

AMENDED AND RESTATED PROGRAM AGREEMENT

THIS AGREEMENT made in duplicate is effective as of this 1st day of January, 2010

B E T W E E N:

WASTE DIVERSION ONTARIO,
a corporation without share capital
incorporated by the *Waste Diversion Act, 2002*

(hereinafter referred to as “**Waste Diversion Ontario**”)

- and -

STEWARDSHIP ONTARIO,
a corporation without share capital
incorporated pursuant to the *Corporations Act (Ontario)*
(hereinafter referred to as “**Stewardship Ontario**”)

WHEREAS according to Subsection 25 (3) of the *Act*, a waste diversion program developed under this *Act* must include an agreement between Waste Diversion Ontario and the industry funding organization that the program is developed in cooperation with, governing the role of the industry funding organization in the implementation and operation of the program and governing the exercise of the industry funding organization’s powers under the *Act*;

AND WHEREAS the Minister of the Environment has required that Stewardship Ontario be the industry funding organization established under Section 24 of the *Act* for the purposes of developing and implementing a waste diversion program for designated Municipal Hazardous or Special Waste under the *Act*;

AND WHEREAS the parties hereto entered into a Program Agreement as of the 8th day of December, 2007 (replacing an earlier agreement made as of the 23rd day of May, 2007) with respect to Phase 1 MHSW and wish to amend and restate such Program Agreement in order to provide for the implementation of the Waste Diversion Program with respect to Phase 2 MHSW (as herein defined) and Phase 3 MHSW (as herein defined) and to amend certain other provisions of such Program Agreement;

NOW THEREFORE in consideration of the premises and mutual agreements contained herein and subject to the terms and conditions hereinafter set forth, the parties covenant and agree as follows:

1. Purpose of the Agreement

1.1 The purpose of this Agreement between Waste Diversion Ontario and Stewardship Ontario is to:

- (a) Define the roles and responsibilities of the two parties;
- (b) Set out the operating relationships between the two parties; and

- (c) Ensure openness and transparency to serve the public interest.

2. Definitions and Interpretation

2.1 Terms beginning with capital letters and used herein without definition shall have the meanings given to them in the *Act*, unless otherwise specified.

2.2 When used in this Agreement, the following words and expressions have the following meanings:

- (a) “**Act**” means the *Waste Diversion Act*, 2002, S.O. 2002, c. 6, as the same may be amended from time to time;
- (b) “**Agreement**” means this Program Agreement which is entered into pursuant to Section 25 (3) of the *Act* and includes all attached schedules and any amendments thereto;
- (c) “**Business Day**” means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year’s Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day, Boxing Day and any other day on which the Government of Ontario has elected to be closed for business;
- (d) “**Documentation**” means, for purposes of Section 9 of this Agreement, correspondence, documentation pertaining to public consultation during development of the Municipal Hazardous or Special Waste Program Plan, minutes of meetings of the Board of Directors and subcommittees, internal reports, consultants’ reports, agendas and other information and data obtained, created or maintained by Stewardship Ontario;
- (e) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended;
- (f) “**Funds**” means monies received by Stewardship Ontario as described in Subsection 32(3) of the *Act*;
- (g) “**Municipal Hazardous or Special Waste**” or “**MHSW**” means waste materials defined under Ontario Regulation 542/06;
- (h) “**Municipal Hazardous or Special Waste Program Plan**” means the Waste Diversion Program (as amended) encompassing Phase 1 MHSW, Phase 2 MHSW and Phase 3 MHSW submitted by Waste Diversion Ontario to the Minister for approval, of which this Agreement forms a part;
- (i) “**Operating Agreement**” means the Operating Agreement entered into between Waste Diversion Ontario and the Minister;
- (j) “**Phase 1 MHSW**” means paints and coatings and the containers in which they are contained, solvents and the containers in which they are contained, oil filters

(after they have been used for their intended purpose), containers that have a capacity of 30 litres or less and that were manufactured and used for the purpose of containing lubricating oil, single use dry cell batteries, antifreeze and containers in which it is contained, pressurized containers such as propane tanks and cylinders, and fertilizers, fungicides, herbicides, insecticides or pesticides and the containers in which they are contained;

- (k) “**Phase 2 MHSW**” means all batteries excluding lead acid batteries from vehicles, aerosol containers, portable fire extinguishers, florescent light bulbs and tubes, switches that contain mercury, thermostats, thermometers, barometers, or other measuring devices if they contain mercury, pharmaceuticals and sharps, including syringes;
- (l) “**Phase 3 MHSW**” means all materials that meet the definition of MHSW set out in Ontario Regulation 542/06 and which are not Phase 1 MHSW or Phase 2 MHSW;
- (m) “**Program Request Letter**” means the letter dated July 22, 2008 from the Minister to Waste Diversion Ontario and the Minister’s letter dated January 14, 2009 to Waste Diversion Ontario approving an extension of the date for submitting the Municipal Hazardous or Special Waste Program Plan;
- (n) “**Stewards**” means the persons or classes of persons designated under the Municipal Hazardous or Special Waste Program Plan rules as responsible for paying fees to Stewardship Ontario;
- (o) “**Steward**” means any member of the class of “Stewards”;
- (p) “**Waste Diversion Program**” means a program referred to in Sections 23 and 25 of the *Act*.

2.3 In this Agreement,

- (a) Words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) The word “including” or “includes” shall mean “including [or includes] without limitation”;
- (c) Any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) When calculating the period of time within which or following which any act is to be done or step taken, the date which is the reference day in calculating such period shall be excluded; if the last day of such period is not a Business Day, the period shall end on the next Business Day;

- (e) All dollar amounts are expressed in Canadian dollars;
- (f) Any tender of notices or documents under this Agreement shall be made upon the relevant party at the address set out in Section 13;
- (g) The division of this Agreement into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (h) Except as specifically defined or provided for in this Agreement, words and abbreviations which have well known or trade meanings are used in accordance with their recognized meanings.

2.4 The parties acknowledge that the recitals to this Agreement are true and correct.

3. Term of Agreement and Amendment

3.1 The term of this Agreement shall commence upon the date of approval of the Municipal Hazardous or Special Waste Program Plan (encompassing Phase 1 MHSW, Phase 2 MHSW and Phase 3 MHSW) by the Minister and shall remain in effect until five (5) years after that date and for successive periods of five (5) years each thereafter unless terminated earlier in accordance with Section 17 of this Agreement or amended in accordance with Subsection 3.5.

3.2 Any changes to the terms of this Agreement shall be by written amendment signed by both parties. No changes shall be effective or shall be carried out in the absence of such an amendment.

3.3 The parties agree to conduct a review of the performance and implementation of this Agreement not later than two (2) years following the date of commencement of the term of this Agreement and every two (2) years thereafter. As part of such review, each of the parties may suggest any appropriate amendments to the terms of this Agreement.

3.4 Notwithstanding Subsection 3.3, the parties agree that Waste Diversion Ontario and Stewardship Ontario shall be able to suggest appropriate amendments to the terms of this Agreement to the Minister at any time.

3.5 No material change may be made to the Municipal Hazardous or Special Waste Program Plan or to the terms of this Agreement without the written approval of the Minister as set out in Section 27 of the *Act*. Material changes include but are not limited to the following:

- (a) Definition of Municipal Hazardous or Special Waste wastes in the approved Municipal Hazardous or Special Waste Program Plan
- (b) Definition of Stewards - Meaning the persons or classes of persons designated under the Municipal Hazardous or Special Waste Program Plan Rules for Stewards as responsible for paying fees to Stewardship Ontario.

- (c) Change in the methodology for calculating fees as outlined in the approved Municipal Hazardous or Special Waste Program Plan.

4. Roles of the Parties

- 4.1 Waste Diversion Ontario represents and warrants that it has approved the Municipal Hazardous or Special Waste Program Plan.

Waste Diversion Ontario:

- (a) Will ensure that the terms and conditions of this Agreement are carried out in a responsible, complete and thorough manner, and on a timely basis;
- (b) Will provide estimates to Stewardship Ontario from time to time of the following:
 - (i) the costs incurred or expected to be incurred by Waste Diversion Ontario in respect of developing, implementing and operating the Waste Diversion Program in respect of Municipal Hazardous or Special Waste; (ii) a reasonable share of the other costs incurred or expected to be incurred by Waste Diversion Ontario in carrying out its responsibilities under the *Act*; (iii) and a reasonable share of the costs incurred or expected to be incurred by the Ministry in administering the *Act*, all of which are to be charged to Stewardship Ontario under Section 32 of the *Act*;
- (c) Will invoice Stewardship Ontario for the costs referred to in 4.1(b) commencing at the end of the first quarter following the date upon which the Municipal Hazardous or Special Waste Program Plan commences following designation of Stewardship Ontario by the regulations made under the *Act* as the industry funding organization for the Municipal Hazardous or Special Waste Program Plan (such costs to include costs identified in paragraph 4.1(b) incurred prior to the date upon which Stewardship Ontario is so designated);
- (d) Will implement the programs, policies and procedures identified as the responsibility of Waste Diversion Ontario in the Municipal Hazardous or Special Waste Program Plan approved by the Minister;
- (e) Will give written notice to Stewardship Ontario if, in the opinion of Waste Diversion Ontario, Stewardship Ontario has failed to comply with the terms of the Municipal Hazardous or Special Waste Program Plan, the Program Request Letter or the *Act* and advise Stewardship Ontario of the action required to remedy such non-compliance; and
- (f) Will implement relevant activities and functions as outlined in the Operating Agreement with the Minister.

4.2 Stewardship Ontario:

- (a) Will, following approval by the Minister, implement the Municipal Hazardous or Special Waste Program Plan;
- (b) Will honour invoices from WDO with payment within 30 days;
- (c) Will consult with Waste Diversion Ontario from time to time during the implementation of the Municipal Hazardous or Special Waste Program Plan as reasonably required by Waste Diversion Ontario;
- (d) Will make commercially reasonable efforts to implement any policies established by the Minister pursuant to Section 7 of the Act;
- (e) Will comply with the terms of the Municipal Hazardous or Special Waste Program Plan, the Program Request Letter and the *Act* (including the preparation of an annual report pursuant to Section 33 of the Act);
- (f) Will, subject to the resolution of any dispute pursuant to the provisions of Section 16 hereof, make commercially reasonable efforts to implement any actions required by Waste Diversion Ontario pursuant to paragraph 4.1(e) above to bring Stewardship Ontario into compliance with the terms of the Municipal Hazardous or Special Waste Program Plan, the Program Request Letter and the *Act*; and
- (g) Will adopt and maintain a Code of Conduct for its directors, officers and committee members that is satisfactory to Waste Diversion Ontario, acting reasonably, and amend its by-laws as required to enable Stewardship Ontario to carry out the terms of the Municipal Hazardous or Special Waste Program Plan, the Program Request Letter or the *Act*, provided that any amendments to the composition of the Board of Directors of Stewardship Ontario shall be subject to an appropriate regulation made by the Minister and to the approval of Stewardship Ontario.

5. Fees and Business Plans

5.1 Stewardship Ontario has adopted the Rules for Stewards with respect to Payment of Fees (2010) set out in Schedule A hereto which have been approved by Waste Diversion Ontario. Any amendments to the Rules set out in Schedule A hereto and any new Rules shall be subject to the prior written approval of Waste Diversion Ontario. Any new and/or amended Rules shall be initialled by representatives of each of the parties to signify their approval thereof and such new and/or amended Rules shall thereafter be appended to Schedule A of this Agreement and incorporated herein for all purposes.

5.2 At such time as Stewardship Ontario proposes to amend the Rules with respect to the payment of fees by Stewards:

- (a) Stewardship Ontario shall prepare a draft business plan outlining its proposed activities and objectives for the period in respect of which such fees are to be

established and shall present such business plan to Waste Diversion Ontario for review and comment; and

- (b) Following any such review and comments, Stewardship Ontario shall consult with stewards concerning any amendment to the Rules with respect to the payment of fees by stewards. Prior to formal approval of any Rules by Waste Diversion Ontario, Stewardship Ontario shall, if deemed necessary as a result of such consultation, prepare a revised business plan outlining its activities and objectives for the period in respect of which such fees are to be established and submitted to Waste Diversion Ontario.

