

Sent via email to: charles.o'hara@ontario.ca

July 24, 2020

Charles O'Hara
Director, Resource Recovery Policy Branch
Ministry of the Environment, Conservation and Parks
Foster Building 8th Floor,
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Toronto, ON M4V 1M2

Dear Charles:

**RE: Proposed Regulation for Municipal Hazardous or Special Waste under the
*Resource Recovery and Circular Economy Act, 2016***

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 the Proposed Regulation for Municipal Hazardous or Special Waste ("MHSW") under the *Resource Recovery and Circular Economy Act, 2016* ("RRCEA"). We appreciate the opportunity to provide comments on this regulation.

Summary of recommendations:

- Continue to support transition of all Ontario's waste diversion programs over to full producer responsibility under the RRCEA.
- Transition and expand on the current list of MHSW currently captured in [O. Reg. 387/16](#) under the *Waste Diversion Transition Act, 2016* (WDTA) and do so in two distinct phases with implementation dates established in the regulation:
 - 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, fluorescent light bulbs (if not in the Electrical and Electronic Equipment (EEE) regulation), 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, used oils and lubricants.
- 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 MHSW; and,
- Establishing a recycling efficiency target that ensures the products collected are properly managed similar to other MHSW.
- Establishing robust public education and communication requirements for producers to ensure consumers understand how and where to properly dispose of designated products and packages.
- Management targets in the first year should be established at levels that at least meet current performance with continued improvement sought in future years.
- Where applicable, 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.
- Support for the development of incentives for producers to market MHSW products with recycled content (paint).
- Municipalities are supportive of the approach taken on visible fees within the Used Tire Regulation that include reporting, auditing and promotion and education and requirements on producers that charge consumers a resource recovery fee, which allows for consumer transparency and flexibility for the producer.
- Requirements related to promotion and education are essential especially for consumables. Producers should be responsible for, at a minimum, delivering one piece of educational material directly to every household on an annual basis.
- 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.
- 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.
- 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.
- The Province should institute a program to compensate municipalities for the cost of legacy MHSW materials that are un-stewarded.

Overview and Facts

Municipal governments play an important role as the final backstop to ensure many hazardous or problematic products do not end up in the environment. This includes keeping these products out of solid waste landfills, stormwater sewer systems and the wastewater system. Further, many municipal governments have requirements to establish collection systems for these materials as part of their waste disposal approvals from Ministry of Environment, Conservation and Parks. Municipal depots and collection event days become the destination of various products that are cleaned out of basements, garages, or medicine cabinets. The costs associated with collecting and managing these materials is a significant burden as compared to other materials collected by municipal governments. Despite many of these materials not having stewardship programs, municipal governments have collected them to reduce environmental degradation from improper disposal.

The current list of materials included in Ontario's municipal hazardous and special waste programs only make up a fraction of what municipalities are collecting and forced to manage. By way of example, the following four Figures illustrate the percentage of miscellaneous organics (e.g. wood glue, drywall patch, wood sealer etc.), pesticides, fertilizers and aerosols that are the responsibility of municipal governments as opposed to the companies that produce them. These Figures are based on lab pack analysis completed over the last five years and used to determine the cost split between producers and municipal collection sites. Producers have adapted a number of these products, and as a result an increasing amount of material does not meet the current definition. While the initial definitions were problematic as they excluded a large amount of materials, more burden is being placed upon municipal governments to pay for the end-of-life management of these materials.

