

May 12, 2020

THIS AGREEMENT is dated _____, 2020

B E T W E E N:

PRODUCT CARE ASSOCIATION OF CANADA (“PCA”)

-and-

STEWARDSHIP ONTARIO (“SO”)

(collectively, the “Parties”)

ARTICLE 1: RECITALS

1. Whereas:

- (a) SO is a not-for-profit corporation and is the designated industry funding organization (“**IFO**”) for the Municipal Hazardous or Special Waste (“**MHSW**”) Program in accordance with the *Waste Diversion Transition Act, 2016* (the “**WDTA**”);
- (b) The MHSW Program is designated to collect certain hazardous and special materials (consisting of single-use dry-cell batteries, pressurized containers, oil containers, oil filters, antifreeze, paints and coatings, pesticides, solvents and fertilizers (collectively, “**All MHSW**”)) and ensure that they are recycled and disposed of in an environmentally responsible manner;
- (c) PCA submitted:
 - (i) an industry stewardship plan (an “**ISP**”) for paints and coatings (collectively, “**Paints**”) which was approved and effective as of January 30, 2015; and
 - (ii) an ISP for pesticides, solvents and fertilizers (collectively, “**PSF**”), which was approved and effective as of April 1, 2016);

- (d) As a result of the approved ISPs for Paints and for PSF, PCA is the Industry Stewardship Organization (“**ISO**”) for Paints and PSF under the WDTA;
- (e) Under sections 33 and 35 WDTA, SO may use Steward fees to fund, *inter alia*:
- (i) the costs incurred by SO to develop and implement a plan to wind up all or part of the MHSW Program;
 - (ii) the costs incurred by SO to wind up all or part of the MHSW Program; and
 - (iii) the costs incurred by SO to wind up SO.
- (f) The Minister of the Environment, Conservation and Parks (the “**Minister**”) provided direction letters (the “**Direction Letters**”) to SO to wind-up the MHSW Program in accordance with the WDTA and an approved wind-up plan (the “**Wind Up Plan**”);
- (g) The Minister’s Direction Letters require SO to develop and implement a Wind Up Plan for All MHSM which satisfies numerous requirements, including:
- (i) pursuant to the April 12, 2018 Direction Letter and Addendum (attached hereto at Schedule “A”), SO must:
 - a. ensure that the assets, liabilities, rights and obligations of SO related to the MHSW Program be dealt with in a fair, open and transparent process in accordance with applicable law;
 - b. ensure that any fees paid by MHSW Stewards fairly reflect the proportion of the cost paid by MHSW Stewards that are attributable to them;
 - c. ensure that there is no cross-subsidization between:
 - i. MHSW Stewards by material category, or
 - ii. MHSW Stewards and stewards of blue box waste;
 - d. limit SO’s spending related to the MHSW Program to Program expenditures necessary to maintain or exceed current MHSW

Program performance for both collection and processing until the MHSW Program ceases operation;

- e. ensure any return of surplus funds by SO to MHSW Stewards will be determined in a manner that would provide for sufficient funds to cover the SO's costs set out in section 33(5) of the WDTA, including costs of operating the MHSW Program, costs incurred to windup the MHSW Program, and the costs incurred by the Resource Productivity and Recovery Authority ("**RPRA**") under section 33(5)(iv) and (vi) of the WDTA;
- (ii) pursuant to the July 2, 2019 Direction Letter (attached hereto at Schedule "B"), SO must:
- a. include a proposal to return surplus funds to Ontario consumers of MHSM in order to substantially eliminate the amount of surplus funds projected to be held by SO for any of the MHSM categories once the MHSW Program, or part of the MHSW Program, has ceased to operate;
 - b. for MHSM categories that are managed by ISPs, including Paints and PSF, include options in the proposal to return surplus funds to MHSM consumers;
 - c. ensure that any proposal to return surplus funds for MHSW managed by ISPs to MHSM consumers provides for sufficient funds for the costs of operating the MHSW Program during the wind up period, as well as costs incurred to windup the MHSW Program;
 - d. ensure that the Wind Up Plan sets out a proposal to deal with any residual funds after the proposal to return surplus funds to MHSM consumers has been implemented and concluded, and

SO has finished its final financial reconciliations for the MHSW Program;

- (iii) pursuant to the December 20, 2019 Direction Letter (attached hereto at Schedule “C”), SO must ensure that, once the MHSW Program or part thereof has ceased operation and SO has accounted for all financial obligations, residual funds should be returned to MSHW Stewards in proportion, where reasonably possible, to the MHSW Stewards’ contribution to the funds for each MHSM category;
- (iv) pursuant to the April 1, 2020 Direction Letter (attached hereto at Schedule “D”), SO must:
 - a. develop amendments to the Wind Up Plan in relation to MHSW material categories for which there are approved ISPs, that would ensure that 100% of the surplus funds that RPRA approved for fee reductions in December 2019 and February 2020 for ISP stewards be returned in one-time lump sum payments to the ISOs that operate ISPs;
 - b. require that one-time lump sum payments be provided pursuant to surplus transfer agreements between SO and the ISOs that:
 - i. outline how the ISO would return 100% of material-specific surplus funds to ISP stewards in the form of fee reductions, for maximum benefit of consumers;
 - ii. in the case that there is a delay in the transition of the MHSW Program to individual producer responsibility under the *Resource Recovery and Circular Economy Act, 2016* (the “**RRCEA**”), allow SO to recover reasonable unexpected costs related to the materials managed by the ISOs, where such costs shall be

supported by full disclosure and shall be similar in scale to prior year's windup costs, plus inflation;

(h) the Parties acknowledge that the foregoing Recitals are true and form part of this Agreement;

2. **NOW THEREFORE THIS AGREEMENT WITNESSETH** that, in consideration of the mutual covenants and agreements contained herein, the Parties hereto covenant and agree with each other as follows.

ARTICLE 2: DEFINITIONS

3. In addition to the terms defined in Article 1, the following terms used in this Agreement shall have the following meanings:

- (a) **"Agreement"** means this Agreement and includes all schedules and amendments thereto;
- (b) **"All MHSM"** has the meaning indicated in section 1(b).
- (c) **"All MHSW Stewards"** means the aggregate of all MHSW Stewards for all MHSW material categories regardless of whether a particular Steward is participating in an ISP or is registered with SO.
- (d) **"Compensable Expenses"** means, in accordance with the Minister's Direction Letter dated April 1, 2020, in the event of a Transition Delay, SO's "reasonable unexpected costs related to the [MHSW] materials managed by ISOs" "supported by full disclosure and... similar to prior years' windup costs, plus inflation" which consist of the following categories of costs, in Section 4 of the approved Wind Up Plan:
 - (i) Plan Implementation; and
 - (ii) RPRA fees,and which are described more fully in Schedule "E".
- (e) **"Direction Letters"** has the meaning provided in section 1(f).

- (f) **“Escrow Agreement”** means the Agreement attached hereto as Schedule “F”.
- (g) **“Escrow Surplus Funds”** has the meaning ascribed to it in section [5(b)] of this Agreement.
- (h) **“Excess Funds”** has the meaning provided in section [12].
- (i) **“Fee Reduction”** has the meaning provided in section [6].
- (j) **“Fee Reduction Schedule”** has the meaning provided in section [9].
- (k) **“Force Majeure Event”** has the meaning ascribed to it in Article [16] of this Agreement.
- (l) **“General Reserves”** means SO’s non-material specific reserves for the MHSW Program.
- (m) **“Industry Funding Organization”** or **“IFO”** has the meaning in section 1(a).
- (n) **“Industry Stewardship Plan”** or **“ISP”** means the PCA Paint and/or PSF waste diversion programs approved by RPRA (formerly Waste Diversion Ontario) pursuant to section 36 of the WDTA, (formerly section 34 of the *Waste Diversion Act, 2002* (Ontario)), as may be amended from time to time.
- (o) **“MHSW”** has the meaning provided in section 1(a).
- (p) **“MHSM”** has the meaning provided in section 1(a).
- (q) **“Minister”** has the meaning provided in section 1(f).
- (r) **“Non-Escrow Surplus Funds”** has the meaning ascribed to it in section [5(a)] of this Agreement.

- (s) **“Paints”** has the meaning provided in section 1(c).
- (t) **“PCA MHSW Material”** means each of:
 - i. Paints and Coatings;
 - ii. Pesticides;
 - iii. Solvents; and
 - iv. Fertilizers.
- (u) **“PCA Stewards”** means that subset of All MHSW Stewards that have joined the PCA ISO for PSF or the PCA ISO for Paints.
- (v) **“PCA Surplus Funds”** means the aggregate of the PCA MHSW Material Market Share of the Program Surplus Funds for each MHSW Material.
- (w) **“Program Surplus Funds”** means 100% of surplus funds approved for MHSW Material fee reductions for PSF and Paints for as set out section [4].
- (x) **“PSF”** has the meaning provided in section 1(c).
- (y) **“Residual Funds”** means, in accordance with the Residual Funds Addendum attached hereto at Schedule “[G]”, “those funds remaining in the [MSHW] program following the resolution of all outstanding operational and financial obligations (including the disbursement of surplus funds).”
- (z) **“Residual Funds Addendum”** means the MHSW Wind Up Plan Residual Funds Addendum attached hereto at Schedule “[G]”.
- (aa) **“Residual Funds Calculation Date”** means the day on which SO has calculated the Residual Funds share calculations in accordance with the Residual Funds Addendum.
- (bb) **“RPRA”** has the meaning provided in section 1(g)(i)e.

