



Stewardship Ontario

# **Municipal Hazardous or Special Waste Wind Up Plan: ISO Surplus Fund Transfer Addendum**

**Submitted to:** Resource Productivity and Recovery  
Authority

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## Attachments

### Appendix A: Ministerial directions and Correspondence:

- Stewardship Ontario correspondence to Minister – March 10, 2020 (lump sum transfer)
- Ministerial direction 100% ISO surplus fund transfer – undated, received April 1, 2020;
- Stewardship Ontario correspondence to Minister – April 6, 2020
- Stewardship Ontario correspondence to Minister – April 23, 2020
- Ministerial direction – Extension of timelines – April 29, 2020

### Appendix B

- Stewardship Ontario Consultation Webinar May 12, 13, 2020
- Stewardship Ontario Consultation Feedback Summary



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## **Introduction: MHSW Wind Up Plan and ISO Surplus Fund Transfer Direction**

In December 2019, the Resource Productivity and Recovery Authority (RPRA) approved, with certain conditions, the Municipal Hazardous or Special Waste (MHSW) Wind Up Plan submitted by Stewardship Ontario. In February 2020, RPRA approved a Residual Funds Addendum related to MHSW Wind Up Plan. 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.<sup>1</sup>

With respect to surplus funds, the approved MHSW Wind Up Plan (Wind Up Plan) included recommendations to return surplus funds to consumers through a fee reduction implemented over the last 18 months of the program. Fee reductions would apply to the materials managed directly by Stewardship Ontario as well as materials where the supply chain is managed under Industry Stewardship Plans (ISPs). The approved Wind Up Plan included an estimate of approximately \$43 million in surplus funds that would be available to be returned to consumers via a fee reduction process.

With respect to fee reductions and ISPs, the MHSW Wind Up Plan contemplated that Stewardship Ontario, subject to a surplus fund transfer agreement, would transfer surplus funds to the Industry Stewardship Organizations (ISOs) that manage ISPs on a quarterly basis over the course of the fee reduction period so that ISOs could implement fee reductions for their members. The Wind Up Plan included draft schedules for each MHSW material identifying the proportionate share of surplus funds to be provided to the SO and ISP Stewards in each category.

With respect to the Product Care Association (PCA), which manages the supply chain for pesticides, solvents, fertilizers and paints, the approved MHSW Wind Up Plan identified a total of approximately \$15.6 million in available surplus funds for transfer to PCA for disbursement as fee reductions. With respect to the Automotive Materials Stewardship (AMS), which manages the supply chain for antifreeze, oil filters and oil containers, the approved MHSW Wind Up Plan identified a total of approximately \$17 million in available surplus funds for transfer to AMS for disbursement as fee reductions.

Subsequent to approval of the MHSW Wind Up Plan, Stewardship Ontario was made aware of ISO stakeholder requests to front load the transfer of surplus funds between Stewardship Ontario and the ISOs. In response to this request, Stewardship Ontario provided correspondence to the Honourable Jeff Yurek, Minister of Environment, Conservation and Parks, on March 17, 2020 (attached under Appendix A: Ministerial Directions and Correspondence) indicating that Stewardship Ontario could transfer 90% of estimated surplus funds to ISOs on an accelerated basis in a one-time lump sum payment with remaining funds to be transferred in the last quarter of the MHSW Program (when Stewardship

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<sup>1</sup> Under the *Waste Diversion Transition Act* (WDTA), 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, July 2, 2019, December 20, 2019, April 1, 2020 and April 29, 2020. A copy of the approved Wind Up Plan is available on [Stewardship Ontario's website](#).



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Ontario's wind up costs are fully accounted for and respective ISO member and Stewardship Ontario steward supply shares could be calculated before finalizing surplus fund amount).

As Stewardship Ontario noted in its correspondence to the Minister:

*As fiduciaries, the Board takes its duty to safeguard IFO funds very seriously. As a government-mandated organization, Stewardship Ontario holds monies in trust to ensure that the Government's policy objectives are met, and that wind up occurs absent any financial or reputational risk. Stewardship Ontario must make prudent allowance for the possibility of regulatory delay and must have enough funds on hand in the event the Government requires additional time to implement new regulations.*

Stewardship Ontario initiated discussions with both Product Care Association (PCA) and AMS in March 2020 on the terms of a surplus fund transfer agreement with a goal of transferring surplus funds to ISOs and initiating fee reductions for both ISP Members and Stewardship Ontario stewards by April 30, 2020.<sup>2</sup>

On April 1, 2020, Stewardship Ontario received an undated Ministerial direction (attached under Appendix A) instructing Stewardship Ontario to develop new amendments to the MHSW Wind Up Plan:

*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 Industry Steward 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 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.*

The Minister indicated that it was his expectation that Stewardship Ontario would submit its proposed amendments to RPRA no later than April 30, 2020 with lump sum payments to be made two weeks of the proposed amendments being approved by RPRA.

