

March 27, 2021

Allison Deng
Resource Recovery Policy Branch
40 St. Clair Avenue West
8th floor
Toronto, ON M4V 1M2

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

Dear Ms. Deng:

On behalf of the Ontario Waste Management Association (OWMA), below are our comments on the proposed draft regulation for hazardous and special products that would require producers of hazardous and special products, such as paints, pesticides, oil filters and antifreeze containers, to collect, manage or promote the recycling or proper disposal of these products at end-of-life.

The Ontario Waste Management Association (OWMA) is the province's largest, most effective environmental services association representing the waste management and recycling sector. Its membership includes more than 250 companies and organizations in the private and public sectors, which manage 85% of Ontario's waste.

OWMA has been an active stakeholder in the development and implementation of waste diversion initiatives at all levels of government- federal, provincial, and municipal. OWMA has been engaged in the MHSW program development and implementation from the time the Ontario Minister of Environment designated MHSW materials under the Waste Diversion Act (WDA) to present. The association represents HSP processors and service providers and has a unique perspective on both the existing MHSW regulation and program and the potential impacts of the HSP regulation.

OWMA does not support the HSP regulation as currently drafted. The proposed regulation fails to establish an EPR regulatory framework that recognizes the significant environmental and human health & safety risk associated with hazardous waste and a regulatory framework that will support increased waste diversion.

Our detailed comments are below.



Key Issues:

The proposed regulation will result in a reduction from current MHSW program performance in both the number of products and the volume of hazardous and special wastes managed. The opportunity to expand the management of HSP materials and increase diversion volumes under the new regulation has been rejected in the draft regulation. In this respect OWMA can only support a regulation that:

- Establishes aggressive waste diversion targets (collection and management targets);
- Clearly and unequivocally requires producers to fund 100% of the amount of materials that are collected;
- Sets realistic and achievable requirements for producers and service providers, compelling them to leverage the efficiencies and consumer value that comes with an open, competitive marketplace for diverting hazardous and special waste;
- Avoids unnecessary exemptions;
- Includes rigorous requirements for transparent and accountable reporting and auditing.

1. Confusing Regulatory Overlap due to the “greater than 30 litres” Container Exclusion Provisions

Many definitions and sections throughout the proposed regulation appear to significantly change the scope of the program beyond residential waste and small quantity waste from IC&I businesses, which are sources that were originally intended for the current MHSW Program. Other large IC&I generators are instead required to manage the waste based on the requirements of Regulation 347 under the *Environmental Protection Act*. Using only the 30 litre container capacity to exclude large IC&I businesses does not exclude IC&I businesses that use quantities of hazardous and special products in containers with capacity of 30 litres or less, but generate or accumulate waste in quantities that exceed the Regulation 347 small quantity exemption provisions.

The proposed regulation, in its current wording, does not exclude producers that supply materials exclusively to IC&I businesses that are required to manage the wastes that they generate based on the requirements of Regulation 347 simply due to some products dispensed in containers that are 30 litres or less. The reference to containers “greater than 30 litres” (and/or 30 kilograms) is a wholly inadequate and erroneous method of excluding large generators. This appears to be a significant oversight which could substantially disrupt the collection network.

Recommendation:

The HSP Regulation must include provisions to exclude materials that are required to be managed under the requirements of Regulation 347 and would not be managed through the collection network requirements of the regulation.

2. Insufficient Time Before Implementation

The draft regulation is needlessly confusing, contains serious omissions, is based on incorrect assumptions regarding the current management of MHSW and is more reflective of a regulation that has been 'rushed' and not fully developed. There are many significant policy and economic implications to regulatory frameworks that are 'rushed' and OWMA urges that the 'pause button' be applied to the regulation and transition timeline to allow for the refinement of policy, regulatory issues and stakeholder concerns. There are many policy issues and directions embodied in the regulation that require further discussion and potential change.

The success of the HSP regulation in diverting HSP materials and the delivery of economic efficiency and value to consumer will also be severely compromised if there is not a fostering of a competitive Producer Responsibility Organizations (PRO) landscape when the new regulation becomes effective.

The establishment of a PRO and the building of capacity to serve producers and other stakeholders takes time. Given the timelines for comments to be submitted (March 28th, 2021) the draft HSP regulation to be finalized and the commencement of the regulation (July 1st, 2021) – less than 95 days – the current industry-funding organizations (IFO) and industry stewardship programs (ISP) are being favoured by the government. New entrants seeking to establish and operationalize a PRO simply have insufficient time to do so.

