

Getting it Right

Paying for the Management of Household Hazardous Wastes

Special Report to the Legislative Assembly of Ontario
Environmental Commissioner of Ontario



July 27, 2010



Environmental
Commissioner
of Ontario



Commissaire à
l'environnement
de l'Ontario

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Commissaire

July 27, 2010

The Honourable Steve Peters
Speaker of the Legislative Assembly of Ontario

Room 180, Legislative Building
Legislative Assembly of Ontario
Province of Ontario

Dear Mr. Speaker,

In accordance with section 58(4) of the *Environmental Bill of Rights, 1993*, I present the attached Special Report of the Environmental Commissioner of Ontario for your submission to the Legislative Assembly of Ontario.

This Special Report concerns the province's approach to managing municipal hazardous or special waste. I am releasing this report to provide the Members of Provincial Parliament and the public with my assessment of the province's Consolidated Municipal Hazardous or Special Waste Program Plan. I am concerned that recent controversy caused by the media and public confusion over the implementation of this plan, as well as the Ministry of the Environment's response to this controversy, jeopardize the future of this important program. I hope that this Special Report will help to provide some clarity surrounding the issues related to the management of household hazardous wastes, as well as help Ontario policymakers move to the next stage of the debate.

Sincerely,

A handwritten signature in black ink, appearing to read 'G Miller', with a long horizontal flourish extending to the right.

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INTRODUCTION

In February 2008, the Minister of the Environment approved the first phase of Ontario's Municipal Hazardous or Special Waste Program Plan (the "MHSW Plan"). The MHSW Plan was developed by Stewardship Ontario in cooperation with Waste Diversion Ontario (WDO). This plan set out a program, which was implemented on July 1, 2008, for managing household hazardous waste materials. These materials included paint, antifreeze, fertilizers and other wastes designated for the first phase of the program. (See pages 121-124 of the ECO's 2007/2008 Annual Report for the ECO's review of the first phase of this program).

In July 2008, the minister requested that WDO amend the MHSW program to include all wastes that had been designated as hazardous or special. This expanded list of MHSW includes batteries, household cleaners, pharmaceuticals, aerosol containers and portable fire extinguishers. In September 2009, the minister approved the amended MHSW Plan.

The ECO supports the MHSW program as a major step forward towards the better management of household hazardous materials and the improved diversion of waste from landfill.

On July 1, 2010 – the date the expanded program was implemented – some retailers chose to add a separate "eco fee" line to their receipts. These "eco fees" were created by retailers presumably to make visible the amount the retailer has increased a product's retail price in order to recoup an increase in wholesale price. These "eco fees" created widespread confusion based on the misconception that a "recycling tax" was being applied (see Clearing up the Confusion on page 6).

On July 20, 2010, after much negative media and public outcry over retailers' "eco fees", the minister announced that the MOE would work with stakeholders over the following 90 days to "develop a new system."

The ECO is very concerned that the controversy caused by media and public confusion could jeopardize the future of what is a necessary step forward for waste diversion in Ontario. While not perfect, the MHSW program as approved in September 2009 is a good plan that should not be scrapped. In this Special Report, the ECO provides a review of the MHSW Plan, with recommendations to improve the program.

Key Terms and Abbreviations

End-of-life management – the handling of products and packaging once they cease to be of use to the consumer; includes the collection, recycling, recovery and disposal of waste materials.

MOE – refers to the Ministry of the Environment

Municipal Hazardous or Special Waste (MHSW) – waste designated by the ministry under O. Reg. 542/06 under the *Waste Diversion Act, 2002*, commonly referred to as household hazardous waste (see Appendix A)

Steward – the company that manufactures the product, or, where the manufacturer is outside the province, the company that imports the product into Ontario.

Stewardship – a system in which the stewards assume full financial responsibility for the end-of-life management costs of their products and packaging.

Stewardship Ontario – an independent, industry organization that developed and operates the MHSW program on behalf of the stewards.

Waste Diversion Ontario (WDO) – a non-crown corporation created under the *Waste Diversion Act, 2002* that was established to develop, implement and operate waste diversion programs for a wide range of materials, including MHSW.

BACKGROUND

The term “municipal hazardous or special waste” (MHSW) refers to a variety of potentially dangerous household waste products. MHSW can be categorized into two main groups:

- **Consumables** – products designed to be consumed, but may result in leftovers that need to be safely managed (e.g., paints, fertilizers and pharmaceuticals); and
- **Durables** – products designed to be discarded in its original form after its useful life expires (e.g., oil filters, oil containers, and batteries).

The provincial government has a specific list of materials that are designated as MHSW (see Appendix A).

MHSW, also commonly called “household hazardous waste” creates problems when landfilled, incinerated, or otherwise improperly managed. In a regular municipal landfill, the chemicals in these wastes can leach out and travel into nearby water supplies. If incinerated, toxic chemicals from MHSW can be released into the air we breathe.

MHSW must be properly managed to prevent the contamination of our natural environment. This includes efforts to reduce, reuse and recycle the materials, and, where necessary, as a last resort, to *safely* dispose of these wastes through efforts to stabilize or neutralize the hazardous materials and dispose of them in a special landfill designed to accept hazardous waste.

Historically, however, MHSW materials have largely gone to regular municipal dumps not designed to handle these special wastes. In recent years, many municipalities have set up programs to collect and properly process these wastes; however, these diversion efforts have relied entirely on voluntary measures by municipalities and the funding from property taxes to support them.

