
REPORT TITLE: **Municipal Hazardous and Special Waste Transition to Full Producer Responsibility Update – Preliminary Analysis of the Draft Regulation**

FROM: **Andrea Warren, Interim Commissioner of Public Works**

RECOMMENDATION

That, while the Region of Peel wholeheartedly supports the transition of waste diversion programs to full producer responsibility, the Region of Peel not support the proposed Hazardous and Special Products regulation in its current form;

And further, that the Minister of the Environment, Conservation and Parks be requested to amend the Hazardous and Special Products regulation to designate all materials captured in Phase 1, 2 and 3 of the current Municipal Hazardous and Special Waste Program;

And further, that the comments outlined in the report of the Interim Commissioner of Public Works, listed on the April 1, 2021 Waste Management Strategic Advisory Committee agenda, titled “Municipal Hazardous and Special Waste Transition to Full Producer Responsibility Update – Preliminary Analysis of the Draft Regulation” be endorsed;

And further, that the Commissioner of Finance and Chief Financial Officer be authorized to increase the value, amend, or extend the terms of existing contracts or to award new contracts, on a direct negotiation basis or otherwise, on business terms acceptable to the Director of Waste Management and on legal terms satisfactory to the Regional Solicitor, in order to implement the new regulatory framework within the timelines contemplated by the draft regulation or such amended regulatory timelines where, in the opinion of the Commissioner of Finance and Chief Financial Officer, such timelines or other regulatory provisions are not reasonably compatible with the carrying out of a competitive procurement process, provided that, in the opinion of the Regional Solicitor such new regulatory framework is substantially in the form contemplated by the draft regulations, subject to the limit of the program’s approved budget and notwithstanding the requirements of Part V of the Procurement By-law 30-2018, as amended;

And further, that where the authority conferred or delegated is to be exercised other than in accordance with Part V of the Procurement By-law 30-2018, as amended, Council hereby states that pursuant to sections 3.1 and 3.2 of the subject by-law, as a matter of public record, it is satisfied that procurement in such manner is necessary in the public interest to ensure a seamless and uninterrupted transition from the current regulatory framework to the new one contemplated by the draft regulations;

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And further, that a copy of the subject report be shared with the Minister of the Environment, Conservation and Parks, the Association of Municipalities of Ontario, and all Peel area MPPs for their information.

REPORT HIGHLIGHTS

- The Region of Peel is one of the largest collectors of Municipal Hazardous and Special Waste (MHSW) in the province collecting 1.8 million kilograms per year.
- The Region began collecting MHSW in 1987 and has been participating in the current MHSW program since its inception in 2008.
- As Peel moves forward with Mixed Waste Processing it will be even more important to keep these materials out of the waste stream.
- The original intention for the current MHSW program was to have producers fund the program in a phased approach, with three phases identified. Producer funding for Phase 1 materials commenced in 2008. Notwithstanding the original intention, the province never obligated producers to fund Phase 2 and 3 materials so the cost of managing Phase 2 and 3 materials, which represents 45 per cent of Peel's MHSW collection and management cost, is borne by Regional taxpayers.
- The current MHSW program will end on June 30, 2021 and will be replaced by the proposed Hazardous and Special Products (HSP) program, which will begin on July 1, 2021.
- On February 11, 2021 the Ministry of the Environment, Conservation and Parks posted the proposed HSP regulation with a comment period until March 28, 2021.
- The proposed regulation does not designate additional materials and is not expected to increase producer funding beyond current levels. In fact, a quick assessment by staff shows that the proposed regulation will lower producer funding.
- While the Region wholeheartedly supports the transition of waste diversion programs to full producer responsibility, staff recommends that the Region not support the proposed regulation in its current form.
- The comments in this report are based on an initial review of the proposed regulation by staff and initial discussions with the Association of Municipalities of Ontario (AMO) and other municipalities. Staff will continue to review the proposed regulation and refine Peel's comments up until the deadline for submitting comments. Staff fully expects that Peel's final comments will be consistent with the contents of this report. If that changes, staff will advise Committee and Council accordingly.
- Once the regulation is finalized, the Region will need to enter into new service agreements and new funding agreements within a short time period.
- To ensure a successful transition to the HSP program within these tight timelines, it is recommended that staff be delegated authority to amend or extend existing contracts or enter into new contracts as necessary.