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<sup>2</sup> As Stewardship Ontario noted in its correspondence to the Minister "With respect to stakeholder impacts, it should be noted that accelerating the payment of reserve funds to ISOs will not generate any benefits for their stewards. The timing by which stewards would be eligible to receive fee reductions is set to occur on a monthly or quarterly basis and would not be affected by front-end loading payments to their stewardship organizations, which would be holding these funds."



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Subsequent to receiving the Ministerial direction, Stewardship Ontario wrote the Minister on April 6, 2020 (attached under Appendix A) and again on April 23, 2020 (attached under Appendix A) requesting an extension to the time line for submission of the proposed amendments.<sup>3</sup>

Subsequently, Stewardship Ontario received a supplemental Ministerial direction on April 29, 2020 (attached under Appendix A) extending Stewardship Ontario's deadline to submit plan amendments to RPRA by June 5, 2020. The new direction also indicated that it was the Minister's expectation that RPRA would approve amendments no later than June 25, 2020.

On May 12, 2020 and May 13, 2020 Stewardship Ontario conducted consultations on proposed amendments in relation to the April 2020 Ministerial direction. It also met with certain industry associations regarding its proposals and entered into discussions with both PCA and AMS regarding the surplus fund transfer agreements necessary to implement the fee reduction process and comply with the Ministerial direction. The consultation webinars and a summary of stakeholder feedback related to Stewardship Ontario proposed amendments are attached under Appendix B. Stakeholder viewpoints and positions are also referenced throughout this document in relation to key proposals.

In the interests of transparency, and given that provisions of the proposed SO-ISO surplus fund transfer agreements have fiscal implications for non-ISO MHSW stewards, Stewardship Ontario posted a copy of draft agreements on its website on May 14, 2020. Since that time, it has adjusted and refined these draft agreements in consultation with both PCA and AMS. This proposal makes recommendations as to the content of the proposed surplus fund transfer agreements.

In developing a proposal to comply with the Ministerial direction of April 2020 regarding the transfer of surplus funds to ISOs, Stewardship Ontario is also bound to comply with all of the previous Ministerial directions related to the plan; as well as the approved MHSW Wind Up Plan itself.

It should be noted from the outset, that there is considerable disagreement between MHSW stakeholders about what represents a fair allocation of costs in relation to the wind up of the MHSW Program. Stewardship Ontario has referenced some of these differences throughout the discussion of MHSW program financing and the proposal to address the April Ministerial direction.

This proposed MHSW Wind Up Plan Addendum modifies related provisions in the approved MHSW Wind Up Plan.

## **MHSW Overview and Wind Up Plan Financing Principles**

Stewardship Ontario operates the MHSW program under the authority of the *Waste Diversion Transition Act, 2016* (WDTA) and is obligated under that statute to provide services for stewards in all MHSW categories. The MHSW program, known to consumers as Orange Drop, was created in 2008 and is designed to collect household hazardous wastes and ensure they are disposed of, and recycled in, an

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<sup>3</sup> Stewardship Ontario correspondence of April 6, 2020 also indicated that Stewardship Ontario did not believe that a "clawback is a suitable measure to protect SO from financial risk" and that "the most prudent course of action would be to return to the discussions we were undertaking with the ISOs to finalize the surplus fund transfer agreements we were on the verge of completing."



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environmentally responsible manner. The MHSW program covers nine materials: antifreeze, oil containers, oil filters, pesticides, solvents, fertilizers, paints, pressurized containers (refillable and non-refillable) and single-use batteries.

Under the WDTA, Stewardship Ontario is responsible for the overall administration of the MHSW Program and is the entity under the statute that is responsible for the development and implementation of a plan to wind up the MHSW Program once directed to do so by the Minister.