- (cc) “**RRCEA**” has the meaning provided in section 1(g)(iv)b.
- (dd) “**Transition Delay**” means, in accordance with the Minister’s Direction Letter dated April 1, 2020, a “delay in the transition of the MHSW program to individual producer responsibility under the *Resource Recovery and Circular Economy Act, 2016*” beyond June 30, 2021.
- (ee) “**Transition Delay Funds**” means funds, which were formerly Non-Escrow Surplus Funds, which will be returned to SO to be used for Compensable Expenses in accordance with Article [7].
- (ff) “**Wind Up Date**” means June 30, 2021 or such other date as the Minister directs.
- (gg) “**Wind Up Plan**” has the meaning provided in section 1(f).

ARTICLE 3: CALCULATION OF SURPLUS FOR EACH PCA MHSW MATERIAL

4. The PCA Surplus Funds therefore consist of the following amounts in Table 1:

Table 1

MHSW Material	PCA ISO Member Share of Surplus Fund Estimate
1. Fertilizers	\$165,800
2. Paints/Coatings	\$14,441,100
3. Pesticides	\$113,000
4. Solvents	\$884,400
5. Total	\$15,604,300

ARTICLE 4: CALCULATION OF ESCROW AND NON-ESCROW SURPLUS FUNDS

5. On or before _____, 2020, SO shall transfer to PCA the PCA Surplus Funds as follows:
- (a) SO shall transfer the amounts in Table 2, Column B to PCA (the “**Non-Escrow Surplus Funds**”); and

(b) SO shall transfer the amounts in Table 2, Column C into Escrow pursuant to the Escrow Agreement in Schedule “E” (the “**Escrow Surplus Funds**”).

Table 2	A	B	C
MHSW Material	PCA Stewards’ Share of Surplus Fund Estimate	Non-Escrow Surplus Funds	Escrow Surplus Funds
1. Fertilizers	\$165,800	\$151,600	\$14,200
2. Paints/Coatings	\$14,441,100	\$13,768,400	\$672,700
3. Pesticides	\$113,000	\$98,000	\$15,000
4. Solvents	\$884,400	\$839,900	\$44,500
5. Total	\$15,604,300	\$14,857,900	\$746,400

ARTICLE 5: NON-ESCROW SUPLUS FUNDS AND FEE REDUCTIONS

6. Subject to section [12], PCA shall use the Non-Escrow Surplus Funds solely for the purpose of reducing fees otherwise payable by PCA Stewards to PCA with respect to the PCA MHSW Materials during the Wind Up Period (“**Fee Reductions**”).
7. Without limiting the generality of the foregoing, in no case shall Non-Escrow Surplus Funds be utilized by PCA to fund PCA’s reserves or for any other purpose other than as provided for in this Agreement.
8. Only PCA Stewards that are in good standing with PCA shall be entitled to receive funds from the Non-Escrow Surplus Funds.
9. PCA will develop a Fee Reduction schedule for the distribution of PCA Non-Escrow Surplus Funds and will provide it to SO and RPRA by [insert date, 2020] (the “**Fee Reduction Schedule**”).
10. In accordance with the procedure determined by PCA, for each PCA Steward that is eligible to receive funds from the Non-Escrow Surplus Funds, PCA must provide an acknowledgement of the Minister’s Direction that these funds will benefit consumers.

11. PCA will report to RPRA the aggregate Fee Reduction amounts applied to PCA Stewards' fees for each PCA MHSW Material in each fiscal quarter of the Wind Up Period.
12. In the event that the Non-Escrow Surplus Funds exceed the fees otherwise payable by a PCA Steward during the Wind Up Period (the "**Excess Funds**"), PCA will disperse the Excess Funds in accordance with the Residual Funds Addendum and Article [8].

ARTICLE 6: ESCROW SURPLUS FUNDS

13. Escrow Surplus Funds shall be maintained in an Escrow Account in accordance with the Escrow Agreement in Schedule "F".
14. If there is no Transition Delay, upon the release by Escrow Surplus Funds to PCA, PCA shall distribute the Escrow Surplus Funds to PCA Stewards in accordance with the Residual Funds Addendum and Article [8].

ARTICLE 7: TRANSITION DELAY AND ESCROW SUPPLUS FUNDS

15. In the event of a Transition Delay for Paint and/or PSF MHSM:
 - (a) within 3 business days of a Minister's letter confirming a Transition Delay for Paint and/or PSF, the Escrow Surplus Funds for Paint and/or PSF shall be transferred to SO in accordance with the Escrow Agreement attached hereto as Schedule "F"; and
 - (b) the funds previously held as Escrow Surplus Funds will become Transition Delay Funds which will be accounted for separately by SO in a manner that complies with this Agreement.
16. Where there is insufficient money in SO's General Reserves to provide funding for the categories of expenses in Section 4 of the Wind Up Plan, SO shall be permitted access the Transition Delay Funds for its Compensable Expenses, shared *pro rata* in a proportional amount amongst All MHSM (regardless of whether those MHSMs are managed by SO or by an ISO).

17. Within 30 days of SO utilizing Transition Delay Funds for Compensable Expenses, SO shall provide PCA with a notice (the “**Notice of Compensable Expenses**”) that must include:
 - (a) a list of Compensable Expenses;
 - (b) the quantum of money associated with each Compensable Expense;
 - (c) an explanation as to why the Compensable Expense(s) cannot be funded by SO from its General Reserves without drawing on the Transition Delay Funds; and
 - (d) a signed statement from SO’s CFO verifying the Compensable Expenses.
18. In the event that the Transition Delay Funds are insufficient to fund SO’s Compensable Expenses, PCA shall ensure that sufficient funds are generated from PCA’s Steward Fees to discharge PCA Stewards’ share of SO’s Compensable Expenses that exceed the Transition Delay Funds, shared *pro rata* in a proportional amount amongst All MHSM and All MHSW Stewards.
19. In the event that PCA disputes any part of SO’s Compensable Expenses, PCA will initiate dispute resolution in relation to any amounts in dispute in accordance with Article [13] within 10 days of receiving the Notice of Compensable Expenses.
20. Any Transition Delay Funds that remain as of the Residual Funds Calculation Date shall be distributed to All MHSW Stewards, including PCA Stewards, in accordance with the Residual Funds Addendum and Article [8].

ARTICLE 8: SO RESIDUAL FUNDS

21. Once SO has determined the amount of Residual Funds in accordance with the Residual Funds Addendum, SO will provide RPRA with a signed statement from SO’s CFO confirming the amount of the Residual Funds.
22. SO will disperse the Residual Funds in accordance with the Residual Funds Addendum or in accordance with such further amendment approved by RPRA.

ARTICLE 9: DATA SHARING AND COMMUNICATION

23. SO and PCA will each provide the other with the data necessary to implement this Agreement, including, without limitation, any data necessary to:
- (a) forecast MHSW Program Costs;
 - (b) calculate the PCA Surplus Funds for PCA MHSW Materials as compared to other categories of MHSW Materials;
 - (c) calculate PCA's share of Compensable Expenses, if any, submitted in accordance with Article [7]; and
 - (d) any other data required reasonably required to give effect to this Agreement.
24. SO and PCA agree to provide prior notice of stakeholder communication activities to each other relating to matters addressed in this Agreement.

ARTICLE 10: TERM

25. The provisions of this Agreement shall continue to be in full force and effect until:
- (a) SO is required to amend or terminate this Agreement in accordance with Article [11]; or
 - (b) if there is no amendment or termination in accordance with Article [11], then the later of such day as:
 - (i) the Parties have completed all of their respective obligations provided for in this Agreement; or
 - (ii) SO has completed all of its obligations under the approved Wind Up Plan or any amendments to the approved Wind Up Plan.

ARTICLE 11: NO LIABILITY IN THE EVENT OF AN AMENDMENT OR TERMINATION OF THIS AGREEMENT

26. This Agreement is subject to and governed by the RRCEA, the WDTA and the residual authority of the Minister and RPRA under such Acts.

27. The parties agree that, subsequent to the date of this Agreement:
- (a) the Minister may issue further letters or directions or require amendments to the Wind Up Plan; and
 - (b) RPRA may approve, not approve, or require amendments to the Wind Up Plan,
- (collectively, “**Directions**”).
28. As a result of Directions by the Minister and/or RPRA, SO may be required to amend or terminate this Agreement.
29. Where SO is required to amend or terminate this Agreement as a result of such Directions, SO shall incur no liability to PCA arising as a result of such amendment or termination.

ARTICLE 12: RELEASE AND INDEMNITY

30. Provided that each of PCA and SO have complied with their obligations under this Agreement, upon the expiration of the Term provided for in Article [10]:
- (a) PCA shall fully and finally release SO and its respective officers, directors, employees, shareholders, contractors, agents, counsel and representatives, as well as each of their respective successors and assigns, from any and all claims, obligations, rights, causes of action, and liabilities of whatever kind or nature, which are based upon, arising from, concerned with, or otherwise related, in whole or in part, to the MHSW Program; and
 - (b) SO shall fully and finally release PCA and its respective officers, directors, employees, shareholders, contractors, agents, counsel and representatives, as well as each of their respective successors and assigns, from any and all claims, obligations, rights, causes of action, and liabilities of whatever kind or nature, which are based upon, arising from, concerned with, or otherwise related, in whole or in part,

to the MHSW Program.

ARTICLE 13: DISPUTE RESOLUTION

31. Any dispute that touches upon the validity, construction, meaning, performance or effect of the Agreement¹ or the rights or liabilities of the Parties or any matter arising out of, or in connection with this Agreement (a “**Dispute**”), between SO and PCA will be addressed as follows:

(a) Each Party will promptly bring to the attention of the other Party, in writing, a notice of the Dispute (a “**Notice of Dispute**”) by email with “Dispute” in the subject line.