It has been clear for some time that a better approach is needed in Ontario. This Special Report assesses the Stewardship Ontario program that was recently implemented to address this need. It also looks at the role of the Ontario government in selecting a specific stewardship-based approach and in putting the mechanisms in place to ensure that the system accomplishes the environmental goals the government intended.

THE STEWARDSHIP APPROACH

Before getting into the details of the MHSW program, it is worthwhile to briefly step back from the specific program and take a look at the range of options available to government for ensuring the responsible management of potentially hazardous or problematic municipal wastes.

If Ontarians generally agree that better programs are required to manage MHSW, the immediate question that arises is “who should pay for these better programs?” Should taxpayers pay (through municipal property taxes) or should industry pay? Or should the costs be shared in some fashion? The past few years have seen the public policy pendulum swing away from government (i.e., taxpayer) funded programs and towards industry-funded models, known as either “extended producer responsibility” or stewardship programs.

The stewardship concept is based on having the “steward” – the company that makes or imports the product – pay the full costs of managing their product or packaging when the consumer is done with it. This approach has three major potential benefits:

- **Fairness.** Most people see this method as more equitable, because the costs are borne by the manufacturer of the product (which may be passed on to the consumer in the product price), rather than by the taxpayer. After all, why should a taxpayer who never uses a specific hazardous product be responsible for its waste management costs? Should that not be the responsibility of the consumer who made the choice to buy that product?
- **Environmental effectiveness.** When manufacturers are required to take responsibility for their waste products, experience in other jurisdictions has shown (Europe has the most and best examples) that companies will make efforts to redesign their products with the environment in mind, in order to reduce their end-of-life management costs and potential liabilities. This has resulted in environmentally preferable products and packaging with fewer environmental impacts.
- **Cost effectiveness.** The cost savings that stewards realize when they redesign their products using environmental criteria are likely to be passed on in whole or in part to the consumer, as part of the natural competition found in market economies. Over time, this competitive pressure lowers the overall costs of the program, maximizing cost effectiveness.

The general consensus that has developed in recent years is that government-funded programs cannot deliver the same benefits as stewardship programs, primarily because:

- Having the taxpayer fund the program is inherently unfair and provides no incentive to the public to change their purchasing behaviour;
- Government has no control over product design and thus cannot create products with improved recyclability or other environmental benefits;
- Government program costs are not kept in check by the discipline of competition.

ENSURING THE STEWARDSHIP ADVANTAGE: CRITERIA FOR SUCCESS

The advantages that stewardship can potentially offer over government-funded and operated programs are completely dependent, however, on how well the program is designed and monitored by government. Many varieties of stewardship programs exist in both North America and Europe and some work better than others. For all of the advantages of a stewardship program to be fully realized, the following three fundamental criteria need to be met:

1. **All waste management costs must be included.** Products that are not captured in the program and that end up in landfills still have disposal costs. Stewards should pay these costs as well as the costs of products that are successfully captured by the diversion program.
2. **Correct price signals.** An individual company should pay less if the environmental impact of its products is less and vice versa. If disposal is still cheaper than recycling, for instance, the system will not work. Furthermore, a non-competitive, shared stewardship model with a flat fee system for all companies within a given product category does not provide any incentive for companies to compete with each other on the basis of green design.
3. **Government oversight.** Although stewardship programs are operated and paid for by the stewards themselves, government must still set the rules and monitor the overall results if the

program is to set and achieve the appropriate societal goals. The latter include both economic and environmental accountability.

The ECO believes that the potential advantages of stewardship make this approach the most desirable one for the province. The issue then becomes whether or not the program developed by Stewardship Ontario, under the guidance of Waste Diversion Ontario and the Ministry of the Environment, meets the above criteria for a successful stewardship program.

HOW WASTE DIVERSION PROGRAMS ARE DEVELOPED

In June 2002, the Ontario government enacted the *Waste Diversion Act, 2002 (WDA)* to “promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs.” Under the *WDA*, a waste is first designated by regulation and then a waste diversion program is developed that sets diversion targets and provides sustainable funding for the program.

The *WDA* established Waste Diversion Ontario (WDO) as a permanent non-government corporation comprised of representatives from industry, municipal and commercial sectors, and the environmental community. Under the *WDA*, brand owners (manufacturers) and importers of products that become a designated waste are called “stewards” and can join together to establish an industry funding organization (IFO) for that waste. IFOs are responsible for developing and operating waste diversion programs and for funding them with fees charged to the stewards. WDO incorporates the IFO, reviews the proposed plans and forwards them to MOE for approval. Stewardship Ontario is the IFO for MHSW. As the IFO for MHSW, Stewardship Ontario collects fees from stewards to finance the MHSW diversion program.

Ontario now has several waste diversion programs under the *WDA*, including the Blue Box program (for glass, metal, paper, plastics and textiles), the Used Tires program (for vehicle tires), the Waste Electrical & Electronic Equipment (WEEE) program (for computers, televisions and other electronic equipment), and the MHSW program.

Public Consultation on the MHSW Plan

Stakeholders and the public were given several opportunities to provide input on the development of Ontario’s MHSW Plan. The Ministry of the Environment first solicited public comment on the program in June 2007 when it posted the proposed program plan for 30 days on the Environmental Registry (#010-0558). When the program was revised to include Phase 2 and 3 materials, on July 31, 2009 the ministry posted the revised program plan in a 30-day proposal notice (#010-7325) on the Environmental Registry for public comment. *See Appendix B for a summary of the comments.*

In addition to the opportunity to comment on the program via the Environmental Registry, Stewardship Ontario solicited feedback from hundreds of stakeholders (e.g., municipalities, manufacturers, retailers, and consumer and community interest groups) during multiple consultation meetings. Three consultation workshops/webcasts were held to get input on the initial MHSW Plan and three more were held to get input on the revised plan.

