

August 4, 2020

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Sent by email: Stephen.Jones2@ontario.ca

RE: Transitioning the Municipal Hazardous or Special Waste Program to Full Extended Producer Responsibility

Dear Mr. Jones,

The undersigned thank you for the opportunity on July 16th to meet with you and MECP staff to review and discuss proposals for the transitioning of the Municipal Hazardous or Special Waste program to full extended producer responsibility (EPR) under the *Resource Recovery and Circular Economy Act, 2016* (RRCEA). Re-structuring the existing program is an important part of the Province's move towards a circular economy built upon individual producer responsibility and environmental sustainability. We value the chance to provide input and comment at this critical stage of the process.

- 1. We fully support the move to transition the existing MHSW program, which covers Phase 1 materials under the original program, to full extended producer responsibility under the RRCEA. The transition provides an important opportunity to improve program performance and to ensure its long term sustainability. This work also creates a foundation for innovation and design to reduce risks related to toxic chemicals found in a range of products in this waste stream.**
- 2. Hazardous and special waste products removed from the program in 2010 should be included in the extended producer responsibility framework under the RRCEA as they cannot be adequately managed through municipal programs with limited accessibility that maintain the financial burden on municipal taxpayers. These products should be included as soon as possible and no later than 2022.**
- 3. As is the case with tires and electronics, all designated hazardous and toxic materials should be regulated in the EPR framework regardless of whether they originate in a residence or an industrial, commercial or institutional setting.**
- 4. It is essential that management and technical standards are developed by government with opportunities for public engagement. These standards would be for the collection, processing and disposition of recovered materials and must be adopted for each category of products and materials covered by the regulations.**
- 5. Our goal is to reduce and eliminate the use of toxic materials, consistent with the RRCEA. The EPR program should be designed in a way that will require product redesign and material substitution to avoid and reduce the use of these toxics.**

With regard to the key policy areas identified in your presentation of July 16th and to the associated questions we have the following comments, answers and recommendations:

Defining Responsible Persons

- We believe that responsible persons should be identified in a way that is consistent with other RRCEA regulations and with a specific focus on brand owners, first importers and marketers (resident and non-resident).
- The Resource Productivity and Recovery Authority (RPRA) must work to minimize and eliminate threats to the sustainability of the program posed by free riders through proactive compliance promotion and enforcement.
- Because of the health and environmental impacts and risks associated with the listed materials there should be no de minimis level applied to exempt small producers.

Designating Materials - Criteria

- The primary objective of the hazardous materials regulation must be to eliminate risks and harm to human health and the environment by providing a functioning, easily accessible and fully producer funded management program.
- Environmental harm criteria (including, but not limited to, those substances considered toxic under the Canadian Environmental Protection Act, Schedule 1) should be used to designate materials.
- Occupational health and safety risks exist in curbside collection and in material recycling facilities. The regulations should ensure the protection of collection crews and MRF workers at all phases of the collection and processing of designated materials.
- Health and safety concerns related to the use and storage of hazardous and special wastes in residences and on residential property should be added as additional criteria for designation.

Designating Materials

- All of the 10 categories of materials designated in the existing program should be regulated under the RRCEA.
- All of the materials originally designated under Phases 2 and 3 of the original program should also be managed under the RRCEA. These materials should be designated as soon as possible and no later than 2022. We have serious concerns regarding the exclusion of these hazardous and special wastes. This is a major failure which leaves the management of a large number of materials which are of serious environmental and health concern outside the EPR framework. Failure to manage the impacts associated with the improper disposal and end of life management of products such as mercury lamps, corrosives, pharmaceuticals, sharps, toxic cleaners and fuels must be addressed and should not be left to a patchwork of municipal programs of limited accessibility.
- We oppose the removal of materials from the list - including small propane tanks and fertilizers - these products continue to pose a threat to human health and the environment if not collected properly.
- The regulation needs to include all sources rather than focus exclusively on residentially generated wastes as many of these materials including products such as mercury lamps are generated in both residential and ICI settings. Regulations under the RRCEA for tires and electronics and electrical equipment apply regardless of the source of the designated product or material and the same approach should be used for designated toxic and hazardous materials. Residential and ICI distinctions are not used in other jurisdictions for programs such as those for used oil, anti-freeze and paint.

- There should be no exceptions or exemptions for materials that have previously been excluded, for legacy and orphan products, or for those that have voluntary management programs.
- The regulation should make no distinction between currently marketed products and legacy products or orphan products as no distinction is made in other EPR regulations. The reality is that consumers will not distinguish eligibility for the program by the age of the particular product they wish to dispose of, whether or not any particular manufacturer is still in business, or whether such a product is still marketed.
- Voluntary programs for hazardous and toxic materials are not acceptable. They do not provide the necessary verifiable reporting and accessibility requirements, and municipalities continue to collect significant volumes of these materials, confirming that management is needed.
- It is essential that all mercury containing products be regulated through the RRCEA. Lamps and lighting equipment, including mercury containing lamps, should be designated under an omnibus EPR regulation for all electronic and electrical equipment as has been done in other jurisdictions.
- Other mercury containing products, such as thermostats and switches, should be designated and managed as part of an expanded MHSW regulation that addresses all of the original phase 1, 2 and 3 materials regardless of their origin.