(b) **Stage 1:**

The Parties will first attempt to resolve the Dispute through representatives from each of SO and PCA who work most closely with each other on related matters, within 5 days after written notice of the Dispute was first given.

(c) **Stage 2:**

If the Dispute is not resolved at the Stage 2, either Party may escalate the Dispute to the senior SO and PCA representatives, who will meet and work together in good faith to attempt to resolve the Dispute within a further 5 days.

(d) **Stage 3:**

If the Dispute is not resolved at Stage 2 within 5 days, then:

(i) Either Party may escalate the Dispute to a third-party arbitrator for final and binding decision by emailing to the other party a request to arbitrate (the “**Request to Arbitrate**”).

(ii) The arbitration shall be conducted in Toronto by a single

¹ Including all Schedules to the Agreement

arbitrator who shall be agreed upon by the parties, or failing agreement by the parties within 15 days of a Request to Arbitrate having been sent, by the Court on an application by either party.

- (iii) The Parties agree that any arbitrator to be appointed must agree to render a decision on the merits the dispute within 30 days of the conclusion of any final submissions.
- (iv) With the benefit of submissions from each party, the arbitrator shall determine the dispute resolution procedure that provides for an adequate opportunity for each party to present its position to the arbitrator prior to the arbitrator rendering his/her decision.
- (v) There shall be no appeal or review of the arbitrator's decision, including with respect to pure questions of law.

ARTICLE 14: ASSIGNMENT

- 32. Neither Party may subcontract or assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of the other Party.

ARTICLE 15: FORCE MAJEURE

- 33. Neither Party will be liable to the other Party for any failure or delay in fulfilling an obligation hereunder, if said failure or delay is attributable to a fire, act of God, natural disaster, provincial or federally-declared pandemic or state of emergency, war, riot, civil disturbance, earthquake, flood, or court or governmental order beyond such party's reasonable control ("**Force Majeure**").
- 34. The Parties agree that the deadline for fulfilling the obligation in question will be extended for a period of time equal to that of the continuance of the Force Majeure. The Party to which the Force Majeure applies will use all

commercially reasonable efforts to minimize the effect of the Force Majeure on its performance under this Agreement.

ARTICLE 16: NO PARTNERSHIP OR JOINT VENTURE

35. This Agreement does not create and will not in any circumstances create or be deemed to create a partnership or joint venture between the Parties.

ARTICLE 17: SEVERABILITY

36. If any provision of this Agreement is determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions of this Agreement, and each provision is hereby declared to be separate, severable and distinct.
37. To the extent that any such provision of this Agreement is found to be invalid, illegal or unenforceable, the Parties hereto will act in good faith to substitute for such provision, to the extent possible, and new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

ARTICLE 18: NOTICES

38. Any notice, request, demand or other instrument or communication herein provide, permitted or required to be given by either PCA or SO will be in writing and sufficiently given if delivered personally, by facsimile transmission or other electronic means of written communication tested prior to transmission to the extent such testing is available (unless otherwise expressly provided herein) or if sent by registered mail to the following respective address hereinafter set out, namely:

(a) Notices to PCA will be delivered to:

President,

Product Care Association of Canada

105 W. 3rd Avenue

Vancouver BC V5Y 1E6Vancouver

Facsimile: 604-592-2982

Email: contact@productcare.org

(b) Notices to SO shall be delivered to:

Executive Director

Stewardship Ontario,

1 St. Clair Ave W., Suite 701

Toronto, ON M4V1K6

Email: gzecchini@stewardshipontario.ca

39. Any such notice if delivered personally, by facsimile transmission or by email or other electronic means will be conclusively deemed to have been given on the day of personal delivery, or facsimile transmission or electronic communication (and if after 5 p.m. E.T. the following business day).
40. Either Party may, at any time, give written notice to the other of any change of address (postal and/or email) of the party giving such notice and from and after the giving of such notice the address therein specified shall (in the absence of knowledge to the contrary) be deemed to be the address of such party for the giving of notices thereafter.

ARTICLE 19: AMENDMENT AND WAIVERS

41. Subject to Article [11],² no amendment or waiver of any provision of this Agreement will be binding on any party unless consented to in writing by such party. No waiver of any provision of this Agreement will constitute a waiver of any other provision, and no waiver will constitute a continuing waiver unless otherwise provided.

ARTICLE 20: FURTHER ACTS

42. Each party will execute all such documents and do all such other acts and things as may be necessary or desirable from time to time in order effectively to carry out

² Article [11]: No Liability in the Event of an Amendment or Termination of this Agreement

the provisions of this Agreement and will not to take any action, or omit to take any action, that would constitute a breach of this Agreement.

ARTICLE 21: NO THIRD PARTY BENEFICIARIES

43. No person or entity which is not a party hereto will have any rights or obligations pursuant to this Agreement or be permitted to place any reliance on anything in this Agreement or on the continuation of this Agreement.

ARTICLE 22: COUNTERPARTS AND EMAIL

44. This Agreement may be transmitted by email, and may be executed in counterparts, such that each of which will constitute an original and all of which taken together will constitute one and the same instrument.

ARTICLE 23: ENTIRE AGREEMENT

45. This Agreement constitutes the entire agreement between the parties with respect to all of the matters herein and supersedes and replaces all previous agreements, whether oral or written, concerning the same or similar subject matter.

ARTICLE 24: HEADINGS FOR CONVENIENCE ONLY

46. The division of this Agreement into articles and sections is for convenience of reference only and will not affect the interpretation or construction of this Agreement.

ARTICLE 25: GOVERNING LAW

47. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 26: LEGISLATION REFERENCES

48. Any reference in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body will be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

ARTICLE 27: CONFIDENTIALITY

49. Subject to any legal requirements, the Parties will at all times treat all information exchanged for the purposes of this Agreement as private and confidential information.

IN WITNESS WHEREOF the parties to this Agreement, by their respective authorized signing authorities, hereby execute this Agreement.

PRODUCT CARE ASSOCIATION OF CANADA

I have authority to bind the corporation,

Per: _____

Mark Kurschner, President

STEWARDSHIP ONTARIO

I have authority to bind the corporation,

Per: _____

Jane Mackenzie, CFO

Schedule “A” Minister’s Direction Letter dated April 12, 2018

Ministry of the Environment
and Climate Change

Ministère de l'Environnement
et de l'Action en matière de
changement climatique



Office of the Minister

Bureau du ministre

77 Wellesley Street West
11th Floor, Ferguson Block
Toronto ON M7A 2T5
Tel.: 416-314-6790
Fax: 416-314-6748

77, rue Wellesley Ouest
11^e étage, édifice Ferguson
Toronto ON M7A 2T5
Tél. : 416-314-6790
Téléc. : 416-314-6748

April 12, 2018

ENV1283MC-2018-718

Mr. John Coyne
Chair
Stewardship Ontario
1 St. Clair Ave. West, 7th Floor
Toronto ON M4V 1K6

Dear Mr. Coyne:

Pursuant to Section 14 of the *Waste Diversion Transition Act, 2016* (WDTA), I am directing Stewardship Ontario (SO) to wind up the waste diversion program for municipal hazardous or special waste (MHSW) in full. SO must develop a plan to wind up the waste diversion program for MHSW and submit it to the Resource Productivity and Recovery Authority (the Authority) for approval no later than June 30, 2019. The waste diversion program for MHSW will cease operation on December 31, 2020.

The development of the plan for winding up the waste diversion program for MHSW must be conducted in accordance with this direction as well as the provisions of the WDTA and its regulations.

It is in the public interest that the plan is consistent with the following principles:

Demonstrate Transparent Communications and Meaningful Consultation

- The public, the Authority and affected stakeholders, including stewards, municipalities, service providers (e.g. collectors, haulers, processors, recycled product manufacturers, and operators of sites that manage and dispose of MHSW), and persons operating approved industry stewardship plans (ISPs), receive transparent and clear communications from SO on a regular basis during development and implementation of the wind up plan.
- Consumer feedback should be obtained related to lessons learned from the waste diversion program for MHSW. Feedback should be documented to provide a baseline to measure the outcomes of future programs under the new producer responsibility framework.
- Affected stakeholders should be consulted and have opportunities for meaningful engagement during the development and implementation of the wind up plan.

Support Competition and Prevent Conflict of Interest

- The plan shall support competition in, and not adversely affect, Ontario's current or future marketplace for the collection and recovery of MHSW. The plan shall not provide for unfair or preferential treatment of the public or any affected stakeholders, or barriers to competition during and following the wind up of the program.
- SO shall take all necessary steps to ensure there is no real, potential or apparent conflict of interest when developing and implementing the plan.
- SO's sharing of data and information to parties other than the Authority must be done through a fair, open and transparent process that does not result in preferential treatment of one person or group over another or release of any confidential information.

Demonstrate Fairness to Stewards and Protect Consumers

- The assets, liabilities, rights and obligations of SO related to the waste diversion program for MHSW must be dealt with in a fair, open and transparent process in accordance with applicable law. Assets that are attributable to the waste diversion program for MHSW must be disposed of for fair market value, other than MHSW program data and information.
- SO shall ensure that any fees paid by stewards fairly reflect the proportion of the costs referred to in Section 33 of the WDTA that are attributable to them and that there is no cost cross-subsidization among stewards of municipal hazardous or special materials (MHSM), or among stewards of MHSM and stewards of products that result in Blue Box waste.
- All monies held in trust by SO related to the waste diversion program for MHSW, including the portions of the program in respect of a designated waste to which an ISP relates, shall be treated appropriately in accordance with the WDTA and its regulations.
- The interests of current and future consumers should be considered when developing options to deal with program surpluses and/or deficits in the wind up plan.
- SO's spending related to the waste diversion program for MHSW should be limited to program expenditures necessary to maintain or exceed current program performance for both collection and processing until the MHSW program ceases operation.