Figure 1 - Responsibility Based on Lab Pack Analysis for Misc. Organics

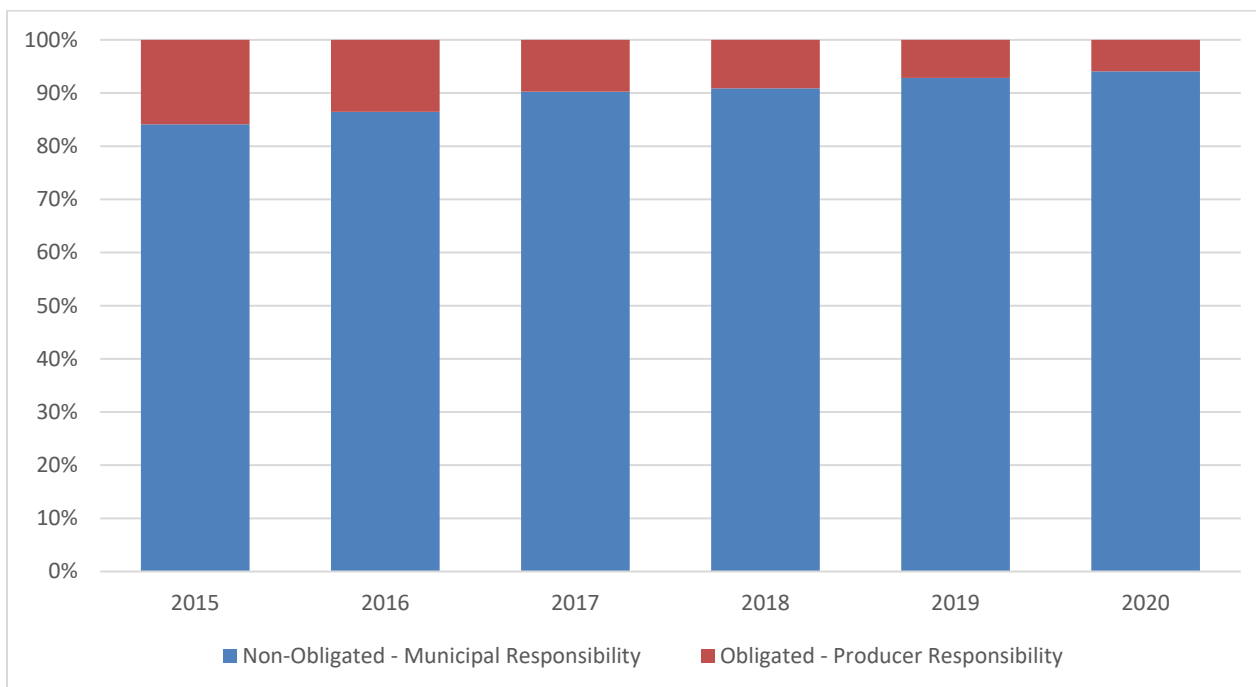


Figure 2 - Responsibility Based on Lab Pack Analysis for Pesticides

