

To: Warden and Members of County Council

From: Director of Public Works

Proposed Producer Responsibility Regulation for Hazardous and Special Products, Environmental Registry of Ontario Posting No. 019-2836

RECOMMENDATION

- 1. That Oxford County Council receive Report No. PW 2021-12 entitled “Proposed Producer Responsibility Regulation for Hazardous and Special Products, Environmental Registry of Ontario Posting No. 019-2836” as information.**

REPORT HIGHLIGHTS

- The purpose of this report is to update Oxford County Council on the Proposed Producer Responsibility Regulation for Hazardous and Special Products (HSP), which was posted on the Environmental Registry of Ontario (ERO) for public comment.
- The proposed regulatory framework is planned to transition the current Municipal Hazardous and Special Waste (MHSW) program to full Producer responsibility in 2021, under the Resource Productivity and Circular Economy Act, 2016 (RRCEA).
- The proposed regulatory framework, includes a methodology to identify persons responsible for designated HSPs marketed in Ontario and establishes Producer’s responsibilities for collection and end of life product management.

Implementation Points

Oxford County comments on ERO posting No. 019-2836 were submitted to the Ministry of the Environment, Conservation and Parks (MECP) on March 25, 2021.

Following Council’s adoption of the recommendations contained in this report, a copy of the Council resolution will be forwarded to the MECP. The proposed HSP regulation is currently proposed to be implemented on July 1, 2021 and afford for an 18-month transition period.

Staff will report back to Council once more information and clarity become available from the MECP regarding the proposed HSP program framework and implementation. In the meantime, staff will continue to advocate for resolution on the concerns raised in this report, as well as explore viable options for the continued operations of the existing municipal hazardous waste depots to ensure responsible and safe collection of these materials.

Financial Impact

Transitioning to full Producer Responsibility for HSP will eliminate the financial burden placed on municipalities to collect and process designated program material under the current MHSW program.

However, it will also reduce funding revenue currently received to operate the MSHW depots that inadvertently offsets operation and maintenance costs associated with the collection and diversion of non-program hazardous materials (fluorescent lights, pharmaceuticals and sharps, corrosives, fire extinguishers, etc.).

There is insufficient information and uncertainty at this time to fully assess the impact on future Waste Management operating budgets.

Communications

Oxford County submission comments regarding the proposed legislation impacts were presented for discussion to Zero Waste Oxford (ZWO) on March 17, 2021 and also reviewed with City of Woodstock staff on March 22, 2021, in relation to the future operations of the County and Woodstock MSHW drop-off depots.

Report No. PW 2021-12 will be circulated to area municipalities for information.

Upon successful transition of the MHSW program, communication to the public will be required to inform residents of potential program changes and impacts to service delivery.

Strategic Plan (2020-2022)

					
WORKS WELL TOGETHER	WELL CONNECTED	SHAPES THE FUTURE	INFORMS & ENGAGES	PERFORMS & DELIVERS	POSITIVE IMPACT
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DISCUSSION

Background

The Province of Ontario is transitioning the current MHSW program to a Producer responsibility model. This is the last of the existing provincial diversion programs initially created under the *Waste Diversion Act*, to be transitioned to full Producer responsibility. As with the other diversion programs, the Resource Productivity and Recovery Authority (RPRRA) will have governing authority.

Currently the County operates an MHSW drop off depot at the Oxford County Waste Management Facility (OCWMF) and also funds the operation of a MHSW drop-off depot at the City of Woodstock's transfer station (Enviro-Depot).

The MHSW Depot at the OCWMF has been in operation since 2009. This depot is open six days a week, year round, and receives residential MHSW material. On average, this depot receives 6,000 vehicles and collects approximately 185 tonnes of hazardous special waste annually. The Enviro-Depot in Woodstock opened in 2018 and services approximately 5,000 vehicles annually and collects around 130 tonnes of hazardous special waste a year.

MHSW depots at the OCWMF and Woodstock Enviro-Depot also collect non-program designated materials like fluorescent tubes, pharmaceuticals and sharps, corrosives, etc. Revenue from Industry Funding Organizations (IFOs) like Stewardship Ontario and the Product Care Association is received and is used to offset costs for the handling of MHSW program material, as well as some depot operation and maintenance costs.