Maintain and Improve Program Performance

- In order to mitigate the negative impacts of MHSW on the environment and human health, there needs to be strong standards to maintain and improve the performance of the waste diversion program for MHSW. As such, there shall be no disruption in the operation of the waste diversion program for MHSW, including collection, transportation, processing and recycled product manufacturing, while the program is operating.

Mr. John Coyne
Page 3.

- Ontarian's access to and experience with the waste diversion program for MHSW shall not be negatively impacted during wind up.
- Current program targets or performance, whatever is higher, must be maintained or exceeded until the waste diversion program for MHSW ceases operation.

An addendum to this letter provides specific direction related to the details that SO must include in its wind up plan for the waste diversion program for MHSW.

The implementation of the wind up plan shall begin on the date on which the Authority approves the wind up plan, which I anticipate will be no later than December 31, 2019.

It is expected that SO will engage with the Authority, and consult with representatives of municipalities, stewards, persons operating approved ISPs and other affected stakeholders when developing its wind up plan in accordance with my direction, the enclosed addendum, the WDTA and its regulations.

It is also expected that SO will engage with and work cooperatively with the Authority in implementing any policy direction issued to the Authority pursuant to Section 29 of the *Resource Recovery and Circular Economy Act, 2016* (RRCEA). In particular, SO will cooperate fully with the Authority on the activities set out in my policy direction to the Authority dated April 12, 2018, including providing the Authority with quarterly reports within four weeks of the end of each remaining quarter in 2018-2020 regarding SO's revenues and expenditures related to the waste diversion program for MHSW.

If it is in the public interest to do so, I will provide further direction at a later date related to the matters set out in this direction, or to provide clarification related to the wind up of the waste diversion program for MHSW.

Lastly, SO shall make publicly available on SO's website this wind up direction letter, as well as the complementary policy direction letter issued to the Authority.

Sincerely,



Chris Ballard
Minister

- c: Mr. Paul Evans, Deputy Minister, Ministry of the Environment and Climate Change
Ms. Glenda Gies, Chair, Resource Productivity and Recovery Authority
Mr. Mark Kurschner, President, Product Care Association
Mr. Robert Budgeon, CFO, SodaStream Canada
Mr. David Pearce, Managing Director, Automotive Materials Stewardship

Addendum to the Minister's Direction Letter to Wind Up the Waste Diversion Program for Municipal Hazardous or Special Waste (MHSW)

SO is directed to develop a plan to wind up the diversion program for MHSW that includes the following:

- A description of the designated wastes that are covered by the MHSW program, including a description of designated wastes to which an industry stewardship plan (ISP) relates.
- A description of how the program will be operated while the plan is being implemented and until the program ceases operation.
- A proposed timeline according to which key aspects of the plan will be implemented.
- A description of and a proposal for dealing with the assets, liabilities, rights and obligations of SO in relation to the waste diversion program for MHSW including:
 - All monies held in trust by SO related to the waste diversion program for MHSW pursuant to Section 35 of the WDTA.
 - Any other assets of SO related to the waste diversion program for MHSW, including, and without limitation, any intellectual property, physical assets or real property.
 - Any liabilities incurred by SO during the development and implementation of the waste diversion program for MHSW and anticipated to be incurred during the development and implementation of the wind up plan.
 - A detailed account of anticipated costs to operate and wind up the waste diversion program for MHSW, and a detailed account of how SO will finance these costs.
 - A detailed account of how SO proposes to equitably apportion its assets, liabilities, rights and obligations among stewards of municipal hazardous or special materials (MHSM) (including stewards that formerly participated in the waste diversion program for MHSW and now participate in ISPs), and among stewards of MHSM and stewards of products that result in Blue Box waste.
- A description of and a proposal for dealing with any program surpluses or deficits associated with any of the MHSW, including:
 - An approach to limit program expenditures necessary to maintain or exceed current program performance for both collection and processing until the program ceases operation.
 - Proposed rules governing stewards fees that are in accordance with the principles set out in Section 33 of the WDTA.
 - The wind up plan and accompanying rules shall set out a process for returning surplus funds to stewards in proportion to stewards' contribution to these surpluses. The rules governing the return of program surpluses to stewards must include stewards of MHSM categories for which there is an approved ISP (including stewards that formerly participated in the waste diversion program for MHSW and now participate in ISPs).
 - The rules governing the return of surpluses may include a fee elimination for MHSM categories managed by SO, as long as the fee elimination will be in effect until the waste diversion program for MHSW ceases operation. Any fee elimination date must be approved by the Authority.

- Except as the return of surplus funds is governed by rules for a fee elimination, the surplus should be returned to the stewards who contributed to the surplus within three months of the plan being approved.
- Any return of surplus funds to stewards will be determined in a manner that would provide for sufficient funds to cover the costs set out in subsection 33 (5) of the WDTA, including costs of operating the program, costs incurred to wind up the waste diversion program for MHSW, as well as costs incurred by the Authority under clauses 33 (5) (iv), (v) and (vi).
- A description of all data and information that is within SO's custody or control and that is related to the operation of the waste diversion program for MHSW since the Minister's program request letter (December 12, 2006), and a proposal for transferring all data and information to the Authority, including:
 - The process for transferring all data and information to the Authority within any timeframes specified by the Authority.
 - The data and information that is to be transferred to the Authority, including, but not limited to:
 - A list of all registered stewards (including stewards that participate in ISPs), including their business addresses and contact information, the nature of each steward's designation under the WDTA (e.g. whether designated because the steward is a brand holder, a first importer, or other person with a commercial connection to MHSM); the classes of MHSM for which the steward is designated; the number of classes of MHSM for which the steward is designated; the number of materials in each class supplied by the steward into the Ontario marketplace;
 - Data and information relating to the collection and management of MHSW, including a list of collectors, haulers, processors, recycled product manufacturers, operators of sites that manage and dispose of MHSW, and persons operating approved ISPs, their business address, business contact information and past program performance data and information; and,
 - Other additional data and information requested by the Authority.
 - Data and information related to the waste diversion program for MSHW that is in SO's custody or control shall not be for sale.
- A proposal for identifying confidential or personal data and information related to the waste diversion program for MHSW and indicating how such data and information will be supplied in confidence when transferring it to the Authority, which will assist the Authority in determining its treatment of such data and information based on applicable law and policies.
- The procedures that SO is putting in place to ensure there is no real, potential or apparent conflict of interest in respect of the plan's development, contents or implementation. Without limiting the scope of these procedures, the plan should address:
 - Any real, potential or apparent conflict of interest in respect of SO's relationship with the Canadian Stewardship Services Alliance (CSSA) and persons operating approved ISPs.
 - Any necessary steps to ensure that the CSSA and persons operating approved ISPs do not receive preferential treatment over other potential market participants in respect of MHSW resource recovery markets that may be created under the RRCEA.

- An approach that outlines how SO will deal with any information technology systems related to the waste diversion program for MHSW to ensure fair and equitable access to all users, as an alternative to disposing of these assets for fair market value.
- A description of changes to the program that are anticipated to be necessary to implement the wind up plan.

I am further directing that the plan to wind up the waste diversion program for MHSW include the following:

- A detailed report of SO's communications with affected stakeholders and the public during the development of the wind up plan.
- A detailed proposal for a communications plan for all affected stakeholders and the public during the implementation of the wind up plan, if approved, including:
 - The process by which SO will provide information to the affected stakeholders and the public on a regular basis.
 - A description of the key steps that will be taken by SO to wind up the waste diversion program for MHSW, and show how affected stakeholders and the public will be affected by the wind up.
 - A summary of lessons learned based on consumer feedback related to the waste diversion program for MHSW.
- A detailed report of how SO has met the consultation requirements of subsection 14 (13) of the WDTA during the development of the wind up plan, including:
 - A list of the stewards, municipalities, service providers, persons operating approved ISPs and other affected stakeholders that were consulted during the development of the plan.
 - A summary of the communications directed by SO through its outreach channels and analytics on responses.
 - A summary of the comments received by SO from affected stakeholders.
 - A report of how the comments were considered by SO in the development of the wind up plan.

Schedule “B” Minister’s Direction Letter dated July 2, 2019

Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement,
de la Protection de la nature et des
Parcs

Office of the Minister

Bureau du ministre

777 Bay Street, 5th Floor
Toronto ON M7A 2J3
Tel.: 416-314-6790

777, rue Bay, 5^e étage
Toronto (Ontario) M7A 2J3
Tél. : 416.314.6790



Ontario

Ms. Debbie Baxter
Chair, Executive Wind Up Committee
Stewardship Ontario
1 St. Clair Ave. West, 7th Floor
Toronto ON M4V 1K6

Dear Ms. Baxter:

I have recently been informed that Stewardship Ontario (SO) has surplus funds in excess of \$40 million in respect of the waste diversion program for municipal hazardous or special waste (MHSW), in large part due to the resolution of a tax dispute with the Canada Revenue Agency.

As a result, and pursuant to section 14 of the Waste Diversion Transition Act, 2016 (WDTA), it is in the public interest that I amend the timelines set out in the direction letter to wind up the waste diversion program for MHSW issued to SO on April 12, 2018. The waste diversion program for MHSW in respect of all designated wastes except single-use batteries will cease operation on June 30, 2021. The waste diversion program for MHSW in respect of single-use batteries will cease operation on June 30, 2020, as previously set out in the direction letter issued to SO on December 11, 2018.

