



Wednesday, March 24, 2021

Allison Deng
Senior Policy Advisor
Resource Recovery Policy Branch
Ministry of the Environment, Conservation and Parks
Resource Recovery Policy Branch
40 St. Clair Avenue West – 8th floor
Toronto, ON M4V 1M2

Dear Ms. Deng,

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

Thank you for the opportunity to provide feedback on the proposed producer responsibility regulation for Hazardous and Special Products (HSP). The City of Guelph (the City) hopes the Ministry of the Environment, Conservation and Parks (MECP) will strongly consider the City's feedback and feedback from other municipalities and municipal waste organizations.

The City continues to support the transition of all Ontario's waste diversion programs over to full producer responsibility under the Resource Recovery and Circular Economy Act (RRCEA). The transition of the existing Municipal Hazardous and Special Waste (MHSW) program to individual producer responsibility (IPR) should result in producers being fully financially and environmentally responsible for the collection and proper disposal of their products – the City supports this policy objective. To succeed, the regulation must therefore ensure that 100 percent of hazardous products, which pose significant risks to human health and the environment, are disposed of properly.

Strengthen the proposed regulation through further consultation with municipalities.

The City encourages Ontario to significantly strengthen the proposed regulation through further consultation with municipal governments and municipal waste organizations.

Although the City supports the policy intent of transitioning the MHSW program to IPR, we cannot support the current regulation as drafted given tight timelines and the exclusion of certain hazardous products, amongst other shortcomings. The exclusion of materials burdens municipalities to mitigate the shortfalls of the regulation at their own expense by continuing to offer collection services for exempted items so that these products do not end up in other waste streams or as pollution in our environment.

A risk for the province and our environment is that this additional financial and administrative burden placed on municipalities, given limitations in the regulation, may result in municipalities opting out of being a service provider for the collection

of designated materials. This would leave producers with insufficient time to put in place collection programs. It would also leave residents without the ability to safely dispose of hazardous materials that are exempt from producer responsibility.

As a partner to the province in protecting the environment, the City therefore advises MECP to strengthen the proposed regulation to address these shortfalls and to ensure an approach that works for municipal governments like Guelph.

Delay finalizing and implementing the regulation.

The City recommends that the MECP delay finalizing the regulation by several months to ensure feedback received from all stakeholders is appropriately considered. The implementation of the regulation should also be delayed until January 1, 2022 at the earliest.

This will allow:

- Producers, PROs and service providers time to prepare and organize;
- Retailers time to prepare and ensure all health and safety requirements are met for the return to retail of hazardous products; and
- Municipalities time to determine their involvement in the new IPR HSP program, as well as the wind up of existing contracts and implementation of new contracts with PROs and/or service providers.

Include common, currently excluded, hazardous products in the regulation.

The City strongly disagrees with the exclusion of refillable propane cylinders, motor oil, omitted mercury containing devices (such as fluorescent bulbs and tubes), and the lack of responsibility and management requirements for fertilizer producers.

The City collects large quantities (see Table. 1) of hazardous products currently excluded from the proposed regulation. Our experience with these products and related recommendations to the province are described below. We encourage Ontario to strengthen the regulation by including these materials.

Table 1: hazardous waste products of concern collected in 2019 at the City’s MHSW Depot

Material	Amount collected (units vary)	Total weight collected
Fertilizer		2.2 tonnes
Propane cylinders	1058 tanks	9.3 tonnes
Motor oil	46,045 litres	
Fluorescent bulbs	7158 bulbs	1016 Kgs

Material	Amount collected (units vary)	Total weight collected
Fluorescent tubes	27,672 ft.	1716 Kgs

Refillable Propane Cylinders

In 2019, the City collected 1,058 propane cylinders, with a total weight of over 9 tonnes, at the MHSW depot. The City therefore strongly disagrees with the exclusion of refillable propane cylinders in the proposed regulation.

Currently, there is minimal information available to residents on disposal options for end of life propane cylinders. For this reason, the City recommends that producers and retailers be required to provide accurate disposal information for this product to customers. They should also directly accept the return of end of life propane cylinders. If proper, accessible and convenient disposal options are not available to Ontario residents, municipalities could see an increase in illegal dumping or disposal in other waste streams resulting in an increased health and safety risk for municipal staff and the public.

Motor Oil

In 2019, the City collected over 46,000 litres of motor oil and 2,880 individual oil filters. While oil filters and oil containers are designated in this draft regulation, the substance which makes the filter and container harmful, motor oil, is not designated.

Motor oil should be included in the draft regulation so that residents have convenient and accessible options to properly dispose of this product. As a ground water-based community, a risk for the City is that residents might improperly dispose of this material in a way that threatens our water supply, environment, and human health. We therefore urge that it be included in the regulation.

Mercury Containing Devices

The City supports the inclusion of mercury containing devices including barometers, thermometers and thermostats. However, the cost savings from these products are minimal compared to the costs incurred by non-designated products. Additionally, not all mercury containing devices were included such as fluorescent lights and tubes.

