



Thinking
beyond
the box

Stewardship Ontario

REPORTER’S AGREEMENT effective as of

_____, _____

AMONG:

STEWARDSHIP ONTARIO, a corporation without share capital continued under the *Waste Diversion Act*, (“**Stewardship Ontario**”)

- and -

(the “**Reporter**”)

a corporation incorporated under the laws of _____

(jurisdiction)

- and -

(the “**Steward**”)

a corporation incorporated under the laws of _____

(jurisdiction)

BACKGROUND

- A. Stewardship Ontario has been designated as the Industry Funding Organization under the Act for the Municipal Hazardous or Special Waste program (MHSW);
- B. Pursuant to the Rules, the Steward is obligated to file an MHSM Steward’s Report and pay fees to Stewardship Ontario in respect of MHSM for which it is the Steward under the Rules;
- C. The Steward and the Reporter have agreed that the Reporter shall file an MHSM Reporter’s Report for which the Steward would otherwise report;
- D. The purpose of this Agreement is to set out the terms and conditions under which the Reporter shall file MHSM Reporter’s Reports and the rights of the Steward, the Reporter and Stewardship Ontario in connection therewith.

THIS AGREEMENT WITNESSES

1. DEFINITIONS AND INTERPRETATION

- 1.1 Terms beginning with capital letters and used herein without definition shall have the meanings given to them in the Act and MHSM Rules unless otherwise specified.
- 1.2 The following words and expressions have the meanings set out below:
- (a) “**Act**” means the *Waste Diversion Act, 2002*, S.O. 2002, c.6, as amended and in force from time to time;
 - (b) “**Agreement**” means this Reporter’s Agreement;
 - (c) “**Base Interest Rate**” means the prejudgment interest rate established from time to time under the Rules of Civil Procedure of the *Courts of Justice Act*, as amended from time to time, for prejudgment interest;
 - (d) “**Data Period**” means each three month period ending on December 31st, March 31st, June 30th and September 30th in each calendar year;
 - (e) “**Municipal Hazardous or Special Materials**” (or its abbreviation “**MHSM**”) means those goods and products set out in Appendix A to the Rules which are Supplied to consumers or consumed/used by Designated IC&I (industrial, commercial and institutional) organizations, that result in the generation of municipal hazardous or special waste as defined in Ontario Regulation 542/06 as amended;
 - (f) “**MHSM Steward’s Report**” means a report prepared by the Steward containing the information set out in Section 3.1 of the Rules;
 - (g) “**Plan**” means the MHSW program plan that was requested by the Minister of Environment Ontario in a letter dated December 12, 2006, a copy of which is posted on Stewardship Ontario’s website as amended from time to time;
 - (h) “**Reporter’s Report**” means a report prepared by the Reporter and filed with Stewardship Ontario with respect to the Steward pursuant to this Agreement, describing the aggregate amount of MHSM that was Supplied to the Reporter by the Steward in the Data Period, and containing the information set out in Appendix B of this Agreement;
 - (i) “**Rules**” means Rules made by Stewardship Ontario under the Act respecting MHSM in effect from time to time which require the filing of MHSM Steward’s Reports and payment of Steward’s Fees, an up-to-date copy of which is posted on the Stewardship Ontario website;
 - (j) “**Steward’s Fees**” means fees payable by the Steward to Stewardship Ontario pursuant to Section 3.2 of the Rules;
 - (k) “**Supplied**” means sold, leased, donated, disposed of, transferred the possession or title of, or otherwise made available or distributed for use in the Province of Ontario; “**Supply**” and “**Supplies**” have similar meanings;

1.3 **FILING OF REPORTER'S REPORTS**

- 1.4 The Reporter shall file an initial Reporter's Report with respect to all MHSM Supplied by the Steward to the Reporter during the first Data Period after commencement of this Agreement. Thereafter, the Reporter shall file a Reporter's Report for all such MHSM Supplied during each subsequent Data Period during which this Agreement is in effect.
- 1.5 A Reporter's Report shall be filed by the end of the calendar month immediately following the end of the Data Period to which it refers in accordance with the Rules. Except for the initial Reporter's Report, each such report shall be for an entire Data Period.
- 1.6 Notwithstanding Section 2.1 of this Agreement, by prior written agreement among a Steward the Reporter and Stewardship Ontario, the Reporter may file a Reporter's Report for less than all of the MHSM Supplied by the Steward to the Reporter in a Data Period, provided that the Steward files an MHSM Steward's Report for all other remaining MHSM Supplied by the Steward.
- 1.7 The Steward will pay to Stewardship Ontario an amount equal to the fees due to be paid by the Steward in accordance with Appendix C of the Rules based on the contents of the Reporter's Report. The Steward and Reporter shall provide at the time of entering into this Agreement the following information to Stewardship Ontario as it is set out in Appendix A of this Agreement including:
- (a) The legal name of each of the Steward and the Reporter as well as the contact information required herein;
 - (b) Trading name or legal names of all entities for whom the Reporter is reporting on behalf of the Steward;
 - (c) Corporation number or Canada Revenue Agency business numbers for the Steward and the Reporter.