The government has left too little time to craft a workable regulation and prepare for implementation by the July 1st, 2021 deadline. The OWMA is requesting that the implementation date for a new regulation be extended to January 1st, 2022 to provide an extended consultation period to work with stakeholders to design a practical and workable regulation that reflects the realities of the current hazardous waste diversion program and is designed to enhance diversion objectives for these materials. An extended timeline will also allow for the development of a competitive PRO landscape to best serve producers and consumers.

Recommendation:

Extend the implementation date for a new regulation to January 1st, 2022 to provide an extended consultation period to work with stakeholders to design a practical and workable regulation.

3. 'De minimis' Exemptions are Inappropriate for Hazardous Waste

OWMA strongly objects to a de minimis principle that exempts producers from being obligated if they only contribute a 'small amount' of hazardous or special products into the market, as described in Section 8 of the proposed regulation. It is paramount that the characteristics of the materials, compounds and chemicals managed under the HSP regulation continue to be recognized and acknowledged as 'hazardous' in terms of the potential adverse impact on human health & safety and on the environment, irrespective of the quantity.

The materials covered by this regulation (such as pesticides, solvents, oil filters), even in small quantities, can pose significant environmental and health risks if not properly managed. All producers should be responsible for the management of these materials, with no exemptions.

In addition to the significant risks to human health and the environment, the proposed exemptions are unfair to producers who must subsidize their smaller competitors' responsibilities. This creates a "free rider" issue resulting in an inefficient distribution of responsibilities and costs among producers, potentially leading to a complete market failure for the collection and management network. For small producers included in the Section 8 exemptions, there is no incentive to contribute to the safe and proper management of hazardous products.

There is a strict over-arching environmental regulatory regime and complex management requirements that cannot be compromised under this regulation just because small producers become exempt from responsibility. Will waste management companies be exempted from Environmental Compliance Approvals (ECA) requirements if they manage only a 'small amount' of hazardous waste?

No legislative or regulatory construct in Ontario provides for any lessening of the environmental and human health & safety safeguards when managing hazardous waste and materials. The regulatory requirements under the Environmental Protection Act (EPA) and the Transportation of Dangerous Goods (TDGA) must be recognized, including the potential costs to producers and inefficiencies that may be the product of regulatory compliance in managing hazardous waste and materials. EPA regulatory requirements such as ECAs for sites and facilities must be referenced and reflected in the regulation as applying to producers and PROs managing HSP materials, the same as they apply to all other entities that manage hazardous waste.

The illogical use of de minimis exemptions is illustrated by analogous comparison to regulatory compliance in other sectors. Are property owners exempt from the Ontario Fire Code because they manage only a small number of buildings? Are construction companies exempt from permit and licensing requirements because they build only a small number of structures? There are few good examples of reduced compliance requirements for entities on the basis they are considered "small", especially when dealing with issues as serious as management of hazardous waste products.

Recommendation:

The proposed de minimis exemptions are an inadvisable policy with no evidence or data to support their rationale. The de minimis exemptions listed in Section 8 of the proposed regulation should be removed.

Designated Materials

OWMA believes that the regulation misses the opportunity to expand the responsibility of producers to manage an increased but rationalized list of designated materials. The draft regulation will result in a reduction from current MHSW program performance in both the number of products and the volume of hazardous and special wastes managed.

This in fact represents a 'retreat' from EPR and the next step in a weakening of our EPR-based waste diversion system that started with an underwhelming Electrical and Electronic Equipment (EEE) regulation, appears to be continuing with the draft HSP regulation and will potentially continue with the Blue Box regulation.

OWMA maintains that the list of designated materials should be expanded as indicated in the [OWMA's July 9 2020 MHSW Submission \(attached\)](#). The Regulation must ensure that **all** the materials currently captured in [Ontario Regulation 542/06](#) under the *Waste Diversion Ontario Act* (WDA) and under Stewardship Ontario's program are included in a new regulation under the *Resource Recovery and Circular Economy Act* (RRCEA). This broadly includes:

- Paint and coatings
- Pesticides
- Solvents
- Fertilizers
- Used Oil Filters
- Oil Containers (under 30 litres)
- Pressurized containers
- Anti-freeze, and
- All associated containers of the above.