The WDTA also governs the operation of ISPs. Under the Act, businesses that chose to join approved ISPs are exempt from the requirement to register as stewards with Stewardship Ontario or pay fees once they have become contractually obligated to pay fees to ISOs for the management of related materials.

ISPs were approved over the years for management of the supply chain of several MHSW materials:

- 2015 Product Care Association – paints;
- 2016 Product Care Association – pesticides, solvents and fertilizers; and
- 2016 Automotive Materials Stewardship – antifreeze, oil containers and oil filters.

Stewardship Ontario continues to manage the supply chain for pressurized containers and single use batteries for which there are no ISPs. In material categories where the supply chain is managed under ISPs, Steward that chose not to join ISPs continue to register with, and pay fees to, Stewardship Ontario in relation to their WDTA obligations.<sup>4</sup>

## **Stewardship Ontario's Wind Up Plan Financing Authority and Principles**

Under the WDTA, Stewardship Ontario is empowered to make Rules for Stewards and collect fees from stewards to fund MHSW program operations. With respect to the wind up of the MHSW program, subsection 33 (5) of the Act related to program fees empowers Stewardship Ontario to utilize steward fees to pay for wind up costs:

*The total amount of fees paid by stewards under section 34 in respect of a waste diversion program for a designated waste should not exceed the sum of the following amounts:*

- *The costs of developing and implementing a plan to wind up all or part of the program.*
- *The costs incurred by the organization or the Authority to wind up all or part of the program.*
- *The costs incurred by the organization or the Authority to wind up the organization.*

*The fee paid by a steward should fairly reflect the proportion of the sum referred to in paragraph 1 that is attributable to the steward.*

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<sup>4</sup> With respect to MHSW categories where the supply chain is managed by ISOs, Stewardship Ontario has supply share agreements with ISOs and purchases credits from ISOs in each category equivalent the share of market for Stewards in those categories that continue to be registered with Stewardship Ontario.



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These provisions are replicated in Section 35 of the WDTA which refers to funds held in the program when the WDTA came into force in 2016. Subsection 35 (2) of the WDTA includes similar references with respect to MHSW program wind up costs:

*The fund shall be held in trust by the industry funding organization and shall only be used for the following purposes:*

- *To pay the costs of developing and implementing a plan to wind up all or part of the program.*
- *To pay the costs incurred by the organization or the Authority to wind up all or part of the program.*
- *To pay the costs incurred by the organization or the Authority to wind up the organization.*

The important cross-subsidization prohibition referenced in Section 33 (2). i.e. fees paid by a steward should fairly reflect the proportion of the sum of costs attributable to the steward, was re-iterated in the Ministerial direction to wind up the program received by Stewardship Ontario on April 12, 2018.

*SO shall ensure that any fees paid by stewards fairly reflect the proportion of these costs referred to in Section 33 of the WDTA that are attributable to them and that there is no 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.*

Ministerial direction of July 2019 regarding the MHSW Wind Up Plan also emphasized that Stewardship Ontario should account for all program costs prior to disbursing surplus funds:

*Any proposal to return surplus funds to MHSM consumers should be determined in a manner that would provide 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.*

Stewardship Ontario Wind Up Plan financing, therefore, was guided by two key principles:

- 1) Prior to the disbursement of surplus funds, Stewardship Ontario would allocate sufficient funds to account for the potential costs associated with wind up of the program; and
- 2) In allocating wind up costs, one material category cannot subsidize the costs of another material category.

While MHSW stakeholders are generally in agreement with the above principles, there are significant differences of opinion among MHSW stakeholders about what represents a correct interpretation of the cross-subsidization principle and a fair allocation of MHSW program wind up costs.

Some MHSW stakeholders that have joined ISOs have taken the position that the MHSW program for their related materials has already wound up and that it is unfair for Stewardship Ontario to use reserves related to ISO stewards to pay for wind up costs. In other words, existing Stewardship Ontario stewards should bear the sole responsibility for financing all MHSW program costs.

This position in turn, has led to disagreements between the ISOs and Stewardship Ontario about what represents a prudent approach to the transfer of surplus funds. Given that certain ISO stewards do not believe that Stewardship Ontario should be accessing material reserves to pay for wind up costs, they feel that there is no legitimate reason to draw on their portion of reserves to cover potential cost increases associated with the program wind up. In their view, MHSW program wind up costs relate exclusively or almost exclusively to existing Stewardship Ontario stewards.