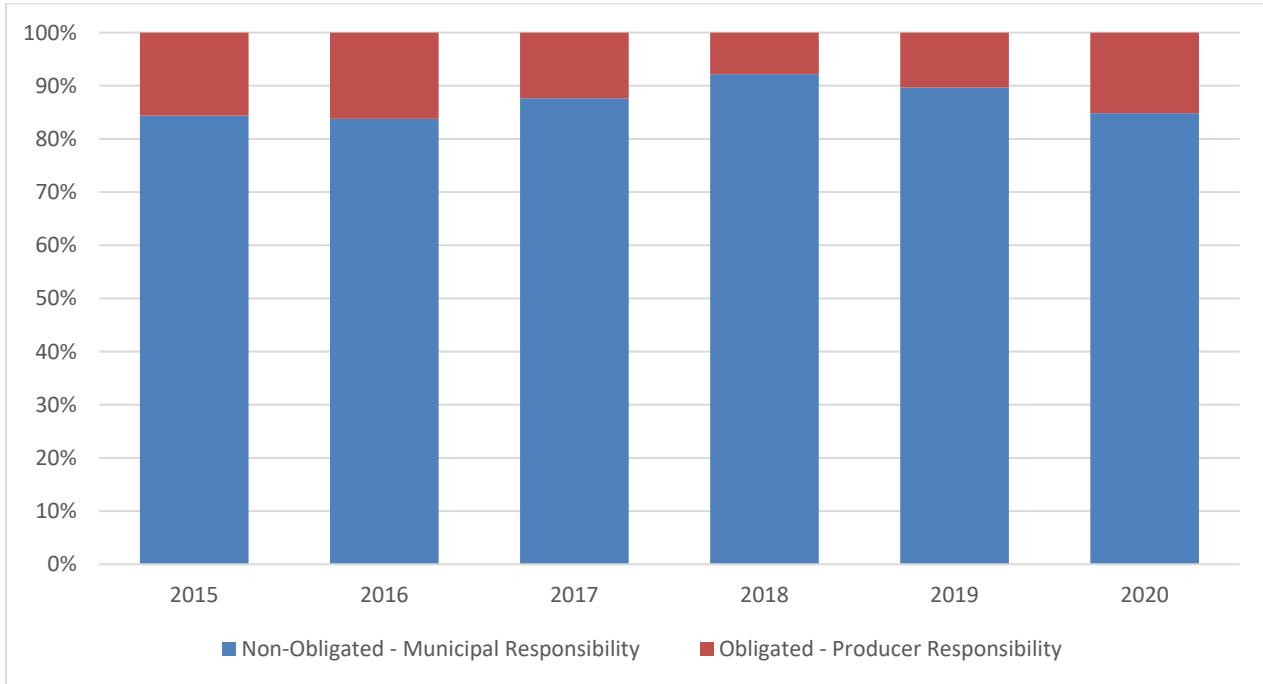


Figure 3 - Responsibility Based on Lab Pack Analysis for Fertilizers

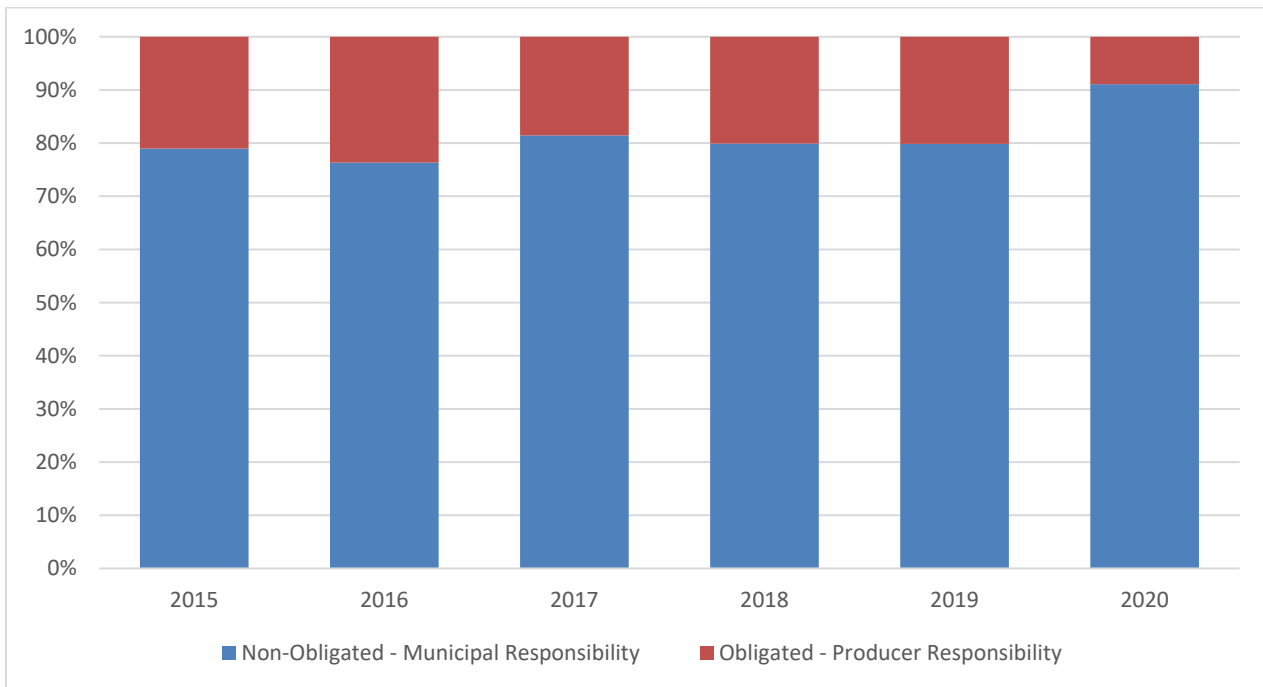
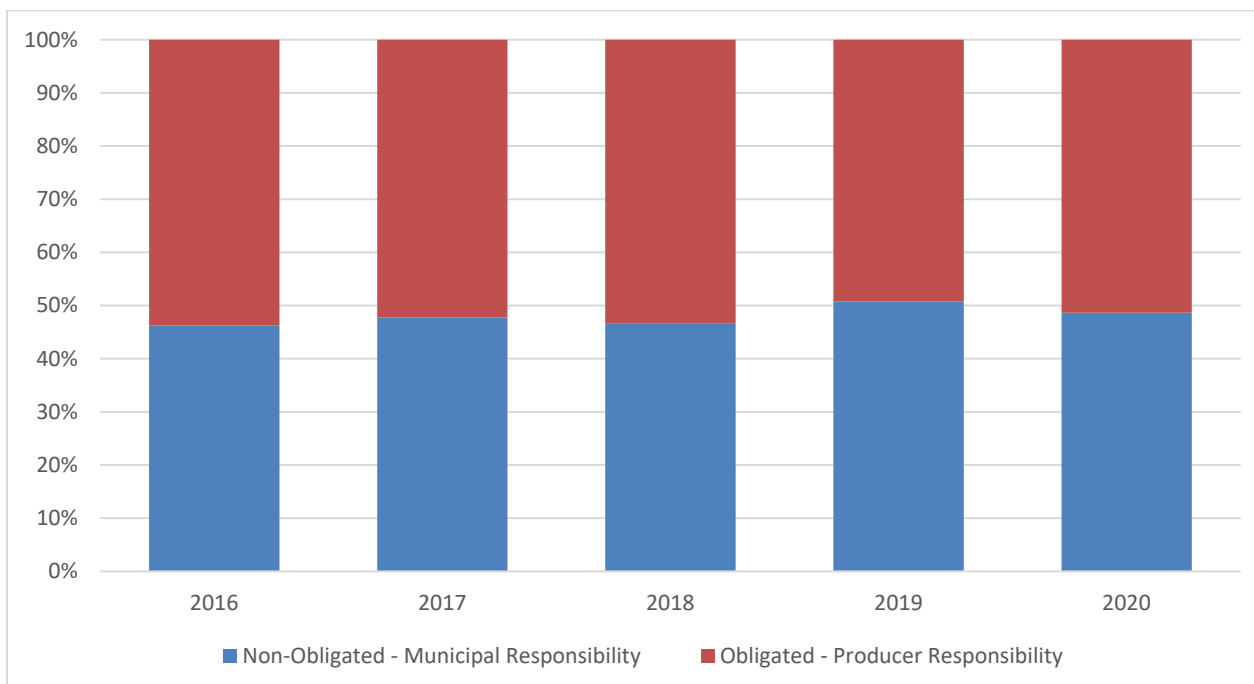