These categories should be updated to ensure they capture **all** the materials being managed through current collection and processing services. For automotive materials, this means ensure diesel exhaust fluid, brake fluid, and automotive cleaning products are captured. Most other provincial programs have a more exhaustive list of materials included and these materials and containers should be added to the regulation as part of a phase 2.

For some of the designated materials, there has been a change in the definitions in the draft HSP regulation compared to the current MHSW program and OWMA is concerned that the changes significantly change the scope of the program. For example, the paints and coatings definition was limited to architectural paints and coatings and exclusions included paints and coating supplied in containers with a volume more than 25 litres and automotive/industrial paints. The definition **for exclusion** in the draft regulation applies to all paints and coatings supplied in containers with a capacity more than 30 litres.

The OWMA does not support the elimination of refillable propane cylinders and the lack of management requirements for fertilizers.

Recommendation:

Based on the proposed exemptions, this regulation moves Ontario further away from a producer responsibility regime and instead adds costs on municipal governments and taxpayers. OWMA maintains that the list of designated materials should be expanded as indicated in [OWMA's July 9 2020 MHSW Submission \(attached\)](#). The Regulation must ensure that all the materials currently captured in [Ontario Regulation 542/06](#) under the Waste Diversion Ontario Act (WDA) and under Stewardship Ontario's program are included in a new regulation under the RRCEA.

4. Product Containers

The new regulation is confusing relative to the designation of product containers and the establishment of separate collection and management targets for containers. The regulation in the definition section defines oil containers but fails to define paint containers and antifreeze containers. Containers are referenced in another section however it is confusing. The regulation must distinguish products from containers and set separate targets and reporting requirements for materials and containers especially where there are currently combined targets for both material and containers (paint & coatings).

Used containers are highly visible where the products may not be (antifreeze). Plastic paint containers are largely sent for disposal currently. Producer claims about container diversion in many areas are not accurate and the actual metrics needed to measure container diversion success are not readily available.

Recommendation:

A 24-month timeline for a phase 2 addition of materials and containers should be included in the regulation to expand the types of materials captured to align with other provinces like British Columbia, Quebec, and Manitoba which include a broader range of flammable, corrosive and toxics materials and their containers. Currently 20-30% of the total MHSW materials municipalities manage at their household hazardous depots and many automotive materials are un-stewarded materials that must be subsidized by the property tax base or by the public directly.

5. HSP Versus Blue Box (batteries and lamps)

There is currently a disjointed regulatory approach to collecting and managing containers and other materials between the MHSW and Blue Box regulations (current & proposed). As new regulations for both are currently being developed under the RRCEA, there is an opportunity to rationalize the issues surrounding HSP materials being collected in both systems. Producer fees are currently being paid by producers either under the Blue Box program or the MHSW program, or both, based on the material or product contained in an aerosol container.

The Ministry needs to fully understand what the municipal blue box system accepts in terms of plastic containers, what the disposition of containers is where they are collected in the Blue Box and ensure that containers are diverted. The responsibility of producers must not get lost through inter-regulatory confusion or inaccuracies between the HSP and Blue Box regulation.

6. Collection, Management Requirements & Targets

Collection requirements and targets are pivotal for **all** HSP 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 or into municipal solid waste landfills.

The HSP regulation must be clear and simply stated that accessibility and collection requirements must be robust and collection cannot 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. The Ministry approach to this issue is less than clear and direct resulting in confusion and different interpretations of this regulatory requirement.

This principle is critical to ensure that the amount of materials and number of containers diverted does not degrade under the new HSP regulation.

Producers must be required to report on the amount of materials collected (e.g. products and containers separately) and how all the collected materials and containers were managed. In all container categories we believe the 'available for collection' is 100% of the containers sold into the marketplace as reported by the producers to RPRA. The actual collection target for containers may be lower but the principle that 100% is available for collection is an important principle and starting point.

The inclusion of management targets for Category A materials and no specific management targets for the other categories is a concern. If the accessibility requirements and collection targets for containers in some material categories are robust, then there may not be a need to specify management targets for certain products. In some categories, collection targets 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 and fertilizers.