Further, I am directing SO to include a proposal to return surplus funds to Ontario consumers of municipal hazardous or special material (MHSM) in the plan to wind up the program in order to substantially eliminate the amount of the surplus funds projected to be held by SO for any of the MHSM categories once the program, or part of the program, has ceased operation.

For the MHSM categories whose recovery is managed by SO, it is my direction that the proposal will set out rules governing a fee elimination during the wind up period. I expect that consumers will benefit from this direction through the elimination of any consumer fees or through reduced product cost.

In addition, for the MHSM categories that are managed through industry stewardship plans, I am directing that the proposal include options to return surplus funds to MHSM consumers; for example, through a consumer rebate program.

The requirement for a proposal to return surplus funds to MHSM consumers replaces the requirement in the April 12, 2018 direction regarding the return of excess funds to stewards.

Any proposal to return surplus funds to MHSM consumers should be determined in a manner that would provide for sufficient funds for the costs of operating the program during the wind up period, as well as costs incurred to wind up the waste diversion program for MHSW. The wind up plan shall also set out a proposal to deal with any residual funds after the proposal to return surplus funds to MHSM consumers has been implemented and concluded, and SO has finished its final financial reconciliations for the program.

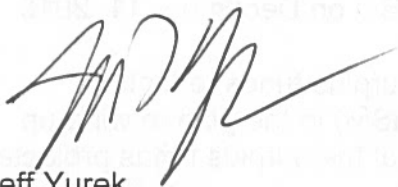
All other elements included in the direction to wind up the waste diversion program for MHSW on April 12, 2018 remain unchanged except as necessary to implement this direction.

The timeline for SO to submit the wind up plan to the Authority for approval will be extended to September 30, 2019. It is my expectation that the implementation of the wind up plan shall begin on the date on which the Authority approves the wind up plan, which I anticipate will be no later than December 31, 2019.

It is expected that SO will continue to engage and cooperate with the Authority on the implementation of the wind up directions and any associated policy directions issued to the Authority pursuant to section 29 of the Resource Recovery and Circular Economy Act, 2016.

Lastly, SO shall post this wind up direction to its website.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Yurek', is written over a faint, illegible background.

Jeff Yurek
Minister

- c: Mr. Serge Imbrogno, Deputy Minister, Ministry of the Environment, Conservation and Parks
Ms. Glenda Gies, Chair, Resource Productivity and Recovery Authority

Schedule “C” Minister’s Direction Letter dated December 20, 2019

Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement,
de la Protection de la nature et des
Parcs

Office of the Minister

Bureau du ministre

777 Bay Street, 5th Floor
Toronto ON M7A 2J3
Tel.: 416-314-6790

777, rue Bay, 5^e étage
Toronto (Ontario) M7A 2J3
Tél. : 416.314.6790



DEC 20 2019

Robyn Collver
Chair
Stewardship Ontario
1 St. Clair Ave. West, 7th Floor
Toronto ON M4V 1K6

and

Ms. Glenda Gies
Chair
Resource Productivity and Recovery Authority
4711 Yonge Street, Suite 408
Toronto ON M2N 6K8

Dear Ms. Collver and Ms. Gies:

I am writing regarding the transition plan developed by Stewardship Ontario (SO) for the waste diversion program for Municipal Hazardous or Special Waste (MHSW).

In response to feedback I have received from stakeholders and pursuant to Section 14 of the Waste Diversion Transition Act, 2016, I am clarifying previous direction on how residual funds must be managed once the program, or part of the program, has ceased operation and all financial obligations have been accounted for. I am directing that the residual funds be returned to stewards. The return of the residual funds should be in proportion, where reasonably possible, to the stewards' contribution to the funds for each municipal hazardous or special material (MHSM) category.

Other than any clarification provided in this direction, it does not change the requirements in the previous direction letters. The direction applies to stewards for the MHSM categories whose recovery is managed by SO as well as stewards of the MHSM categories that are now managed through industry stewardship plans.

It is my expectation that the Resource Productivity and Recovery Authority (the Authority) will approve the revisions to the plan resulting from this clarification no later than February 29, 2020.

Lastly, SO and the Authority shall post this clarifying direction to their respective websites.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Yurek', with a long horizontal stroke extending to the right.

Jeff Yurek
Minister

c: Mr. Serge Imbrogno, Deputy Minister, Ministry of the Environment, Conservation and Parks

Schedule “D” Minister’s Direction Letter dated April 1, 2020



357-2020-577

Ms. Robyn Collver
Chair, Stewardship Ontario
1 St Clair Avenue West, 7th Floor
Toronto ON M4V 1K6

Dear Ms. Collver:

In accordance with recent Ministerial directions to Stewardship Ontario (SO) on the transition of the Municipal Hazardous or Special Waste (MHSW) program, I am directing that SO develop amendments to the wind up plan, pursuant to subsection 14(17) of the *Waste Diversion Transition Act, 2016*.

This direction applies only to the MHSW material categories for which there are approved Industry Stewardship Plans (ISPs) and does not relate to the material categories managed exclusively by SO (i.e. single-use batteries and pressurized containers).

Pursuant to feedback from stakeholders, I am directing SO to develop amendments to the wind up plan that would ensure that 100 per cent of the surplus funds the Resource Productivity and Recovery Authority (the Authority) approved for fee reductions in December 2019 and February 2020 for stewards who are part of approved ISPs be returned in one-time lump sum payments to the Industry Stewardship Organizations (ISOs) that operate the ISPs.

The amended wind up plan will require that the one-time lump sum payments be provided pursuant to surplus transfer agreements between SO and the ISOs that:

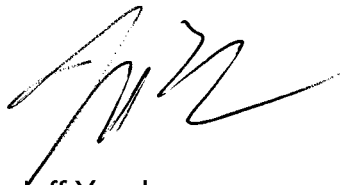
- Outline how the ISO would return 100 per cent of the material-specific surplus funds to ISP stewards in the form of fee reductions, for the maximum benefit of consumers.
- In the case that there is a delay in the transition of the MHSW program to individual producer responsibility under the *Resource Recovery and Circular Economy Act, 2016*, allows SO to recover reasonable unexpected costs related to the materials managed by the ISO's. This shall be supported by full disclosure and shall be similar in scale to prior years' wind up costs, plus inflation.

Ms. Robyn Collver
Page 2.

It is my expectation that SO submit its proposed amendments to the Authority no later than April 30, 2020 and that SO make the lump sum payments to the ISOs within 2 weeks of the proposed amendments being approved.

Other than the amendments required under this direction, no other amendments to the plan are required.

Sincerely,

A handwritten signature in black ink, appearing to read 'JY', with a stylized flourish extending to the right.

Jeff Yurek
Minister of the Environment, Conservation and Parks

C: Serge Imbrogno, Deputy Minister
Ministry of the Environment, Conservation and Parks

Mark Kurschner, President
Product Care Association

David Pearce, Vice-President
Canadian Stewardship Services Alliance
Automotive Materials Stewardship

Schedule “E” Categories of SO Compensable Expenses in the Event of a Transition Delay

1. In the event of a delay in the transition of the MHSW program to individual producer responsibility under the *Resource Recovery and Circular Economy Act, 2016* beyond June 30, 2021, SO would need to fund the following activities for the period of the extension.
2. SO’s Compensable Expenses in accordance with Article 7 fall within the following categories:
 - (a) RPRA costs associated with oversight of the MHSW WUP process;
 - (b) Costs of contractors to manage and administer the program for the additional wind up period including costs for accounting, regulatory reporting and the preparation of financials and reconciliations.
 - (c) Incremental increases to SO staff severance costs;
 - (d) IT costs and SAP licenses
 - (e) Rent
 - (f) Auditors for additional financial year(s);
 - (g) SO Board expenses
 - (h) Communications with stakeholders including costs of consulting with stewards, service providers, MECP and RPRA regarding implementation of WUP elements.
 - (i) Costs associated with additional Ministerial directions during the extension period.

Schedule “F” Escrow Agreement

THIS AGREEMENT is dated _____, 2020

B E T W E E N:

PRODUCT CARE ASSOCIATION OF CANADA (“PCA”)

-and-

STEWARDSHIP ONTARIO (“SO”)

-and-

[Escrow Agent]

(collectively, the “Parties”)

ARTICLE 1: RECITALS

1. Whereas:

- (a) SO and PCA have entered into a Surplus Transfer Agreement (the “**Surplus Transfer Agreement**”)
- (b) The Surplus Transfer Agreement requires that Escrow Surplus Funds be paid into an Escrow Account
- (c) SO and PCA have agreed to appoint the Escrow Agent as escrow agent for the sole purpose of accepting, holding and releasing the escrow funds in accordance with the terms and conditions hereof, and the Escrow Agent has agreed to accept such appointment;

(d) Pursuant to the terms and conditions of the Surplus Transfer Agreement, SO has delivered to the escrow agent the Escrow Surplus Funds (defined below) To be held in accordance with the terms and conditions of this escrow Agreement;

2. **NOW THEREFORE THIS AGREEMENT WITNESSES THAT**, in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each Party), the Parties agree as follows:

ARTICLE 1: INTERPRETATION

(a) Definitions

3. Capitalized terms in this Agreement have the same meaning as the same terms defined in the Surplus Transfer Agreement or are specifically defined below:
- (a) **“Approved Bank”** means any one of the financial institutions listed in Appendix “A” attached hereto as selected by the Escrow Agent.
 - (b) **“Authorized Representative”** means each person authorized to sign for PCA and SO as set forth in Appendix “B” attached hereto.
 - (c) **“Business Day”** means any day, other than a Saturday, Sunday, or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business.
 - (d) **“Escrow Agent Account”** means a segregated interest-bearing trust account maintained by the Escrow Agent at an Approved Bank.
 - (e) **“Escrow Surplus Funds”** means the “Escrow Surplus Funds” referenced in the section [5] of the Surplus Transfer Agreement paid into Escrow in accordance with this Agreement and the Surplus Transfer Agreement.
 - (f) **“Escrow Funds Income”** means any interest income earned on the Escrow Funds being held in escrow by the Escrow Agent during the term

of this Agreement.