6. Transparency

- 6.1 Stewardship Ontario will maintain an Internet website accessible by the public and will post every rule made pursuant to the *Act* on its website. Subject to confidential or proprietary considerations, and provided that information is available in electronic format, Stewardship Ontario's website is to include information on, or contain the appropriate electronic links to, the Municipal Hazardous or Special Waste Program Plan and Stewardship Ontario's annual report pursuant to Section 33 of the *Act*. Stewardship Ontario will provide a copy of a rule to every person who requests a copy and may charge the person a reasonable fee for such copy.

7. Information Sharing

- 7.1 Subject to confidential and proprietary considerations, Stewardship Ontario shall provide data and information obtained in the course of developing or implementing the Municipal Hazardous or Special Waste Program Plan to Waste Diversion Ontario upon request. The parties acknowledge and agree that data and information which might be confidential or proprietary in relation to one Steward may cease to be proprietary or confidential if aggregated with data and information relating to more than one Steward, provided that after such aggregation it will not be possible to identify individual Stewards within the aggregated information. Information to be shared shall include, without limitation, comments received from Stewards with respect to the Municipal Hazardous or Special Waste Program Plan. The parties have agreed upon the information sharing protocol set out in Schedule B hereto to implement the provisions of this Subsection 7.1.
- 7.2 Stewardship Ontario acknowledges that information provided by Waste Diversion Ontario to the Minister is under the control of the Minister within the meaning of FIPPA. Waste Diversion Ontario shall retain full control over all other information obtained, created or maintained by Waste Diversion Ontario.
- 7.3 Any data or materials provided by Stewardship Ontario to Waste Diversion Ontario which are confidential and are to remain confidential shall be clearly marked as confidential. In the event that the Minister receives a request under the FIPPA relating to the disclosure of any such confidential information which has been provided by Waste Diversion Ontario to the Minister and provides notice thereof to Waste Diversion Ontario, Waste Diversion Ontario agrees to provide Stewardship Ontario with notice to that effect. Notwithstanding the foregoing, Stewardship Ontario acknowledges that the

Minister is bound by FIPPA and may be required by order of a court or tribunal to disclose confidential information provided by Stewardship Ontario to Waste Diversion Ontario which has in turn been provided by Waste Diversion Ontario to the Minister.

- 7.4 Each of the parties agrees to hold data and information received from the other which are marked confidential in confidence, unless:
- (a) Such party is required to disclose such data or information by applicable law or by the order of any court or tribunal of competent jurisdiction;
 - (b) Such data or information have become generally available to the public without breach of this Agreement;
 - (c) Such data or information were developed independently by the recipient without the use of such confidential data or information or were lawfully received from another source having the right to furnish such data or information; or
 - (d) Such data or information were previously known to the recipient free of any restriction as evidenced by documentation in the recipient's possession.

8. Stakeholder and Public Consultation

- 8.1 Waste Diversion Ontario may require Stewardship Ontario to provide opportunities for consultation with stakeholders, including the public, who may be affected by any proposed material changes to the Municipal Hazardous or Special Waste Program Plan. Such consultation is to be open, accessible and responsive to concerns expressed.

9. Stewardship Ontario Responsibility for Documentation and Audit

- 9.1 Stewardship Ontario shall be responsible for maintaining Documentation in carrying out its responsibilities under this agreement, in a responsible and complete manner. Documentation may be maintained in paper or electronic format, as permitted by applicable law.
- 9.2 Without limiting the generality of the foregoing, the Board of Directors of Stewardship Ontario shall maintain the following:
- (a) All Documentation relating to its consultation activities, comments and responses received and a review of whether and how comments and responses were addressed; and
 - (b) All Documentation relating to the Funds.
- 9.3 The receipt and disbursement of the Funds will be reflected in the audited financial statements of Stewardship Ontario. The audited financial statements are to be prepared in accordance with generally accepted accounting principles and accompanied by the auditor's report thereon.

9.4 Stewardship Ontario agrees to implement and maintain measures to ensure the security and integrity of the Documentation and to protect the Documentation against loss, alteration and destruction.

10. Complaints and Inquiries Handling

10.1 Waste Diversion Ontario shall be responsible for handling all complaints and inquiries it receives in the following manner:

- (a) Waste Diversion Ontario will be responsible for determining if the complaint and/or inquiry is related to:
 - (i) its responsibilities as set out under the *Act* or as set out in this Agreement;
 - (ii) any other action of Waste Diversion Ontario; or
 - (iii) Stewardship Ontario;
- (b) If the complaint/inquiry is related to Waste Diversion Ontario's responsibilities as set out under the *Act* or as set out in this Agreement, or to any other action of Waste Diversion Ontario, Waste Diversion Ontario will be responsible for addressing the complaint or responding to the inquiry;
- (c) If the complaint/inquiry is related to Stewardship Ontario, Waste Diversion Ontario shall forward the complaint/inquiry to Stewardship Ontario asking it to address the complaint or respond to the inquiry (in accordance with any applicable dispute resolution mechanism) and report to Waste Diversion Ontario within one calendar month and every calendar month thereafter until the dispute is resolved;
- (d) In the event that Waste Diversion Ontario receives complaints/inquiries pertaining to enforcement issues, Waste Diversion Ontario will forward such complaints/inquiries to the Ministry; and
- (e) With respect to any other complaint or inquiry, Waste Diversion Ontario will be responsible for forwarding the complaint or inquiry to the appropriate person.

11. Insurance

11.1 Stewardship Ontario shall put into effect and maintain throughout the term of this Agreement all the necessary and appropriate insurance for a prudent not-for-profit corporation.

11.2 Without limitation to the generality of the foregoing, Stewardship Ontario shall obtain and maintain directors and officers liability insurance in amounts which are customary for a prudent not-for-profit corporation.

12. Assignment

- 12.1 Stewardship Ontario shall not assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of Waste Diversion Ontario and the Minister.
- 12.2 Stewardship Ontario shall not subcontract any of its rights or obligations under this Agreement or any part thereof without the prior written consent of Waste Diversion Ontario.

13. Notices

- 13.1 All notices to or upon the respective parties hereto shall be in writing and shall be delivered to the party to which such notice is required to be given under this Agreement at the respective address set out below by personal delivery, facsimile with confirmation of transmission, pre-paid registered post or electronically by email. All notices shall be deemed to have been duly given:
- (a) one (1) Business Day after such notice is received by the other party when delivered by personal delivery, by facsimile or by email; or
 - (b) five (5) Business Days after posting by prepaid registered post. In the event of a postal disruption, notices must be given by personal delivery or by a signed back facsimile and all notices delivered within one (1) week prior to the postal disruption must be confirmed by a signed back facsimile to be effective.

Notices to Waste Diversion Ontario shall be delivered to:

Waste Diversion Ontario
4711 Yonge Street, Suite 1102
Toronto, Ontario M2N 6K8

Attention: Executive Director
Facsimile: 416-226-1368
e-mail: glendagies@wdo.ca

Notices to Stewardship Ontario shall be delivered to:

Stewardship Ontario
21 St. Clair Ave East, Suite 503
Toronto, ON M4T 1L9

Attention: Chief Executive Officer
Facsimile: (416) 323-3185
e-mail: GZecchini@stewardshipontario.ca

- 13.2 Either party may, by written notice delivered to the other party, designate a new address or facsimile number for these notices.

14. Waiver

- 14.1 No term, condition or provision hereof shall be or be deemed to have been waived by Waste Diversion Ontario by reason of any act, forbearance, indulgence, omission, or event. Only an express written waiver by Waste Diversion Ontario shall be binding and each such waiver shall be conclusively deemed to be limited to the circumstances, right or remedy therein specified.

15. Severability

- 15.1 In the event that any provision of this Agreement or any part of such provision shall be determined to be invalid, unlawful or unenforceable to any extent, such provision or part thereof shall be severed from the remaining terms and conditions of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

16. Dispute Resolution

- 16.1 Stewardship Ontario shall include a dispute resolution mechanism in all contracts to which Stewardship Ontario is a party with the exception of contracts for goods and services in the ordinary course of business.
- 16.2 If any dispute arises between Stewardship Ontario and Waste Diversion Ontario as to their respective rights and obligations under this Agreement or the interpretation of the Municipal Hazardous or Special Waste Program Plan by Waste Diversion Ontario, the parties shall use the following dispute resolution procedures (modified if necessary pursuant to Subsection 17.3 below) to resolve such disputes:
- (a) The parties shall attempt to resolve disputes in the spirit of mutual cooperation through discussions and negotiations between the designated representatives of the parties within thirty (30) days of the date upon which written notice of the dispute was first given by one party to the other or as otherwise agreed upon;
 - (b) If the parties are unable to resolve the dispute in the manner aforesaid, either party shall have the right, on notice in writing to the other, to require that such dispute be submitted to the Executive Director of Waste Diversion Ontario and the CEO of Stewardship Ontario for discussion and resolution within thirty (30) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
 - (c) In the event that the Executive Director of Waste Diversion Ontario and the CEO of Stewardship Ontario are unable to resolve such dispute, either party shall have the right, on notice in writing to the other, to require that such dispute be submitted to the Chair of the Board of Directors of Waste Diversion Ontario and the Chair of the Board of Directors of Stewardship Ontario for discussion and resolution within thirty (30) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;

- (d) If the Chair of the Board of Directors of Waste Diversion Ontario and the Chair of the Board of Directors of Stewardship Ontario are unable to resolve the dispute, either party shall have the right to refer the matter to binding arbitration in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended. Each party shall bear the cost of its own counsel and witnesses but the costs of the arbitration including the fees of the arbitrator(s), the cost of court reporters and transcripts and the cost of the arbitration facility shall be borne equally by the parties. The arbitration shall take place in Toronto, Ontario, Canada, before a single arbitrator to be chosen jointly by the parties. If the parties cannot agree on the choice of an arbitrator within thirty (30) days of the notice requiring such dispute to be submitted to arbitration, then the parties will each select an arbitrator who in turn will select a third arbitrator as soon as reasonably practicable following such thirty (30) day period; and
- (e) The parties may determine the procedure to be followed by the arbitrator(s) in conducting the proceedings, or may request the arbitrator(s) to do so. The arbitrator(s) shall issue a written award within thirty (30) days of completion of the hearing.

16.3 Notwithstanding the provisions of Subsection 16.2, if such dispute relates to the costs recoverable by Waste Diversion Ontario (on its own behalf or on behalf of the Ministry) from Stewardship Ontario, to any invoice issued by Waste Diversion Ontario to Stewardship Ontario in respect of such costs or to any other issue which, in the reasonable opinion of Waste Diversion Ontario, pertains to the calculation of or responsibility for costs in relation to the Municipal Hazardous or Special Waste Program Plan, the following provisions shall apply:

- (a) The parties shall attempt to resolve such dispute in the spirit of mutual cooperation through discussions and negotiations between the designated representatives of the parties within fifteen (15) days of the date upon which written notice of the dispute was first given by one party to the other or as otherwise agreed upon;
- (b) If the parties are unable to resolve the dispute in the manner aforesaid, either party shall have the right, on notice in writing to the other, to require that such dispute be submitted to the respective auditors of the parties for discussion and resolution within fifteen (15) days of the date of the notice requiring such dispute to be submitted to them or as otherwise agreed upon;
- (c) In the event that the respective auditors of the parties are unable to resolve such dispute within such further fifteen (15) day period, such auditors shall, upon the request in writing of either party, select a third independent auditor as soon as possible to act as an arbitrator and to resolve such dispute in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended. In the event that the respective auditors of the parties are unable to agree upon the selection of an independent auditor to serve as arbitrator within five (5) days of the date of the written request by either party, Waste Diversion Ontario shall propose three (3) independent auditors to Stewardship Ontario and Stewardship

Ontario shall, within two (2) days of receipt of such list, select one of such auditors to serve as the arbitrator;

- (d) The auditor chosen as arbitrator shall make a final decision within fifteen (15) days of its appointment or such longer period as the parties may agree upon; and
- (e) If any such dispute with respect to an invoice has not been finally resolved prior to the due date of such invoice, Stewardship Ontario shall pay the undisputed amount immediately to WDO and shall pay the disputed amount into a solicitor's trust account to be held pending the conclusion of the dispute resolution procedure. The disputed amount shall be disbursed by the solicitor in accordance with the results of the dispute resolution procedure. Each party agrees to continue performing its obligations under the Agreement pending the resolution of any dispute with respect to an invoice.