DISCUSSION

1. Background

The Region began collecting Municipal Hazardous and Special Waste (MHSW) in 1987 to properly manage these materials, which create significant harm to the environment if left in the waste stream. At the time, Peel taxpayers bore 100 percent of the collection and disposal costs. In 2008, the current MHSW program was approved and producers were to become responsible, in a phased manner, for funding the collection and disposal of MHSW.

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The implementation did not go as planned and, as a result, only Phase 1 of the program is currently funded by producers.

The Region of Peel is one of the largest collectors of MHSW in the province, collecting 1.8 million kilograms per year. The Region currently accepts MHSW from Peel residents and eligible small businesses at its Community Recycling Centres (CRCs) free of charge. The Region plays an important role in ensuring MHSW does not end up in sewers, landfills, or the environment.

As the Region considers Mixed Waste Processing it will be even more important to keep these materials out of the waste stream.

2. Current Program

The current MHSW program is operated and funded by three organizations representing producers: Stewardship Ontario, Automotive Materials Stewardship, and Product Care Association.

The original intent of the MHSW program was to fund the collection and disposal of MHSW materials in a three phased approach. In 2008, the province obligated producers to fund Phase 1 materials and that obligation remains in place today. In 2010, when producers were obligated to fund Phase 2 and 3 materials, there was significant media coverage of public backlash due to Eco Fees charged by retailers, so the Ministry paused those two phases and they were never reinstated.

The Region collects Phase 1 MHSW materials and is reimbursed by the three industry organizations for the cost of managing the Phase 1 materials.

Peel also collects Phase 2 and 3 materials along with some additional materials that are not designated within any of the three phases (i.e. wet cell batteries, motor oil) to prevent these materials from leaking into the environment. Peel is not reimbursed for the cost of managing any of these materials. While wet cell batteries and motor oil are not designated, they are revenue generating materials and as such, staff is satisfied with them not being designated.

Appendix I provides a list of all MHSW materials collected at Peel's CRCs.

Table 1 below provides a breakdown of collection and management (i.e. recycling/disposal) costs for the MHSW materials managed by Peel in 2020. It shows that producers paid \$2,190,064 which represents 72 percent of the cost for Phase 1 materials. Table 1 highlights that Regional taxpayers paid \$834,197 for Phase 1 materials, which represents a 28 percent subsidy to producers. Regional taxpayers paid an additional \$968,362 to collect and manage Phase 2 and 3 materials.

Table 1 – 2020 MHSW collection and management costs

Collection and Management	2020 Total Collection & Management Costs	2020 EPR Producer Funding	2020 Funding Gap (\$)	2020 Funding Gap (%)
Phase 1	\$3,024,261	\$2,190,064	\$834,197	28%
Phase 2	\$316,665	\$0.00	\$316,665	100%

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Collection and Management	2020 Total Collection & Management Costs	2020 EPR Producer Funding	2020 Funding Gap (\$)	2020 Funding Gap (%)
Phase 3	\$651,697	\$0.00	\$651,697	100%
Total	\$3,992,623	\$2,190,063	\$1,802,559	45%

3. Regulation Development Advocacy

Staff has been engaged in the development of the proposed regulation, participating directly in information webinars, and attending consultation sessions since the Province directed the wind-up of the current MHSW program in 2018.

In July 2020, staff worked with the Association of Municipalities of Ontario to develop the following key recommendations for the proposed Hazardous and Special Products (HSP) regulation and sent them to the Ministry for consideration:

- Designate all materials currently handled by the Region and other municipalities.
- Require Producers to report on the amount of materials collected and how they are managed.
- Require Producers to develop education and promotion activities to inform the public on the proper disposal of HSP products.

Comments submitted by staff during the development of the proposed regulation are included in Appendix II of this report.

On February 11, 2021 the Ministry released the proposed regulation for Hazardous and Special Products under the *Resource Recovery and Circular Economy Act, 2016*. The MHSW program will transition to a full producer responsibility program under the proposed HSP regulation as follows:

- Deadline for comments on proposed regulation– March 28, 2021
- Final Regulation expected to be posted – sometime in April or May 2021
- Registration deadline for Producers – May 31, 2021
- Registration deadline for Producer Responsibility Organizations (PROs) – 30 days after being retained by a Producer (for example if a producer retains a PRO on June 1 then the deadline is June 30)
- End of existing MHSW program – June 30, 2021
- New HSP program starts – July 1, 2021

Under the new program producers may fulfill their regulatory obligations themselves or through Producer Responsibility Organizations (PROs). These PROs would be responsible for establishing and operating collection or management systems and administrative reporting on behalf of producers they represent.