- (g) **“Joint Direction”** means a written direction addressed to the Escrow Agent and executed by an Authorized Representative of each of PCA and SO , upon receipt of which the Escrow Agent shall comply without further inquiry of any kind.

(b) Entire Agreement

4. This Agreement and the Surplus Transfer Agreement constitute the entire agreement between the Escrow Agent, SO and PCA with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral.

(c) Time of Essence

5. Time shall be of the essence in this Agreement.

(d) Governing Law and Submission to Jurisdiction

6. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
7. Each of the parties irrevocably and unconditionally agrees to submit any dispute resolution pursuant to the dispute resolution provisions of the Surplus Transfer Agreement.

(e) Severability

8. If any provision of this Agreement is determined by a Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions of this Agreement, and each provision is hereby declared to be separate, severable and distinct.
9. To the extent that any such provision of this Agreement is found to be invalid,

illegal or unenforceable, the Parties hereto will act in good faith to substitute for such provision, to the extent possible, and new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

ARTICLE 3: DEPOSIT IN AND RELEASE FROM ESCROW

(a) Appointment of Escrow Agent

10. SO and PCA hereby appoint the Escrow Agent to act as escrow agent in accordance with this Agreement, and the escrow agent accepts such appointment.

(b) Delivery of Escrow Surplus Funds

11. SO shall deliver the Escrow Surplus Funds to the Escrow Agent on [insert date] by wire transfer pursuant to the written instructions of the Escrow Agent.
12. The Escrow Agent shall acknowledge receipt of the Escrow Surplus Funds by delivering to SO and PCA a written receipt executed by the Escrow Agent.
13. The Escrow Agent agrees to hold the Escrow Surplus Funds as agent in the Escrow Agent Account.

(c) Escrow Agent Not the Beneficial Owner

14. The Escrow Agent acknowledges and agrees that it is not the beneficial owner of the Escrow Surplus Funds but holds them as agent for SO and PCA on the terms and conditions set out in this Agreement.
15. The Escrow Surplus Funds shall be held in released by the Escrow Agent in accordance with the terms of this Agreement.

(d) Investment of Escrow Surplus Funds

16. Until released in accordance with this Agreement, the Escrow Surplus Funds shall be kept segregated in the records of the Escrow Agent and shall be deposited in the Escrow Agent Account.

17. All interest shall accrue in the Escrow Agent Account at the prevailing rate of interest payable by the applicable Approved Bank and be released in accordance with the terms of this Agreement.
18. All interest accrued on the Escrow Surplus Funds shall be added to the Escrow Surplus Funds.
19. All amounts held by the Escrow Agent pursuant to this Agreement shall be held by the escrow agent for SO and PCA in accordance with the terms of this Agreement.
20. The delivery of the Escrow Surplus Funds to the Escrow Agent shall not give rise to a debtor-creditor or other similar relationship.
21. The amounts held by the Escrow Agent pursuant to this Agreement are at the sole risk of SO and PCA and, without limiting the generality of the foregoing, the Escrow Agent shall have no responsibility or liability for any diminution in the escrow funds which may result from any deposit made with an approved Bank, including any losses resulting from a default by the Approved Bank.
22. The Parties hereto acknowledge and agree that the Escrow Agent will have acted prudently in depositing the Escrow Surplus Funds at any Approved Bank, and that the Escrow Agent is not required to make further inquiries in respect of any such Approved Bank.

(e) Release of Escrow Surplus Funds

23. At any time and from time to time, SO and PCA shall be entitled to direct the Escrow Agent by Joint Direction to withdraw all or any of the Escrow Surplus Funds that may be deposited with any Approved Bank specified in the Joint Direction (a “**Withdrawal Notice**”).
24. With respect to any Withdrawal Notice, the Escrow Agent shall withdraw such amount specified in the Withdrawal Notice as soon as reasonably practicable

and will immediately release the Escrow Surplus Funds as so directed.

(f) Termination

25. This Agreement and the obligations of all the Parties hereto shall terminate upon the distribution by the Escrow Agent of all of the Escrow Surplus Funds in accordance with the terms hereof.

(g) Taxes

26. The Escrow Agent shall not be responsible for including any portion of the proceeds from the investment of or the interest earned on the Escrow Surplus Funds in its income for tax purposes.

ARTICLE 4: SECURITY PROCEDURES AND ACCOUNT INFORMATION

(a) Security Procedures

27. Any Withdrawal Notice relating to the transfer distribution of the Escrow Surplus Funds must be in writing and executed by an Authorized Representative of SO and PCA and must be delivered in accordance with sections [23-24].

(b) Account Information

28. Subject to section [29],
- (a) SO acknowledges that the Escrow Agent is authorized to rely on a Joint Direction to disburse any funds due to SO under this Agreement without further verification:

Account Name:

Account Address:

Bank Name: Canadian Imperial Bank of Commerce

Bank address:

Account Number:

Transit Number:

SWIFT Code:

- (b) PCA acknowledges that the Escrow Agent is authorized to rely on a

Joint Direction to disburse any funds due to PCA under this Agreement without further verification:

Account Name:

Account Address:

Bank Name:

Bank address:

Account Number:

Transit Number:

SWIFT Code:

(c) Either SO or PCA may modify its account information by notice in writing delivered to the Escrow Agent and executed by an Authorized Representative of such party.

29. If a Joint Direction to the Escrow Agent contains funds transfer instructions but the account(s) into which the funds are to be transferred differ(s) from the accounts listed in section [28], the Escrow Agent is authorized to seek confirmation of such instructions by email to the applicable Authorized Representative(s), and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or person so designated.

ARTICLE 5: ESCROW ARRANGEMENTS

(a) Duties and Obligations of the Escrow Agent

30. The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which SO and PCA hereby agree shall govern and control with respect to the escrow agent's rights, duties, liabilities and immunities:

(a) The Escrow Agent shall not have any duties or responsibilities as Escrow Agent hereunder except those set forth in this Agreement, and shall not be bound by the provisions of any agreement between PCA and SO with respect to the subject matter hereof to which the escrow agent is not a party.

- (b) The duties of the Escrow Agent under this Agreement are intended to be purely administrative in nature.
 - (c) The Escrow Agent shall not be responsible to determine, nor shall it be required to investigate, the genuineness or validity of any document, direction, notice, request, waiver, consent, receipt, election or declaration deposited with or furnished to it, and the Escrow Agent is hereby authorized and directed to follow the instructions contained therein.
 - (d) The Escrow Agent is and will at all times be fully indemnified pursuant to Article [6] for acting in accordance with such instructions given in a Joint Direction and believed by the Escrow Agent to have been signed by an Authorized Representative of SO and PCA.
 - (e) For greater certainty, the Escrow Agent will have no liability for making a payment pursuant to a Joint Direction delivered to it in accordance with this Agreement.
31. Notwithstanding any other provision in this Agreement, the Escrow Agent is authorized and directed to comply with and obey any order, judgment, decree or award of any Court of competent jurisdiction or any Arbitrator appointed by SO and PCA in accordance with the Dispute Resolution provisions in Article [13] of the Surplus Transfer Agreement (collectively “**Compliance**”).
32. In the case of such Compliance, the Escrow Agent will not be liable by reason of such Compliance to any person even if thereafter, such order, judgment, decree or award is appealed, reversed, modified, annulled, set aside or vacated.
33. If the Escrow Agent receives a notice, claim, arbitral award, order, judgment, demand or Joint Direction (collectively, “**Notices**”) with respect to the Escrow Surplus Funds and the Escrow Agent considers it to be:
- (a) conflicting with one or more other such Notices;

- (b) incomplete, ambiguous or otherwise insufficient; or
- (c) inadequate for any other reason the Escrow Agent determines in good faith that it is unable to identify clearly the person or persons entitled to receive the Escrow Surplus Funds,

the Escrow Agent shall refuse to make any payment:

- (i) until it has received a Joint Direction from SO and PCA which eliminates any such conflict or ambiguity; or
- (ii) until directed by an Arbitrator's award pursuant to a dispute undertaken in accordance with Article [13] of the Surplus Transfer Agreement

whereupon it will make or not make, as the case may be, such disposition in accordance with the Joint Direction or such arbitral award.

34. In any Arbitration proceeding in which entitlement to the Escrow Surplus Funds or any portion thereof is placed in issue, the Escrow Agent may pay the Escrow Surplus Funds into Court and the Escrow Agent may apply to such Arbitrator for a direction permitting such payment into Court in which case PCA and SO each irrevocably agree to consent to such a direction.

ARTICLE 6: INDEMNIFICATION OF ESCROW AGENT

35. SO and PCA equally each as to 50%, severally agree to pay or cause to be paid all the reasonable fees and expenses charged and incurred by the Escrow Agent in carrying out its duties and obligations under this Agreement.
36. SO and PCA equally each as to 50%, severally agree to indemnify, defend and hold the Escrow Agent harmless from and against all losses suffered or incurred by it as a result of or arising directly or indirectly out of or in connection with its acting as Escrow Agent under this Agreement except to the extent that such losses result from the Escrow Agent's own fraud, wilful misconduct, gross negligence or bad faith.