- 16.4 Stewardship Ontario will develop a dispute resolution procedure providing for the resolution of any dispute between Stewardship Ontario and a person with respect to the person's obligations under Section 31 of the *Act* or the person's obligations under the rules made by Stewardship Ontario under Section 30 of the *Act*, such dispute resolution procedure to be satisfactory in all respects to Waste Diversion Ontario.
- 16.5 Stewardship Ontario agrees to submit any dispute with respect to payments or in-kind contributions to be made to the municipalities under the Municipal Hazardous or Special Waste Program Plan for resolution in accordance with the dispute resolution procedure adopted by Waste Diversion Ontario for this purpose, as amended from time to time. Waste Diversion Ontario agrees to consult with Stewardship Ontario upon request, but without obligation, with respect to the terms of such dispute resolution procedure.

17. Termination

- 17.1 If, in the reasonable opinion of Waste Diversion Ontario, there has been a breach of this Agreement by Stewardship Ontario, Waste Diversion Ontario may terminate this Agreement if Stewardship Ontario fails to remedy such breach within ninety (90) Business Days following written notice from Waste Diversion Ontario outlining the breach in reasonable detail. In the event that the remedy of such breach by Stewardship Ontario reasonably requires more than ninety (90) Business Days, Stewardship Ontario shall so advise Waste Diversion Ontario without delay and provide a revised time line to remedy such breach. Waste Diversion Ontario shall notify Stewardship Ontario in writing as to whether the revised time line is acceptable and, if it is, the revised time line to remedy such breach will apply. Notwithstanding the foregoing, with respect to a breach of Section 12, Waste Diversion Ontario may terminate this Agreement immediately if Stewardship Ontario has not given written notice to Waste Diversion Ontario that it disputes such breach within ten (10) days of the notice of breach from Waste Diversion Ontario.
- 17.2 Notwithstanding Subsection 17.1, Waste Diversion Ontario may terminate this Agreement immediately upon written notice to Stewardship Ontario if:

- (a) Stewardship Ontario makes a voluntary assignment or a proposal under the *Bankruptcy and Insolvency Act* or a petition or any other proceeding shall be filed, instituted or commenced with respect to Stewardship Ontario under any bankruptcy, insolvency, debt restructuring, reorganization, liquidation, winding-up or similar law now or hereafter in effect, unless such proceedings are commenced by a party other than Stewardship Ontario and are being diligently contested by Stewardship Ontario and are stayed within 30 days from the date of notice of such proceedings being received by Stewardship Ontario;
- (b) A receiver or trustee is appointed for any part of the assets of Stewardship Ontario; or
- (c) Stewardship Ontario ceases for any reason whatsoever to be the designated industry funding organization for the Municipal Hazardous or Special Waste Program Plan or the Municipal Hazardous or Special Waste Program Plan is terminated for any reason whatsoever.

17.3 The parties acknowledge and agree that any determination by Waste Diversion Ontario that Stewardship Ontario is in breach of this Agreement as set out in a written notice given pursuant to Subsection 17.1 above is subject to the dispute resolution provisions of this Agreement but termination of this Agreement pursuant to Subsection 17.2 above is not subject to the dispute resolution provisions of this Agreement. If Stewardship Ontario disputes the right of Waste Diversion Ontario to terminate this Agreement pursuant to Subsection 17.1, Stewardship Ontario shall be required to give written notice of the dispute to Waste Diversion Ontario within ten (10) days of receiving written notice of breach from Waste Diversion Ontario and, if the parties have not resolved the dispute pursuant to paragraphs 16.2(a)-(c) above within twenty (20) days thereafter, the parties shall, at the option of Stewardship Ontario, proceed to arbitration pursuant to paragraph 16.2(d) above and the arbitrator shall be directed to deliver a written decision within ninety (90) Business Days of the written notice of breach. If Stewardship Ontario has required arbitration of the issue, a notice given pursuant to Subsection 17.1 shall be effective ninety (90) Business Days thereafter unless the arbitrator has issued a written decision nullifying such notice on or before that date (without prejudice to any rights of Waste Diversion Ontario to appeal such decision on any basis provided for in the *Arbitration Act*, 1991, S.O. 1991, c.17, as amended).

18. Agreement Binding

18.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

19. Entire Agreement

19.1 This Agreement embodies the entire Agreement between the parties with regard to the implementation of the Municipal Hazardous or Special Waste Program Plan and supersedes any prior understanding or agreement, collateral, oral or otherwise, with respect to such subject matter existing between the parties at the date of execution of this Agreement.

20. Public Announcements

20.1 Neither Waste Diversion Ontario nor Stewardship Ontario shall make any press release or other formal public announcement which refers to the role of the other in the development and implementation of the Municipal Hazardous or Special Waste Program Plan without first consulting the other concerning the contents of such proposed press release or public announcement. The parties agree that prior consultation shall not be required in respect of routine communications or other general information provided by either of the parties to the public with respect to the implementation of the Municipal Hazardous or Special Waste Program Plan.

21. Governing Law

21.1 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereby agree that any dispute arising out of or in relation to this Agreement shall be determined in Ontario.

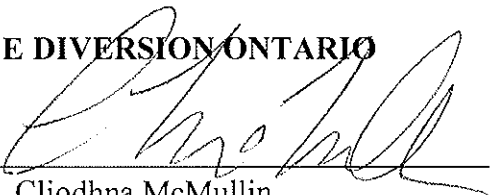
21.2 Stewardship Ontario agrees that it shall, and shall require its officers, directors and staff to, comply with all laws, ordinances, rules and regulations which apply to the operation of Stewardship Ontario, any activities of Stewardship Ontario and the responsibilities of Stewardship Ontario under the *Act*.

22. Signatures

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date stated in the Preamble to this Agreement.

WASTE DIVERSION ONTARIO

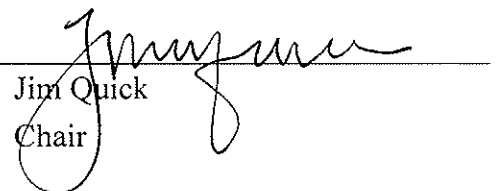
Per:



Clodhna McMullin
Chair

STEWARDSHIP ONTARIO

Per:



Jim Quick
Chair



**Schedule A to Program Agreement Stewardship Ontario and the
Resource Productivity and Recovery Authority**

**Rules for Stewards with Respect to the Payment of MHSW Fees for
the Period Commencing January 1, 2019**

CONTENTS

PART I: DEFINITIONS

1. Definitions

**PART II: APPLICATION, DURATION, NON-COMPLIANCE, POLICIES, NOTICE,
CONFIDENTIALITY**

2. Application of These Rules
3. Duration of These Rules
4. Noncompliance with These Rules
5. Policies, Guidance and Interpretive Memoranda
6. Notice to Stewardship Ontario
7. Notice to Stewards
8. Publishing Company Names
9. Confidentiality

PART III: DESIGNATION OF STEWARDS

10. Designation of Stewards
11. Voluntary Reporter
12. Voluntary Reporter Fails to Comply with Obligations

PART IV: STEWARD REPORTING

13. Reporting Categories
14. Reporting Deadline for Stewards and Voluntary Reporters
15. Stewards who Fail to Register with Stewardship Ontario
16. Reporting for Affiliates and/or Franchisees

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17. Contents of Quarterly MHSM Steward Report
18. Consequences of Late Filing or Non-Filing of the Quarterly MHSM Steward Report
19. Errors in the Quarterly MMSM Steward Report
20. Financial Responsibility for Underreporting By a Voluntary Reporter
21. Steward-Initiated Adjustment Requests to Quarterly MHSM Steward Reports
22. Corrections to the Quarterly MHSM Steward Report Initiated By Stewardship Ontario

PART V: STEWARD FEES

23. Steward Shared Assessment (SSA)
24. Fee Components
25. Relief From Requirements to Report and Pay Fees

PART VII: COMPLIANCE

26. Penalties and Interest
27. Steward and Voluntary Reporter Records Retention
28. Duty to Comply with Stewardship Ontario's Requests for Documentation
29. Duty to Provide Access to Stewardship Ontario
30. Duty to Cooperate with a Verification Audit

PART VIII: DISPUTE RESOLUTION

31. Dispute Resolution Policy and Procedure



PART I: Definitions

1. In these Rules, the following terms have the following meanings:

“Affiliate” is an entity that controls a Steward or is controlled by a Steward or is controlled by an entity that also controls a Steward, where "control" in the case of a corporation has the meaning ascribed thereto by subsection 1(5) of the Business Corporations Act (Ontario) as amended from time to time.

“Approved Wind-up Plan” means the Wind-up Plan for the MHSW program developed and approved in accordance with section 14 of the *Waste Diversion Transition Act*.

“Brand” means a trademark.

“Brand Owner” with respect to a specific product or good, that is MHSM, where such product or good, or its packaging bears a trademark means during any time in any Data Period:

- (a) a Person Resident in Ontario who is the holder of the registered trademark, or
- (b) a Person Resident in Ontario who is the licensee, in respect of the registered trademark, or
- (c) a Person Resident in Ontario, who owns the intellectual property rights to the unregistered trademark, or
- (d) a Person Resident in Ontario, who is the licensee, in respect of the intellectual property rights of the unregistered trademark.

Where “licensee” includes a Person who packages goods and the products or goods are MHSM or MHSM Packaging, and bear a trademark, other than a packer, producer or filler of Private Label Goods, and includes any Person whose corporate name or business name registration contains the trademark.

“Confidential Information” means sales or other data submitted by a Steward to



Stewardship Ontario that is not publicly available from any source.

“Data Period” means the 3 month periods ending December 31, 2016; March 31, 2017; June 30, 2017; and September 30, 2017 and successive three month periods thereafter for which a Steward must report MHSM quantities Supplied.

“Designated IC&I Business” means an industrial, commercial or institutional business that generates MHSW of the types described in Appendix A that is not required to submit a Generator Registration Report with respect to that MHSW under subsection 18 (1) of Ontario Regulation 347, made under the *Environmental Protection Act*, as amended from time to time.

“Fee Category” means the category against which the quantities appearing in the reporting category are invoiced by Stewardship Ontario.

“Fee Obligation Period” means the period for which amounts are due as set out in Table 2 of Appendix C.

“File” means electronically submitted by a Steward to Stewardship Ontario through the WeRecycle Portal <https://wecycle.cssalliance.ca>. Filed and File have similar meanings.

“First Importer” is a Person Resident in Ontario who imports MHSM into Ontario or is the first to take possession or control of MHSM in Ontario for which a Brand Owner does not exist.

“Franchisor, Franchisee and Franchise System” have the meaning ascribed thereto under the Arthur Wishart Act (Franchise Disclosure), 2000, as amended from time to time.

“Generator” means the Person to which MHSW is supplied for use in Ontario that makes the product(s) available for reuse, recycling or disposal. The categories of MHSM generators are residential, designated IC&I business, and all IC&I.



“In Good Standing” means a Steward who is current with its financial and reporting obligations to Stewardship Ontario.

“Industry Funding Organization (IFO)” means the organization designated by regulation with responsibility for implementing the MHSW Program Plan including collection of fees from Stewards to cover the costs of developing, implementing and operating the diversion program and to cover associated costs of RPRA and the Ministry of the Environment and Climate Change.

“Industry Stewardship Plan (ISP)” means a RPRA or Waste Diversion Ontario -approved plan allowing one or more Stewards to manage wastes that have been designated for a recycling program by the Minister.

“Industry Stewardship Organization (ISO)” means any organization (including one Steward or a group of Stewards) that submits an Industry Stewardship Plan (ISP) to RPRA, or its predecessor, Waste Diversion Ontario, for review.

“Interest” means the amount calculated using the prime rate per annum established by the CIBC as at the close of business on the first day of each month plus four percent compounded monthly.

“Methodology” means the process the Steward used to:

- (a) determine MHSM Supplied including data sources, percentage allocation of data reported, data collection systems, and the use of calculators, worksheets or mathematical formulae, whether or not they were previously approved by Stewardship Ontario; and
- (b) determine exclusions.

“MHSM Packaging” means materials that are used for the containment, protection, handling, delivery and presentation of MHSM Supplied.



“MHSW Program Plan” means the plan most recently approved by the Minister.

“Minister” or **“Ministry”** means Minister or Ministry of the Environment and Climate Change for the Province of Ontario.