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## Understanding the Stewardship Ontario Wind Up Financial Plan

Over the course of MHSW program during the period wherein Stewardship Ontario managed all 9 material categories, Stewardship Ontario generated surpluses which can be divided into material and general categories. The MHSW Wind Up Plan identified the amount of money held in both material and general reserves at the end of 2018 and provided preliminary forecasts of how these amounts were forecast to change over the course of the wind up period.<sup>5</sup>

General reserves represent amounts set aside by Stewardship Ontario to pay for eventual wind up of the program. The source of the general reserve fund is: interest earned on Stewardship Ontario cash holdings over the course of the program; payments from the Ontario government in relation to the management of Phase 2 and Phase 3 MHSW materials (a program eventually cancelled); and a portion of the Canada Revenue Agency (CRA) HST Input Tax Credit refund received by Stewardship Ontario in 2018.<sup>6</sup>

In the approved Wind Up Plan, general wind up costs are to be financed by drawing down from general reserves and material specific costs for collection, transportation, processing/safe disposal would be drawn from material reserves. Stewardship Ontario began 2019 with approximately \$5.4 million in the general reserve. The approved Wind Up Plan estimated that approximately \$5.3 would be incurred in general wind up costs, meaning that a small amount from the general reserve category would be disbursed to material categories at the end of the program for disbursement as residual funds assuming there were no changes to budgeted costs. The Wind Up Plan also noted that if there was a shortfall in general reserves, additional amounts to finance general wind up would then be drawn from material reserves in proportion to each category's contribution to MHSW Program costs/revenues over the course of the program. The use of reserves to pay for MHSW program wind up costs, avoids the need to bill Stewards or former Stewards for MHSW wind up costs.

While most stakeholders supported the principle of general wind up costs being financed from general reserves, it should be noted that certain ISO stakeholders strongly disagreed with this approach. These stakeholders argued that their share of existing general reserves should be re-allocated to the material reserves and paid out, leaving existing Stewardship Ontario stewards to bear the full responsibility for financing MHSW wind up costs. This dissenting viewpoint was noted in the approved Wind Up Plan, but given that a number of these same stakeholders continue to question the legitimacy of general wind up costs, the following section provides additional detail on Stewardship Ontario general wind up costs.

### MHSW General Wind Up Costs

As explained during consultation on both the original MHSW Wind Up Plan and the proposed Amendments in relation to the April 2020 Ministerial direction, general wind up costs are the cost

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<sup>5</sup> Details provided in the Approved Wind Up Plan Section 8.

<sup>6</sup> In 2018, as a result of a Tax Canada of Court ruling, Stewardship Ontario settled a long-standing dispute with the CRA and was awarded CRA ITC refunds for the period from 2009 to 2018 resulting in a net increase in MHSW reserves of approximately \$29.4 million. Of this amount, approximately \$2 million was related to ITC credits on general administrative costs and was allocated to the MHSW general reserve. Details regarding the amount of the CRA HST ITC refund payment related to each material category are provided in the Approved MHSW Wind Up Plan.





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associated with developing and implementing the MHSW Wind Up Plan itself as described in more detail below.

General wind up costs are distinct from the cost associated with managing the collection, transportation, processing/disposal of those materials that continue to be managed by Stewardship Ontario. Known as material management costs or operations costs, these will continue to be paid for by fees collected from registered Stewardship Ontario stewards. For additional clarity examples of Stewardship Ontario general wind up costs are described in more detail below.

### ***Wind Up Plan Development Costs***

Costs related to the development of the MHSW Wind Up Plan include the costs related to developing and submitting a Wind Up Plan to RPRA. These include a number of related activities including, but not limited to:

#### **Development of Wind Up Plan Proposals:**

- Accounting costs related to Wind Up Plan financial proposals;
- Professional costs associated with development of Wind Up Plan consultation materials;
- Professional costs associated with development of Board briefing materials re Wind Up Plan proposals and related briefing processes;
- Cost of CSSA staff time related to information inputs related to Wind Up Plan development proposals;
- Professional costs associated with stakeholder liaison associated with Wind Up Plan proposals;
- RPRA liaison costs related to Wind Up Plan consultation proposals.