Where no material collection or management target has been established, it is essential that other measurements such as 'recycling efficiency' are required in the regulation. RPRA oversight must also 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. This is an area requiring further discussion and consultation.

The OMWA does acknowledge that the goal for some of these materials is to simply ensure they are used up rather than disposed of.

Recommendation: The HSP regulation must unequivocally require that all materials and containers collected must be managed and recycled with the costs being borne by producers. The amount 'available for collection' must equal 100% of the containers sold into the marketplace. The lack of clarity on this matter will result in confusion and different interpretations of this regulatory requirement.

7. Collection and Consumer Accessibility

OWMA supports the concerns of municipal organizations regarding the complexity of how accessibility requirements are being determined. It is not clear the number of sites and events that would be required in each jurisdiction and how that compares to what exists currently. Clarity around the collection requirements is fundamental to ensuring the management of materials irrespective of targets and avoiding slippage in the actual amount of HSP materials currently being managed. We also share 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. A normal individual who has containers from painting their own home could easily surpass the 25 kg threshold. The ministry should consider striking out this requirement.

The HSP regulation must be clear what accessibility and collection requirements will be to ensure the maximum collection and management of HSP materials.

8. HSP Processor Definition - Transfer Station

OWMA has identified an issue in respect to the definition of processor in the regulation. The wording in the definition section could be interpreted to exclude transfer stations that are also processors with transfer/processing ECA approvals from the Ministry. The definition of processor needs to be amended to reflect the processing function of transfer/processing facilities. In all cases the hierarchy of processing activities and facilities must be recognized in the regulation.

9. Regulatory Standards

OWMA is concerned that there is no attempt by the Ministry to set a cross-regulation standard for recycling and diversion despite recommendations to do so. Service providers active under multiple regulations are faced with inconsistent requirements and 'gaps' in diversion reporting requirements. The OWMA again strongly supports the referencing 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.

Recommendation:

The Hazardous & Special Products Regulation should include requirements for producers such as such as having supply data audited by a 3rd party, and regular quarterly reporting help ensure accountability, transparency and better management outcomes for this recycling program.

If clarification is needed on any aspect of this submission, please do not hesitate to contact me. We look forward to working with the Ministry to ensure an HSP regulation is finalized that meets the needs of all stakeholders and that sufficient time is available to effectively implement the final regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Chopowick".

Mike Chopowick
Chief Executive Officer

Encl. Ontario Waste Management Association, "[Recommendations for a New Municipal Hazardous & Special Waste \(MHSW\) Regulation](#)" (July 9, 2020)

July 9, 2020

Stephen Jones, Senior Policy Analyst
Resource Recovery Policy Branch
Ministry of the Environment, Conservation & Parks
8th Flr, 40 St Clair Ave W
Toronto, ON M4V 1M2

Sent via email to: Stephen.Jones2@ontario.ca

Dear Mr. Jones:

Re: Recommendations for a new Municipal Hazardous and Special Waste (MHSW) Regulation

On behalf of the Ontario Waste Management Association (OWMA), I am pleased to submit policy recommendations on a new producer responsibility regulation for Municipal Hazardous and Special Waste (MHSW), under the *Resource Recovery and Circular Economy Act*.

OWMA's recommendations are intended to enhance collection and recovery of MHSW materials, while accelerating innovation, investment and job creation in the circular economy by ensuring producers are responsible for the waste generated from hazardous waste products and containers.

Our key policy recommendations include:

- A non-prescriptive regulation that sets targets and standards to allow innovation and fair, competitive markets to deliver results and positive outcomes;
- Include aerosol containers as a product category irrespective of the material or product contained within;
- Require convenient and easy access to collection points for residents to ensure these materials are managed properly and are not incorrectly discarded;
- Aggressive and progressively increasing targets for materials, based on the principle that the amount 'available for collection' is 100% of the containers sold into the marketplace.

Thank you for consideration of our recommendations, we would be pleased to discuss our proposals in further detail with you and other Ministry staff.

Sincerely,



Mike Chopowick
Chief Executive Officer

Encl. *OWMA Submission: Producer Responsibility Regulation for MHSW, July 2020*





MUNICIPAL HAZARDOUS & SPECIAL WASTE (MHSW)

Policy Recommendations for a new
Producer Responsibility Regulation

JULY 9, 2020



MHSW PRODUCER RESPONSIBILITY REGULATION SUBMISSION - JULY 2020

About OWMA

The OWMA is the voice of the waste management sector in Ontario. We represent over 250 organizations across the province who manage over 85% of the province's waste. OWMA members have diverse interests and investments in waste collection, landfills, transfer stations, material recycling facilities, resource recovery facilities including energy-from-waste (EFW), organics waste processing and composting, and hazardous waste recycling and safe disposal.