“Municipal Hazardous or Special Materials (MHSM)” means those goods and products set out in Appendix A which are Supplied and that result in the generation of MHSW.

“Municipal Hazardous or Special Waste (MHSW)” means waste that consists of any one of the following materials, or any combination of them:

- Antifreeze, and the containers in which they are contained
- Fertilizers and the containers in which they are contained
- Oil filters – after they have been used for their intended purpose
- Oil Containers that have a capacity of 30 litres or less and that were manufactured and used for the purpose of containing lubricating oil
- Pesticides and the containers in which they are contained.
- Paints and Coatings, and the containers in which they are contained
- Pressurized containers
- Solvents, and the containers in which they are contained
- Single-use dry cell batteries

“Ontario Regulation 387/16” means the Regulation made under the Waste Diversion Transition Act that designates MHSW and that designates Stewardship Ontario as the IFO for MHSW.

“Person” means an individual, partnership, joint venture, sole proprietorship, company or corporation, government (whether national, federal, provincial, state, municipal, city, county or otherwise and including any instrumentality, division, body, department, board or agency of any of them), trust, trustee, executor, administrator or any other kind of legal personal



representative, unincorporated organization, association, institution, entity, however designated.

“Primary Contact” means a member of the Steward’s organization appointed by the Steward pursuant to the [Primary Contact Policy](#) as posted on the Stewardship Ontario (for new Stewards who join the MHSW Program on or after January 1, 2019) as the Steward’s authorized person or agent under whose authority a Quarterly MHSM Steward Report is Filed or amended.

“Private Label Goods” means goods that carry the Brand of a Brand Owner and are Supplied by such Brand Owner.

“Program Request Letter” means the letter from the Minister to Waste Diversion Ontario (WDO) dated December 12, 2006 requiring Waste Diversion Ontario to develop a waste diversion program in respect of certain categories of MHSW.

“Proxy Report” means a prior Quarterly MHSM Steward’s Report used by Stewardship Ontario in the event that a Steward does not meet its Filing obligation in accordance with these Rules.

“Published Address” means an address appearing in a current telephone directory or a recognized current published business directory.

“Quarterly MHSM Steward’s Report” means a report prepared by a Steward describing the aggregate quantity of MHSM that was Supplied in the Data Period by the Steward or its Franchisees and/or Affiliates containing the information in accordance with Section 17 and Filed with Stewardship Ontario in accordance with Appendix C.

“Reporting Obligation Period” means the period for which a Steward is required to report as described in Appendix C.



“Resident in Ontario” with respect to a corporation, means a corporation that has a permanent establishment in Ontario in accordance with the provisions of Appendix B.

“Resource Recovery and Productivity Authority (RPRA)” is a corporation which oversees the operation of Stewardship Ontario and the MHSW Program in accordance with the *Waste Diversion Transition Act, 2016*. RPRA is the successor to Waste Diversion Ontario.

“Rules” means these rules, including any such modifications to the Rules resulting from or necessitated by the Approved Wind-up Plan..

“Service Cost” is any waste management cost including the costs to collect, transport, consolidate, process and dispose of MHSW.

“Steward” means a person who is obligated with respect to MHSM in accordance with Part III of these Rules

“Steward Share Assessment” means the individual Steward’s share of the total quantities reported to Stewardship Ontario by Fee Category.

“Stewardship Ontario” is the Not-for-profit Corporation incorporated under the Ontario Corporations Act and continued by Regulation 542 under the *Waste Diversion Act* as the IFO and under the *Waste Diversion Transition Act* for MHSW Program. It is also the IFO for Designated Blue Box Waste.

“Supplied” means sold, leased, donated, disposed of, used, transferred the possession or title of or otherwise made available or distributed for use in the Province of Ontario by a Generator. Supply and Supplies have similar meanings.



“**Voluntary Reporter**” means a Person who elects to become a Voluntary Reporter in accordance with Section 11 of these Rules.

“**WeRecycle Portal**” means the internet portal that must be used by all Stewards when submitting their Quarterly MHSM Steward Reports.

PART II: APPLICATION, DURATION, NONCOMPLIANCE, POLICIES, NOTICE, CONFIDENTIALITY

Application of These Rules

2. These Rules apply to all:

- (a) Stewards who are obligated to File a Quarterly MHSM Steward Report in the current year;
- (b) Stewards (regardless of whether they have Registered) who were obligated but failed to File a Quarterly MHSM Steward Report in a prior year;¹
- (c) New Stewards who began Supplying MHSM in the current year or who began MHSM in a prior year but did not Register at that time;
- (d) Stewards who make an Adjustment Request in the current year in accordance with the [Policy for Steward-Initiated Adjustment Requests](#) in Appendix E and on the Stewardship Ontario website for any current or prior Quarterly MHSM Steward Report; and
- (e) Steward requests for Dispute Resolution made in the current year.

Duration of These Rules

3. These Rules:

- (a) remain in force from the time that they are approved by RPRA and posted on the Stewardship Ontario website until the time they are replaced on the Stewardship Ontario website with RPRA-approved Rules; and

¹ These Rules apply to all Quarterly MHSM Steward Report which should have been Filed but were not Filed by a Steward for a prior Data Year. However, the calculation of Fees associated with any past unfiled Quarterly MHSM Steward Report will be calculated in accordance with the Stewardship Fee rates applied in each of the applicable prior Data Years.



- (b) shall be automatically amended for years subsequent to 2019 by substituting the year appearing in these Rules with the subsequent year unless or until new rules are approved by RPRA and are posted on the Stewardship Ontario website.

Noncompliance with These Rules

4. All Stewards are required to comply with these Rules. Failure to comply with these Rules may result in penalties and interest and/or compliance and enforcement actions undertaken by Stewardship Ontario and/or RPRA as provided for:
 - (a) in these Rules or in Stewardship Ontario policies;
 - (b) in the *Waste Diversion Transition Act, 2016*;
 - (c) in the Regulations,
 - (d) in the [Penalty and Interest Policy](#) in Appendix F of these Rules and on the Stewardship Ontario website, or
 - (e) as otherwise permitted by RPRA or the Ministry.

Policies, Guidance and Interpretive Memoranda

5. Stewardship Ontario may, but is not required to, publish on the Stewardship Ontario website policies, guidance, and interpretive memoranda (collectively “secondary guidance”) with respect to these Rules that must be followed by Stewards. In the event of any conflict between the Rules and any secondary guidance, the Rules shall prevail.

Notice to Stewardship Ontario

6. A Steward must inform Stewardship Ontario within 30 days of its change of address, change of Primary Contact, bankruptcy, closing, merger, acquisition, sale, or divestiture of all or part of its business and any impact on the Steward’s obligation to pay Stewardship Fees. All notices to Stewardship Ontario shall be provided:
 - (a) in writing, addressed to Stewardship Ontario, 1 St. Clair Avenue West, Suite 700, Toronto, ON, M4V 1K6, Attention: CFO; or



(b) by email to werecycle@stewardshipontario.ca.

Notice to Stewards

7. All Stewards (regardless of whether the Steward has Registered with Stewardship Ontario) are deemed to have notice of the contents of these Rules and are bound by these Rules, including the reporting and payment obligations from the time that these Rules are approved by RPRA and posted on the Stewardship Ontario website.

Publishing of Company Names

8. Stewardship Ontario may, but is not required to, publish any of the following:

- (a) the names of Stewards Filing a Quarterly MHSM Steward Report with Stewardship Ontario;
- (b) a list of all Stewards In Good Standing;
- (c) a registry of all Brands reported in Quarterly MHSM Steward Reports; and
- (d) the names of any Person that may appear to be a Steward Resident in Ontario, but which it has determined upon investigation is not Resident in Ontario.

Confidentiality

9. Stewardship Ontario will use reasonable diligence and care to prevent the unauthorized disclosure of a Steward's Confidential Information. Stewardship Ontario may disclose Confidential Information:

- (a) to its administrative service provider or a third party auditor, provided that the administrative service provider or the third party auditor also agrees to protect the Steward's Confidential Information;
- (b) to the RPRA or the Ministry as permitted by law or the MHSW Program Plan or MHSW Program Agreement; or
- (c) in accordance with the Steward's consent.



PART III: DESIGNATION OF STEWARDS

Designation of Stewards

10. For the purpose of determining which Person shall be designated as a Steward for a particular category of MHSM, the following provisions shall apply in the order in which they are set out. If two or more Persons are designated as a Steward pursuant to the following provisions, then the earlier provision shall prevail:

- (a) A Brand Owner is designated as a Steward with respect to all MHSM, for which it is the Brand Owner and Supplied such MHSM during the Data Period.
- (b) A First Importer is designated as a Steward with respect to all MHSM for which it is the First Importer and Supplied such MHSM during the Data Period.
- (c) A Franchisor which is resident in Ontario is designated as a Steward with respect to all MHSM Supplied within the Ontario Franchise System during the Data Period.
- (d) In the event there is more than one Brand Owner for the same MHSM, the Brand Owner more directly connected to the production of the MHSM shall be designated as the Steward, but where the Brand Owner is a Franchisor, the Franchisor shall be designated as the Steward for its Ontario Franchise system.
- (e) In the event there is no identifiable Brand on a particular MHSM product or good and if the manufacturer of the MHSM is Resident in Ontario, the manufacturer of such MHSM shall be designated as the Steward for such MHSM, otherwise the First Importer shall be designated as the Steward for such MHSM.

Voluntary Reporter

11. A Person may elect to become a Voluntary Reporter upon execution of Stewardship Ontario's [Voluntary Reporter's Agreement](#) by:

- (a) the Steward;



- (b) the Voluntary Reporter; and
- (c) Stewardship Ontario.

Voluntary Reporters must comply with these Rules and the Voluntary Reporter Agreement.

Voluntary Reporter Fails to Comply with Obligations

12. In the event that the Voluntary Reporter defaults on its responsibility to report with respect to the MHSM Supplied in Ontario, the obligation for that MHSM will revert to the Steward in accordance with the Voluntary Reporter Agreement.

PART IV: STEWARD REPORTING

Reporting Categories

13. For reporting and fee calculation, MHSM is organized into nine material classes as outlined in Appendix A.

Reporting Deadline for Stewards and Voluntary Reporters

14. Every Steward and Voluntary Reporter shall:

- (a) File a Quarterly MHSM Steward Report in accordance with the timetable in Appendix C;
- (b) if applicable, immediately File all overdue Steward Reports; and
- (c) if applicable, File a Quarterly MHSM Steward Report within 60 days after such Person becomes a Steward or Voluntary Reporter pursuant to Part III, Section 11 using the [WeRecycle Portal](#).

Stewards Who Fail to Register With Stewardship Ontario

15. A Steward who begins Supplying MHSM, who has not registered with an ISP, must Register with Stewardship Ontario within 60 days. Any Steward who fails to Register with Stewardship Ontario within 60 days of beginning to Supply MHSM in Ontario:

- (a) will be subject to compliance and enforcement by Stewardship Ontario, RPRA and/or MOECC; and



- (b) is required to pay the penalties and interest in accordance with the [Penalty and Interest Policy](#) in Appendix F and on the Stewardship Ontario website.

Reporting for Affiliates and/or Franchisees

16. A Steward, including Franchisors, shall report for its Ontario Affiliates and/or Franchisees under one Steward number. Any Person whose MHSM is included in its Affiliates' or Franchisors' Annual Steward Report shall not File a separate Quarterly MHSM Steward Report. Affiliates must seek Stewardship Ontario's approval to report separately.

Contents of Quarterly MHSM Steward Report

17. Quarterly MHSM Steward Reports must include the following information Filed on the WeRecycle Portal:

- (a) obligation period of the Quarterly MHSM Steward's Report;
- (b) contact information such as email addresses and phone numbers for the Steward's Primary Contact, Billing Contact, Secondary Contacts and Environmental Lead;
- (c) company name, mailing address, phone number, and sector;
- (d) quantities of materials Supplied according to the reporting categories and units of measure in Appendix A;
- (e) description of Methodology used to prepare the Quarterly MHSM Steward Report including any significant events resulting in any material change(s) to quantities reported;
- (f) description of any excluded waste from the Quarterly MHSM Steward Report;
- (g) list of Brands included in the Quarterly MHSM Steward Report, and any changes in Brands since the prior Reporting Obligation Period;
- (h) list of all Affiliates and/or Franchisees included in the Quarterly MHSM Steward Report;
- (i) Declaration of accuracy of contents of the Quarterly MHSM Steward Report.