#### **Consultation costs:**

- Costs of consultation webinars;
- Stakeholder liaison/management costs;
- Communications costs associated with consultation;
- Support to RPRA consultation process (once Wind Up Plan submitted).

#### **Wind Up Plan Submission:**

- Accounting costs associated with Wind Up Plan financial proposal updates and adjustments;
- Professional costs associated with writing MHSW Wind Up Plan and related attachments;
- CSSA staff time related to information inputs related to Wind Up Plan submission (more detailed information required for full Wind Up Plan Submission than required for Consultation proposals);
- Professional costs associated with developing Board briefing materials regarding the Wind Up Plan submission and support for related briefing processes.
  - RPRA liaison costs specific to Wind Up Plan Submission;
  - Stakeholder liaison/management costs.

It should be noted that Wind Up Plan development costs noted above are incurred in relation to both the initial Ministerial direction and all subsequent Ministerial directions that require significant changes to previous directions. With respect to this issue, Stewardship Ontario has received four Ministerial directions related to development of the MHSW Wind Up Plan: the original program wind up direction



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received in April 2018; new Ministerial direction to return surplus funds to consumers received in July 2019; new Ministerial direction regarding the disbursement of residual program funds received December 2019 and the Ministerial direction related to this Addendum received April 1, 2020. Each of these directions incurs all or a portion of the costs described above.

### ***Implementation of Wind Up Plan***

The implementation of the Wind Up Plan requires both ongoing costs that recur until the final year and one-time costs—typically those costs that occur once at the termination of the program. These are described below.

#### **Ongoing Wind Up Costs:**

- Additional Program processes associated with implementation of wind up plan activities such as fee reductions;
- Program processes associated with additional RPRA Wind Up Plan reporting requirements, briefings and updates;
- Additional briefing materials associated with Board oversight and approval of wind up activities;
- Ongoing stakeholder liaison and communications, including webinars, information bulletins,
- Maintenance of dedicated MHSW Wind Up web page related documentation;
- Professional and legal costs associated with MHSW Program rules changes regarding wind up;
- Accounting costs associated with Wind Up Plan budget forecasts, updates and adjustments;

#### **One-time Wind Up Costs:**

- Professional and Legal costs associated with development of SO-ISO surplus fund transfer agreements;
- Data management costs associated with: removal of MHSW data from IT systems, destruction of data (physical and electronic); transfer of MHSW Program data to RPRA;
- Finalization of MHSW Program accounts;
- Termination of service provider agreements;
- Closure of MHSW program participation in SAS reporting systems;
- Submission of final Wind Up Plan Report.

### **How are General Wind Up Costs Affected in the Event of a Program Extension**

As noted in the Approved MHSW Wind Up Plan, as at December 2019 Stewardship Ontario forecast a small surplus of approximately \$138,000 in its general reserves taking into account all of its obligations with respect to potential wind up costs associated with a program termination date of June 30, 2021.



**Table 1: General Wind Up Costs From MHSW Wind Up Plan (Table 19)**

(\$000)	2019	2020	2021	Total
Plan Development & Implementation	\$996	\$1,231	\$895	\$3,121
RPRA fees	\$450	\$450	\$610	\$1,510
HR Severance			\$110	\$610
Litigation/Dispute Resolution			\$500	\$500
Corporate Wind Up			\$50	\$50
<b>Total</b>	<b>\$1,446</b>	<b>\$1,681</b>	<b>\$2,165</b>	<b>\$5,291</b>
<b>Residual Amount Remaining in General Reserves after Program Termination</b>				<b>\$138</b>

Events that could significantly increase MHSW Program wind up costs include:

1. **Regulatory delay:** This possibility is explicitly referenced in the April 2020 Ministerial direction. The MHSW program may be extended beyond June 2021 because new regulations under the **RRCEA** are not yet promulgated. Keeping the program running increases Wind Up Plan implementation costs because wind up activities as well as overhead must continue for an extended period of time.
2. **Additional Ministerial Directions:** Each additional direction imposes costs for duplicate consultations (IFO + RPRA), professional fees for drafting proposals, technical, administrative and communications support.

While some wind up costs are one-time in nature, such as the removal and destruction of MHSW program data from IT systems (currently utilized in the administration of the Program), many general wind up costs are ongoing until the program is fully wound up. Furthermore, a program extension will require a recalibration of the MHSW Program budget that would accommodate new and/or ongoing wind up activities in relation to the new termination date.