Staff previously participated in MECP, Stewardship Ontario, and Association of Municipalities Ontario (AMO) stakeholder consultation sessions in development of the regulatory framework for the transition of the MHSW program to full Producer responsibility. Through these consultation sessions, staff provided program operational expertise and have advocated for additional materials to be designated under the program, desired implementation timelines and reviewed and commented on Producer obligation responsibilities.

On February 11, 2021, the MECP released its draft regulatory framework for MHSW transition to full Producer responsibility under RRCEA. The proposed regulatory framework was posted on the Environmental Registry of Ontario (ERO) for a 45-day consultation period and closed on March 28, 2021.

Comments

Staff reviewed the MECP's proposed HSP regulation posted on the ERO (No. 019-2836) with municipal staff from the City of Woodstock and the Zero Waste Oxford (ZWO) Advisory Committee. Staff also participated in webinar sessions hosted by AMO and MECP to inform stakeholders and provide further clarification on the details of the proposed HSP regulation.

The proposed draft regulation will require Producers of designated HSPs, (such as non-refillable pressurized containers, oil filters, paints and coatings, anti-freeze, pesticides, solvents, oil containers, refillable pressurized containers, mercury-containing devices and urban fertilizers) to collect, manage and promote the recycling or proper disposal of these products at end-of-life. Similar to the current MHSW program, the proposed HSP program targets hazardous waste generated by residential sector.

The objectives of the HSP program are as follows:

- Improve environmental outcomes by ensuring that HSPs are collected and managed properly at end of life, as well as, provide a convenient collection network across Ontario, leading to increased waste diversion and recovery of resources currently lost to landfill;
- Potentially reduce costs and burden for businesses by providing Producers with increased flexibility for how to collect and meet end of life management obligations, which will encourage innovative and cost-effective approaches to collection and management of HSPs; and
- Support economic growth and innovation by reducing taxpayer burden, shifting costs to Producers, encouraging a sustainable system and support competition, innovation and better product design.

The proposed HSP regulation is to be implemented on July 1, 2021 and provides for an 18-month transition period, giving HSP Producers time to establish collection networks and obtain Ministry approvals where necessary, all while being required to maintain the existing MSHW collection system for a number of collection sites and events in each municipality.

Producers will be responsible to establish a convenient collection network for consumers to return their HSP at end of life, free of charge, based on municipal population size and/or number of retail locations, with flexibility on how they establish their collection system. Under the proposed regulation, Producers may choose to impose a recovery fee at the time the product is purchased.

Producers can reduce their required number of permanent collections sites and events by implementing alternative collection options, such as call-in and curbside collection or potentially using existing sites to offset proposed regulatory requirements for establishing new sites.

The proposed regulation also establishes a hierarchy methodology for identifying Producers who would be subject to regulatory requirements to ensure the person with closest connection to the designated products is made responsible. Producers that supply a relatively small quantity of HSP in the Ontario market would be exempt with the exception of recordkeeping requirements.

[Oxford County Submission Comments](#)

In principle, staff are supportive of MECP's proposed HSP regulation to transition responsibility to Producers to collect, manage and promote the recycling or proper disposal of HSP products to Producers. The County's detailed comments in response to ERO No. 019-2836 are included as Attachment 1. These comments were submitted to the MECP on March 25, 2021.

Staff's review and key considerations of the proposed HSP regulation are further detailed below:

Administrative Issues

The MHSW program transition is proposed for July 1, 2021. Staff is concerned that there is insufficient time left to address all of the outstanding municipal concerns. Additionally, many municipal service contracts have end dates of December 31, 2021, making January 1, 2022 a more preferable time to transition.

Staff support the approach to clearly identify how Producers can apply resource recovery fees upon program implementation. The Province has taken measures to ensure full transparency on how recovery fees are to be calculated and what must be communicated to the consumer prior to the purchase of designated HSPs. Taking this approach should prevent a repeat of the controversy in 2010 over the use of eco-fees as a means to generate revenue to cover the cost of industry-operated Producer stewardship programs.