HOW THE PROGRAM WORKS

- Stewards – i.e., manufacturers or importers – have two options for meeting their obligations under the *WDA*. The company can either:
 1. Participate in the Stewardship Ontario program; or
 2. Apply to WDO for approval of their own stewardship program.
- The MHSW Plan requires industry stewards of designated hazardous products to take financial responsibility for the full end-of-life management for the wastes collected under the program. The ECO notes, however, that the program excludes the end-of-life management costs for those products not collected under the program (i.e., sent directly to landfill).
- Participation in the Stewardship Ontario program entails: registering with Stewardship Ontario as a participant steward, reporting the necessary data to Stewardship Ontario (such as the amount of each MHSW product sold into the marketplace), and paying their share of the stewardship program costs to Stewardship Ontario.
- The entire cost of the MHSW program is funded by the stewards through stewardship fees paid to Stewardship Ontario. In allocating the program costs, each steward is required to pay to Stewardship Ontario its fair share of the “common costs” of the program (i.e., the costs that are common to all material categories, such as the start-up costs of the program, development of the corporate website, shared promotion and education, steward registration, etc.) as well as the steward’s proportionate share of the “material-specific costs” (i.e., the specific costs, such as collection, transportation, processing and treatment/disposal, that pertain directly to the management of the particular category of waste).
- Municipalities, not-for-profits and private businesses will be paid to operate the various components of the program (e.g., collecting, hauling, processing, etc. the materials) under contract to Stewardship Ontario. The contracts will require that all service providers collect and submit to Stewardship Ontario data on the amounts and types of wastes handled. The MHSW Plan also requires stewards to track MHSW materials.
- As the success of the MHSW program relies on the voluntary participation of the public to return waste materials to a MHSW collection point for proper recycling or disposal, the MHSW Plan aims to make it as easy as possible for consumers to “do the right thing”. To increase accessibility and make collection as efficient as possible, Stewardship Ontario plans to operate a number of different collection services, including: permanent depot facilities; collection events; “Depot-in-a-Box” (i.e., a mobile depot that travels to different areas); and “Return-to-Retailer” programs.
- The MHSW Plan includes promotion and education activities (such as a social marketing campaign) to inform the public that the MHSW program exists, to encourage participation in the program, and to motivate consumers to adopt better environmental behaviour.
- The MHSW Plan sets a target for collecting 68% of the total amount of MHSW materials available, and a target for recycling 52% of the material available by the fifth year of the program.

For more detail on the plan, please see Appendix C: Key Elements of the MHSW Program.

Clearing up the Confusion

- **A fee is charged to stewards – not to consumers or retailers.** Under the MHSW program, Stewardship Ontario charges stewards (e.g., manufacturers) a fee by unit for products introduced into the Ontario marketplace that require the management of hazardous or special waste when discarded. Making stewards pay for the recycling and safe disposal of wastes created by their products helps transfer the costs of managing these wastes from the taxpayer to the steward.
- **The “eco fee” was created by retailers and is not a component of the MHSW Plan.** The MHSW Plan leaves it up to stewards whether to absorb the stewardship fees charged by Stewardship Ontario as a cost of doing business or to “pass the fee along” by increasing the wholesale price of the products it sells to retailers. Under the MHSW Plan, retailers face a similar choice; while some may choose to absorb the increase in wholesale price, others may add some or all of the price increase to the price tags of the products it sells. When the program was implemented on July 1, 2010, some retailers chose to create a separate “eco fee” line on their cash register receipts presumably to make a price increase visible to consumers. The government, however, does not require retailers to charge consumers an “eco fee”.
- **The “eco fee” is not a tax.** Money collected through “eco fees” is retained by retailers; none of the proceeds go to government. As explained above, “eco fees” are receipt lines created by some retailers presumably to make visible an increase in wholesale prices resulting from fees paid by manufacturers to Stewardship Ontario. Stewardship Ontario uses the funds to finance the collection and recycling of hazardous and special wastes created by stewards’ products, as well as cover Stewardship Ontario’s operating expenses.
- **Charging manufacturers and importers fees to cover the costs of Ontario’s waste diversion programs is nothing new.**
 - To finance the first phase of Ontario’s MHSW program, manufacturers and importers of paints, antifreeze, fertilizers and other Phase 1 MHSW materials have been charged stewardship fees since July 1, 2008.
 - To finance Ontario’s Waste Electrical & Electronic Equipment (WEEE) recycling program, manufacturers and importers of computers, televisions and other electronic equipment have been charged stewardship fees since April 1, 2009.
 - To finance Ontario’s Used Tires Program Plan, brand owners and first importers of vehicle tires have been charged a Tire Stewardship Fee for every new tire supplied into the Ontario market since September 1, 2009.
- **Stewards are able to set up their own diversion program.** Stewards of a designated MHSW material that wish to take direct responsibility for managing their obligations under the *Waste Diversion Act, 2002* can apply to Waste Diversion Ontario for approval of their own recycling program rather than participating in the Stewardship Ontario program. Several industry groups are currently in the process of doing so.
- **The public was consulted in the development of the MHSW Plan.** Stakeholders (including municipalities, manufacturers, retailers, and consumer groups) were consulted on the MHSW Plan during multiple consultation meetings. The public was invited to comment on the program plan via postings on the Environmental Registry (#010-0558 and #010-7325). The decision to move forward with the second phase of the MHSW Plan was posted on the Environmental Registry on October 15, 2009.
- **The use and disposal of hazardous materials carry an unavoidable cost.** Ontarians ultimately pay the cost of this disposal, whether through a taxpayer-funded municipal recycling program, the markup of product prices to fund a steward-managed program, reduced landfill space or a degraded environment caused by unsafe disposal.