2. **PENALTIES, INTEREST AND BACK FEES**

- 2.1 If the amounts reported in a Reporter's Report are inaccurate, any deficiency in fees paid resulting from such inaccuracies will be subject to the same penalties and payment interest outlined in the Rules but shall be paid by the Reporter to Stewardship Ontario. Stewardship Ontario will notify the Steward and the Reporter on any deficiency notices issued by it to the Reporter;
- 2.2 The Steward shall not be responsible for penalties or interest under Section 2.1 of this Agreement accruing on amounts for which the Reporter is obligated under this Agreement. Such penalties and interest shall accrue against the Reporter. Penalties and interest shall accrue against the Steward only after notification has been provided to the Steward of such unpaid Fees, which notice shall set out the calculation of such Reporter's Fees and such information as may reasonably be required to inform the Steward of the facts giving rise to the amount of unpaid Reporter's Fees. Payment by either the Steward or the Reporter shall constitute payment by the other for such amount.
- 2.3 Reporter shall indemnify and save Steward harmless from and against all losses, costs, damages, demands or claims, including legal fees resulting from any breach by Reporter of the provisions of this Agreement, including but not limited to the failure to file a Reporter Report in accordance with this Agreement.

3. **RECORD PROVISION AND RETENTION**

- 3.1 The Reporter shall promptly provide to Stewardship Ontario and the Steward all data, including calculation methodology, product and packaging data, audit reports, list of brands reported and list of brands excluded from any Reporter's Report, and any applicable allocation percentages, used by the Reporter in the preparation of the Reporter's Report upon request from Stewardship Ontario or the Steward.
- 3.2 The Reporter shall retain or make available to Stewardship Ontario and the Steward such information, data and records at an address in the Province of Ontario to substantiate and verify the amount set out in any Reporter's Report for a period of not less than five years from the date of the Reporter's Report to which they relate. The Reporter shall grant access to Stewardship Ontario and the Steward at such address upon its request to examine its books and records to enable Stewardship Ontario or the Steward, as the case may be, to audit and inspect such records respecting a Reporter's Report up to five years after the date of receipt of such Reporter's Report by Stewardship Ontario.
- 3.3 This Agreement shall not relieve the Steward from the Record Provision and Retention provisions of the Rules.

4. **TERMINATION**

- 4.1 This Agreement shall come into effect on the date set out above and shall remain in effect until terminated by any of the parties in accordance with Section 5.5, or either of the following provisions:
- (a) Stewardship Ontario or the Steward may terminate this Agreement at any time for cause, including non-filing of Reporter's Reports or non-payment of Reporter's Fees or penalty or interest charges assessed following notice as provided below. Prior to such termination Stewardship Ontario or the Steward, as the case may be, shall give the other parties notice of such default. Notice given by Stewardship Ontario shall include the method of calculation of such fees and such other information and documents as may be reasonably expected to be required by the other parties to understand the basis for the determination of default. The Reporter and the Steward shall have a period of 15 days in which to effect a cure to such default, failing which Stewardship Ontario or the Steward, as the case may be, may thereupon terminate this Agreement without further notice.
 - (b) Any party may otherwise terminate this Agreement on giving notice to the other parties prior to the expiry of a Data Period, and such termination notice shall be effective on the expiry of the next Data Period. If such notice is given, the Reporter shall file a Reporter's Report for the Data Period ending on the date of termination.
- 4.2 Notwithstanding the termination of this Agreement by any party, the Reporter shall remain liable to Stewardship Ontario for any penalties or interest outstanding under this agreement, but in no case shall Stewardship Ontario be entitled to penalties or interest from the Reporter that exceed the amounts that would have been payable by the Steward but for the existence of this Agreement. The provisions of Articles 3, 4 and 5 of this Agreement will survive termination and remain in effect for a period of five years from the date of termination.