ARTICLE 7: RESIGNATION AND SUCCESSORSHIP

37. At any time after the date hereof, the Escrow Agent may deliver to SO and PCA written notice of its intention to resign as escrow agent hereunder, in which case a successor escrow agent shall be mutually appointed by SO and PCA.
38. The Escrow Agent's resignation shall only become effective upon the successor escrow agent accepting its appointment hereunder.
39. SO and PCA, acting together, may replace the Escrow Agent at any time upon giving 30 days' advance written notice of such replacement, jointly signed by them, to the Escrow Agent.
40. Any new escrow agent to be appointed hereunder will execute an instrument accepting such appointment hereunder and shall deliver one counterpart thereof to SO, PCA, and the existing Escrow Agent, and thereupon such newly appointed Escrow Agent, without further act or notice, will become vested in all rights, powers and obligations of its predecessor for execution of the mandate hereunder, with like effect as if originally named as the escrow agent herein and the predecessor escrow agent will forthwith deliver any and all Escrow Funds in its possession pursuant to this Agreement to the new escrow agent for the purposes and uses of this Agreement.

ARTICLE 8: RELEASE OF OBLIGATIONS OF ESCROW AGENT

41. Upon resignation or replacement of the Escrow Agent pursuant to Article 7, and upon delivery by the Escrow Agent of the Escrow Funds to the new escrow agent, the Escrow Agent, without further act or notice, will be forever released and discharged from all of its duties and obligations hereunder.

ARTICLE 9: MISCELLANEOUS

(a) Notices

42. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by fax or email or

similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(c) Notices to PCA will be delivered to:

President,
Product Care Association of Canada
105 W. 3rd Avenue
Vancouver BC V5Y 1E6Vancouver
Facsimile: 604-592-2982
Email: contact@productcare.org

(d) Notices to SO shall be delivered to:

Executive Director
Stewardship Ontario,
1 St. Clair Ave W., Suite 701
Toronto, ON M4V1K6
Email: gzecchini@stewardshipontario.ca

(e) Notices to the Escrow Agent will be delivered to:

■

Attention: ■

Email: ■

Facsimile: ■

43. Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day), or if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of

documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforementioned.

44. Any Party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Agreement.

(b) Amendments and Waivers

45. No amendment or waiver of any provision of this Agreement shall be binding on any party unless consented to in writing by such party.
46. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

(c) Specific Performance

47. The Parties acknowledge and agree that in the event of a Party's breach or failure to perform its obligations under this Agreement, any other Party shall be entitled to an injunction to prevent or restrain breaches of this Agreement by the other, and to specifically enforce the terms and provisions of this Agreement to prevent breaches of, or to enforce compliance with, the obligations under this Agreement.
48. Each of the Parties agrees not to raise any objections to, or request the posting of a bond for, the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by it, and to specifically enforce the terms and provisions of this Agreement to prevent breaches of, or to enforce compliance with, the obligations of the parties under this Agreement.

(d) Force Majeure

49. Except in respect of payment obligations, no Party shall be liable to any other Party, or held in breach of this Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of act of God, riots, terrorism, acts of war, epidemics, governmental action or judicial

order, earthquakes, or any other similar causes (including, but not limited to, mechanical, electronic or communication interruptions, disruptions or failures). Performance times under this Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section (d).

(e) Successors and Assigns

50. This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the Parties and, where the context so permits, their respective successors and permitted assigns. SO and PCA may not assign any of their rights or obligations hereunder without the prior written consent of the other Parties.

(f) Survival

51. Notwithstanding the termination of this Agreement, the provisions of Article [5] (Escrow Arrangements), shall survive such termination and continue in full force and effect for the benefit of each party hereto, as applicable.

(g) Further Assurances

52. Each of the parties hereto shall, from time to time hereafter and upon any reasonable request of the other, at the expense of the requesting party, promptly execute and deliver or cause to be executed and delivered all such documents, including, without limitation, all such consents and other assurances and do or cause to be done all such other acts and things as any other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

(h) Counterparts

53. This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of

counterparts, with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first above written.

PRODUCT CARE ASSOCIATION OF CANADA

I have authority to bind the corporation,

Per: _____

Mark Kurschner, President

STEWARDSHIP ONTARIO

I have authority to bind the corporation,

Per: _____

Gemma Zecchini, Executive Director

[ESCROW AGENT]

by

Name: ■

Title: ■

**APPENDIX A
AUTHORIZED REPRESENTATIVES**

**Telephone Number(s) and Authorized Signature(s) for
Person(s) Designated to Give Instructions and Confirm Funds Transfer Instructions**

If from SO:

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
1.	_____	_____	_____
2.	_____	_____	_____

If from PCA:

	<u>Name</u>	<u>Telephone Number</u>	<u>Signature</u>
1.	_____	_____	_____
2.	_____	_____	_____

All instructions, including but not limited to funds transfer instructions, whether transmitted by facsimile or set forth in a PDF attached to an email, must include the signature of the Authorized Representative providing such instructions on behalf of such party.

PCA AND STEWARDSHIP ONTARIO SURPLUS TRANSFER AGREEMENT

APPENDIX B APPROVED BANKS

Financial Institution

PCA AND STEWARDSHIP ONTARIO SURPLUS TRANSFER AGREEMENT

SCHEDULE “G” RESIDUAL FUNDS ADDENDUM



Stewardship Ontario

Municipal Hazardous or Special Waste Wind Up Plan: Residual Funds Addendum

Submitted to: Resource Productivity and Recovery
Authority

Submitted on: February 4, 2020

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Introduction: MHSW Wind Up Plan and Residual Funds Direction

On December 31, 2019, the Resource Productivity and Recovery Authority (RPRA) approved, with certain conditions, the Municipal Hazardous or Special Waste (MHSW) Wind Up Plan submitted to RPRA by Stewardship Ontario. As per Ministerial direction, the MHSW Wind Up Plan details steps Stewardship Ontario will take to wind up the MHSW program for single-use batteries on June 30, 2020 and for other MHSW materials on June 30, 2021.¹

On December 20, 2019, Stewardship Ontario received supplementary Ministerial direction clarifying previous directions on how residual funds must be managed once the program has ceased operation and all financial obligations have been accounted for:

The key elements of the direction include the following:

- Residual funds must be returned to stewards;
- The return of residual funds should be in proportion, where reasonably possible, to the Stewards' contribution to the funds for each municipal hazardous or special material (MHSM) category;
- The direction applies to Stewards² for the MHSM categories whose recovery is managed by Stewardship Ontario as well as stewards (industry stewardship plan members) of the MHSM categories that are now managed through industry stewardship plans;
- It is the Minister's expectation that the RPRA will approve revisions to the plan resulting from the direction no later than February 29, 2020;
- Other than the clarification provided in the direction, there are no changes to the requirements in previous direction letters.

This MHSW Residual Funds Addendum outlines a proposal for the disbursement of residual funds consistent with the Ministerial direction. In developing this proposal, Stewardship Ontario consulted with key MHSW stakeholder groups during the week of January 13th, 2020. A list of stakeholder groups consulted and a summary of their initial feedback is attached as an appendix to this Addendum.

With respect to other elements of the MHSW Wind Up Plan, (i.e. other than those dealing with the management of residual funds), Stewardship Ontario, in accordance with its statutory obligations, will begin to implement the MHSW Wind Up Plan as approved by RPRA.

¹ Under the *Waste Diversion Transition Act*, industry funding organizations such as Stewardship Ontario are obligated to develop and submit wind up plans to RPRA in accordance with statutory requirements and the direction provided through the Ministerial direction. Stewardship received direction to wind up the MHSW program on April 12, 2018 which was supplemented by additional Ministerial directions received December 11, 2018 and July 2019. A copy of the approved wind up plan is available on Stewardship Ontario's website at https://stewardshipontario.ca/wp-content/uploads/2020/01/MHSW-WUP-December_2019-FINAL.pdf.

² Note: For the purposes of clarity the term Steward in this document will be used to refer to Stewards registered with Stewardship Ontario for the purposes of fulfilling their obligations under the WDPA. The term ISP Member will be used to refer to organizations that have registered with Industry Stewardship Organizations for the purposes of fulfilling their obligations under the WDPA.



MHSW Program Residual Fund Estimates

Consistent with Ministerial direction, Stewardship Ontario submitted a financial and operational MHSW Wind Up Plan designed to minimize the amount of residual funds left in the program following the termination of all financial obligations.

The distinction between surplus funds and residual funds should be noted. Surplus funds are those funds or MHSW reserves which Stewardship Ontario will not require to complete wind up the MHSW program. As per Ministerial direction these surplus program funds will be returned to consumers through the implementation of a fee reduction initiative. Stewardship Ontario's initial estimate of the reserve amounts to be disbursed through the fee reduction initiative is approximately \$43.3 million.³

Residual funds are those funds remaining in the program following the resolution of all outstanding operational and financial obligations (including the disbursement of surplus funds). Stewardship Ontario's initial estimate of residual funds was provided in Table 33 of the Wind Up Plan (replicated below).

Table 33: Initial MHSW Residual Fund Forecast (\$000)	
Antifreeze	\$55
Fertilizers	\$5
Oil Containers	\$87
Oil Filters	\$58
Paints/Coatings	\$53
Pesticides	\$5
Solvents	\$9
Pressurized Containers (Non-Refillable)	\$44
Pressurized Containers (Refillable)	\$33
Single-Use Batteries	\$27
Residual Funds at program Termination*	\$376

** Note the residual fund estimate provided in Table 33 differed slightly from residual fund estimates included in other WUP charts due to rounding.*

Both the estimate of surplus funds to be distributed to Stewards and Industry Stewardship Plan (ISP) Members and residual fund estimates associated with each MHSW category will be adjusted and updated throughout the wind up process as financial estimates are updated to reflect actual operating and financial results.