The Charging of “Eco Fees” by Some Retailers

When the new MHSW program was rolled out on July 1, 2010, some retailers chose to add a separate “eco fee” line to their receipts. This resulted in considerable negative media attention, with many calling the fee a new “tax”. This assertion is incorrect (see Box entitled: Clearing up the Confusion).

Allowing retailers to include “eco fees” on receipts has both advantages and disadvantages from an environmental perspective. On one hand, a visible “fee” helps draw awareness to the MHSW program and the need to manage these products safely. On the other hand, visible “fees” confuse the consumer into thinking that the charge is a government-administered tax that will be remitted to fund Ontario’s MHSW program. This brings with it the incorrect assumption that “eco fees” are mandated by the government and are required to be consistent with the fees Stewardship Ontario charges stewards.

CONCLUSIONS

The ECO believes that the MHSW program is a major step in the right direction:

- **The program will keep more hazardous materials out of our environment** – MHSW materials must be managed properly at the end of their life. Without proper management – i.e., collection, recycling and safe disposal – these toxic materials end up in landfills, where they can contaminate water, air and soil. The MHSW program will increase diversion of our municipal hazardous wastes from landfills by extending collection and recycling services across Ontario.
- **The program will put the cost of managing MHSW where it belongs: on producers** – There is no question that MHSW must be properly managed to prevent the contamination of our environment. This necessity, however, brings with it an unavoidable economic cost. If we accept that there is a cost, who should pay it? Historically, the costs of managing MHSW in Ontario have been borne by the public through municipal property taxes. The ECO strongly supports the stewardship model adopted in the MHSW program, which shifts the full cost of managing hazardous wastes from the taxpayer to the manufacturer of the product.
- **The program will provide much-needed information** – The MHSW program will provide much-needed information on the amount of hazardous waste that is generated, collected and disposed of in Ontario by requiring stewards to track MHSW materials. This information can be used to measure progress in meeting the program’s goals, as well as measure the costs of the program.

However, the ECO believes that the MHSW program as currently constituted does not meet the criteria for a successful and effective stewardship program (see page 3). First, stewards only pay for the end-of life management costs of the portion of their products that is collected through the program; materials going directly to landfill remain the financial responsibility of municipalities. Since the program aims to collect only 68% of the available MHSW by the end of Year 5, almost one third of the MHSW generated in the province at that time will still be going to landfill, with the disposal costs borne by the taxpayer. Second, stewards pay a flat fee per unit product within each material category, rather than a fee that varies with a specific product’s environmental attributes. This provides no incentive for companies to design for the environment, as individual stewards are not competing with each other on this issue. Finally, although government is overseeing this program via WDO, the ECO does not see how it will be able to ensure cost-effectiveness without the discipline provided either by differential fees or the competition created through companies taking individual responsibility for the end-of-life management of their products.

To ensure that the full potential of stewardship is achieved, the ECO recommends the following:

- **Stewards should finance all waste management costs, including the costs of disposing those products not captured by the program** – The fact that stewards only cover the end-of-life management costs for those materials that are collected through the MHSW program represents a failure to create full product stewardship. In addition, only including the cost of materials collected under the program creates a disincentive for Stewardship Ontario to collect waste materials for diversion. The ECO recommends that MOE require that the MHSW program cover all end-of-life management costs, including the costs of disposing those products not captured by the program.
- **Steward fees should differ based on the end-of-life costs of responsibly managing an individual product's waste** – An individual company should pay less if the end-of-life costs of managing its product are less. For example, if a manufacturer produces a paint that has fewer toxic chemicals (e.g., no volatile organic compounds), thus making any leftover paint easier and cheaper to manage, that company should pay a lower fee than a manufacturer that sells a more toxic and more difficult to manage paint.

Unfortunately, the fees currently charged to stewards do not take into account differences in the specific costs of managing the waste created by an individual producer's products. The Ministry of the Environment itself points out, when steward fees are uniform across all producers, "there is no direct financial incentive provided to individual producers to reduce their costs through product design, such as designing a product that is easier and cheaper to recycle. The lack of direct financial incentives to improve product design can be an impediment to reducing waste, increasing reuse, and ultimately striving for zero waste."¹ A truly differential fee structure would compel stewards to improve the design of their products to the point, in some cases, that their fees are reduced to nil because the product no longer needs to be managed by the MHSW program.

One of the objectives of the MHSW Plan is to provide an ongoing price signal to stewards to promote continuous improvement in product design by reflecting "over time, the differential economic and environmental costs of managing products with similar functions but different designs and characteristics." The ECO sees this objective as a priority and fundamental to achieving real waste diversion and a cost-effective program. The ECO therefore recommends that MOE implement the phase-in of differential fees based on the full end-of-life management costs of a product's waste.

ECO Recommendations

The ECO recommends that MOE require that the MHSW program cover all end-of-life management costs, including the costs of disposing those products not captured by the program.

The ECO recommends that MOE implement the phase-in of differential fees based on the full end-of-life management costs of a product's waste.

