

26 March 2021

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Ministry of Environment, Conservation, and Parks
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RE: Proposed producer responsibility regulation for Hazardous and Special Products (HSP)

We, the undersigned, are pleased to submit the following comments on Proposed producer responsibility regulation for Hazardous and Special Products (HSP) (ERO #019-2836). Comments provided are guided by our primary focus of environment protection and human health.

Effective extended producer responsibility (EPR) policy for hazardous and special products is critical to mandating proper collection and management, and could provide impetus for producers to improve the design of their target products. In particular, EPR should encourage the elimination of toxic substances associated with human health and environmental impacts.

Due to the hazardous nature of the targeted materials and their potential for harm, ensuring effective HSP Regulation is critical. The lack of proper and fulsome stakeholder consultation, compounded by a suggested July 1, 2021 effective date, is untenable. As such, we recommend that the Ministry **delay implementation to January 1, 2022, and that the existing regulation be extended to December 31, 2021. We further recommend that the consultation and comment period for this draft regulation be extended to May 31, 2021.**

As drafted, the proposed regulation is deficient in several areas that could result in substantial regression from Ontario's current performance and waste reduction objectives. Furthermore, additional regulatory and policy amendments currently proposed by government, including but not limited to, changing the function and mandate of the Resource Productivity and Recovery Authority (RPRA), and the absence of administrative monetary penalties may further compromise success of any new regulation under the *Resource Recovery and Circular Economy Act*.

Notwithstanding our request for an extended consultation and comment period, we offer the following initial recommendations for consideration. All comments are informed by the following principles that Ontario should strive for:

- Reduce and ultimately eliminate the use of toxic substances, and reduce residuals that require management.
- Eliminate risks of harm to the environment and human health through proper collection, management, reporting, and auditing requirements.
- Ensure designated materials include all related hazardous and special products or substances subject to the regulation regardless of where they are sold in Ontario.
- Fully transfer all associated costs of end of life management from taxpayers and other actors to producers.
- Facilitate innovations at a product or systems level.
- Offer flexibility and allow for innovation for producers to operationalize their obligations.

- Make producers responsible for providing or publishing public information about hazards of improper disposal and safe collection options.
- Mandate highest and best use of recovered materials resources.

The following provides detailed comments offered not by order of priority, rather, as listed in the draft regulation.

Part II - General

Designated Class

Remove exemptions: Given the hazardous and potentially toxic nature of the subject materials, all should be covered by the regulation irrespective of the amount supplied or where they are sold. Small suppliers have equal opportunity to work with supply chains and their consumers to support collection and management of their products in line with amounts they supply.

Remove container size (30 litres or less) thresholds and scope the regulation to include all sources: The Ministry has not provided any rationale for limiting the scope of designated products based on container size. All designated materials should be covered by the regulation wherever they are sold or used for residential, commercial, or industrial purpose.

Include containers for all Categories in Designation Class: Consumers often return unused materials in containers that the subject products are sold in. As such they likely contain residual material amounts. Given the hazardous nature of the products and their potential to cause contamination the proposed regulation should include all containers and not managed through the Blue Box.

Expand the list of subject products to include all hazardous materials supplied in Ontario, including but not limited to:

- lubricating oil and their containers;
- aerosol containers;
- fire extinguishers;
- automotive additives and cleaners;
- fuels;
- oxidizers;
- corrosive (acids and caustics);
- reactive chemicals; and
- miscellaneous flammable materials.

Products that are orphaned must also be included in the scope to ensure proper management.

In summary, we support the additions that the Association of Municipalities Ontario has recommended to the scope of the designated materials.

Collection and Collection Sites

Collection that is easily accessible to consumers of HSP is essential to ensure that hazardous and toxic substances are safely collected. All residents in Ontario, including remote and Indigenous communities, must have easy and free access to collection services, including those without reliable access to vehicles.

Eliminate distinction between large and small producers: In keeping with removing all exemptions related to amounts sold into Ontario, there should be no distinction between what large or small producers should be required to collect and/or manage. The methodology prescribed in the regulation assigns fair proportionality of responsibility to producers commensurate with what they supply into the market. As such, it is unnecessary to have different collection or performance targets for small producers.

Eliminate requirement of producers to collect and manage the full list of products within a category:

The regulation requires all producers that sell any of the designated products to establish collection sites that must collect all of the products within a category. Producers should not be required to collect materials they do not sell; they must only be responsible for what they do supply into the market. Requiring a producer to collect a suite of products they do not sell forces them into collective systems that will stifle alternative methods of collection and management. The regulation as drafted does not allow flexibility for producers in how they manage their individual obligation, which is a central tenet to effective EPR.

Management of HSP

Management targets must lead to and prioritize highest and best use of materials by promoting avoidance, reuse, and closed-loop recycling to allow recirculation of resources where appropriate. We support the draft regulation's designation of incineration, energy-from-waste, and other forms of thermal treatment, as disposal. **To strengthen this, hazardous materials should also be banned from disposal.**

Meaningful management performance standards are critical to ensuring effective regulatory results. Many of these designated products have been regulated for more than a decade and collection and processing targets should exceed current performance. Given that the suite of products includes a combination of durable, refillable, and consumable products, it is reasonable to have variations regarding target-setting, measurement methodologies, and reporting requirements. Therefore, all should require continuous monitoring and improvement.

To date the Ministry has not provided the details or rationale that was used to set performance requirements for any of the products designated. It is critical that all stakeholders understand the data and methodologies that underpin performance setting and reporting. This is particularly true given the diversity of products covered by this draft regulation and the variation between some products as durable and others as consumables.