Consequences of Late Filing or Non-Filing of the MHSM Quarterly Steward Report

18. Stewards that fail to File a Quarterly MHSM Stewards' Report by the date specified in Appendix C will be subject to:



- (a) penalties and interest in accordance with the [Penalty and Interest Policy](#) in Appendix F and on the Stewardship Ontario website;
- (b) the use by Stewardship Ontario of a Proxy Report using the Steward's highest quantities contained in any of its prior four quarters plus 10 percent shall constitute the Quarterly MHSM Steward Report then due;
- (c) an adjustment invoice associated with the reconciliation of the quantities used by Stewardship Ontario to the actual quantities reported by the Steward;

Errors in the Quarterly MHSM Steward Report

19. Quarterly MHSM Steward Reports shall contain accurate data. If a Steward or a Voluntary Reporter identifies any errors in any Quarterly MHSM Steward Report after submission, the Steward or Voluntary Reporter must notify² Stewardship Ontario within 30 days in writing via email to WeRecycle@stewardshipontario.ca with full particulars of the error.

Financial Responsibility for Underreporting By a Voluntary Reporter

20. Where a Voluntary Reporter has made an underreporting error in the Quarterly MHSW Steward Report, financial responsibility as between the Steward and the Voluntary Reporter for the error and any interest or other penalties associated with the error is governed by the Voluntary Reporter Agreement between the Steward, the Voluntary Reporter and Stewardship Ontario.

Steward-Initiated Adjustment Requests to Quarterly MHSM Steward Report

21. A Steward who is In Good Standing may make a request to correct an error in a Quarterly MHSM Steward Report in accordance with the:
- (a) [Policy for Steward-Initiated Adjustment Requests](#) in Appendix E and on the Stewardship Ontario website; and
 - (b) [Penalty and Interest Policy](#) in Appendix F and on the Stewardship Ontario website.

² This is only a requirement to *notify* - not to submit an adjustment request. Stewards still have two years to submit an adjustment request as outlined in the Steward-Initiated Adjustment Policy.



This section applies with necessary modifications to a Voluntary Reporter who requests an Adjustment to a Quarterly MHSW Steward Report.

Corrections to the Quarterly MHSM Steward Report Initiated By Stewardship Ontario

22. Stewardship Ontario may require changes to a Filed Quarterly MHSM Steward Report

following a third party review or report validation by Stewardship Ontario. Stewards will be required to pay third party fees associated with any MHSM underreporting for a maximum of five years of Quarterly MHSM Steward Reports prior to the current calendar year.³

Part V: Steward Fees Fee Components

23. Stewards shall pay fees to Stewardship Ontario in accordance with the following:

(a) The Steward Share Assessment with respect to the Reporting Obligation Period for all MHSM classes as set out in Appendix A and according to Table 2 as set out in Appendix C. The formula to calculate the Steward Share Assessment is specified in Section 3 of Regulation 387/16.

(b) Subject to the Steward or Voluntary Reporter satisfying the requirements of the Policy for Steward-Initiated Adjustment Requests in Appendix E and on the Stewardship Ontario website, in the event that the quantities reported in the Quarterly MHSM Steward Report are inaccurate, Stewardship Ontario shall issue to the Steward an invoice or a credit note based on the total quantities reported into Stewardship Ontario by all Stewards by the reporting deadline.

(c) If:

(i) a Steward's Quarterly MHSM Steward Report is determined to be inaccurate either prior to or subsequent to the effective date of these Rules, and

(ii) the Steward is required to pay additional fees or is entitled to a credit,

³ For example, stewards are responsible for the fees (if any) associated with errors in a prior quarterly MHSM Steward report discovered by stewardship Ontario in the current calendar year (2019) for up to five prior calendar years (20 Quarterly MHSM Steward Reports) (2018, 2017, 2016, 2015, and 2014).



these amounts will be applied to adjust the costs in the relevant MHSM class in the subsequent quarter period.

Annual True Up

24. Stewardship Ontario will conduct an annualized reconciliation (annual true up) as if the Steward Share Assessments were calculated on an annual basis. In the event that the amount calculated is different from the aggregate of the Steward's four quarterly invoices, including any adjustments for that quarter (calculated using the quarterly Steward Share Assessments), then Stewardship Ontario shall prepare a credit note or a debit note to adjust the Steward's amount owing to equal the amount calculated based on annual data. Stewardship Ontario shall give notice by way of invoice or credit note to each Steward. Any such additional fee shall be payable within 30 days of the sending of such invoice.

Relief from Requirements to Report and Pay Fees

25. Any Steward that:

- (a) is In Good Standing
- (b) intends to join an RPRA-approved Industry Stewardship Plan (ISP) covering MHSM generated by the Steward;
- (c) has received RPRA approval to join the ISP; and
- (d) adheres to any additional criteria agreed to between Stewardship Ontario and/or RPRA, and the ISO,

is no longer required to report to Stewardship Ontario for the related MHSM Supplied on and after the date to which the ISP applies.

PART VI: COMPLIANCE

Penalties and Interest

26. Stewardship Ontario shall impose penalties and interest on a Steward or Voluntary Reporter in accordance with the [Penalty and Interest Policy](#) in Appendix F and on the Stewardship Ontario website.



Steward and Voluntary Reporter Records Retention

27. All Stewards and Voluntary Reporters shall retain all of the records to substantiate and verify the accuracy of the information submitted in their Quarterly MHSM Steward Report for a period of not less than five years from the date of submission. Any Steward or Voluntary Reporter who fails to produce documentation to substantiate its Quarterly MHSM Steward Report Filed during the five year retention period must pay Stewardship Fees on the total amount of MHSM:

- (a) substantiated by the available documentation; or
- (b) based on an estimate calculated with reference to a prior or subsequent Quarters' MHSM Steward Report; or
- (c) as determined by a third-party auditor,

whichever is greatest. Stewards are subject to the [Penalty and Interest Policy](#) in Appendix F and on the Stewardship Ontario website with respect to any quantities of MHSM found to have been underreported.

Duty to Comply with Stewardship Ontario's Requests for Documentation

28. Upon written request from Stewardship Ontario, Stewards and Voluntary Reporters shall within 30 days provide documentation in support of their Quarterly MHSM Steward Report, including, but not limited to:

- (a) data used by Stewards or Voluntary Reporter in the preparation of any Quarterly MHSM Steward Report;
- (b) relevant information regarding Affiliates and/or Franchisees included in the Quarterly MHSM Steward Report;
- (c) calculation Methodology;
- (d) product data such as samples or product information provided by vendors;
- (e) audit reports; and
- (f) a list of Brands included or excluded in the Quarterly MHSM Steward Report and any changes in Brands from those Brands reported in the prior Quarterly MHSM Steward Report.



Duty to Provide Access to Stewardship Ontario

29. A Steward or Voluntary Reporter shall grant access during business hours to Stewardship Ontario or its authorized representative to inspect and review the Steward's records maintained in accordance with the Rules for up to five years after the Filing deadline for the Quarterly MHSM Steward Report.

Duty to Cooperate with a Verification Audit

30. At the request of Stewardship Ontario, a Steward or Voluntary Reporter must:

- (a) provide confirmation from a senior officer with authority to bind the steward confirming that the data contained in the Quarterly MHSM Steward Report is accurate and complete; and
- (b) cooperate in an audit or review of the Steward's records, including:
 - (i) providing Stewardship Ontario with all requested documentation, data, records and reports within 30 days of such request; and
 - (ii) providing access to the Steward's business premises by Stewardship Ontario, its administrative service provider, or an independent third-party within 30 days of such request.

PART VIII: DISPUTE RESOLUTION

Dispute Resolution Policy and Procedure

31. Disputes between Stewardship Ontario and a Steward or Voluntary Reporter regarding the payment of Stewardship Fees shall be addressed through the [Dispute Resolution Policy](#) posted on the Stewardship Ontario website. A Steward must be In Good Standing to invoke Dispute Resolution.



Appendix A

Municipal Hazardous or Special Materials Class Definitions and Reporting Information

The following materials are defined by one or more of the following Acts, Standards, and/or Regulations:

- Waste Diversion Transition Act, 2016 (Ontario)
- Environmental Protection Act (Ontario)
- Fertilizers Act (Canada)
- Fertilizers Regulations (Canada)
- Hazardous Products Act (Canada)
- Pest Control Products Act (Canada)
- SOR/2001-269 – Canadian Standards Association Standard Z752-03
- Waste Diversion Transition Act, 2016, Ontario Regulation 387/16
- Waste Diversion Transition Act, 2016, Ontario Regulation 389/16
- Environmental Protection Act, Ontario Regulation 347
- Environmental Protection Act, Ontario Regulation 463/10

Key for using Tables of Material Class Definitions and Reporting Information in Appendix A:

Material Class Definitions	Provides the name and a definition for each of the 9 (nine) material classes designated under the MHSW Program.
Notes	Provides clarifying information for the material definition and any other general comments on the material class.
Sector(s) into which MHSW is Supplied	Identifies the sector(s) into which materials must be Supplied to be included in the MHSW Program: <ul style="list-style-type: none"> - The residential sector; and/or - All industrial-commercial-institutional (IC&I) sectors; and/or - Designated IC&I businesses (e.g. small quantity generator—a business that generates MHSW and is not required to submit a generator registration report as per subsection 18(1) of Regulation 347 under the Environmental Protection Act and that does not return more than 100 kg per month of MHSW through the program).
Examples	Contains a list of product examples. Note: This is not intended to be an exhaustive list.
Exclusions	Identifies product exemptions for each material class.
Reporting Category	Indicates all sub categories for each material class, as it appears on the steward reporting site.
Unit of Measure	Contains the unit of measure that stewards will be required to report.
Fee Category	Provides the Fee Category name against which the material reporting category will be invoiced.



Antifreeze						
Means ethylene or propylene glycol used or intended for use as a vehicle engine coolant.						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> • Containers of packaged antifreeze are included if they have a volume equal to or less than 30 litres 	<ul style="list-style-type: none"> • Residential • All IC&I Businesses 	<ul style="list-style-type: none"> • Includes premixed (water diluted) and concentrated product • Antifreeze Supplied in all container sizes including Bulk and Packaged <ul style="list-style-type: none"> ○ Bulk is Supplied in containers greater than 30 litres (e.g. delivered using a tanker trailer) ○ Packaged is Supplied in containers equal to or less than 30 litres 	<ul style="list-style-type: none"> • Factory fill initial charge of vehicle antifreeze • Plumbing antifreeze • Vehicle windshield antifreeze • Product marketed as industrial heat transfer fluid • Fuel (gasoline & diesel) antifreeze • Lock de-icer • Air brake antifreeze • Antifreeze which does not contain ethylene or propylene glycol 	Packaged	Volume in litres	Antifreeze
				Bulk	Volume in litres	Antifreeze



Fertilizers						
Means packaged products regulated under the <i>Fertilizer's Act (Canada)</i> .						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> Includes containers in which it is contained 	<ul style="list-style-type: none"> Residential Designated IC&I Businesses (small quantity generator) 	<ul style="list-style-type: none"> All N-P-K fertilizers, micronutrients and supplements that are required to be registered under the <i>Fertilizers Act (Canada)</i>, and therefore would bear a <i>Fertilizers Act</i> registration number Supplied in containers equal to or less than 30 litres and/or 30 kilograms including <ul style="list-style-type: none"> Products that have a registration number and are used by homeowners, commercial applications, or agricultural operations Herbicide and fertilizer combination products (weed and feed) Crabgrass control and fertilizer combination products, other fertilizer 	<ul style="list-style-type: none"> Compost (that does not make an N-P-K claim) Fertilizers and supplements exempted from registration including: <ul style="list-style-type: none"> a) fertilizers and supplements set out in Schedule II (<i>Fertilizer Regulations</i>); b) farm fertilizers that do not contain pesticides and that satisfy section 10 (<i>Fertilizer Regulations</i>); c) supplements sold only for correction of soil acidity or alkalinity; d) supplements referred to in subsections 10.2(1), 10.2(1.1), 10.2(3) and 10.2(5) (<i>Fertilizer Regulations</i>) e) peat, peat moss, sphagnum moss, tree bark and other fibrous organic matter that is represented for use only in improving the physical conditions of the soil; 	Fertilizers	Volume in litres or weight in kilograms	Fertilizers