Under the proposed regulation, municipal depots will be required to record personal contact information for any residential drop-off of HSPs exceeding 25 kg. Producers desire this language as it enables them to randomly contact users to ensure that the material is coming from residential sources and is covered under the program. Municipalities across Ontario collectively agree that this requirement is operationally unrealistic, impractical and may be subject to privacy concerns.

Staff comments also request that the Environmental Compliance Approval (ECA) amendment process be streamlined by the province so that any municipal depot in need of updating their ECA in order to remain compliant and participate in the program can do so prior to implementation.

Designated HSP Materials

Designated materials under the current MHSW program are to be transferred to the new HSP program. Additional materials such as mercury containing devices have been added to the program list. This is a positive step forward as the collection and handling of mercury containing devices has been problematic for municipalities.

Failure to include products like refillable propane tanks (a reduction compared to the current program), pharmaceuticals and sharps, miscellaneous flammable materials, oxidizers, corrosives and lubricating oils, as well as all HSP product containers, is a concern identified by staff.

Municipalities currently collect these products for landfill diversion and to ensure proper end of life management. Producers should remain accountable for collection, management and recycling/disposal of these products.

Designated Materials Targets

Staff are concerned with the lack of collection targets under the proposed regulation. Omitting collection targets for HSPs provides little incentive for Producers to ensure the materials that they are introducing into the market each year are captured for proper end of life management. There are no requirements to collect HSP product containers other than for oil, which means that Producers can simply dispose of the containers.

Even more concerning is the lack of targets for fertilizers. The regulation has elected to default to the current program whereby Producers are only required to educate consumers on the need to use up all of their material or share material with others. Unused fertilizers is a material type widely collected at municipal depots and greater oversight on the end of life management of this material is needed.

Producer Requirements/Responsibilities

The proposed regulation provides Producers with the opportunity to enter into agreements with individuals/organizations to carry out and complete all or part of the Producer's responsibilities. However, greater oversight is required to ensure that Producers remain liable for the end of life management of their products.

Staff do not agree with proposed exemptions for Producers of small quantities of HSPs. All Producers, whether they produce small or large amounts of HSPs, should be held accountable for the proper end of life management of their products.

Producers should also be responsible for their material that has been illegally disposed of, otherwise, this responsibility will fall onto municipalities and road authorities.

Impact to Oxford County Operations

Under the proposed regulation, Producers will have an 18-month transition period to establish HSP collection networks while maintaining the same level of service that currently exists under the MHSW program. Producers will not be required to fund and/or support existing collection infrastructure and must demonstrate that their established collection system meets regulatory requirements.

There is no assurance that Producers will continue to support municipal depot operations. Municipalities will need to consider if they want to be a service provider to Producers and if so, negotiate funding and operational terms to collect HSPs on behalf of the Producers.

If Producers choose not to support the municipal depots within the County then these depots would be required to operate without funding support. However, the expectation is that Producers would handle designated HSPs collected at the County's depots at no cost, similar to used tires and electronic waste that previously transitioned to full Producer responsibility.

Zero Waste Oxford Advisory Committee

The Zero Waste Oxford Advisory Committee supports staff submission comments and also responded to ERO No. 019-2836 with their own committee comments of which they have shared for information as shown in Attachment 2.

Conclusions

Staff support the proposed HSP regulation, in principle, as the proposed regulation aligns with the goals and objectives of the RRCEA and eliminates the financial burden placed on municipalities to manage these products at end of life.

SIGNATURES

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Original signed by

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Departmental Approval:

Original signed by

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Approved for submission:

Original signed by

Michael Duben, B.A., LL.B.
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ATTACHMENTS

Attachment 1: Oxford County Submission – Proposed Producer Responsibility Regulation for Hazardous and Special Products (HSP), ERO Posting # 019-2836

Attachment 2: Zero Waste Oxford Submission – Proposed producer responsibility regulation for Hazardous and Special Products (HSP), ERO Posting # 019-2836