

**Proposed Hazardous and Special Products (HSP) Regulation  
(posted February 11<sup>th</sup>, 2021 for comments – closing March 28<sup>th</sup> 2021)**

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The following Comments are listed in order of the section they appear in.

**General Comment:**

The proposed HSP Regulation has done a good job capturing the framework of Individual Producer Responsibility requirements as they pertain to HSP. The definitions of obligated HSP materials have been simplified and, in some cases, broadened when compared to the previous ISP product definitions. However, the proposed Regulation could greatly benefit by removing restrictions that currently hinder the collection and proper management of these wastes (e.g., removing exempted quantities, implementing management targets, removing collections thresholds for non-retails sites). The comments below are an attempt to help bring clarity to Regulatory requirements and improve the application of these requirements; they are by no means an effort to slander or discredit the efforts and intent of the Regulation.

## **PART I – Definitions**

**“Hazardous and special products (HSP)”** - This regulation primarily pertains to the management of ‘Wastes’. The HSP materials are products that are unwanted, have been used, expired, comingled, contaminated, and are being returned to a collection location because they are wastes. In the waste industry we have always been cognizant of the distinction between a ‘Waste’ and a ‘Product’. It has been our experience that once deemed a “waste” the Ministry of the Environment requires that those materials be managed in accordance with Regulation 347, whereas “products” do not. Hazardous products do not require HWIN registration, ECA licenced receivers and transporters...but once those same products are deemed a “waste”, these requirements come into play. Since this Regulation pertains to the end-of-life management of hazardous materials I would recommend changing the name of these materials (and Regulation) to **Hazardous and Special Wastes (HSW)**. I appreciate the Tire regulation and Electronics regulation maintained the “Products” designation, however, in the case of hazardous materials (many of which are subject wastes) I do not feel it is in the best interest of the regulation to name these ‘Products...at best, it is misleading; and at worst, it could lead to unsafe handling practices and non-compliance with Reg.347.

**“HSP Collection Site”**: The definition of HSP Collection Site needs to expand on the criteria of what constitutes a Collection Site and differentiates it from a Collection event.

- hours or days of operation?
- Permanent vs. temporary site?
- Staffed vs. unmanned sites?
- Consumer accessibility considerations?

**“Category A, B, C, D Products”**: For added clarity in the regulation it would be a benefit if the definitions of Category A, B, C, D products included the wording “...and their containers”. For example: *“Category B Products” means, subject to any exceptions set out in the HSP Verification and Audit Procedure, any of the following hazardous and special products:*

1. *Antifreeze **and their containers***
2. *Paints and coatings **and their containers***
3. *Pesticides **and their containers***
4. *Solvents **and their containers***
5. *Oil containers **and their containers***
6. *Refillable pressurized containers;*

I appreciate section 3(4) addresses the containers, however, adding this wording to the definitions would make it more clear that these are obligated HSP materials.

**“HSP Verification and Audit Procedure” and “HSP Collection, Processing and Disposal Procedure”**: These documents form an integral part of the operation and integrity of the HSP Regulation and yet there is no indication of the scope or content of these documents; nor does it appear there will be any consultation in developing them. If these documents are going to form the rules by which Producers, Processors, Haulers, Collections Sites, and Collection Events are required to operate then I would encourage the Regulation, at the very least, to indicate the framework for these documents.

**“Refillable Pressurized Containers”**: Refillable Propane containers should NOT be removed from the definition of “Refillable pressurized containers”. Refillable propane forms the bulk of this category and still requires Producer responsibility in order to be managed properly and effectively. Over 400 tonnes of this material is collected annually through Municipal HHW Depots and Events. To remove producer responsibility of this materials and assume it will be handled in the various exchange programs would be a step backwards. This material needs to be obligated for Producer responsibility otherwise Municipalities and the general public will be supplementing proper handling and disposal.

## **PART II – General**

**Section 3(1) – Category A, B, C, D**: At least 5 of the 12 materials listed in Category A, B, C, and D are subject wastes as defined under Reg.347, and therefore have additional licencing, registration, handling and storage requirements. There was an indication that in order to facilitate collection of HSP, a possible exemption was “on the table” for these items, which would open up the collection channel to include retail and other unlicensed venues. I would strongly advise against any exemptions that would undermine the safe and proper handling of subject wastes. Furthermore, I would also recommend the HSP Regulation highlight any HSP

that qualifies as subject waste must be handled in accordance with Reg.347. Reinforcing this understanding within the regulation helps bring clarity for how these materials need to be handled. Facilitating collection by reducing the regulatory burden of ECA licencing is a slippery slope. Retail and other unlicensed sites are not equipped, trained, or experienced to handle the complexities of commingled subject wastes.

**Section 8 - Remove Exemption Quantities:** I understand that including an exemption threshold reduces the burden of managing end of life products for “small” producers, however it simply displaces that burden on others. Including exemption thresholds provides an opportunity for loop holes, displaces the financial burden on larger producers, and deviates from the spirit of the Regulation, which says that “if you produce obligated materials you are responsible for managing them”. It was mentioned that these exemptions were created in the same vain as the Small Quantity Exemptions (SQE) adopted under Regulation 347, however the SQE limits are in the order of 1-5 kilograms per month, and are intended to reduce the administrative burden of Generator registration and manifesting, not the financial obligation of arranging proper disposal.

## **PART III– Collection of HSP**

**Section 10 (5) & (6) –Non-refillable pressurized container collected at Parks:** I believe non-refillable pressurized containers are a subject waste as defined under Reg.347. There are currently no exemptions that I am aware that would allow for the collection of non-refillable pressurized containers, such as 1lbs. camping propane, without an ECA licence. I support the collection of these materials at Parks as it makes sense from a practical point of view, however, they would require an ECA approval.

