



March 26, 2021

Allison Deng
Senior Policy Advisor, Resource Recovery Policy Branch
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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.

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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

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