¹ Toward a Zero Waste Future: Review of Ontario's *Waste Diversion Act, 2002*, p. 8

APPENDIX A: Materials Included in the MHSW Program

The MHSW Plan identifies which municipal hazardous and special wastes (as designated under O. Reg. 542/06, Municipal Hazardous or Special Waste, under the *Waste Diversion Act, 2002*) are included in each phase of the MHSW program.

Phase 1 Products included in MHSW Program (implemented July 1, 2008)

- Paints and coatings, plus their containers
- Solvents and their containers
- Used oil filters
- Lubricating oil containers (< 30 litres)
- Single-use dry cell batteries
- Antifreeze and its containers
- Pressurized containers (e.g., propane tanks and cylinders)
- Selected fertilizers, fungicides, herbicides, insecticides or pesticides, and their containers

Phases 2 and 3 Products included in MHSW Program (implemented July 1, 2010)

- All batteries (except lead-acid vehicle batteries)
- Aerosol containers
- Portable fire extinguishers
- Fluorescent light bulbs and tubes
- Switches that contain mercury
- Thermostats, thermometers, barometers, or other measuring devices that contain mercury
- Pharmaceuticals
- Sharps, including syringes
- All fertilizers (as defined under the federal *Fertilizer Act*)
- Flammable materials (e.g., gasoline, kerosene, adhesives, thinners, sealers, etc.)
- Corrosive materials (acidic products such as tire cleaners & drain openers; alkaline products such as paint remover and masonry products)
- Irritants (defined by the Consumer Chemical & Container Regulations, 2001)
- Toxics (e.g., adhesives such as contact cement and glues, waxes, polishes, etc.)
- Reactives (e.g., materials that react with air or water, producing a gas or exploding, such as isocyanate foams or metal powders)
- Leachates (materials that when exposed to water produce a toxic leachate)

APPENDIX B: Public Comments on the Consolidated MHSW Plan

The *Environmental Bill of Rights, 1993 (EBR)*, gives Ontarians the right to participate in decision-making by the Ontario government that has the potential to be environmentally significant. To this end, the *EBR* requires ministries prescribed under the Act to post policy proposals that could affect the environment on the Environmental Registry for public comment. The Environmental Commissioner of Ontario (ECO) is tasked with reviewing and reporting on the use of the Environmental Registry and how ministers exercise discretion and carry out their responsibilities in relation to the *EBR*.

On July 31, 2009, the Ministry of the Environment (MOE) posted a policy proposal for the Consolidated MHSW Program Plan (the “MHSW Plan”) on the Environmental Registry (#010-7325). During the 30-day comment period, the ministry received 51 comments on the proposal notice: 28 comments were received in writing and 23 were received online (including one duplicate). Twenty-seven of the comments were submitted by private businesses (including two recycling companies); fourteen were submitted by industry or consumer associations; three came from municipalities, two from journals, two from jurisdictions outside the country, one from an individual, and one from an environmental non-governmental organization. The following is a summary of the comments received and the ministry’s response.

Definitions of Products or Materials Included in the Program

The most common criticism of the MHSW Plan was that it includes compost as a hazardous waste. The Phase 2 definition of hazardous waste includes any compost product sold into the retail market in packages that weigh 30 kilograms or less and that includes any nutrient claim (e.g., percentage nitrogen content). Of the 50 comments received, 21 specified that compost should be excluded from the MHSW Plan. In addition, four others requested that the MHSW Plan return to the Phase 1 definition of fertilizer, which would automatically exclude compost and all naturally derived fertilizers. Detailed input and support for the exclusion was provided by composting experts in Australia and California.

The main arguments presented were as follows: compost is not hazardous or harmful to the environment; unused compost does not need special collection or disposal and can safely be deposited on any backyard garden or lawn; compost is highly beneficial when added to soils; the decision to include compost contradicts MOE’s stated intention to promote composting as an environmentally preferred means of dealing with organic residuals; including compost sends the wrong message to the marketplace; defining compost in this manner will hurt the composting industry. In response, the ministry stated that while compost, like other products such as detergent, dish soap, and some natural health products, is not considered hazardous for its intended use, it has waste management impacts and associated environmental costs and therefore would be included in the plan.

Commenters singled out other products or materials as inappropriately defined or erroneously included in the MHSW Plan, including:

- rechargeable batteries and mercury thermostats – it was pointed out that programs already exist to collect and recycle these products;
- non lead-acid motive batteries – it was argued that these batteries have inherent value and will thus automatically be recycled by dismantlers. The addition of a fee to their sale will add an unnecessary cost burden to the emerging and environmentally beneficial electric-vehicle industry;

- natural health products – those supporting exclusion for most if not all of these products argued that they break down safely and quickly in the natural environment and therefore pose no risk to the environment;
- mercury switches in automobiles – commenters felt that the plan would hurt the existing program by putting a “bounty” on these switches. It was argued that a bounty would be too low to be effective and would instead mask and delay solutions to the real problem: the need for provincial licensing for vehicle dismantlers; mandatory codes of practice; and adequate enforcement;
- the entire irritants category – commenters argued that products in this category are not sufficiently hazardous or problematic for the environment.

