is currently available.
- Possible further service adjustments based on ridership and in reaction to any provincial changes. Staff will continue to work with the IMTWG in reviewing the available data to ensure that adequate service is being provided while being mindful of the financial challenges faced by each municipality.
- The Niagara Transit Governance Study report will be complete by summer 2020. Introduction of the final report to LNTC with recommendation on a new governance model by the Project Team and study consultants will be done in consultation with the CAO Working Group and the LNTC Chair.

6 months

- The IMTWG will begin working towards the implementation of a new fare payment technology through the funding provided by the Investing in Canada Infrastructure Program (ICIP). Due to the complexity of the program, an implementation date in 2021 is being targeted, however orders for the hardware are just beginning to be made. Staff will continue to provide updates once a timeline has been established and at the major milestones.

As both the Province and Region move through the recovery process, staff at each of Niagara's transit providers will continue to collaborate in monitoring service levels, processes, and policies to ensure the safety of the residents and employees remain a priority and that decisions are made and communicated jointly wherever possible.

Respectfully submitted and signed by,

Bruce Zvaniga, P.Eng.
Commissioner of Public Works (Interim)

Other Pertinent Reports

CAO 10-2020, April 23, 2020 COVID-19 Response and Departmental Updates

PWC-C 13-2020, May 12, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 20-2020, June 16, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 24-2020, July 14, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 27-2020, August 4, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 33-2020, September 8, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 37-2020, October 13, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 41-2020, November 10, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 47-2020, December 8, 2020 COVID-19 Response and Business Continuity in Public Works

PWC-C 1-2021, January 12, 2021 COVID-19 Response and Business Continuity in Public Works

PWC-C 3-2021, February 16, 2021 COVID-19 Response and Business Continuity in Public Works

PWC-C 7-2021, March 9, 2021 COVID-19 Response and Business Continuity in Public Works