Figure 4 - Responsibility Based on Lab Pack Analysis for Aerosols



Municipal governments understand that some of the producers of these products are advocating that they should not be included in producer responsibility regulations as they have functioning diversion initiatives already in place. However, an assessment of 2019 data for eight Ontario municipalities representing about a quarter of Ontario's population indicates consumers are bringing high quantities of these materials to municipal depots and collection event days. When extrapolated Province-wide this data showed that Ontario municipalities collected over 52,500 kg of pharmaceutical waste and 20,000 kg of sharps and 170,000 kg of propane cylinders in 2019. If these programs were functioning well, municipalities would not be forced to manage this amount of materials.

For pharmaceuticals and sharps, municipal governments strongly believe the current Ontario Medications Return Program (OMRP) and the Ontario Sharps Collection Program (OSCP) are underperforming. These programs were regulated under Ontario Regulation 298/12 "Collection of Pharmaceuticals and Sharps – Responsibilities of Producers", which was a stop gap measure introduced as new producer responsibility legislation was under development. Municipal governments do not believe this regulation has been properly overseen by the Province in a manner similar to Regulation 102/94 and 103/94, which were meant to increase recycling in the industrial, commercial, and institutional sectors.

Municipal hazardous or special material needs to be managed properly. It continues to arrive in large volumes to municipal depots and event days on an annual basis due to many reasons, including expiry dates and excess quantities not needed. Table 1 and 2 provide a breakdown of quantity and costs for some of these non-obligated MHSW materials for both a large regional urban municipality as well as a regional rural municipality. Important to note these costs are based on management and do not include collection cost, nor promotion and education.