Size and Calculation of Fees

The issue of fees was raised by about one-third of commenters and was a primary concern of representatives of stewards. Although there was general support for the concept of having stewards pay 100 per cent of the costs of the program, some felt that the fees and administrative costs were too high and questioned the amounts budgeted for specific program elements, such as research and development. Others felt that the data used to establish targets and project collection and management costs were inaccurate. Other fee-related issues raised were: the economic impacts of high fees on certain industry sectors; the relevance or importance of specific MHSW Plan elements that influence fees; the uncertain nature of the “measured return share”; the need to pay fees to Stewardship Ontario immediately upon sale when the customers of some stewards may not pay for several weeks; and fairness issues around the inclusion of Phase 1 deficits and orphan-product costs in the common costs assigned to all stewards.

The ministry’s response to these concerns was that fees would be adjusted as more detailed information on program costs is gathered.

Data and Tracking

Many industry commenters questioned the accuracy of the data collected to date, stating that it did not match their own understanding of the industry. They also questioned some of the methodologies used to generate the data. Some felt that sales and collection data on particular products (e.g., non-rechargeable batteries) cannot be tracked accurately (e.g., because they are sold to other companies for use in exported products). The ministry did not post a specific response to these concerns.

Relationship of Plan to Existing Programs

The MHSW Plan calls for appropriate integration with existing industry-led recycling programs. However, many commenters felt that existing programs, such as the Clean Air Foundation’s “Switch the ‘Stat’” program for mercury-containing thermostats, were working fine and that introducing a new program would be counterproductive.

The ministry responded to these concerns by stating that any steward or group of stewards can submit an Industry Stewardship Plan (ISP) to Waste Diversion Ontario for approval and that approved ISP stewards would be exempt from most obligations under the consolidated MHSW program.

The Industry Stewardship Plan Option

Two stewards that intended to apply to WDO for approval of their ISPs argued that making ISP stewards still pay for part of the development costs of the consolidated MHSW Plan is unfair, has no

basis in law, and likely discourages the development of ISPs. Moreover, they argued that requiring stewards to pay fees until approval of an ISP is obtained is unfair to those that have already implemented successful programs. The ministry did not post a specific response to these concerns.

Other Comments

The following is some of the other comments provided by stakeholders to the ministry:

- Farmers should be exempt from stewardship fees on fertilizers and pesticides;
- Stewardship Ontario has too big a role – responsibilities should be shared between more organizations;
- Schools should not be collection sites for any MHSW products or materials;
- Schools should be collection sites for batteries;
- The fee should be visible to consumers;
- Industry expertise is required in designing various aspects of the program, such as how to deal with obsolete products;
- Products made from organic or natural materials can also be hazardous or problematic;
- Confidentiality is an important issue that needs to be addressed more fully;
- The MHSW Plan should support return-to-retail programs wherever possible;
- The rural component of the MHSW Plan should be scaled back because of expense;
- Stewardship Ontario's governance model does not provide stewards with enough control;
- The MHSW Plan does not provide any latitude for innovation by individual firms. The only way to reduce fees is to sell fewer products.

APPENDIX C: Key Elements of the MHSW Program

The MHSW Plan sets out the details of how the MHSW program works. This Appendix includes a summary of each of the key elements of the MHSW Plan.

Stewards

The MHSW Plan requires industry stewards – defined as “the brand owners and first importers of designated wastes” – to take financial responsibility for the full end-of-life management, from collection through to final diversion or disposal, for their products collected under the program.

Options for Meeting Steward Obligations

Stewards have two options for meeting their legal obligations under the *WDA*:

1. Participate in the Stewardship Ontario program (i.e., register with Stewardship Ontario, report the necessary data, and pay the required fees as described below); *or*
2. Apply to WDO for approval of an Industry Stewardship Plan (ISP).

The ISP alternative provides companies with the option of meeting their stewardship obligations by operating their own collection and recycling program. Companies that wish to operate their own program, however, must apply to WDO for approval of their stewardship program before being exempted from the Stewardship Ontario program. Before approval, the following requirements must be met:

- The waste has been designated under section 34 of the *Waste Diversion Act, 2002*;
- The minister is satisfied that the ISP plan will achieve objectives that are similar to or better than those of the MHSW Plan; and
- The responsible party must prepare and submit an annual report to WDO and make it available to the public.

Although companies participating in an approved ISP are exempt from the Stewardship Ontario program, the WDO and/or minister retain the right to charge the ISP stewards reasonable fees that reflect the WDO’s costs for reviewing the application and monitoring the ISP plan. In addition, the ISP stewards will also be responsible for their share of the start-up costs of the MHSW program, right up to the date that they receive their ISP approval. This rule applies even to those industry groups that already operate pre-existing stewardship programs – such as the Call2Recycle rechargeable battery recycling program – until their ISP application is approved.

Diversions Targets

A key goal of the MHSW program is to increase the amount of MHSW materials that are diverted from disposal (i.e., landfilled or incinerated). Therefore, the MHSW Plan includes diversion targets for increasing the amount of MHSW materials collected and recycled over the next five years (see Table 2).

Table 2: Summary of the MHSW Plan's Five-Year Collection and Recycling Targets

	Year 1	Year 2	Year 3	Year 4	Year 5
Available for collection (tonnes)¹	82,160	81,037	81,439	81,193	81,158
Collection target (tonnes)²	34,752	39,630	44,572	49,765	54,992
Collection performance (%)³	42	49	55	61	68
Recycling target (tonnes)⁴	24,414	28,581	33,311	37,797	42,552
Recycling performance (%)⁵	70	72	75	76	77
Recycling efficiency (%)⁶	30	35	41	47	52

The MHSW Plan sets a goal to collect 68% and recycle 52% of the material available for collection by the fifth year of the program. These figures imply that 16% of the material will be collected but not recycled. This is presumably because it is not economically or technically recyclable.