Fertilizers						
Means packaged products regulated under the <i>Fertilizer's Act (Canada)</i> .						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
		and pesticide combination products ○ Micronutrient mixes that contain micronutrient only such as chelated iron or chelated copper ○ Fertilizers that are growth regulants such as rooting hormones	f) customer-formula fertilizers; g) specialty fertilizers, other than those referred to in paragraph (b) of the definition "specialty fertilizers", that do not contain pesticides; and h) potting soils that contain supplements, if those supplements are registered under the <i>Fertilizers Act</i> . • Fertilizers Supplied in containers greater than 30 litres and/or 30 kilograms			



Oil Containers						
Containers that have a capacity of 30 litres or less and that were manufactured and used for the purpose of containing lubricating oil.						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<p>For this purpose, “lubricating oil” means petroleum-derived or synthetic crankcase oil, engine oil, hydraulic fluid, transmission fluid, gear oil, heat transfer fluid, or other oil or fluid used for lubricating machinery or equipment and includes:</p> <ul style="list-style-type: none"> • Any crankcase or engine oil • Hydraulic fluid • Polyol ester fluids • Circulating oil or turbine oil • Paper machine oil • Transmission fluid • Power steering fluid • Gear oil • Vegetable oil for lubrication • Re-refined oil • Electrical insulating oil 	<ul style="list-style-type: none"> • Residential • All IC&I Businesses 	<ul style="list-style-type: none"> • Containers that contained Lubricating Oil 	<p>Containers that contained</p> <ul style="list-style-type: none"> • Ethylene glycol heat transfer fluid • Propylene glycol heat transfer fluid • Silicone heat transfer fluid • Synthetic aromatic hydrocarbon heat transfer fluid • Glycol-based heat transfer fluid • Water glycol hydraulic fluid • Phosphate ester hydraulic fluid • Hydraulic oil dye • Polyglycol synthetic compressor oil • Base oil, including re-refined base oil • Grease • Oil additive • Oil treatment • Diesel fuel treatment • Cleaning/flushing fluids for motors/equipment 	Oil Containers	Volume in litres	Oil Containers



<ul style="list-style-type: none">• Refrigeration system oil• Compressor oil• Mineral heat transfer fluid• Marine engine oil for vessels operating domestically• Metal working oil• Form release oil• Textile oil• Chain oil• Rock drill oil• 2-cycle engine oil• Gasoline / 2-cycle engine oil mixes• Saw guide oil• Drawing, stamping and shaping oil• Process oil• Dedusting oil• Marine cylinder oil• Machine tool and slideway lubricant• Natural gas compressor oil• Conveyor lube• Dripless lube• Quenching oil• Pneumatic system oil• Rustproof oil• Food grade white mineral oil			<ul style="list-style-type: none">• Winter start fluid• Brake fluid• Undercoating• Penetrating oil• Hydraulic jack oil• 3-in-1 household oil• Aerosol propelled lubricant• Gun oil• Kerosene• Urethane coating• Sewing machine oil• Cooking oil• Windshield washer fluid			
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Oil Filters						
Means filters produced and/or arriving into the province, and which are for sale, directly or as part of a product, in Ontario.						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
• None	<ul style="list-style-type: none"> • Residential • All IC&I Businesses 	<ul style="list-style-type: none"> • Spin-on or element style filters that are used in hydraulic, transmission or internal combustion engine applications • Diesel fuel filters • Household furnace fuel filters • Coolant filters • Storage tank diesel fuel filters • Plastic & paper element style filters • Diesel fuel filters used at retail and commercial pump islands • Sump type automatic transmission filter 	<ul style="list-style-type: none"> • Gasoline fuel filters • Air filters • Household furnace air filters • Sock-type filters 	Less than or equal to 8"	Number of units Supplied	Oil Filters
				Greater than 8"	Number of units Supplied	Oil Filters



Paints and Coatings						
Means latex, oil and solvent-based architectural coatings, including paints and stains, whether tinted or untinted.						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> • Includes containers in which it is contained • Products that match the definition of both Paints and Coatings and Pesticides are to be reported under Pesticides • For Paints and Coatings that require addition of an ingredient by the user, where the ingredient is not Supplied with the Paints and Coatings, report the volume/weight of the Paints and Coatings Supplied to the user. • Architectural coatings means organic coatings intended for onsite applications at ambient temperatures to interior or exterior 	<ul style="list-style-type: none"> • Residential • Designated IC&I Businesses (small quantity generator) 	<ul style="list-style-type: none"> • Paints and coatings in aerosol containers that match the definition of Paints and Coatings • Paints and Coatings Supplied in containers equal to or less than 30 litres 	<ul style="list-style-type: none"> • Automotive and marine paints • Stucco and spackling compounds • Waxes and polishes • Caulks and sealants • Paints and Coatings Supplied in containers with a volume greater than 30 litres 	< = 250 mL	Number of units Supplied	Paints & Coatings
				> 250 mL – 1 L	Number of units Supplied	Paints & Coatings
				> 1 – 5 L	Number of units Supplied	Paints & Coatings
				> 5 L	Number of units Supplied	Paints & Coatings
				Aerosols	Number of units Supplied	Paints & Coatings



<p>surfaces of residential, commercial, institutional, industrial, or government structures including exterior and interior house paints, stains, undercoaters, primers and sealers.</p> <ul style="list-style-type: none">• Structures include all components and attachments of both buildings and non-buildings, including but not limited to driveways, furniture (indoor and outdoor) appliances, floors, cabinets and doors but with the exception of automotive and marine structures.					
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Pesticides						
<p>Means pesticides including fungicides, herbicides and insecticides registered under the <i>Pest Control Products Act (Canada)</i> bearing the “DOMESTIC” classification that are required to display on the label the symbol shown in Schedule III of the <i>Pest Control Products Regulation (Canada)</i>, the signal words “danger” or “warning” and “poison” and represented by the precautionary symbols octagon or diamond and the skull and crossbones.</p>						
Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> • Includes containers in which it is contained • Products that match the definition of both Paints and Coatings and Pesticides are to be reported under Pesticides 	<ul style="list-style-type: none"> • Residential • Designated IC&I Businesses (small quantity generator) 	<ul style="list-style-type: none"> • Pesticides meeting the definition that bear the “DOMESTIC” classification • Pesticides in aerosol containers that match the definition of Pesticides • Pesticides Supplied in containers equal to or less than 30 litres and/or 30 kilograms 	<ul style="list-style-type: none"> • Commercial, agricultural and restricted classifications registered under the <i>Pest Control Products Act (Canada)</i> • Insect repellents for personal use • Sanitizers, disinfectants and anti-microbial products • Pet products • Products regulated under the <i>Food and Drug Act (Canada)</i> • Pool chemicals • Insecticidal soaps • Diatomaceous earth • Ant traps • Pesticides Supplied in containers greater than 30 litres and/or 30 kilograms 	Pesticides	Volume in litres or weight in kilograms	Pesticides



Pressurized Containers

All pressurized containers that are identified with the following Transport Canada markings:

- Seamless Cylinders and Tubes: TC-3AAM, TC-3ALM, TC-3AM, TC-3ANM, TC-3ASM and TC-3EM
- Welded Cylinders and Spheres: TC-4AAM-33, TC-4BM, TC-4BM17ET, TC-4BAM, TC-4BWM, TC-4DSM and TC-4EM
- Non-refillable Containers: TC-39M
- Composite Cylinders: TC-3FCM and TC-3HWM
- Insulated Cylinders: TC-4LM
- Cylinders for Acetylene Service: TC-8WWM and TC-8WAM.

Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Residential • Designated IC&I Businesses (small quantity generator) 	<ul style="list-style-type: none"> • Non-refillable and refillable cylinders, such as seamless cylinders and tubes, welded cylinders and insulated cylinders, previously containing material such as acetylene, propane, refrigerant, isocyanate resins, helium, nitrogen and all other compressed gases 	<ul style="list-style-type: none"> • Aerosols • Butane lighters • Reservoir tanks intended for use with an air compressor • Cylinders that must be punctured for use (e.g. small CO2) • Cylinders with a water capacity over 109 litres • Fire extinguishers 	Non-Refillable	Number of units Supplied	Pressurized Containers – Non-Refillable
				Refillable	Number of units Supplied	Pressurized Containers - Refillable



Single Use Dry Cell Batteries

Means batteries that are one or more cells, including case, terminals and markings. The source of electrical energy is obtained by the direct conversion of chemical energy that is not designed to be charged by any other electrical source.

Notes	Sector(s) into which MHSM is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Residential • All IC&I Businesses 	<ul style="list-style-type: none"> • All Single Use Dry Cell Batteries including but not limited to the following chemistries: <ul style="list-style-type: none"> ○ Alkaline-Manganese ○ Lithium ○ Silver Oxide ○ Zinc Air ○ Zinc-Carbon • Includes batteries Supplied with products • Includes batteries within and/or embedded in products: <ul style="list-style-type: none"> ○ Supplied to the residential sector where the products are designed so that the batteries are removable and replaceable (such as toys, electronics, watches, hearing aids) ○ Supplied to the IC&I sector where the products 	<ul style="list-style-type: none"> • Secondary batteries that are designed to be recharged 	Single Use Dry Cell Batteries	Weight in kilograms	Single Use Dry Cell Batteries



		<p>are designed so that the batteries are removable by those providing service for the products</p> <ul style="list-style-type: none">○ Supplied to the residential and/or IC&I sector that can be removed by those providing end of life management of products captured under the WEEE Program				
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Solvents

Means liquid products that are intended to be used to dissolve or thin a compatible substance and:
 1. are comprised of 10% or more of water-immiscible liquid hydrocarbons, including halogen-substituted liquid hydrocarbons; or
 2. are flammable as described in part (c) of “municipal hazardous waste” in Ontario Reg. 542; or
 3. all of the above.

Notes	Sector(s) into which MHSW is Supplied	Examples	Exclusions	Reporting Category	Unit of Measure	Fee Category
<ul style="list-style-type: none"> • Includes containers in which it is contained • Water-miscibility means the ability of a material (or mixture) to mix uniformly with water, without separating. A 1:5 ratio of material to water at 20°C does not display visible separation in less than 1 hour. This includes mixing by dissolving, reacting, suspending, or dispersing. [ref. CSA Z752]. 	<ul style="list-style-type: none"> • Residential • Designated IC&I Businesses (small quantity generator) 	<ul style="list-style-type: none"> • Turpentine, alcohols (methanol, isopropanol, ethanol), ketones (acetone, methyl ethyl ketone), xylene, toluene, mineral spirits, linseed oil, naphtha, methylene chloride • Products marketed as paint thinners, lacquer thinners, automotive body resin solvents, contact cement thinners, paint strippers and degreasers • Solvents in aerosol containers that match the definition of Solvents • Solvents Supplied in containers equal to or less than 30 litres and/or 30 kilograms 	<ul style="list-style-type: none"> • Products Supplied as fuels • Household cleaning products not marketed as solvents e.g. Window cleaners • Solvents Supplied in containers greater than 30 litres and/or 30 kilograms 	Solvents	Volume in litres	Solvents



Appendix B⁴
Resident In Ontario⁵

Resident in Ontario, with respect to a corporation, means a corporation that has a permanent establishment in Ontario, where:

- (a) “permanent establishment” includes branches, mines, oil wells, farms, timberlands, factories, workshops, warehouses, offices, agencies and other fixed places of business and
- (b) the following rules apply;

Contracting Employees or Inventory Sufficient

Where a corporation carries on business through an employee or agent who has general authority to contract for the corporation or who has a stock of merchandise owned by the corporation from which the employee or agent regularly fills orders which the employee or agent receives, such employee or agent shall be deemed to operate a permanent establishment of the corporation.

Commission Agent not Sufficient

The fact that a corporation has business dealings through a commission agent, broker or other independent agent shall not of itself be deemed to mean that the corporation has a permanent establishment.

Subsidiary of Parent not Sufficient

The fact that a corporation has a subsidiary controlled corporation in a place or a subsidiary controlled corporation engaged in a trade or business in a place shall not of itself be deemed to mean that the first- mentioned corporation is operating a permanent establishment in that place.