Table 1 - MHSW Management Costs from a Large Regional Urban Municipality (Based on [O. Reg. 387/16](#) Phases)

	Total Management Costs	EPR Funding	Municipal Costs	% Covered
Phase 1	\$1,218,413	\$879,888	\$338,524	72%
Phase 2/3	\$275,214	\$0	\$275,214	0%
Total	\$1,493,627	\$879,888	\$613,738	59%

Table 2 - MHSW Management Costs from a Regional Rural Municipality (Based on [O. Reg. 387/16](#) Phases)

	Total Management Costs	EPR Funding	Municipal Costs	% Covered
Phase 1	\$106,226	\$36,016	\$70,210	34%
Phase 2/3	\$21,993	\$0	\$21,993	0%
Total	\$128,219	\$36,016	\$92,203	28%

Phase 1 materials represent a significant amount of paint that would be funded by producers but also includes large amounts of pesticides, and fertilizers (see Figures 2 and 3) not obligated which would account for the municipal costs. Phase 2 and 3 materials include materials such as misc. flammables, portable fire extinguishers and mercury containing devices.

Municipal governments advocate that the responsibility to manage all these materials should be that of the producers that manufacture these products rather than the municipal taxpayer and ratepayer. 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 and ratepayer if the Province decides to retract rather than expand producer responsibility.

Defining Responsible Person

Municipal governments recommend that the definition of "responsible producer" should take a similar cascading approach to [Ontario's Used Tires Regulation](#), [BC's PPP program plan](#), and in [Stewardship Ontario's draft amended Blue Box Program Plan](#) (e.g. brandholder, first importer, marketer [resident and not]).

Designating Materials

The proposed Regulation should ensure that all the materials currently captured in [O. Reg. 387/16](#) under the *Waste Diversion Transition Act, 2016* (WDTA) are included in the new regulation. The Table below includes all the consumables and containers/products that should be included. Each continues to represent a significant portion of what is being returned to municipal depots and needs to be managed properly at the end-of-life.

Two stages are being recommended:

- 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, fluorescent light bulbs (if not in the EEE regulation), 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.

Further detail on the materials and the proposed phases are included in Appendix A.

Phase 1 transitions materials that are already designated while expanding to include a broadened pesticides and fertilizer categories as the previous definitions did not account for the types of materials being returned.

Municipal governments do not believe there is rationale to exempt products such as fertilizers and propane cylinders, which as identified earlier, are being dropped off by residents in large quantities.

It is also recommended the government extend the designated material to include those that were a part of the Recycling Council of Ontario MHSW program, which reimbursed municipalities for certain Municipal Hazardous or Special Waste (MHSW) materials. This includes aerosols, portable fire extinguishers, mercury containing devices, and fluorescent light bulbs (if not in the EEE regulation). The data has already been captured by the Ministry as part of this program, and makes these materials easier to designate.

The definition of pesticides should be expanded to include Schedule IV of the Pest Control Products Regulation¹ as this represents the bulk of retail pesticides that residents currently return to municipal depots. As noted earlier, based on producer lab pack analysis, currently 85-90% of all pesticides returned are non-obligated. Automotive additives and cleaners and their containers have been included as they are similar to other materials like used oil containers and anti-freeze that are already being collected.

Phase 2 includes the bulk of other materials being collected via municipal depots. As noted above, municipalities continue to receive large volumes of these products back through their municipal depots – including increasing amounts of products that are not obligated but need to be properly managed at the end-of-life.

Including these materials would help to align with other provinces like British Columbia, Quebec, and Manitoba, which include a broader range of flammable, corrosive and toxic materials and their containers. Currently based on the total residential MHSW materials that municipalities manage at their household hazardous depots, 20-30% of materials by tonnage are un-stewarded and must be subsidized by the property tax base or by the public directly.

We would also recommend that the Province institute a program to compensate municipalities for the cost of legacy MHSW materials that remain un-stewarded.

Management and Standards

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.

It is acknowledged that the goal for some of these materials is to simply ensure they are used up properly rather than disposed of. The Table below outlines the recommended targets (including new and stockpiled items).

¹ Available at Pest Control Products Regulation - <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2006-124/index.html>