Increasing Access to Collection

A core element of the MHSW program is the collection of the MHSW materials at the end of their useful life. For the MHSW program to succeed at increasing waste diversion rates, the public must be able to easily return the MHSW materials to an appropriate body that is tasked with the responsibility of managing (i.e., recycling, disassembling and/or properly disposing of) the waste materials.

As the success of the MHSW program relies on the voluntary participation of the public, the MHSW accessibility strategy focuses on making it as easy as possible for consumers to “do the right thing” (i.e., return waste materials to a MHSW collection point). To increase accessibility, the MHSW Plan focuses on the following criteria:

- Scope: maximizing the range of MHSW received at collection points
- Proximity: minimizing the distance the public must travel
- Frequency: providing collection services that reflect the lifespan of the products
- Coverage: providing collection services that meet the needs of all Ontarians
- Cost effectiveness: maximizing outcome while minimizing costs
- Cost internalization: ensuring all program costs are borne by stewards (and thus users) of products

To increase accessibility, the MHSW program will integrate a number of different collection options, including: permanent depot facilities; collection events; “Depot-in-a-Box” (i.e., a traveling depot that is set up for limited periods in different areas); “Return-to-Retailer”; and “Toxic Taxis” (i.e., a program

¹ The amount “available for collection” represents Stewardship Ontario’s estimate of the total amount of material discarded (in the case of durables) or left over (in the case of consumables) in a given year.

² The “collection target” is the amount by weight (in absolute tonnage) that the MHSW Plan aims to divert from regular disposal.

³ The “collection performance” is the percentage of the amount of material available that Stewardship Ontario aims to collect.

⁴ The “recycling target” is the weight of material collected that the MHSW Plan aims to actually recycle (as opposed to send to safe disposal).

⁵ The “recycling performance” figure is the percentage of the material collected that is actually recycled.

⁶ The “recycling efficiency” is the percentage of the material available for collection that is actually recycled.

currently offered only in Toronto and Sudbury where a person that has large amounts of MHSW can have the material picked up from their home at no charge).

Different types of collection services will be appropriate for different geographic areas. For example, the MHSW Plan states that in high-density urban areas, where many people don't own cars, "service will be delivered directly to householders in that community." In most areas, MHSW depots (both municipal and private) are expected to be the backbone of the MHSW program. Because depots will be eligible for 100% funding, Stewardship Ontario expects that municipal depots will no longer restrict access to residents. Regardless of the collection option used, the MHSW Plan states that the collection services must be convenient.

In Year 1, Stewardship Ontario plans to schedule and manage at least 400 collection events and 110 Depot-in-a-Box events. Stewardship Ontario intends to support a number of other options as well. For example, Stewardship Ontario intends to support Return-to-Retailer programs for a number of products, including pharmaceuticals and consumer-type portable batteries. Overall, Stewardship Ontario intends to make collection services as efficient and cost-effective as possible by sharing resources with other WDO-approved programs (such as the Blue Box program) and by organizing on a regional basis.

Promotion and Education

Promotion and education activities will be developed to inform the public that a MHSW program exists, to encourage participation in the program, and to motivate consumers to adopt and maintain the desired environmental behaviour. A social marketing campaign will focus on two major messages:

- 1) Manage MHSW appropriately; and
- 2) The "B.U.D." message:
 - Buy only what is needed;
 - Use it up; and
 - Dispose of residue and container properly.

Data and Tracking

The MHSW Plan also sets out requirements for tracking MHSW materials. In the past, MOE has had remarkably little information about the amount of hazardous waste generated by households or subsequently disposed of in landfills and incinerators. The new MHSW program will ensure that there will soon be "accurate information on MHSW from collection through to final destination", so that Stewardship Ontario will be able to: measure operational and cost performance; ensure that costs are fairly allocated; and ensure that there is progress in reuse and recycling. Collected data will be used to both recalibrate and measure progress towards targets as well as to measure program improvements as they are implemented.

Program Costs and Steward Fees

The MHSW Plan sets out the methodology for calculating the total cost of the program. The MHSW Plan identifies four major categories of costs:

1. *Common costs* – costs that are common to all material categories
 - Common costs include costs for: plan development; start-up costs; steward registration and compliance management; material and supplier management; program management; shared promotion and education; and Phase 1 costs.

- A large component of this cost category is activities undertaken during Phase 1, such as the development of the corporate website. Because these activities were deemed to be of value to all stewards in the MHSW program, a share of these costs has been allocated to the common-cost category for the expanded program.
2. *Material-specific costs* – costs that pertain directly to the management of the particular category of waste
 - For material-specific operations, all of the costs (i.e., collection, transportation, processing, haulage, treatment/disposal, promotion and education, and research and development) can be tracked and associated with the particular material.
 - To project Year 1 costs for each material category, Stewardship Ontario commissioned a study of various municipal MHSW program costs. The results of this study, combined with Phase 1 data and data from other non-municipal programs, was used to estimate Year 1 costs, allocated by weight, to the 23 specific material categories. However, a major difficulty Stewardship Ontario encountered is that municipalities do not collect data on a material-specific basis. As a result, the study had to take randomly selected (and hopefully reasonably representative) packages of materials from municipalities and analyze them for specific material content, in order to assess relative costs on a weight basis. The basic understanding for Year 1, therefore, is that the projections are very rough and will be refined in subsequent years as material-specific data becomes available. The MHSW Plan proposes to repay sectors for overestimated fees and charge back other sectors for underestimated fees, in both cases by adjusting future fees both to reflect actual costs and to adjust for past discrepancies. Cost allocations will be refined in future years.
 3. *Contingency for forecast risk* – a margin built in to protect Stewardship Ontario from unforeseen variances
 - Stewardship Ontario calculated contingency costs for each material. To do this, they first assigned “confidence levels” of High, Medium, or Low to materials based on their best understanding of the risk of variance associated with the data available. They then weighted these according to whether the data was for future sales (weight of 1), amount of material to be managed (weight of 1.5), or the cost of managing the waste (weight of 2). Resulting costs for materials ranged from 4.5% to 22.5%, depending on the material. These percentages were then applied to the calculated material-specific costs in order to build in some protection for Stewardship Ontario against “cumulative negative variances”.
 4. *Deficit recovery* – a cost to recoup fees from sectors that ran a deficit in Phase 1.
 - For those materials that ran a deficit in Phase 1, a deficit-recovery amount was added to their fees in the MHSW program.