Licensed Insurance Company Sufficient

An insurance corporation is deemed to have a permanent establishment in each jurisdiction in which the corporation is registered or licensed to do business.

Purchasing Office not Sufficient

The fact that a corporation maintains an office solely for the purchase of merchandise shall not of itself be deemed to mean that the corporation has a permanent establishment in that office.

Ownership of Land Sufficient

⁴ Contents from “Corporations Tax Act, Ontario

⁵ The language in this appendix is from the Corporations Tax Act and should be applied to determine residency in Ontario rather than residency in Canada in order to help determine a Person’s status as a steward



Where a corporation, otherwise having a permanent establishment in Canada, owns land in a province or territory of Canada, such land is a permanent establishment.

Production Packing and other Activities Sufficient

The fact that a non-resident corporation in a year produced, grew, mined, created, manufactured, fabricated, improved, packed, preserved or constructed in whole or in part anything in Canada, whether or not the corporation exported that thing without selling it prior to exportation, shall of itself, be deemed to mean that the corporation maintained a permanent establishment at any place where the corporation did any of those things in the taxation year.

Machinery or Equipment Sufficient

The use of substantial machinery or equipment in a particular place at any time in a year of a corporation constitutes a permanent establishment of such corporation in that place for such a year.

Principal Place of Business Sufficient

Where a corporation has no fixed place of business, it has a permanent establishment in the principal place in which the corporation's business is conducted.

Charter or By Laws designating Head or Registered Office Sufficient

Where a corporation does not otherwise have a permanent establishment in Canada, it has a permanent establishment in the place designated in its charter or by-laws as being its head office or registered office.



Appendix C
Reporting and Payment Timetables

All stewards who are legally obligated under the Ontario Waste Diversion Act, 2002 and according to these Rules, must register as a steward of the MHSW Program, and File Quarterly MHSM Steward’s Reports of the quantities of MHSM Supplied in Ontario and pay fees on these materials as outlined in Appendix A, in accordance with Ontario Regulation 11/12 (as found in Appendix D of these Rules).

Table 1 REPORTING OBLIGATIONS: A Steward collects and reports data according to the table below.

Reporting Obligation Period	Collect Data from Data Period	Report Due
Q1 - 2019	Q4 – 2018: October 1, 2018 – December 31, 2018	January 31, 2019
Q2 – 2019	Q1 – 2019: January 1, 2019 – March 31, 2019	April 30, 2019
Q3 – 2019	Q2 – 2019: April 1, 2019 – June 30, 2019	July 31, 2019
Q4 – 2019	Q3 – 2019: July 1, 2019 – September 30, 2019	October 31, 2019

This schedule extends indefinitely into future quarters in the form above until such times as the Rules are amended.

Table 2 FEE PAYMENT SCHEDULE : A Quarterly MHSM invoice for fees payable is calculated on the basis of the Stewardship Ontario’s quarterly costs and Steward’s Report submitted as outlined below in accordance with Regulation 542/06 as amended by O. Reg. 11/12:

Fee Obligation Period	Fee Payment Due	Steward’s report used for fee calculation (Report Obligation Period)	Data from Data Period (when quantities Supplied)	Quarterly Costs Used in Fee Calculation
Q1 – 2019 January 1, 2019 – March 31, 2019	Feb 28, 2019	Q4 - 2018	Q3 – 2018 July 1, 2018 – September 30, 2018	Q4 – 2018 October 1, 2018 – December 31, 2018
Q2 – 2019 April 1, 2019 – June 30, 2019	May 31, 2019	Q1 - 2019	Q4 – 2018 October 1, 2018 – Dec. 31, 2018	Q1 – 2019 January 1, 2019 – March 31, 2019
Q3 – 2019 July 1, 2019 – September 30, 2019	August 30, 2019	Q2 - 2019	Q1 – 2019 January 1, 2019 – March 31, 2019	Q2 – 2019 April 1, 2019 – June 30, 2019
Q4 – 2019 October 1, 2019 – December 31, 2019	November 30, 2019	Q3 - 2019	Q2 – 2019 April 1, 2019 – June 30, 2019	Q3 – 2019 July 1, 2019 – September 30, 2019

This schedule extends indefinitely into future quarters in the form above until such times as the Rules are amended.



Stewardship Ontario

Appendix D

ONTARIO REGULATION 387/16

made under the

WASTE DIVERSION TRANSITION ACT, 2016

Made: October 26, 2016

Filed: November 24, 2016

Published on e-Laws: November 24, 2016

Printed in The Ontario Gazette: December 10, 2016

MUNICIPAL HAZARDOUS OR SPECIAL WASTE

Fees to be paid by stewards

3. (1) In this section,

“fiscal quarter” means the three-month period that begins on January 1, April 1, July 1 or October 1.

(2) Stewardship Ontario shall, no later than 90 days after the end of each fiscal quarter, determine the amount of a fee that must be paid in respect of that fiscal quarter by a steward designated in respect of municipal hazardous or special waste in a class of municipal hazardous or special waste using the following formula:

$$A = B \times C / D$$

where,

A = the fee to be paid by the steward,

B = the costs related to the class during the fiscal quarter in respect of which the fee is to be paid,

C = the quantity of material that is commercially connected to the class and that was supplied by the steward during the fiscal quarter that occurred before the fiscal quarter in respect of which the fee is to be paid,

D = the quantity of material that is commercially connected to the class and that was supplied by all stewards in respect of that class during the fiscal quarter that occurred before the fiscal quarter in respect of which the fee is to be paid.

(3) For the purposes of subsection (1),

(a) the quantity of material supplied by a steward is determined by applying the method for reporting that quantity to Stewardship Ontario as set out in a rule



Stewardship Ontario

continued under clause 9 (2) (b) of the Act or made under clause 33 (1) (g) of the Act or under a regulation made under subsection 73 (3) of the Act; and

- (b) the costs related to a class of municipal hazardous or special waste must not exceed the sum of the amounts described in paragraph 1 of subsection 33 (5) of the Act that were incurred in relation to the class, subject to subsection (4).
- (4) Unless a rule continued under clause 9 (2) (b) of the Act or made under clause 33 (1) (c) of the Act prescribes times when a fee determined under this section is to be paid, the fee shall be paid no later than 180 days following the end of the fiscal quarter in respect of which the fee is required to be paid.
- (5) Stewardship Ontario shall, at least 30 days before a fee or the first instalment of a fee determined under this section is required to be paid by a steward in respect of a fiscal quarter, provide written notice of the following to the steward:
 - 1. The amount of the fee to be paid by the steward.
 - 2. If the fee may be paid in instalments, the amount of each instalment.
 - 3. The date or dates on or before which all amounts must be paid.
- (6) If this Regulation comes into force on a day that is not the first day of a fiscal quarter, the sum of the following amounts shall be used for the purposes of determining the costs related to a class of municipal hazardous or special waste for the fiscal quarter during which this Regulation comes into force:
 - 1. The amounts described in paragraph 1 of subsection 33 (5) of the Act that were incurred in relation to the class during that fiscal quarter.
 - 2. The amounts described in paragraph 1 of subsection 30 (3) of the *Waste Diversion Act, 2002* that were incurred in relation to the class during that fiscal quarter.

Commencement

- 4. This Regulation comes into force on the later of the day clause 73 (1) (b) of Schedule 2 to the *Waste-Free Ontario Act, 2016* comes into force and the day this Regulation is filed.



Appendix E

POLICY FOR STEWARD-INITIATED ADJUSTMENT REQUESTS

KEY FEATURES:

- Stewards can request adjustments to submitted reports for a maximum of two years from the report submission deadline
- Adjustment requests must include supporting documentation
- Only adjustments that meet the policy requirements will be processed

I. Overview

1. This policy provides guidance to stewards as to the types of adjustments that may be allowed.

II. Purpose

2. This policy promotes fairness and consistency for all stewards and enables stewardship programs to operate in a cost-effective manner.
3. The two-year time limit:
 - (a) helps stabilize fees as adjustments can impact the total quantities of supplied materials (i.e. steward-reported quantities) which in turn impacts fee setting for the subsequent period or year. For example, where an adjustment results in a credit, these funds must be recouped in the subsequent period or year from steward fees and will be added to the program's budget; and
 - (b) provides stewards with sufficient time to identify possible issues in their reports and submit adjustment requests. The table below stipulates the deadlines.

III. Scope

4. This policy applies to all adjustment requests submitted on or after January 1, 2018, regardless of the data or reporting period/year associated with the adjustment request, initiated by stewards and voluntary stewards ("stewards") meeting their regulatory stewardship obligations with one or more of the following programs:
 - (a) Recycle BC (formerly MMBC);
 - (b) Multi-Material Stewardship Western;
 - (c) Multi-Material Stewardship Manitoba; and



(d) Stewardship Ontario (Blue Box Program and MHSW Program)

- 5. This policy:
 - (a) shall remain in force from the time that it is posted on the programs’ websites until the time it is replaced; and
 - (b) shall be automatically amended by substituting the year appearing in this policy with the subsequent year, unless or until a new policy is posted on the programs’ websites.

IV. Policy

Reporting and Payments Must be Up-to-Date

- 6. Only stewards whose reporting and payments to the program are up-to-date may make an adjustment request.

Two-Year Time Limit for Adjustment Requests

- 7. Stewards can request adjustments for a period of up to two years (eight quarters for MHSW) from the associated report submission deadline (regardless of the date the steward submitted its report).

Table 1 – PPP Reports (Annual cycle)⁶

Report	2016 Report (2015 Data)	2017 Report (2016 Data)	2018 Report (2017 Data)
Deadline for annual report submission	May 31, 2016	May 31, 2017	May 31, 2018
Deadline for completed Adjustment Request⁷	May 31, 2018	May 31, 2019	May 31, 2020

⁶ This table shall be automatically amended by substituting the year with the subsequent year, unless or until a new policy is posted in accordance with clause 5 of this policy

⁷ If the deadline for an adjustment request falls on a non-business day, the deadline is extended to the next business day.



Table 2 – MHSW Reports (Quarterly cycle)⁸

MHSW Reports	Q1 - 2017	Q2 - 2017	Q3 - 2017	Q4 - 2017	Q1 - 2018	Q2 - 2018	Q3 - 2018	Q4 - 2018	Q1 - 2019
Deadline for quarterly report submission	Jan 31, 2017	Apr 30, 2017	July 31, 2017	Oct 31, 2017	Jan 31, 2018	Apr 30, 2018	July 31, 2018	Oct 31, 2018	Jan 31, 2019
Deadline for completed Adjustment Request	Jan 31, 2019	Apr 30, 2019	July 31, 2019	Oct 31, 2019	Jan 31, 2020	Apr 30, 2020	July 31, 2020	TBD ⁹	TBD ¹⁰

Stewards Who Have Exited a Program

8. A steward who has exited a program:
 - (a) may file an adjustment request within 30 days of exiting the program, following which no adjustment request may be filed; and
 - (b) will be credited or debited within 90 days, unless the adjustment request requires a third party review.

How to Make an Adjustment Request

9. All stewards who wish to make an adjustment request must:
 - (a) submit a completed and signed [Adjustment Request Form](#), and email it to adjustments@cssalliance.ca; and
 - (b) provide accompanying supporting documentation.

Contents of Adjustment Request form and Supporting Documentation

10. Adjustment requests must include:

⁸ This table shall be automatically amended by substituting the year with the subsequent year, unless or until a new policy is posted in accordance with clause 5 of this policy. (The anticipated wind up of MHSW – Dec 2020 will impact the application of this policy).

⁹ The MHSW Program will be wound up effective December 31, 2020. The deadline for steward-initiated adjustment requests for reports filed on or after October 31, 2018 shall be determined pursuant to the approved MHSW Wind Up Plan.

¹⁰ The MHSW Program will be wound up effective December 31, 2020. The deadline for steward-initiated adjustment requests for reports filed on or after October 31, 2018 shall be determined pursuant to the approved MHSW Wind Up Plan.



- (a) clear and detailed supporting documentation and narratives to explain each of the errors; and
 - (b) an audit trail that, if followed, would confirm the legitimacy of the adjustment request.
11. If there are multiple errors in a single report, stewards must include all relevant information for all errors as only one adjustment request will be considered for each year's report.
12. See Appendix A: "Steps to Complete an Adjustment Request" for step-by-step guidance on submitting an adjustment request.