Under the approved MHSW Wind Up Plan, Stewardship Ontario will delay the issuance of final Steward invoices by 90 days following the program termination dates. This delay will enable Stewardship Ontario to complete more accurate program financial assessments related to the level of surplus funds that can be disbursed through the fee reduction process.

³ Note: As per the MHSW Wind Up Plan, the amount of surplus funds available for disbursement through the fee reduction process will be adjusted as actual financial results are realized and the final amount of funds available for disbursement through via a fee reduction may vary from the initial estimates provided in the Wind Up Plan.



Stewardship Ontario

Stewardship Ontario's intention, as per Ministerial direction, is to maximize the amount of surplus fund revenue that can be directed toward the fee reduction process thereby minimizing the amount of residual funds remaining in the program following the completion of that process and the resolution of other program financial obligations.

In some categories, Stewardship Ontario may be able to reduce residual funds to zero by adjusting fee reduction disbursements.

In the event that Stewardship Ontario does have residual funds remaining following the completion of all program financial obligations, it is proposing that those funds be distributed to Stewards and ISP members in accordance with the following proposal.

Residual Funds Disbursement Proposal

Given the small amount of estimated residual funds and Stewardship's Ontario intention to lower these residual amounts, if possible, Stewardship Ontario is proposing an administratively efficient process to distribute residual funds which includes the following elements:

1. Residual funds would be distributed to existing Stewards and ISP Members. Only Stewards and ISP Members in good standing would be eligible for disbursements;
2. The surplus fund fee reduction methodology would be utilized to determine each Steward's or ISP Member's share of residual funds in each MHSW category;
3. Stewardship Ontario would distribute residual funds directly to its registered Stewards. With respect to ISP Members, Stewardship Ontario would disburse a lump sum payment to the relevant Industry Stewardship Organization which would distribute residual funds to its individual ISP Members in accordance with the approved residual fund share formula.
4. Stewardship Ontario and ISOs would not be required to issue residual fund payments where Stewards or ISP Members were entitled to less than \$25.00.

More detail on each element of the residual fund disbursement proposal is provided below, but in general the set of recommendations represents an administratively efficient approach to disbursement of residual funds and a reasonable way to disburse those funds in accordance with Steward and ISP Member contributions to those funds.

Residual Fund Eligibility

1. Residual funds would be distributed to existing Stewards and ISP Members.

Stewardship Ontario is proposing that residual funds be distributed to active program participants which would be defined as Stewards or ISP Members who were active in the program within the last 18 months of the MHSW program operations.

This proposal will expedite residual fund share calculations as Stewardship Ontario will not be required to review historical program contributions and track corporate transitions and changes in program participation over time. In the view of Stewardship Ontario, this represents an administratively reasonable approach to determining eligibility for residual fund payments. If Stewardship Ontario audits



Steward and ISP Member contributions over the course of the entire program, the resulting accounting costs could represent a significant portion of the amounts available for disbursement.

As with the fee reduction process, Stewardship Ontario is proposing that Stewards or ISP Members that are not in good standing with either Stewardship Ontario or the relevant ISO, would not be eligible for distribution of a residual amount. In other words, Stewards or former Stewards which owed Stewardship Ontario money at the time of the residual disbursement would not be eligible for such a disbursement. Stewardship Ontario is proposing any amounts related to Stewards or ISP Members not in good standing, would simply be added to the residual fund pool for distribution to those Stewards and ISP Members which were in good standing at the time of the disbursement.

Residual Fund Share Calculation Methodology

2. The surplus fund fee reduction methodology would be utilized to determine each Steward's or ISP Member's share of residual funds in each MHSW category.

Stewardship Ontario is proposing that the surplus fund fee reduction share methodology would be utilized to determine each Steward's or ISP Member's share of residual funds in each MHSW category. If a Steward's or ISP Member's share of surplus fund fee reduction disbursements in an MHSW category was 5%, that organization would receive 5% of the residual fund disbursement for the category.

Each Steward's or ISP Member's share of a potential residual fund disbursement would be based on 18 months of program participation.⁴ This is consistent with anticipated fee reduction schedule for most MHSW categories. The administrative advantage of this approach is that Stewardship Ontario and the ISOs will have already completed the calculations necessary to determine individual Steward and ISP Member shares. This approach would minimize the administrative resources necessary to determine the exact amount of each Steward or ISP Member residual fund payment.

For MHSW categories, where Stewardship Ontario is not anticipating an 18-month fee reduction process (single-use batteries and non-refillable pressurized containers), for consistency, Stewardship Ontario would calculate individual Steward residual fund share as if a fee reduction had been implemented over an 18-month period. In other words, individual Steward residual fund share within the category would be based on that Steward's share of allocated program costs for the final 18 months of the program.

Residual Fund Payment Process

3. Stewardship Ontario would distribute residual funds directly to its registered Stewards. With respect to ISP Members, Stewardship Ontario would disburse a lump sum payment to the relevant Industry Stewardship Organization which would distribute residual funds to individual ISP Members in accordance with the approved residual fund share formula.

Stewardship Ontario is proposing that it would process residual fund payments to Stewards that are registered with it for the purposes of fulfilling their obligations under the WDTA.

With respect to ISP Members, Stewardship Ontario is proposing that it would provide a lump sum payment to ISOs equivalent to the ISO Member aggregate share of the residual funds for that category.

⁴ Stewardship Ontario is working with ISOs to develop a fee reduction agreement which would support the implementation of fee reductions for materials over the last 18 months of the MHSW program.



The ISO would then distribute residual funds to individual ISP Members in accordance with the approved residual fund share formula.

The aggregate share of residual funds directed to Stewardship Ontario Stewards and ISOs Members in each MHSW category would be the same as the relative share associated with fee reduction payments in that category. In other words, if an ISO received 80% of the surplus funds allocated toward the fee reduction process in an MHSW category, its lump sum payment related to the residual fund disbursement would represent 80% of available residual funds.

Stewardship Ontario anticipates that it would be in a position to calculate and disburse residual fund amounts in each MHSW category six to nine months following the final termination date for the program of June 30, 2021.⁵

Residual Fund De Minimus Threshold

4. Stewardship Ontario and ISOs would not be required to issue residual fund payments where Stewards or ISP Members are entitled to less than \$25.00.

In order to ensure that administrative costs are reasonable in light of distribution amounts, Stewardship Ontario is proposing that Stewardship Ontario and ISOs would not be required to issue residual fund payments to Stewards or ISP Members where those organizations are entitled to receive less than \$25.00.

Stewardship Ontario is proposing that any residual amounts not distributed to organizations in relation to the proposed de minimus threshold be held by Stewardship Ontario or the relevant ISO. In the case of Stewardship Ontario, it would add these amounts to the MHSW hold back amount designated by Stewardship Ontario to offset the MHSW portion of eventual Stewardship Ontario corporate wind up costs or other residual MHSW program obligations. In the case of ISOs, it is proposing these amounts be held by the ISO to help offset administrative costs.

Conclusion

In view of Stewardship Ontario, this residual fund disbursement proposal is consistent with the Ministerial direction on how residual funds should be managed following the resolution of program obligations.

The proposal distributes, what Stewardship Ontario anticipates will be relatively small, residual fund amounts in an administratively efficient manner with a methodology which is fair for both Stewardship Ontario Stewards and ISP Members.

While alternate share calculation methodologies were considered with respect to this initiative, in the view of Stewardship Ontario, the higher administrative costs associated with historic program analysis

⁵ In the case of single-use battery stewards, even though the program for single-use battery program will terminate on June 30, 2020, Stewardship Ontario will not be in a position to calculate residual amounts for that category until all program obligations have been resolved following the termination date for other MHSW materials.



necessary for these methodologies are not warranted in light of the relatively small amounts anticipated for disbursement.

Appendix: Stewardship Ontario Consultation Residual Funds

As noted in the introduction, Stewardship Ontario reviewed a draft proposal regarding the disbursement of residual funds with key MHSW stakeholder groups during the week of January 13th 2020.

The organizations which provided initial feedback on the Stewardship Ontario proposals included the following:

- Association of Municipalities of Ontario;
- Automotive Materials Stewardship;
- Canadian Propane Association;
- Canadian Paint and Coatings Association;
- Canadian Consumer Specialty Products Association;
- National Electrical Manufacturers Association
- Ontario Waste Management Association;
- Product Care Association.

It should be noted that given the timeframes associated with the consultation, the summary of initial feedback referenced below may not reflect the full views of any of the above organizations in relation to the residual funds proposal. Stewardship Ontario noted for all participants that a published residual funds proposal (in the form of a draft Addendum) would be available for review and that Stewardship Ontario would be considering any comments received following a scheduled RPRA consultation prior to finalizing the content of the proposal.

The residual funds proposal reviewed with stakeholders included the key elements referred to in this Addendum with an additional proposal related to a de minimus category threshold for each MHSW category. With respect to that issue, following feedback from stakeholders, that a category threshold might have an unfair impact on an individual steward dependent on relative supply share in a category, Stewardship Ontario has dropped the concept of a potential category threshold. In the view of Stewardship Ontario the proposed individual de minimus will be sufficient to deal with the administrative issues associated with processing very small residual fund amounts.

With respect to the main elements of the residual funds proposal, stakeholders in general voiced support for an administratively efficient process for the distribution of these amounts. As such there were no objections to restricting residual fund payments to existing program participants or utilizing the surplus fund fee reduction methodology as the basis of determining individual Steward or ISP Member residual fund payment amounts.