Purpose

This submission provides the Ontario Ministry of the Environment, Conservation and Parks with policy recommendations on a new producer responsibility Regulation for Municipal Hazardous and Special Waste (MHSW), under the *Resource Recovery and Circular Economy Act*. OWMA's recommendations are intended to enhance collection and recovery of MHSW materials, while accelerating innovation, investment and job creation in the circular economy by ensuring producers are responsible for the waste generated from hazardous waste products and containers.

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Introduction

Ontario's Municipal Hazardous and Special Waste (MHSW) Program allows residents to safely dispose of household products that require special handling, such as paint containers and propane tanks. The program is responsible for recovering additional hazardous waste products, including automotive materials; paints and coatings; pesticides, solvents and fertilizers; and proprietary carbon dioxide cylinders.

Like other recycling programs, MHSW recycling helps recover valuable materials and resources, and diverts waste materials from going to landfill. Ontario's MHSW program also serves another vital purpose by preventing potentially dangerous materials and substances from being improperly disposed, where they could present a hazardous risk to the environment or human health.

Without an effective, accountable program to ensure the collection and processing of household hazardous waste, there is a serious risk of unsafe substances such as paints, pesticides and motor oil, entering water drains, sewers, into rivers or straight onto ground soil.

The transition of the existing MHSW program to a full producer responsibility model is an important part of the shift to a circular economy - a new waste management approach where waste is seen as a resource that can be recovered, reused and reintegrated into the production stream.

Guided by a new Regulation under the *Resource Recovery and Circular Economy Act*, the new MHSW Program will ensure progress that will protect the environment, drive innovation, performance and competitiveness, and stimulate economic growth and job creation in the business of recycling of dangerous materials.

OWMA's policy recommendations, described in this submission, will ensure the new program is effective in collecting and recovering designated materials, improving recycling rates in Ontario, and providing convenience, accountability and cost-effectiveness to consumers and residents.

Key Elements of an MHSW Regulation

OWMA has been an active stakeholder in the development and implementation of waste diversion initiatives at all levels of government- federal, provincial, and municipal. OWMA represents MHSW processors and service providers and has been engaged in the MHSW program development and implementation from the time the Ontario Minister of Environment designated MHSW materials under the *Waste Diversion Act* (WDA) to present.

OWMA is supportive of the transition of existing Waste Diversion Act (WDA) programs to a new regulatory framework under the *Resource Recovery and Circular Economy Act* (RRCEA). In these program transition circumstances, the greatest challenge centers on ensuring that the new regulation provides effective diversion and collection targets and ensures that all parties become engaged in a new competitive marketplace under the RRCEA.

In this respect, OWMA is supportive of a regulation that ensures waste diversion targets (collection and management targets) are realistic and achievable and that producers and service providers are compelled to leverage the efficiencies and consumer value that comes with an open, competitive marketplace for diverting MHSW.

OWMA recognizes that the key elements of an effective new MHSW regulation under the RRCEA will focus on accessibility, collection targets and management targets for both designated materials and containers. The effectiveness of a new regulation will be compromised if these critical regulatory elements are not clearly and strategically defined.

Background

The ability for domestic markets to manage the collection and processing of additional MHSW materials offers a significant opportunity to Ontario both from an economic and environmental perspective. Research undertaken for the Ministry of Environment, Conservation, and Parks¹ illustrates the economic upstream and downstream outputs associated with recycling (see Table 1)

¹ AECOM. The Economic Benefits of Recycling in Ontario, 2009. Available at <https://archive.org/details/theeconomicbenef00snsn21841>.

Table 1 - Economic Outputs for Recycling (Combined Upstream and Downstream Sectors)

Measure	Blue Box	MHSW	EEE	Total Recycling	Waste Disposal
Jobs/1000T	5.4	8.7	61.1	6.6	0.7
Value Add/T	\$570	\$850	\$6,000	\$645	\$49

This research is supported by similar studies such as the Canadian Conference Board of Canada², which estimated that if Ontario increased its rate of recycling to 60 per cent, it would create at least 13,000 jobs and increase gross domestic product by \$1.5 billion.