Feedback related to individual products within categories or the category itself:

Category A

Non-refillable pressurized containers

The draft regulation does not provide details or rationale that informs performance requirements. These are critical to ensure there is no backsliding from the current rates. For example, and in particular, the diversion rate for non-refillable pressurized containers should account for the weight difference of when it is full and sold (supplied) versus when it is collected and empty. **As containers have a standard average weight the calculation methodology can and should account for the difference when setting and calculating diversion rates.**

The regulation should also increase the collection and processing target for non-refillable containers over time: 45% in 2022; 50% in 2023; 60% in 2024; 75% in 2025, and continue increasing to 100%. Non-refillable containers currently managed through Stewardship Ontario's Orange Drop Program have a collection and processing rate of 41%. These containers are a significant contributor to the Municipal Hazardous or Special Waste (MHSW) stream and there are domestic markets in Ontario that have capacity to recycle them. Increasing their processing target and ensuring results are tracked and reported is critical.

Oil Filters

Similar to refillable pressurized containers, **the weight of the residual oil collected from oil filters should be deducted from the weight of the filter itself when setting and calculating the diversion rate.**

Given the current diversion rate of more than 100% as reported in Stewardship Ontario's 2019 annual report, the regulation should **set a collection and processing target as well as a Recycling Efficiency Rate (RER) at 100% for oil filters.**

Category B

Set a collection, management, and RER for all containers. Containers for all of the designated products should be part of the responsibility of the producers, managed with HSP, have collection and processing targets and results reported and audited annually.

Consumables should be defined in the regulation, and include paint and coatings, antifreeze, solvents, and pesticides.

Producers should be responsible for funding municipal or private sector collectors for consumables.

Set RER and reporting requirements for all consumables.

While the objective for consumables is for consumers to use all of these products in full without remnants that require management, residuals are nevertheless collected by municipalities. Furthermore, it is likely that significant amounts of residue from industrial and commercial sources are unreported and disposed of. While setting collection and processing targets may not be suitable for these products, the regulation should expand producer's responsibility to track and report their generation, collection, and management to final disposition. This will provide valuable insight into the effectiveness of any promotional and educational program.

Refillable Containers: While the existing voluntary deposit and refill program has a high recovery and recycling rate, municipalities reported 170,000 kilograms of refillable propane containers received at their depots in 2019. Given the continued management and associated cost burden to municipalities, **the regulation should not provide an exemption and assign performance requirements to their producers including collection, processing, tracking, and reporting.**

Category C & D

Like consumables, Category C & D products are found in municipal and private management systems. Producers should be responsible for tracking and reporting amounts collected, and finance an extensive promotion and education program to ensure they are not improperly stored and/or disposed of.

Chart: Recommended Minimum Annual Targets for All Designated Products

Category	Product	Actual Tonnes Diverted 2019*	Diversion Rate 2019*	Management – Recycling Target			RER
				2022	2023	2024	
A	Non-refillable Pressurized Containers	327	41%	45%	50%	55%	95%
	Oil Filters	876	100%	100%	100%	100%	100%
B	Antifreeze	219	68%	No recycling target	Promotion and education		
	Paints and Coatings	1	53%				
	Pesticides	-	-	Producer pays for amounts collected			
	Solvents	0	0	Amounts collected should be reported annually to RPRA and part of annual audit report			

Category	Product	Actual Tonnes Diverted 2019*	Diversion Rate 2019*	Management – Recycling Target			RER
C	All Single-Use Containers	719**	111%**	100%	100%	100%	100%
	Refillable Pressurized Containers	415	90%	No recycling target			100%
	Barometers			Producer pays for amounts collected			100%
	Thermometers						100%
Thermostats						100%	
D	Fertilizers	-	-	Amounts collected should be reported annually to RPRA and part of annual audit report	Promotion and education		

* Stewardship Ontario 2019 reported collected and diversion rates

** Reported numbers for oil containers

Additional products and materials noted that should be included in the scope of the regulation should be assigned appropriate collection, processing, and promotion and education requirements using a baseline of current municipal collection trends and/or diversion rates if they are durable goods and include their containers.

HSP Verification and Audit Procedure

The regulation refers to HSP Verification and Audit Procedures but does not include them. These procedures are critical to ensure materials are managed to the highest standard with stringent reporting and auditing requirements. **Development of HSP verification and audit procedure should take place publicly with comprehensive and meaningful stakeholder consultation.**

Registration, Reporting, and Auditing

Annual verification by an independent third party is essential to track compliance and ensure continuous improvement. Aggregated performance data and compliance records must be made public and easily accessible.

Regulation should require producers to submit third party audits annually; and RPRA to post aggregated results annually and publicly available on its website.

Promotion and Public Education

Effective promotion and education should be required to support consumer and resident education, and ensure performance requirements are met by including information about the environmental and health risks of improper disposal.

Conclusion

Thank you for the opportunity to provide comments. While we look forward to working with you to realize a best-in-class regulation for HSP in Ontario, we must reiterate that the lack of proper and fulsome stakeholder consultation, compounded by a suggested July 1, 2021 effective date, is untenable.

We strongly urge that the Ministry delay implementation to January 1, 2022, and that the existing regulation be extended to December 31, 2021. We further recommend that the consultation and comment period for this draft regulation be extended to May 31, 2021.

As drafted, the proposed regulation is deficient in several areas that could result in substantial regression from Ontario's current performance and waste reduction objectives.

Yours sincerely,



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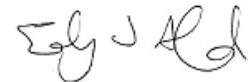
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