In 2019, the City collected 7,158 compact fluorescent bulbs with a weight of 1,016 Kgs, and 27,672 ft. of fluorescent tubes with a weight of 1,716 Kgs. This material is designated under the EEE Regulation as of January 1, 2023. However, this material remains undesignated for 1.5 years with the potential for large quantities of mercury containing devices being improperly disposed of during that time period.

Fertilizer

In 2019, the City collected 2.2 tonnes of fertilizer at the MHSW depot. Given this quantity, the City is disappointed that fertilizer products have been exempt in the draft HSP regulation. While educating residents provides an avenue to mitigate against the negative impacts of this proposed exemption, we have seen residents continue to drop off this material at the City's MHSW depot despite ongoing education efforts with fertilizer producers.

Additionally, the City has concerns with the proposal that producers will work with municipalities to help them find ways to use the fertilizer products that are brought to municipal depots.

Designate products as recommended by AMO.

The City strongly advises the province to designate products as recommended by the Association of Municipalities of Ontario (AMO) in July 2020:

- 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.

The City also encourages the MECP to include a timeframe for when the designated materials will be re-evaluated with the possibility of expansion in the final regulation, i.e. July 1, 2022.

Ensure transparency and accountability for any levied recovery fees.

Producers that levy resource recovery fees should be required to report on the fees collected, provide consumers with fee information, and perform audits.

The regulation should include mandatory requirements for any resource recovery fees levied. If producers choose to levy a resource recovery fee on their product to pass on the costs of the program to consumers, they should be required to report on the fees collected, provide consumers with fee information, and perform audits. We also encourage the province to ensure misleading labels cannot be used to describe the fees.

Comparable requirements to these recommendations already exist for Ontario's Used Tire Regulation and Ontario's Deposit Return Systems. If incorporated into the regulation, these requirements would ensure consumer transparency while providing flexibility to producers.

Section 8 which exempts “small producers” should be removed.

The City disagrees with the exemption of “small producers” of hazardous or special products in the regulation. All producers should be responsible for the materials they supply into the Ontario market given their hazardous nature and potential harm to the environment and human health. The exclusion of these materials also causes potential issues with understanding the amount of material supplied into the market, affecting diversion targets.

Focus on promotion and education

Prioritize promotion and education, encouraging producers to engage municipal governments on how best to reach residents.

Promotion and education for the designated materials 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. Given municipal experience in diversion-related education campaigns, the province should encourage producers to engage with municipal governments to design promotion and education initiatives in local communities.

Adequate promotion and education will mitigate against the risk of residents improperly disposing of materials. If disposal options are not well understood, products could end up in other waste streams or illegally dumped, requiring costly municipal intervention, and resulting in negative impacts to the environment and human health.

Develop an Administrative Monetary Penalty approach based on annual performance audits.

The City encourages the MECP to develop and implement an Administrative Monetary Penalties regulation linked to annual performance audits in a timely manner. Administrative Monetary Penalties must exceed the cost to manage materials at the end of life.

Designated materials need stringent targets and strong enforcement through audits and an Administrative Monetary Penalties regulation. The City recommends that producers be required to perform annual performance audits, as opposed to the proposed three-year audits. A producer’s inability to meet its targets should result in penalties and the City therefore encourages the MECP to develop and implement an Administrative Monetary Penalty regulation in a timely manner. The monetary penalties must exceed the cost to manage materials at the end of life.

The City is also concerned about the lack of stringent collection and management targets. There are no requirements to collect products that are meant to be consumable, other than recycling efficiency rates based on what is collected. There needs to be pressure on producers to capture these materials so they do not end up being disposed of improperly in other waste streams or as pollution in our environment.

The following targets should be implemented:

- Fertilizers be designated with collection and management targets, and the inclusion of a 100 percent recycling efficiency target.
- Antifreeze and mercury containing devices recycling efficiency rates should start in 2022, not 2023.
- Management targets should be in place for all containers based on a 3-year average of the current program performance.
- Reporting requirements for the designated materials (i.e. fertilizers) that are intended to be used up that continue to be brought to collection sites, to monitor the effectiveness of this approach.

Require producers to address illegal dumping.

The City recommends an amendment to section 11(1) to require producers to collect materials that have been illegally dumped.

Without addressing this gap in the regulation, municipal governments will be left fiscally and operationally responsible for addressing illegal dumping, limiting the effectiveness of implementing an IPR approach to the disposal of hazardous products.

Exempt municipal governments from section 13(6).

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

The requirement in section 13(6) that municipal sites must record the personal information of residents dropping off 25 Kg or more of material in a day is not feasible. The City strongly recommends that municipal collection sites be exempt from this requirement for the following reasons:

- This would require City staff to be available to sort designated and non-designated materials to understand if the weight had been established. It would also require new scale infrastructure;
- Additional staff resources would be required to support the increased workload;
- Many residents bring in a substantial amount of products at one time so many would exceed the limit of 25 kg. These residents would have to either wait until their material is sorted and deemed above 25 Kg, or provide their contact information in order to leave and then trust that the City will properly destroy this personal information if it is not necessary, resulting in potential privacy concerns.

Conclusion

The City asks that these comments and recommendations be taken into consideration in finalizing the Hazardous and Special Products regulation. We thank MECP for engaging municipalities on this important initiative.

Sincerely,

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