With an effective new regulation, the MHSW recycling (collection & processing) industry in Ontario can generate economic activity through capital investments and job creation. In all extended producer responsibility (EPR) regulatory scenarios, it is the recycling sector that offers the greatest potential for economic activity and growth.

A Fair, Open and Competitive Marketplace

In the development of an MHSW regulation, the government should refrain from being prescriptive, and instead set targets and standards that allow innovative and competitive markets to deliver results. Extended producer responsibility functions best in an open market for both producers and service providers

A key component of establishing a fair market for resource recovery is ensuring Ontario's current industry-funding organizations are not permitted to use the resources and data that they have acquired under the previous system to gain an unfair advantage in the new one.

Any 'common' approaches and allowances for producers should be avoided, including a reliance on a common collection system. The government can strike the right balance in the new regulations by considering the guidelines laid out in the OECD Competition Toolkit and the OECD Updated Guidance for Efficient Waste Management.

² Conference Board of Canada. Opportunities for Ontario's Waste: Economic Impacts of Waste Diversion in North America, 2014. Available at <https://www.conferenceboard.ca/e-library/abstract.aspx?did=6233>.

Designated Materials

The Regulation should ensure that all the materials currently captured in [Ontario Regulation 387/16](#) under the Waste Diversion Transition Act and under Stewardship Ontario's program are included in a new regulation under the RRCEA. This broadly includes:

- Paint and coatings,
- Pesticides,
- Solvents,
- Fertilizers,
- Used Oil Filters,
- Oil Containers (under 30 litres),
- Pressurized containers,
- Anti-freeze, and
- All associated containers of the above.

These categories should be updated to ensure they capture the materials being managed through current collection and processing services. For automotive materials, this captures diesel exhaust fluid, brake fluid, and automotive cleaning products. Most other provincial programs have a more exhaustive list of materials included³ and these materials and containers should be added to the regulation as part of a phase 2.

For pesticides, Schedule IV of the Pest Control Products Regulation⁴ should be added as this includes the bulk of retail pesticides that residents currently return to municipal depots.

The new regulation should set separate targets and reporting requirements for materials and containers especially where there are currently combined targets for both material and containers (paint & coatings).

³ A list of various automotive products captured in other provincial programs is available at <https://soghu.com/wp-content/uploads/20.04.01-EHC-Applicable-Product-List.pdf>.

⁴ Available at Pest Control Products Regulation - <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-124/index.html>

Eventually, the ministry should consider the best way to incorporate pharmaceuticals and sharps under the RRCEA Regulation. Since 2013, the Health Products Stewardship Association (HPSA) has administered the Ontario Medications Return Program (OMRP) and the Ontario Sharps Collection Program (OSCP). These programs are operated under the principles defined by Ontario Regulation 298/12 “Collection of Pharmaceuticals and Sharps - Responsibilities of Producers”, which is Ontario’s first Extended Producer Responsibility (EPR) regulation created under the Environmental Protection Act (EPA).

In 2019 the OMRP collected 310,342 kilograms of Consumer Health Products and the OSCP collected 343,020 kilograms medical sharps returned by consumers to participating retail pharmacies⁵.

While these programs help ensure that pharmaceuticals and sharps returned by the public are packaged, handled, transported and disposed of in a safe, compliant and environmentally responsible manner, there is a policy rationale for having all EPR regulations captured under the same legislative framework to ensure consistency and effective oversight. Similar to other waste diversion programs that are, and will be, regulated under Resource Recovery and Circular Economy Act, having consistent standards, enforcement, reporting and oversight by the Resource Productivity and Recovery Authority (RPRA) could help strengthen this important program for Ontarians. As part of a 24-month Phase 2 implementation, the ministry should take a carefully planned approach to regulating pharmaceuticals and sharps under the RRCEA, and only do so in a manner that avoids disruption to the current well-established and effective collection network.

A 24-month timeline for a phase 2 addition of materials and containers should be included in the regulation to expand the types of materials captured to align with other provinces like British Columbia, Quebec, and Manitoba which include a broader range of flammable, corrosive and toxics materials and their containers. Currently 20-30% of the total MHSW materials municipalities manage at their household hazardous depots and many automotive materials are un-stewarded materials that must be subsidized by the property tax base or by the public directly.