Credits and Debits

13. Following assessment of the steward's adjustment request:
- (a) Net Credits:
 - (i) can be applied to the steward's current or future invoices in the corresponding program; or
 - (ii) may be paid to the steward by cheque, upon request by the steward.

 - (b) Debits are due within 30 days of the date of issue and are subject to the [Penalty and Interest Policy](#).

Permitted Adjustments

14. Subject to adequate substantiation, adjustment requests that will be considered are limited to the following circumstances:
- (a) incorrect formula in Excel spreadsheet or similar "tool";
 - (b) incorrect logic in Excel spreadsheet or similar "tool";
 - (c) material classification error;
 - (d) material weight input error (e.g., entered 1 instead of 10);
 - (e) data entered in the wrong units (e.g., in grams instead of kilograms)
 - (f) exclusion of materials in error;
 - (g) inclusion of material for which another steward is obligated;
 - (h) inclusion of non-obligated PPP;
 - (i) actual data to replace estimates used by newly on-boarded stewards.

Non-Permitted Adjustments

15. Adjustment that will not be accepted include, but are not limited to:



(a) Adjustments resulting from reporting methodology changes:

- (i) changing from the use of calculators to the reporting of “actuals”;
- (ii) application of a new study or change in internal processes that identifies previous errors in reported quantities;¹¹
- (iii) changing percentage allocations (e.g. for IC&I sales or for packaging that never leaves the commercial establishment);
- (iv) revisions to Average Bill of Material groupings (ABOMs);
- (v) creation of ABOMs, when one was not originally used to develop the report

(b) Adjustments on adjustments:

Requests will not be considered for changes to a report where the steward previously requested an adjustment for the same report, regardless of whether the steward is seeking the same or a different adjustment to the previously submitted report.

(c) Adjustments due to changes to your business model such as divestments, mergers or acquisitions:

If part of your business is acquired or divested in a given calendar year, the impact of those changes, if any, must be included during the next reporting cycle, but the steward will not be permitted to make an adjustment to a previously submitted report.

(d) Adjustments with inadequate substantiation and supporting documentation:

- (i) Stewards may be required to undergo a third-party review, at the steward’s expense, in order to have their adjustment requests validated and processed.
- (ii) If an incomplete package is submitted or additional substantiation is required by the program(s), stewards will be notified and must provide the additional documentation within 30 days of notification. A steward’s adjustment request will be closed where the steward fails to provide additional information requested by the program(s) within 30 days.

Processing Time

16. Adjustments can take from weeks to months to process. The amount of time is a function of a number of factors that include complexity, the completeness of the steward’s supporting documentation, and the number of adjustments in the queue.

¹¹ Efforts to improve the accuracy of reports are appreciated, and can be used for future reports, but cannot be applied retroactively.



Stewardship Ontario

Third-Party Reviews

17. A third-party review is a detailed examination of a steward's methodology and data collection and reporting processes conducted by an independent consultant.
18. The programs reserve the right to initiate a third-party review of an adjustment request, and may do so in their sole discretion.
19. Third-party reviews will be paid for by the affected steward. In the event that the program(s) determines that a third-party review is warranted, a steward's refusal to participate in or pay for a third-party review will result in the steward's adjustment request being closed.
20. The scope and cost of the review will be outlined in a contract with the steward.
21. The professional services firm engaged to undertake the review will be required to ensure its independence.
22. Every effort will be made to collaborate with the steward with respect to the review process and timing.

CHECK THE ACCURACY OF YOUR REPORTS

- All stewards are advised to take the following steps to identify potential errors in their reports on a timely basis:
- Carefully review Submission Detail Report (SDR) which is available on the WeRecycle Reporting Portal immediately upon submission of your steward report for accuracy.
- Review your first annual invoice for evidence of any errors (e.g. your invoice is significantly higher or lower than expected).
- Contact CSSA as soon as possible after identifying a potential error.

QUESTIONS AND ASSISTANCE

Please contact National Steward Services with any questions about the adjustment process:

1 (888) 980-9549 or adjustments@cssalliance.ca.



Stewardship Ontario

Appendix A to the Policy for Steward-initiated Adjustment Requests

Steps to Complete an Adjustment Request

1. Verify that your request meets the criteria for permitted adjustments.
2. Ensure that your request and submission of all materials to substantiate the request, including all information requested by CSSA, is made within the two-year timeframe.
3. Download the Adjustment Request Form [available here](#).
4. Complete the Adjustment Request Form.
 - Provide previously reported material quantities and revised material quantities.
 - Explain the errors that led to the request and provide supporting documentation (e.g., validation data such as SKU, UPC or other product categorization information, internal audit reports, weight data from suppliers, internal testing to validate weights, etc.) that provides an audit trail sufficient to allow for assessment of the adjustment request.
5. Email your completed Adjustment Request Form and supporting documentation to adjustments@cssalliance.ca with “Adjustment Request” in the subject line. Please include your steward number and name in the email.



Appendix F

PENALTY AND INTEREST POLICY

KEY FEATURES:

- **Penalty and/or interest charges will apply for obligated stewards who:**
 - Fail to meet their registration obligations in accordance with program deadlines;
 - Fail to file their reports in accordance with program deadlines; and/or
 - Intentionally file an inaccurate report; and/or
 - Fail to pay an invoice according to program deadlines

I. Overview

1. This policy provides guidance to stewards regarding conduct that will result in the application of penalty, and/or interest charges.
2. Nothing in this policy limits a program's ability to escalate a steward to the applicable Ministry or Authority as specified in the governing legislation.

II. Purpose

3. The Penalty and Interest Policy promotes fairness and consistency for all stewards and enables stewardship programs to operate in a cost-effective manner by applying a set of consistent penalties and interest to serve as a deterrent to non-compliance.

III. Scope

4. This policy applies effective January 1, 2019 for all stewards and voluntary stewards ("stewards") meeting their regulatory stewardship obligations with one or more of the following programs:
 - (e) Recycle BC;
 - (f) Multi-Material Stewardship Western (MMSW);
 - (g) Multi-Material Stewardship Manitoba (MMSM); and
 - (h) Stewardship Ontario (SO) Blue Box Program and Municipal Hazardous or Special Waste Program (MHSW).



Stewardship Ontario

IV. Policy

5. Definitions

- a. **“Obligation Date”** is the date that a steward begins supplying designated material in the province, after which they have 60 days to register with the Program (SO, MMSM) or execute a Membership Agreement with the Program (Recycle BC, MMSW).¹²
- b. **“Reporting Deadline”** is the date that packaging and paper Annual Steward Reports are due each year (May 31).and Quarterly MHSW Steward Reports are due (as per Appendix C of the MHSW Rules).
- c. **“Substantiation Request Date”** is the date on which the program provides the steward with written notice, by email, that the Penalty and Interest Policy will apply if the steward has not provided substantiation within the 30 days following such notice regarding one or more Annual Steward Reports or Quarterly Steward Report (MHSW) submitted via the WeRecycle Portal.
- d. **“Payment Due Date”** is the date that payment is due for an invoice associated with a steward’s account. The Payment Due Date can be found on each invoice.

6. Penalties and interest will be applied in the scenarios outlined in the following charts.

¹² Ontario stewards are obligated from the date they were notified of the Stewardship Ontario Rules. As of 2016, Ontario stewards are deemed to have been notified at the time the Stewardship Ontario Rules were posted on Stewardship Ontario's website. Ontario stewards that were notified of the Stewardship Ontario Rules by email or mail prior to 2016 are obligated from the date of that notice. Recycle BC, MMSW and MMSM stewards are obligated from the time they begin supplying obligated material in those provinces.



Scenario	Step I	Step II
<p>Not Registered¹³ An obligated steward who has <u>not registered</u> with the Program (SO, MMSM) and/or has <u>not executed</u> a Membership Agreement with Program (Recycle BC, MMSW) in accordance with the Onboarding Policy¹⁴, will be subject to the following:</p>	<p>For stewards that Register between the 61st and 180th day past the Obligation Date:</p> <ul style="list-style-type: none"> • Back payment and back filing to the Obligation Date • Penalty of 5% of all fees owing when report(s) invoiced; • Steward may be escalated to regulatory authority (Recycle BC, MMSW, SO (Blue Box and MHSW)) <p>Beginning on the 121st day past the Obligation Date:</p> <ul style="list-style-type: none"> • Steward may be escalated to regulatory authority (MMSM) 	<p>For stewards that Register on or after the 180st day past the Obligation Date:</p> <ul style="list-style-type: none"> • Penalty of 10% of all fees owing when report(s) invoiced
<p>Not Filed¹⁵ Steward has registered with the program, but has <u>not filed</u> its Report by the Reporting Deadline or has intentionally filed an incorrect report prior to the Reporting Deadline</p>	<p>Between the 31st and 90th day past the Reporting Deadline (SO, Recycle BC, and MMSW):</p> <ul style="list-style-type: none"> • Penalty of 5% of all fees owing when invoiced; <p>Beginning on the 31st day past the Reporting Deadline (MMSM):</p> <ul style="list-style-type: none"> • Penalty of 10% of all fees owing when invoiced 	<p>Beginning on the 61st day past the Reporting Deadline:</p> <ul style="list-style-type: none"> • Steward may be escalated to regulatory authority (Recycle BC, MMSW, (SO Blue Box and MHSW)) • Membership Agreement (Recycle BC, MMSW) may be cancelled <p>Beginning on the 91st past the Reporting Deadline:</p> <ul style="list-style-type: none"> • Penalty of 10% of all fees owing when invoiced (Recycle BC, MMSW, SO Blue Box and MHSW) <p>Beginning on the 121st day past the Reporting Deadline:</p> <ul style="list-style-type: none"> • Steward may be escalated to regulatory authority (MMSM)

¹³ In Ontario, the Penalty in this scenario applies to fees that are not paid in accordance with section 34 of the *Waste Diversion Transition Act*.

¹⁴ The Onboarding Policy requires new stewards to register within 60 days of their Obligation Date, and file all outstanding reports within 60 days of registration. The current report must be filed within 60 days of registration, or by May 31, whichever is later.

¹⁵ In Ontario, the Penalty in this scenario applies to fees that are not paid in accordance with section 34 of the *Waste Diversion Transition Act*.



Scenario	Step I	Step II
<p>Steward does not respond to program’s requests for substantiation of the steward’s report within 30 days during staff-initiated steward report review (the “Substantiation Request Date”)</p>	<p>Beginning on the 31st day past the Substantiation Request Date:</p> <ul style="list-style-type: none"> Report will be considered to be “not filed” and the Penalty consequences associated with that scenario will apply. Interest begins accruing on the steward’s invoice(s) from the Substantiation Request Date at the RBC prime rate of interest +3% (MMSM) or CIBC prime rate of interest +4% (SO, Recycle BC, MMSW) to the date adequate substantiation is received 	<p>Beginning on the 61st day past the Substantiation Request Date:</p> <ul style="list-style-type: none"> Membership Agreement (Recycle BC, MMSW) will be cancelled Steward may be escalated to regulatory authority (Recycle BC, MMSW, SO (Blue Box and MHSW) <p>Beginning on the 91st day past the Substantiation Request Date:</p> <ul style="list-style-type: none"> Penalty of 10% of all fees owing <p>Beginning on the 121st day following the Substantiation Request Date:</p> <ul style="list-style-type: none"> Steward may be escalated to regulatory authority (MMSM)
<p>Not Paid Steward has registered and has filed its report by the applicable deadline, but it has <u>not paid</u> its invoice by the Payment Due Date</p>	<p>Beginning on the 31st day past the Payment Due Date:</p> <ul style="list-style-type: none"> Interest begins accruing on the steward’s invoice(s) from the Payment Due Date at the RBC prime rate of interest +3% (MMSM) or CIBC prime rate of interest +4% (SO, Recycle BC, MMSW) 	<p>Beginning on the 61st day past the Payment Due Date:</p> <ul style="list-style-type: none"> Membership Agreement (Recycle BC, MMSW) will be cancelled Steward may be escalated to regulatory authority (Recycle BC, MMSW, SO (Blue Box and MHSW) <p>Beginning on the 121th day past the Payment Due Date:</p> <ul style="list-style-type: none"> Steward may be escalated to regulatory authority (MMSM) <p>Beginning on the 181st day past the Payment Due Date:</p> <ul style="list-style-type: none"> Penalty of 10% of all fees owing when paid