

# HAZARDOUS AND SPECIAL PRODUCTS ARE NEXT IN LINE IN ONTARIO'S TRANSITION TO A PRODUCER RESPONSIBILITY MODEL FOR CONSUMER PRODUCTS

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On June 3, 2021, Ontario enacted the [Hazardous and Special Products Regulation](#) (the “**HSP Regulation**”)[1] under the [Resource Recovery and Circular Economy Act, 2016](#) (the “**Act**”)[2], which shifts financial and operational responsibilities of collecting, managing, recycling and disposing of hazardous and special products (“**HSP**”) in the Province from municipalities to producers. The HSP Program is next in line in a series of regulations delegating responsibility to producers for end-of-life obligations for consumer products in the Province. The upcoming HSP Program as well as the electrical and electronic equipment, battery and tire programs already in effect are managed by the Resource Productivity & Recovery Authority (“**RPRA**”).

The HSP Regulation, which came into force on July 1, 2021, provides that the current Municipal Hazardous or Special Waste (“**MHSW**”) Program operated by Stewardship Ontario under the [Waste Diversion Transition Act, 2016](#)[3] will cease on September 30, 2021 and the HSP Program will come into effect on October 1, 2021.

The HSP Regulation introduces a number of significant changes to Ontario's HSP regime. Unlike the previous MHSW Program where municipalities and producers shared funding responsibilities, the HSP Program shifts all financial and operational obligations for waste diversion to a producer responsibility model. This requires producers to take on full responsibility for program funding and the collection, management and recycling or disposal of products.

This bulletin provides an overview of producer obligations and key dates under Ontario's new HSP Program.

## Who is a Producer?

Materials regulated under the HSP Regulation are organized into five categories:

- **Category A:** non-refillable pressurized containers and oil filters.
- **Category B:** antifreeze, oil containers, paints and coatings, pesticides, refillable pressurized containers and solvents.
- **Category C:** barometers, thermometers and thermostats.

- **Category D:** fertilizers.
- **Category E:** refillable propane containers.

The new regime establishes a methodology for identifying who will attract responsibilities under the HSP Regulations. The Province has provided a hierarchy of producers to ensure that the person with the closest connection to the products is designated as the responsible producer.

Under this responsibility hierarchy with respect to HSP under Categories A, B and E, a brand holder who is a resident of Canada would be the first person responsible. Where the brand holder is not a resident of Canada, the responsibility falls to the importer or others who supplied the HSP who are resident in Ontario. Where no importer is resident in Ontario, then the marketer who supplied the HSP to consumers in Ontario will be responsible. The HSP Regulation also captures marketers that are located outside of Ontario.

With respect to Category C, all brand holders that are resident in Canada are the responsible producer. If there are no brand holders that are resident in Canada, then brand holders that are resident in Canada with a similar marketed product in Ontario that does not contain mercury are deemed the responsible producer.

With respect to Category D, the brand holder who is resident in Canada is the only possible designated producer.

### **Producer Obligations**

With some limited exceptions, the HSP Regulation requires producers of HSP to:

1. Establish free collection networks for consumers across Ontario. In larger communities, there must be an accessible network of drop-off locations for consumers and, in smaller or remote communities (including First Nation reserves), collection services must be available to consumers on a call-in basis;
2. Manage all collected materials properly, including meeting procedures for recycling, where possible, and disposal;
3. Provide promotional and education materials to increase awareness about the product itself as well as collection, management, recycling and disposal services;
4. Comply with registration, reporting and record-keeping requirements; and
5. Transparently reflect any charges associated with the above activities that are intended to be passed on to consumers.

Similar to the electrical and electronic equipment, battery and tire programs under the Act, producers are entitled to contract with a Producer Responsibility Organization (“**PRO**”), a third party registered with RPRA, to carry out the collection, management and recycling or disposal of products as well as promotional and educational requirements on the producer's behalf.

## Timelines for Transition

Key dates under the HSP Regulation are as follows:

- **July 31, 2021:** Processors and haulers of HSP as well as HSP disposal facilities are required to register with the RPRA.
- **October 1, 2021:** Producers' transitional HSP collection requirements and promotional, educational and management obligations begin. During the transitional collection period, from October 1, 2021 to December 31, 2022, producers must ensure the continuation of the current number of collection sites and events in each municipality.
- **October 31, 2021:** Producers of HSP are required to register with RPRA by this date.
- **January 31, 2022:** Producers of HSP are required to submit an interim report to the RPRA by this date outlining how they are or will fulfill the regulatory responsibilities under the HSP Regulation.
- **Every year, starting on July 31, 2022:** Producers have an ongoing requirement to submit an annual report to the RPRA that outlines their compliance with all regulatory responsibilities under the HSP Regulation for the prior calendar year. Note that the 2022 calendar year is deemed to be October 1, 2021 to December 31, 2022 under the HSP Regulation.
- **January 1, 2023:** The transitional collection period ends and producers have new collection requirements that mandate the operation of additional collection sites depending on the size of the producer and the type of HSP produced.

## Impacts to Producers of HSP

The obligations created by Ontario's new producer responsibility framework mean that producers of HSP, instead of municipalities, will now assume the financial and operational obligations for their products' end-of-life collection, management, recycling and disposal regardless of how many hands the product passes through before ending up with its ultimate consumer. This is in line with the commercial reality that producers know their products best and therefore know when their products' life span is expected to end and the potential uses for their products once their life span has concluded.

With most producer obligations coming into force on October 1, 2021, those designated as producers need to understand and begin preparing for their compliance obligations under the HSP Regulations. This may include entering into agreements with PROs and other service providers (e.g. haulers, processors and waste disposal facilities) to facilitate compliance and to achieve optimal operational cost savings as well as ensuring that the appropriate internal procedures are implemented and personnel appointed to manage and meet all continuous reporting and record-keeping requirements.

[1][ps2id id='1' target=''] [\*Hazardous and Special Products\*](#), O. Reg. 449/21.

[2][ps2id id='2' target=''] [\*Resource Recovery and Circular Economy Act, 2016\*](#), S.O. 2016, c. 12, Sched. 1.

[3][ps2id id='3' target=''] [\*Waste Diversion Transition Act, 2016\*](#), S.O. 2016, c. 12, Sched. 2.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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