Categories	Reporting on Collection	Target on Collection	Reporting on Management	Target on Management
Paints and Coatings	✓	✗	✓	80%
Paint and Coatings Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Solvents	✓	✗	✓	Best efforts to improve outcomes
Solvent Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Oil Filters	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Oil Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Used Oil and Lubricants	✓	✗	✓	Best efforts until targets set
Antifreeze	✓	✗	✓	80%
Antifreeze Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Pressurized Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Fertilizers	✓	✗	✓	Best efforts to improve outcomes
Fertilizer Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Pesticides	✓	✗	✓	Best efforts to improve outcomes
Pesticide Containers	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Aerosols	✓	80% (year 1), 85% (year 2), 90% (year 3)	✓	80%
Portable Fire Extinguishers	✓	Best efforts until targets set	✓	Best efforts until targets set
Pharmaceuticals	✓	✗	✓	Best efforts to improve outcomes
Sharps	✓		✓	Best efforts to improve outcomes
Mercury Containing Devices	✓	Best efforts until targets set	✓	Best efforts until targets set
Automotive additives and cleaners	✓	✗	✓	Best efforts until targets set
Automotive additives and cleaner containers	✓	Best efforts until targets set	✓	Best efforts until targets set
Fuels	✓	✗	✓	Best efforts to improve outcomes
Miscellaneous Flammable Materials	✓	✗	✓	Best efforts until targets set
Oxidizers and Containers	✓	✗	✓	Best efforts until targets set

Categories	Reporting on Collection	Target on Collection	Reporting on Management	Target on Management
Corrosives- Acids	✓	✗	✓	Best efforts until targets set
Corrosives – Caustics	✓	✗	✓	Best efforts until targets set
Reactive Chemicals	✓	✗	✓	Best efforts until targets set

Promotion and Education

MHSW 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 and safety and environmental risks associated with MHSW 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 products 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. We suggest that a social marketing campaign focuses on two major messages:

- Manage MHSW appropriately and do not dispose of with regular waste; and
- The “B.U.D.” message:
 - Buy only what is needed
 - Use it up or (if a resident can’t, consider giving it to a neighbour or family member to use, or deliver it to a MHSW Drop-off in the original container so that other Ontarians may use it), and
 - Drop off the rest at a local drop off site to be recycled, reprocessed or safely disposed of.

In addition, due to the human health and safety and environmental risk associated with MHSW products 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 conjunction with municipalities.

Collection and Consumer Accessibility

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, into municipal solid waste landfills or incorrectly managed through the Blue Box program.

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 shops².

² See sections 5 – 10 - <https://www.ontario.ca/laws/regulation/r18225#BK7>

For pharmaceuticals and sharps, the regulation should increase the accessibility requirements in place in O. Reg. 298/12: Collection of Pharmaceuticals and Sharps to address the large volume of materials still being returned to municipal depots.

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.³

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 their containers were managed.

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 paint, pesticides, solvents, fertilizers, pressurized containers, aerosols, sharps and pharmaceuticals. Where no material collection or management target has been established, it is essential that Resource Productivity and Recovery Authority (RPRA) oversight 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.

Registration Reporting and Auditing

Municipal governments appreciate how important it will be to collect and track data to assess progress towards objectives and continuous improvement.

We are however concerned with compliance in the first year of the regulation. It is difficult to determine if Producer Responsibility Organizations (PROs) and producers under the current Tires regulation are meeting their obligations. The concern is that if the required audit uncovers problems, those problems will not be known until over a year after the regulation came into force. By that point, the market may have been substantially disrupted and it may be difficult to rectify problems created. Additional forms of interim auditing within the first year would help to ensure the right market conditions are established at the onset of the program.

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.

³ See sections 6 – 10 - https://prod-environmental-registry.s3.amazonaws.com/2019-04/Electrical%20and%20Electronic%20Equipment_Consultation%20Version%20April%2026%202019.pdf

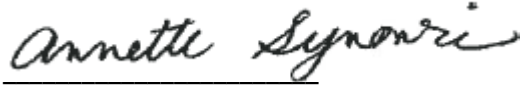
Additionally, while not specific to the draft Regulations, the Province should consider having the Resource Productivity and Recovery Authority (RPRA) perform periodic waste composition audits across the Province to assess performance of the program.

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.

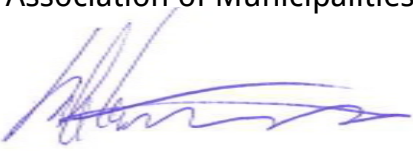
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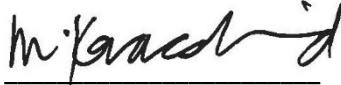
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Chair, Regional Public Works
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Chair, Municipal Waste Association

cc: Atif Durrani, Manager, Policy Development, Resource Recovery Policy Branch, Ministry of the Environment, Conservation and Parks

Appendix A: Proposed Phase 1 and 2 Material Categories:

Categories	Definitions	Stage
Paints and Coatings	All materials that are designed and intended to be used to coat a surface including but not limited to Architectural paints, automotive paints, furniture paints, undercoating's, bitumen-based driveway sealers, roof patches, tars, high heat paints, wood stains, varnishes and sealers, foundation coatings, industrial paints etc.	1
Paint and Coatings Containers	All forms of containers that are used to contain paints and coatings	1
Solvents	Thinners, mineral spirits	1
Solvent Containers	All forms of containers that are used to contain solvents	1
Oil Filters	All sizes of oil filters after they have been used for intended purpose	1
Oil Containers	All size of oil and lubricant containers that were used for the purpose of containing lubricating oil	1
Used Oil and Lubricants	All types of oils and lubricants designed and intended to lubricate any engines including but not limited to automotive oils, small engine oils, chain oils, hydraulic fluids, power steering fluids, brake fluids etc.	2
Antifreeze	All materials that are designed and intended to be used as a coolant or anti-freezing agent including but not limited to automotive antifreeze, RV antifreeze, plumbing antifreeze, coolants etc.	1
Antifreeze Containers	All forms of containers that are used to contain Antifreeze and coolants	1
Pressurized Containers	All refillable and non-refillable pressurized containers including but not limited to propane cylinders, oxygen cylinders, acetylene and other forms of compressed gasses	1
Fertilizers	All forms of fertilizers designed and intended to be used for the purpose of encouraging the growth of plants (certified compost should be excluded)	1
Fertilizer Containers	All durable containers that contained fertilizers	1
Pesticides	All materials with chemical compositions designed and intended to kill or repel pests, insects, vectors, vermin and invasive plants, including but not limited to pesticides, herbicides, fungicides, insect repellants, insecticides, Algicides	1
Pesticide Containers	All durable containers that contained pesticides	1
Aerosols	All forms of aerosols including but not limited to paint aerosols, body sprays, hair sprays, insect repellants, etc.	1
Portable Fire Extinguishers	All size and chemical formulas of portable fire extinguishers	1
Fluorescent light bulbs	If not included in the EEE regulation should include all sizes of Fluorescent light bulbs including Compact Fluorescent lights etc.	1
Pharmaceuticals	All forms of materials designed for the intended purpose of improving the health and wellness of humans and animals including but not limited to over the counter and prescribed medications, vitamins, cold medications, supplementals etc.	2
Sharps	All forms of devices that are designed and can break the skin. Including but not limited to needles, syringes, diabetic lancets, glucose sensors, acupuncture needles, straight razors from all potential residential sources and public spaces.	2
Mercury Containing Devices	Including but not limited to thermometers, thermostats, Barometers and all other mercury containing switches or devices	1
Automotive additives and cleaners	Including but not limited to Diesel exhaust Fluid, Brake fluid, and other fuel cleaners and additives	2
Automotive additives and cleaner containers	All containers that contained automotive additives and cleaners	2
Fuels	Including but not limited to Kerosene, gasoline, diesel, camping fuels, mixed fuel blends for small engines.	2
Miscellaneous Flammable Materials	All products that by chemical formulation have the inherent risk of being flammable if not included in any of the other categories. Including but not limited to Adhesives, contact cements, glues, epoxies, caulking, fiberglass resins, polishes, waxes, water proofing solutions, acetone, nail polish remover etc.	2

Categories	Definitions	Stage
Oxidizers	All products that by chemical formulation have the characteristics or being an oxidizer including but not limited to Peroxides, bleach, Oxidizer cleaners, organic peroxides (Methyl Ethyl Ketones), Hardeners, Some Pool Chemicals and Some Photo Chemicals	2
Corrosives- Acids	All products that have a pH between 0 – 7 including but not limited to Acid cleaners, rust removers, masonry cleaners, deck washers, boric acid, muriatic acid, pH down, some photo chemicals, furniture and paint strippers	2
Corrosives – Caustics	All products that have a pH between 7.5 – 14 including but not limited to Caustic cleaners, soaps, etching solutions, oven cleaners, toilet and drain cleaners etc.	2
Reactive Chemicals	Products that are by their chemical characteristics reactive to light, water or vibrations including but not limited to sodium metal, phosphorus, lithium, organic peroxides, picric acid, calcium carbide	2
Fireworks and Flares	As identified	2