5. EFFECT OF AGREEMENT

- 5.1 The Steward consents to the Reporter entering into this Agreement, filing Reporter's Reports on behalf of and for the account of the Steward. Subject to Section 3.3 of this Agreement, Steward acknowledges and agrees that it shall be relieved of reporting MHSM under the Rules only to the extent to which the Reporter carries out its obligations under this Agreement.
- 5.2 The Reporter and the Steward acknowledge that Stewardship Ontario is not obligated to enter into this Agreement and that, unless and until a copy of this Agreement signed by Stewardship Ontario is delivered to each of them, this Agreement shall have no force and effect. Stewardship Ontario is not bound to provide reasons for refusing to enter into this Agreement and neither the Steward nor the Reporter shall have any claim against Stewardship Ontario for refusing to do so. If, within 15 days of submission of this Agreement signed by both the Steward and the Reporter, Stewardship Ontario does not notify each of them of its acceptance, then this Agreement shall be deemed not to have been accepted by Stewardship Ontario.
- 5.3 The obligation of the Reporter to file a Reporter's Report shall not be subject to or affected in any way by any disputes, accounts or equities which may exist between the Reporter and the Steward. The Reporter agrees that it will file all such Reporter's Reports regardless of any such disputes, accounts or equities and shall look only to the Steward with respect thereto.
- 5.4 The Reporter agrees to the disclosure of information to the Steward by Stewardship Ontario about the amount of MHSM reported.
- 5.5 Stewardship Ontario retains the right to revise or amend the terms of this Agreement. Stewardship Ontario will give notice to the Steward and Reporter of such change (the "Change Notice"). Unless the Steward and/or Reporter give notice to Stewardship Ontario (the "Rejection Notice") within 45 days of receipt of the Change Notice that the Steward and/or the Reporter do not accept the revisions or amendments in the Change Notice, the Agreement, as amended, remains in effect and is binding. If the Steward and/or Reporter give a Rejection Notice to Stewardship Ontario, this Agreement shall be terminated 10 days after the delivery by the Steward and/or Reporter of the Rejection Notice.

6. DISPUTE RESOLUTION

- 6.1 If any dispute arises between any of the parties as to the amount of MHSM that is required to be included in a Reporter's Report:
- (a) The parties shall attempt to resolve the dispute through designated representatives from each of the parties within 30 days after written notice of the dispute was first given, or as otherwise agreed upon.
 - (b) If the parties are unable to resolve the dispute within the above period, the parties shall, within 30 days thereafter, jointly select an arbitrator to arbitrate the dispute. If a party does not nominate an arbitrator within the 30 day period, the other parties that have nominated an arbitrator shall nominate the arbitrator. The arbitration shall be conducted in accordance with the *Arbitration Act 1991*, as amended from time to time.
 - (c) Stewardship Ontario may from time to time establish a panel of approved arbitrators for the purposes of this Section 6, whose names shall be published on the Stewardship Ontario website. The arbitrator shall be chosen from this panel, unless the parties mutually agree otherwise.

- (d) The arbitrator shall render a written decision on the dispute within 14 days after the arbitration hearing or submission. The decision of the arbitrator shall be final and binding on the parties and shall not be subject to appeal on any grounds whatsoever, and shall be enforceable against Stewardship Ontario and the Reporter, as the case may be, immediately on the issue of such decision to the parties to the dispute.

6.2 The requirement for a Reporter to file a Reporter's Report shall not be an item subject to arbitration.

7. **CONFIDENTIALITY**

7.1 The Reporter agrees that its name and the Reporter's number assigned to it by Stewardship Ontario may be published on Stewardship Ontario's website. The Reporter further agrees that the Steward may at any time obtain access to the state of the Reporter's account, such access to be restricted to the portion of the account for the Steward's MHSM for which the Reporter has filed reports; and provided that such access shall not disclose to the Steward information with respect to other stewards under the Act for which the Reporter may have entered into a Reporter's Agreement. Stewardship Ontario shall take commercially reasonable and appropriate precautions to maintain the confidentiality of information in its database, but shall not be liable to the Steward or Reporter, or anyone claiming by, through or under either of them, for any losses, claims and damages arising out of inadvertent or negligent disclosure of any confidential information.

8. **GENERAL**

8.1 Assignment. The rights and obligations of the Steward and the Reporter under this Agreement are personal and may not be assigned in whole or in part.

8.2 Agreement Binding. This Agreement shall enure to the benefit of and be binding on the parties, their heirs, legal personal representatives, and successors and permitted assigns.

Notices. Any notice, determination, consent, request or other communication from one party to the other or others or other documents required or which may be given under this Agreement may be delivered or transmitted by means of electronic communication, personal service, facsimile with confirmation of transmission or by prepaid first class postage to the party at the addresses below and shall be deemed to have been received on the third day after posting and on the first day after the date of electronic or facsimile transmission, in each case which is not a Saturday, Sunday or public holiday in Ontario. 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 week prior to the postal disruption must be confirmed by a signed back facsimile to be effective. If Stewardship Ontario makes available on its website a system or method for electronic communication of notices to Stewardship Ontario, such notices may be given through such website.