**Section 13 (1) 1 – Non-retail collections Sites:** This section states that non-retail collection sites must accept ALL of the products in Category A or B, as the case may be. This implies that provincial parks collecting 1lbs. propane cylinders would also HAVE to accept oil filters, and other non-refillable pressurized container (foam kits, freon, Carbon Dioxide etc.). I don’t think this was the intent, however this requirement currently forces non-retail collection sites to accept products that may not make practical sense for them to accept. I would encourage changing this to be similar to the retail requirement of collecting those products that are relevant and feasible for the collection site.

**Section 13(1) 5 & 6 - Non-retail Collection Site Limits:** The 25kg threshold for non-retail collection sites is not feasible and does not serve the intent of the Regulation. Municipal collection sites are fast paced collection environments that receive HSP from 100’s of residents a day. There is often a line up at these sites and Technicians are unloading, sorting and packing these materials as fast as possible to keep the line moving. It is not feasible to expect them to:

- 1) Gauge if someone might have over 25 kg;

- 2) Separate ONLY obligated HSP (defined under this Regulation);
- 3) Weigh ONLY the obligated HSP
- 4) Record the name and contact information of the resident who exceeded the 25 Kg threshold.

Respectfully, I do not see the benefit of this requirement for non-retail collections sites. If the Regulation is trying to prevent large quantities of out of Province HSP from entering the program, there are easier methods to police this.

**Section 14 3 – Collection Events:** I do not understand the rationale for requiring that a Collection Event “*must be held at least 30 days after the last day for the previous HSP collection event...*” Producers should be encouraged to hold more frequent Collection Event schedules, not discouraged; especially in communities where Collection Events provide the most effective form of HSP collection. If a separation between Events must be required, then perhaps consider reducing to 5 days as opposed to 30 days.

**Section 15(2) 1 – Call In Service:** My understanding would be that to perform a residential pickup of waste (some of which are subject wastes), this would require appropriate ECA licencing. While I am in favour of this service there needs to be some clarification for operating such a service so that it is not misleading Producers or service providers. I would also recommend removing the 10-50Kg limits for this service. These limits only serve to restrict the effectiveness, and practicality of the program. If a producer wishes to offer this service and a resident has obligated HSP, the quantities should be irrelevant.

## PART IV – Management of HSP

**Incorporating Management Targets:** The HSP Regulation should define “minimum” management targets for all obligated materials, including consumables such as paints, pesticides, solvents, oil containers, refillable containers etc. The management targets should clearly state they are the *MINIMUM requirements*, and any materials collected beyond the minimum amount **MUST** be managed by Producers as well. These minimum thresholds need to be established as a benchmark for Producers, otherwise there is no motivation, incentive, or drive to deliver an effective collection and management program.

I appreciate the argument that “it is too difficult to set management targets on consumable products”, however, I would say that there is a significant amount of accurate data collected over the past 11+ years of Producer Stewardship and ISP programs that demonstrate the amount of HSP collected vs. the amount supplied into the marketplace. Perhaps I am wrong, but I would assume RPRA has access to this data as the Authority regulating the ISP programs. I would suggest using these data to develop realistic management targets for all obligated materials, recognizing of course, that these are simply the minimum requires to keep producers accountable to their obligations. Previous HSP collection totals are public knowledge and

published in ISP annual reports. At the very least, these collection totals provide historic performance and could form the basis of future collection expectations. Simply saying that it is too difficult to predict the collection rate of consumable products is not acceptable.

**100% Collected is 100% Managed :** The HSP Regulation should include a very simple statement to effect “100% of all obligated and eligible HSP collected in Ontario will be 100% managed by Producers”

A statement like this reinforces, plain and simple, what is implied through the Regulation, but never actually stated. A statement like this eliminates any misunderstanding or reservations that eligible material will be supplemented by Collection sites/Municipalities/ or service providers.

**Section 17 2 (ii) - Management Percentage :** The Management Percentage (MP) used to determine the management requirement for Non-refillable pressurized containers is too low. Non-refillable pressurized containers are not consumable product in the same sense as Paint (for example). When a paint can is all used up you are simply left with an empty plastic or metal can for recycling. Non-refillable pressurized container (such as 1lbs. propane, CO2, refrigerant etc.) are still available for collection intact after use and therefore should have a much higher “management percentage”. I understand in the case of tires there is some inherent attrition as the products is wore away or repurposed. Similarly, the contents of the non-refillable pressurized container is used up and so 100% of the weight sold into the market is not available for collection. However, I do not think 70-80% attrition is justified in the case of Non-refillable pressurized containers (which section 17 is alluding to by implementing a MP of 20-30%).

**Section 19 4 iii - Management Methods:** The majority of Non refillable pressurized containers are comprised of single-use propane. Typically, the best management practice is to recover the propane, which is subsequently used as a fuel, and recycle the metal carcass. Managing the recovered propane appears like it may not qualify as an acceptable management options under section 9 4 (iii) (since it is eventually burned as fuel).

## **PART V – Promotion and Education**

**Section 24(1) 1&2 – Fertilizer PE:** I think the intent here is correct, however, the wording is misguided with respect to i) encouraging residents to “otherwise dispose” of their unused fertilizer and ii) “refrain” from dropping off at municipal depots. This is a subject waste and residents should not be encouraged to find their own disposal methods. This material SHOULD be dropped off at municipal depot and other appropriately licenced facilities.