There is currently a disjointed regulatory approach to collecting and managing aerosol containers between the MHSW and Blue Box regulations. As new regulations for both are currently being developed under the RRCEA, there is an opportunity to rationalize the issues surrounding aerosol containers. Producer

⁵ *Ontario Medications Return Program and Ontario Sharps Collection Program 2019 Annual Report* (April 30, 2020)

fees are currently being paid by producers either under the Blue Box program or the MHSW program, or both, based on the material or product contained in an aerosol container. The hazardous aspect of aerosol containers relates to the propellant and less so the material. While the propellant is of concern from an environmental perspective, the container itself is also of concern from an explosive and safety perspective, making management within a municipal Blue Box system problematic.

There are also many other products that are sold in aerosol containers that are not necessarily captured by either the blue box or MHSW programs currently.

The most rational and effective approach to aerosol containers is to regulate them irrespective of the material or product contained within. It would be desirable to include aerosol containers as a specific material category under a new MHSW regulation and focus producer fees and management responsibilities for all aerosol containers within the regulation. This would assist in clarifying and rationalizing the cost for producers and promote cost efficiency under a single regulatory instrument. Addressing aerosol containers as a specific category would potentially add some new producers that could assist in reducing the overall cost currently being born by a smaller number of aerosol container producers.

Adding these materials would increase the amount of MHSW being properly processed, providing both economic and environmental benefits. The sector has the capacity to manage additional materials and this change could substantially reduce the administrative costs of the current program and the cost to producers.

OWMA Recommendation 1:

The OWMA recommends that the government continue to use the definition for MHSW set out in [Ontario Regulation 387/16](#) and designate all of the currently designated products in the new regulation. These designated products should be expanded to include similar products such as diesel exhaust fluid, brake fluid, automotive cleaning products, as well as acids and oxidizers and containers.

OWMA Recommendation 2:

OWMA recommends that aerosol containers be identified as a product category irrespective of the material or product contained within. The MHSW regulation should identify aerosol containers as a hazardous waste and provide for material collection and management. New producers of aerosol containers not currently obligated, may be captured by the regulation and it would be necessary to provide sufficient notice and time to obligated parties. Consolidating all aerosol containers into a single product or material category if not feasible from a timing perspective for the initial regulation could be moved to a phase 2 element.

OWMA Recommendation 3:

Further, a Phase 2 should be included in the regulation to become effective 24-months after the regulation start date, that would add products such as fluorescent light bulbs or tubes, switches that contain mercury, thermostats, thermometers, barometers or other mercury-containing devices and additional automotive products to advance consistency with other provincial jurisdictions.

OWMA Recommendation 4:

To ensure consistent standards, oversight and reporting with other waste diversion programs, OWMA supports a carefully phased-in approach to eventually including the pharmaceutical and sharps program under the RRCEA regulation.

Collection, Management Requirements and Targets

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 or into municipal solid waste landfills.

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 shops.⁶

For pharmaceutical and sharps, the regulation should establish similar accessibility requirements to those in place in O. Reg. 298/12: Collection of Pharmaceuticals and Sharps. OWMA understands that this sector is actively addressing issues on the front lines of the COVID-19 pandemic, and as a result requests that the regulation largely be replicated as is.

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.⁷

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 contain were managed.

OWMA acknowledges that the goal for some of these materials is to simply ensure they are used up rather than disposed of. However, Table 2 outlines the recommended targets that the following programs are meant to adhere to for the materials listed (including new and stockpiled items).

⁶ See sections 5 - 10 - <https://www.ontario.ca/laws/regulation/r18225#BK7>

⁷ See sections 6 - 10 - https://prod-environmental-registry.s3.amazonaws.com/2019-04/Electrical%20and%20Electronic%20Equipment_Consultation%20Version%20April%2026%202019.pdf

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 pesticides, solvents, paints, pressurized containers, fertilizers, sharps and pharmaceuticals.

In every container category, the 'available for collection' amount is 100% of the containers sold into the marketplace as reported by the producers to RPRA. The actual collection target for containers may be lower but the principle that 100% is available for collection is an important foundation and starting point.