To ensure the Region continues to receive funding for the program, it will need to enter into funding agreements with producers or PROs by the start of the new program on July 1, 2021. The Region may also have to enter into new agreements with service providers depending on how producers set up the new program.

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4. Preliminary Comments and Recommendations on Proposed Hazardous and Special Products Regulation

The proposed Hazardous and Special Products regulation does not incorporate Peel's recommendations from its July 2020 submission to the Ministry as noted above. A preliminary review of the proposed regulation shows that it increases costs and reduces revenue for Peel, adds administrative burden, sets poor targets, and makes producers less responsible for the collection and management of these materials.

While the Region of Peel wholeheartedly supports the transition of waste diversion programs to full producer responsibility, staff recommends that the Region not support the proposed regulation in its current form.

The following sections identify key areas where the proposed regulation fails to satisfy a transition to full producer responsibility and provide staff's recommended comments.

Designated Materials

The proposed regulation does not provide for improvement of environmental outcomes as it limits the list of materials designated for producer funding. For example, it removes refillable propane cylinders which is currently a designated material. Municipalities will be forced to manage non-designated materials to avoid significant environmental impact and risks to the health and safety of staff and contractors.

Staff recommends that the regulation designate all materials currently included in the three phases of the MHSW program so that there is some certainty that producers will become responsible for all materials and municipal taxpayers will be able to stop subsidizing producers for the cost of collecting and managing these materials. Staff recognizes that the province prefers to designate materials in a phased approach to mitigate the impact on producers. If the province chooses to do this, staff recommends that it be done in this regulation with dates set for each phase.

Targets

The proposed regulation only includes management targets for oil filters and non-refillable pressurized containers. For all other designated materials, there are no collection or management targets. Without collection or management targets, producers have no incentive to utilize or pay municipalities to collect materials on their behalf.

Staff recommends that the regulation set ambitious collection and management targets for all designated materials.

Municipal Costs

Since the list of materials designated in the proposed regulation represents only a portion of what the Region collects, there would continue to be a significant funding gap. Table 2 below compares producer funding under the current MHSW program to the estimated level of producer funding under the proposed HSP regulation. Staff estimate the funding gap would increase from 45 percent to 50 percent. If producers choose not to pay Peel for collection, the funding gap would increase to 70 percent.

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Staff recommends that the regulation require producers to be responsible for all collection and management costs related to all of their products, including costs reasonably incurred by municipalities for providing HSP services.

Table 2 – Comparison of funding for collection and management costs

Funding System	2020 MHSW Gross Costs	2020 MHSW Funding	2020 MHSW Funding Gap (\$)	2020 MHSW Funding Gap (%)
Current	\$3,992,623	\$2,190,064	\$1,802,559	45%
New HSP Funding (if collection costs continue to be covered)	\$3,992,623	\$2,007,967	\$1,984,656	50%
New HSP Funding (if only Management Costs are covered)	\$3,992,623	\$1,178,223	\$2,814,400	70%

Suggested Municipal Obligation for Mercury Containing Devices

The proposed regulation directs producers to identify municipal depots as drop-off locations for the disposal of mercury containing devices as part of promotion and education materials. The identification of municipalities in this manner suggests a municipal obligation for collection and management of mercury containing devices and could limit producers' obligation to cover the costs for collecting these materials. Further, it is unclear if municipalities would have the option to opt out of collection and management of mercury containing devices.

Staff recommends the regulation not identify municipalities as drop-off locations for mercury containing devices or for any other materials. Instead, it should require that sites accepting mercury containing devices must have appropriate provincial environmental compliance approvals. Alternatively, if the final regulation identifies that mercury containing devices should go to municipal depots, it should also require that producers pay municipalities for the collection of these materials on a full cost recovery basis.

Compressed Transition Process

The proposed regulation does not amend the transition date of July 1, 2021 creating uncertainty and introducing significant risk for municipalities and all service providers by providing insufficient time to ensure a smooth transition process to the new program.

Staff recommend that the Ministry delay the start of the HSP program until January 1, 2022, to give municipalities, producers and service providers the time required to prepare for the start of the new program.

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Exemptions

The proposed regulation allows for the exemption of producers that contribute a small quantity of materials into the market. These exemptions, often referred to as de minimis exemptions, are common in producer responsibility regulations but the materials covered by this regulation, 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. Staff is unaware of any analysis done by the Ministry to justify these exemptions and does not agree they should apply to wastes of this nature.