Altogether, the total program costs for the first year have been set at \$71.5 million. Common costs make up \$12.7 million of the total, while material-specific costs, contingency for forecast risk, and deficit recovery costs make up the remaining \$58.8 million.

The entire cost of the MHSW program is funded by the stewards through stewardship fees paid to Stewardship Ontario. In allocating the fees to each steward, the MHSW Plan sets out the following fee-setting principles:

- The fee setting methodology should be transparent;
- The common costs should be fairly shared across all stewards;
- Stewardship Ontario should be financially responsible for obsolete products, but only where a steward cannot be identified;

- The fees applied to stewards should be based on the amounts of materials or products sold into the Ontario market; and
- Stewardship Ontario should allocate the costs within the material categories, where appropriate, to reflect the different costs of managing them and to “incentivize” greater diversion of waste from disposal.

The MHSW Plan also sets out a detailed methodology for setting stewards’ Year 1 fees in accordance with these principles. Stewardship Ontario expects to have much more data available after Year 1 and will use these to set fees for future years, modify material categories, disaggregate categories where appropriate, adjust contingency fees, etc. Fees for subsequent years may be modified after further public consultation.

The MHSW Plan includes the principle that Stewardship Ontario should allocate the costs within the material categories (where appropriate) to reflect the different costs of managing them; however, in the actual fees for Year 1, every member company within each material category pays the same per-unit or per-weight fee, regardless of the relative merits of their particular product (such as increased recyclability, reduction in toxicity, or other product improvements).

In addition, it is worth noting that neither the costs of the program, nor the stewardship fees, include the cost of managing the portion of MHSW materials that are *not* collected in the program (i.e., those materials that go to landfill).

Material-Specific Plans

The MHSW Plan contains a specific plan for each of the products or materials covered by the program. The plans for each include:

- *A definition* – For greater clarity on what is contained in each material category.
- *Market and product information* – For example, fire extinguishers are differentiated by the class of fire that they are intended to extinguish (e.g., Class C is a fire in electrical equipment, Class K is a fire in a cooking appliance that involves oils or fats) and by their size (1 lb, 5 lb, 30 lb, etc.). They are sold through hardware stores, home improvement retailers, etc.
- *Identification of Industrial, Commercial and Institutional (IC&I) generators, if applicable* – In some cases (e.g., sharps and syringes), IC&I sources are not included in the MHSW program for collection; in others, (e.g., used oil filters), both residential and all IC&I sources (large and small) are included; in still others, (e.g., fertilizers), only small-quantity generators, such as landscapers and lawn-care companies, are included.
- *Quantity supplied for use* – These are estimated figures for the amounts of the product sold into Ontario in Year 1. The figures were derived from a variety of sources; for instance, the estimates for pharmaceuticals were based on the number of prescriptions issued in Ontario yearly.
- *Quantity available for collection* – These estimates were a major challenge for Stewardship Ontario, as they require a number of assumptions. For durables (e.g., batteries and thermometers), they require assumptions regarding the life of the product and the amount of time that the consumer will take to dispose of it at the end of its life. For consumables (e.g., pharmaceuticals and paint), the assumptions have to do with how much of the product, on average, will be unused by the consumer.
- *Current management structure and performance* – This describes how MHSW resulting from a material was managed at the time the MHSW Plan was approved. This includes the MHSW program for Phase 1 products, Blue Box collection (for some limited products, such as aerosol containers), industry-led programs, and municipal programs. For instance, unused pesticides

have been collected by 95 municipalities servicing 4.3 million households, and these efforts resulted in the collection of 417 tonnes of pesticides in 2007.

- *Accessibility strategy* – This sets out Stewardship Ontario’s proposed collection options for the specific product category (e.g., depot, Return to Retail, etc.).

Economic Impacts

The MHSW Plan provides Stewardship Ontario’s analysis of the economic impacts of the MHSW program with regards to service providers and stewards. The injection of the stewards’ funding into the system should provide new opportunities for businesses that are already active in the area, including those who collect, process, and recycle MHSW products and materials. In addition, the new funding is expected to draw new businesses into the service fields and to foster both continuous improvement in services and in the cost-effectiveness of those services through increased competition and higher potential profit levels.

The Environmental Commissioner of Ontario is the province's independent environmental watchdog. Appointed by the Legislative Assembly, the Environmental Commissioner of Ontario is tasked under the Environmental Bill of Rights with publicly reporting on the government's environmental decision-making.

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