
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

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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