OWMA Recommendation 5:

The following recommended targets in Table 2 are based on previous and current WDA program performance in Ontario and the performance of similar programs in other jurisdictions (provinces) across Canada.

Table 2 - Material and Container Reporting and Targets

Category	Reporting on Collection	Target on Collection	Reporting on Management	Target on Management
Paint and coatings (% of sold into the market)	✓	✓ 10%	✓	✓ 10%
Paint and coatings containers (% of sold into the market)	✓	✓ 80% 85% year 2 90% year 3	✓	✓ 80% 85% year 2 90% year 3
Pesticides	✓	✗	✓	✗
Pesticide Containers	✓	✓ 80% 85% year 2 90% year 3	✓	✓ 80% 85% year 2 90% year 3
Solvents	✓	✗	✓	✗
Solvent Containers	✓	✓ 80% 85% year 2 90% year 3	✓	✓ 80% 85% year 2 90% year 3
Fertilizers	✓	✗	✓	✗
Used Oil Filters (% of sold into the market)	✓	✓ 85% 88% year 2 90% year 3	✓	✓ 85% 88% year 2 90% year 3
Oil Containers (% of sold into the market)	✓	✓ 85% 88% year 2 90% year 3	✓	✓ 85% 88% year 2 90% year 3
Pressurized Containers (% of sold into the market)	✓	✓	✓	✓
Antifreeze (% of sold into the market)	✓	✓ 25%	✓	✓ 25%

Antifreeze containers (% of sold into the market)	✓	73% 80% year 2 85% year 3	✓	73% 80% year 2 85% year 3
Aerosol Containers (less than 680g / 24oz) (% of sold into the market)	✓	80% 85% year 2 90% year 3	✓	80% 85% year 2 90% year 3
Pharmaceuticals ⁸	✗	✗	✗	✗
Sharps ⁸	✗	✗	✗	✗

OWMA Recommendation 6:

Where applicable, the OWMA supports the 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. As part of this effort, lower-end uses, such as waste derived fuels, should continue to be discouraged. The current program has succeeded in promoting higher end uses, which generate greater economic and environmental returns. To maintain a high level of waste diversion for MHSW, these definitions should continue to be used to define recycling targets while encouraging reuse wherever possible. The Canadian Standards Association's Guideline - SPE-890-15 - A Guideline for accountable management of end-of-life materials provides a basis for the definition of recycling that could be used to ensure the continued promotion of higher end uses.

⁸ For pharmaceuticals, the measure of success or "targets" should be geared toward consumer accessibility and consumer awareness of programs. The more access and the greater the awareness the lower the actual collections of material should become. For sharps, setting collection targets is not effective due to the variety of sharps containers used to contain these products, along with the outer biomedical waste packaging. Consumer accessibility and consumer awareness reach and saturation are the key measures of success.

Promotion and Education

Every producer who is designated under the MHSW must be required by the Regulation to establish and a promotion and education program for residents and consumers. This program should make reasonable efforts to raise public awareness of the producer's efforts to collect, reduce, reuse, recycle and recover household hazardous waste materials and to encourage public participation in collection efforts. The promotion and education program should include adequate information on the collection system and sites. Given the level of risk from MHSW materials, the promotion and education program should also raise public awareness in Ontario of the consequences for the environment and human health of improper disposal and handling of designated materials.

Requirements for Producers and Service Providers

The *Waste-Free Ontario Act* defines a brand holder as “a person who owns or licences a brand or who otherwise has rights to market a product under the brand.” The *Waste Diversion Act* defines a steward as a person having a commercial connection to the designated waste or to a product from which the designated waste is derived.

OWMA Recommendation 7:

The OWMA recommends the government keep the same definition for brand holder and require them to individually register, record keep and report to the Authority while meeting collection, recycling and accessibility targets. Requirements related to promotion and education are necessary. Producers should be required to provide messaging at least once a year to residents to ensure they understand how to manage these materials safely.

OWMA Recommendation 8:

The OWMA recommends that 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.

Definitions

OWMA Recommendation 9:

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 third-party, independent audits.

Additional Tools

OWMA Recommendation 10:

The province should consider a disposal ban in combination with the regulation to assist in driving environmental and economic outcomes. This is an approach successfully employed by many other jurisdictions. The OWMA [policy paper on disposal bans \(2016\)](#) provides specific considerations on how that disposal ban could be implemented.

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