Staff recommends that, unless the Ministry provides evidence-based rationale for exemptions, the exemptions be removed from the regulation.

Resident Information Collection Requirements

The proposed regulation requires municipal depots to collect resident contact information and the weight of materials accepted if a resident brings in more than 25kg. This requirement raises privacy concerns and adds administrative burden onto municipal depots and collection events. The implementation of this requirement would require establishment of a protocol to protect resident private information, new and onerous processes that would slow down the flow of customers, extra resourcing and perhaps infrastructure to comply with this requirement.

Staff recommends the Ministry work with municipalities to develop an alternative method that considers the realities of municipal collectors.

Staff will continue to assess the proposed regulation and work with the Association of Municipalities of Ontario and other municipalities up until the end of the commenting period and may submit additional comments to those identified above.

PROCUREMENT IMPLICATIONS

In the short time between the filing of the final HSP regulation and the transition date of July 1, 2021 staff must review the final regulation, understand Producers' funding and operational plans, procure the services of a service provider to accept the hazardous and special products collected at our CRCs and enter into agreements with producer responsibility organizations.

To ensure a successful transition from the current MHSW program to the new HSP program in the short timelines prescribed in the proposed regulation, and to ensure uninterrupted service, staff is requesting authority to increase the value, amend the scope or terms, or extend the term of existing contracts or award new contracts, on a direct negotiation basis or otherwise under the authority of sections 3.1 and 3.2 of the Procurement By-law.

If the Ministry were to delay the start of the HSP program until January 1, 2022, it would give staff the time required to prepare for the start of the new program.

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NEXT STEPS

Proposed Regulation Comments

Staff will submit comments to the Ministry by the March 28, 2021 deadline. Should staff find additional areas of concern that significantly deviate from the above, the new comments will be submitted by the deadline and presented to Council at the earliest opportunity.

Implementing the New Hazardous and Special Products (HSP) Program

Staff will conduct market soundings with producers, producer responsibility organizations and service providers as soon as possible, to obtain information on how they are planning to offer services under the new Hazardous and Special Products program. Subject to the finalization of the HSP regulation and subject to Council approval of the recommendations in this report, staff will secure service providers and producer funding as expeditiously as possible.

RISK CONSIDERATIONS

There is a risk that the final HSP regulation may not expand the list of materials the collection and management of which producers are obligated to fund, beyond those identified in the draft regulation.

If the final HSP regulation does not include collection and management targets for obligated materials, there is a risk that producers might not need to retain Peel as a collector or might use hardball negotiation tactics to lower their cost.

Given the extremely short time between when the final regulation is expected and July 1, 2021 when the new program is to come into effect, there is a risk that the Region might not be able to finalize funding agreements with producer responsibility organizations by the transition date meaning the Region would not be paid for collection and would have to pay for the processing or disposal of any materials it does collect until it is able to enter into a funding agreement with a producer or producer responsibility organization.

There is also a risk that the Region may not be able to enter into a service agreement by the start date if service providers are unsure about how producers or Producer Responsibility Organizations will structure the payment system. This could mean that the Region may not be able to send HSP materials to an end-market resulting in reaching allowable storage limits and potential compliance issues with our Environmental Compliance Approvals and therefore need to stop collecting HSP materials for a period of time.

Each of these risks is accompanied by financial implications as described in this report.

Staff will continue to advocate for terms that mitigate these risks.

FINANCIAL IMPLICATIONS

There are no immediate financial implications resulting from this report.

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CONCLUSION

Staff reviewed the proposed Hazardous and Special Products regulation under the *Resource Recovery and Circular Economy Act*, 2016 and, while the Region of Peel wholeheartedly supports the transition of waste diversion programs to full producer responsibility, staff recommends that the Region not support the proposed regulation in its current form. Staff will submit comments to the Ministry of the Environment, Conservation and Parks by the March 28, 2021 deadline.

Staff will continue to participate in consultations related to the transition of the Municipal Hazardous and Special Waste program to provide feedback that advocates for the interest of the Region's residents and will update Regional Council as appropriate.

APPENDICES

Appendix I – List of all Municipal Hazardous and Special Waste Materials Collected at the Community Recycling Centres

Appendix II - Comments on Municipal Hazardous and Special Waste Regulation Development
Submitted July 24, 2020

For further information regarding this report, please contact Norman Lee, Director Waste Management, Ext. 4703, norman.lee@peelregion.ca.

Reviewed and/or approved in workflow by:

Department Commissioner, Division Director, Financial Support Unit, Legal Services and Procurement.