Management and Standards

- Management standards must lead to and prioritize the highest and best use of materials - promoting avoidance, reuse and closed loop recycling to allow the recirculation of resources where appropriate. Used paint can be recycled, but some recovered toxic materials need to be removed from use and circulation in the interests of health and the environment.
- Management targets should exceed current performance or targets, whichever is higher, and should be ramped up over time to ensure continuous environmental improvement and to capture all hazardous and toxic materials.
- Incineration, energy-from-waste, and other forms of thermal treatment should be used as a last resort for disposal, but not allowed when recycling is possible. No thermal application of any type should be used towards performance targets. Hazardous materials should be banned from disposal in non-hazardous waste landfills.
- Stewards must be responsible for both durable and consumable products, and regulations should ensure that left over consumables such as paint, anti-freeze, pesticides and solvents are recovered and managed. Targets should be established for containers based on units put on the market. Producers who sell consumables should be required to track and report annually to RPRA any and all residual amounts remaining that require proper management.
- Management targets for durable materials such as oil containers and propane tanks should be based on calculations of the amount of containers and materials sold into the market by the designated stewards. The categories of materials covered by the existing regulation and by expansion of scope to include Phase 2 and 3 materials are sufficiently unique to warrant their own individual performance measures. Such distinct measures by material and product category already exist in programs operating in Ontario and elsewhere across the country.
- Management and technical standards should be developed by the Province through an open and transparent process and built into the regulations. Standards will need to be set for each category of designated materials in recognition of each material's unique properties and to ensure the adoption of appropriate health and environmental protocols and appropriate disposition of recovered materials.
- Standards should be written to require that producers identify and work towards product reformulation to eliminate the use of toxic or hazardous substances.

- The regulation should support investment in research and development of safe, toxic free, alternatives to materials and products which meet toxicity and hazard criteria.
- Designated producers must be obligated to report their performance against the standards and prompt and effective enforcement action should be taken by RPRA with producers who violate the standard or any other regulatory obligations.

Promotion and Education

- Aggressive and effective promotion and education should be used to support high diversion targets. RPRA data shows that communities that spend more on promotion and education for recycling programs generally have much better performing programs than those that spend considerably less.
- Visible environmental handling and eco-fees should be eliminated and the costs of end of life management should be built into the price of the product. This is already done with many stewardship programs such as those for agricultural pesticide containers, phones and pharmaceuticals. Ontario should ban the explicit addition of such separate fees at the point of purchase (excluding refundable deposits) but allow producers to inform consumers that the price of a product subject to an EPR regulation does include the cost of end of life management and what that cost is.
- Public disclosure and labelling on all designated materials needs to be mandated to promote safe handling and use along with advice to consumers on appropriate end of life management.
- Promotion and education requirements should be mandated and should include: follow the BUD principle (buy only what you need, use up what you buy, properly dispose or recycle leftover products); point-of-sale information; online information for consumers; information on collection events; depot signage.

Collection and Consumer Accessibility

- Verifiable, easily accessible and effective collection is essential for ensuring that hazardous and toxic substances are safely collected, preventing harm to human health and the environment.
- Regulated collection targets for durables should be set in addition to minimum accessibility requirements. Accessibility requirements should be established to ensure broad coverage and are a supportive element that should not be used as a replacement for collection and recovery targets.
- All communities across Ontario should be provided with collection/drop off services.
- The Regulation should ensure that small, remote and indigenous communities have convenient service.
- Depots, municipal special events, and in-store returns are likely to remain the major means to maximize the quantities and volumes of material collected.
- Producers should be required to provide a minimum level of service by, for example, providing collection depots and levels of service based on population. Accessibility requirements can be based on and measured by travel distance and or travel time. Accessibility requirements should also consider populations without access to vehicles - for example by providing a pick up service or 'toxic taxi'.
- Retail drop-off locations are convenient for consumers. Standards should be set for the minimum number of retail locations where drop off depots are required.

Registration, Reporting and Auditing

- Producers, haulers, processors and PROs should be subject to registration, reporting, data verification and record keeping requirements to ensure a secure chain of custody of the designated materials from collection to ultimate disposal, recycling or reuse.

- Aggregated performance data and compliance records must be made public and be easily accessible.
- There is a need for strong third party verification. Internal attestation will be unreliable and is unacceptable. Verification can be done through conventional annual audited policy and financial statements by individual producers and PROs and through the retaining of third party certification bodies. This verification should be released publicly.

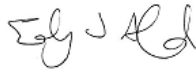
Public engagement throughout the process of transition with all stakeholders, including environmental non-governmental organizations, is essential. We thank you again for the opportunity to provide this input. We look forward to hearing from you the results of the consultation and to the posting of the proposed regulation and to the additional opportunity to provide input to the next stage of the process.

We would be happy to meet with you to discuss this submission and to address any possible questions you may have on the points we have raised.

Yours sincerely,



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