Stewardship Ontario
1 St. Clair Avenue West Suite 700
Toronto, Ontario M4V 1K6
Attention: Chief Executive Officer
Facsimile: 416-594-3463

(the **“Reporter”**)
attention to and mailed/faxed to:

(primary contact)

(mailing address)

(phone number) (fax number)

(email)
CRA BIN Number _____

(the **“Steward”**)
attention to and mailed/faxed to:

(primary contact)

(mailing address)

(phone number) (fax number)

(email)
CRA BIN Number _____

- 8.3 Waiver. No failure by any of the parties to insist on strict performance of any covenant, agreement, term or condition (the "**provision**") of this Agreement, or to exercise any right or remedy consequent on the breach of any provision, and no acceptance of partial payment during the continuance of any such breach, shall constitute a waiver of any such breach or provision. No waiver of any breach shall affect or alter this Agreement, but each and every provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach of such provision.
- 8.4 Severability. If any provision of this Agreement or the application of the provision to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application of them to other circumstances shall not be affected by the invalidity or unenforceability and shall be valid and enforceable to the fullest extent permitted by law.
- 8.5 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements among the parties in connection with the subject matter of this Agreement, except as specifically set forth in it. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound by it. Notwithstanding the foregoing, nothing in this Agreement shall prevent a Steward and Reporter from, between themselves, entering into one or more other agreements concerning the subject matter of this Agreement, provided that nothing shall affect the obligations of the Steward or Reporter, or the rights of Stewardship Ontario, under this Agreement.
- 8.6 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws in force in the Province of Ontario.
- 8.7 Headings. The headings used throughout this Agreement are solely for convenience of the parties and are not to be used as an aid in the interpretation of this Agreement.
- 8.8 Time of Essence. Time shall be of the essence of this Agreement and every part of it.

EXECUTION BY THE PARTIES.

STEWARDSHIP ONTARIO

Per: _____
Name

Title

Date

We have authority to bind the Corporation

REPORTER

Per: _____
Name

Title

Date

We have authority to bind the Corporation

STEWARD

Per: _____
Name

Title

Date

We have authority to bind the Corporation

This authorization must be completed by a senior officer of the company

APPENDIX A –Information for the Reporter’s Agreement (as set out in Section 1.7 of this Agreement)

Legal Name of Reporter

Legal Name of Steward

Reporter’s General Phone

Steward’s General Phone

Primary Contact

Primary Contact

Phone

Phone

Email

Email

Trading name or legal names of all entities for whom the Reporter is reporting on behalf of the Steward (Brand names) and the type of MHSM (i.e., Oil Filters, Paints and Coatings):

Brand Name	Type of MHS Materials

Brand Name	Type of MHS Materials

APPENDIX B – MHSM Reporters Report (as set out in Section 1.2 of this Agreement)

Name of Reporter

Mailing address

Billing address

Primary Contact Person for MHSM Reporter’s Report

Email address

<u>Designated Materials</u>		
Material Category	Reporting Category	Unit of Measure
Antifreeze	Packaged (Containers with a volume equal to or less than 30 litres)	Volume in litres
	Bulked	
Fertilizers and their containers	Fertilizers	Volume in litres or weight in kilograms
Oil Containers	Oil Containers	Volume in litres
Oil Filters	Filters measuring less than or equal to 8"	Number of units Supplied
	Filters measuring greater than 8"	Number of units Supplied

Paints and Coatings and their containers	Containers with volume less than or equal to 250 ml	Number of units Supplied
	Containers with volume greater than 250 ml but less than or equal to 1L	Number of units Supplied
	Containers with volume greater than 1L but less than or equal to 5L	Number of units Supplied
	Containers with volume greater than 5L	Number of units Supplied
	Aerosols	Number of units Supplied
Pesticides and their containers	Pesticides	Volume in litres or weight in kilograms
Pressurized Containers	Non-refillable	Number of units Supplied
	Refillable	Number of units Supplied
Single Use Dry Cell Batteries	Single use dry cell batteries	Weight in kilograms
Solvents and their containers	Solvents	Volume in litres

Required information to be included in the MHSM Reporter's Report:

1. Description of methodology and data used to prepare this MHSM Reporter's Report;
2. Description of Excluded Waste deductions from MHSM Reporter's Report;
3. List of brands or trademarks covered in this MHSM Reporter's Report;
4. List of all stewards that this Reporter's Agreement includes; and
5. Declaration of accuracy of contents of this MHSM Reporter's Report.