In order to estimate the potential costs associated with regulatory delay, Stewardship Ontario assumed that the current program would be extended 18-months. Other than allowing for an extended time for wind up, all other assumptions about general wind up costs remained the same as in the approved Wind Up Plan. Table 2 below shows the revised estimates associated with a program that ends in 2022 and allows for an additional 6-month period in 2023 to complete all final activities.

The decrease in wind up costs in 2021 are due to the fact that one-time costs typically incurred only in the last year of the program have now been shifted to the future termination date (2023).



**Table 2: General Wind Up Cost Estimate: 18-Month Program Extension<sup>7</sup>**

\$000s	2019	2020	2021	2022	2023	Total
Plan Development & Implementation	\$996	\$1,231	\$895	\$1050	\$510	\$4,681
RPRA fees	\$450	\$450	\$450	\$450	\$385	\$2,185
HR Severance					\$110	\$110
Litigation/Dispute Resolution					\$500	\$500
Corporate Wind Up					\$50	\$50
<b>Total</b>	<b>\$1,446</b>	<b>\$1,681</b>	<b>\$1,345</b>	<b>\$1,500</b>	<b>\$1555</b>	<b>\$7,526</b>
<b>Program Extension Unfunded</b>				<b>\$1,500</b>	<b>\$735</b>	<b>\$2,235</b>

While the cost impact of a MHSW Program extension would be affected by a number of factors beyond the length of the extension, including any potential new MHSW Program plan adjustments associated with potential Ministerial directions, an extension alone without any additional complicating factors will generate a significant increase in general MHSW wind up costs. Based on current obligations, an extension would cost \$125K month or \$2.2 million over the course of 18 months.

Given that Stewardship Ontario only forecast a surplus of \$138,000 in its general reserves in the initial MHSW Wind Up Plan budget, it is clear that a program extension would generate costs well in excess of general reserve amounts requiring Stewardship Ontario to draw from material reserves to cover unfunded general wind up costs.

The formula that Stewardship Ontario would utilize to determine each material category's share of additional general wind up costs is to draw funds on the basis of each materials' historic share of revenue contribution to the MHSW program.

For example, if material X contributed 10% of the revenue in Stewardship Ontario's MHSW program between 2009 and 2019 and general wind up costs increase by \$10,000 then material X pays 10% of \$10,000 or \$1,000 toward the increased costs. All stewards in Material category X are affected through a deduction from their material reserve fund.

Potential general wind up cost increases, therefore, have the potential to affect the material reserve balances and therefore the amount of surplus funds available for disbursement as fee reductions.

This possibility is acknowledged in the Ministerial direction which indicated that the proposed ISO-SO surplus fund transfer agreements must include provisions for ISOs to return unexpected costs to Stewardship Ontario in the event of a delay in transition of the program.

<sup>7</sup> Note the unfunded costs associated with a Program extension shown in Table 2 are the same as those presented in Stewardship Ontario's May 12 and 13 consultation webinars, but the allocation of costs to particular years has been reformatted to reallocate to the years in which the cost allocation would likely be incurred.



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## ISO Surplus Fund Transfer Proposal

During webinars held on May 12, 2020 and May 13, 2020 Stewardship Ontario reviewed proposals for addressing the new Ministerial direction regarding the transfer of ISO surplus funds to ISOs for the purposes of facilitating fee reductions. In addition, Stewardship Ontario met with key associations to discuss proposals.

As noted above, Stewardship Ontario reviewed potential cost implications associated with a program extension and reviewed key elements of the proposed surplus fund transfer agreement that would ensure that Stewardship Ontario could manage MHSW Program costs in a way that was consistent with statutory principles and fair for both current and former program participants.

Stewardship Ontario's proposal can be divided into two key categories:

1. Amount of the 100% Lump Sum Transfer; and
2. Returning Surplus Funds to Stewardship Ontario in the Event of a Delay in MHSW Program Transition

### Amount of the 100% Lump Sum Transfer

With respect to determining the amount of the 100% lump sum transfer, the April 2020 Minister's letter to Stewardship Ontario provides the following direction:

*...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 Industry Steward Organizations (ISOs) that operate the ISPs.*

With respect to this issue Stewardship Ontario followed the direction as stated and used the estimates of ISO surplus funds available for fee reductions found in the approved MHSW Wind Up Plan.

These amounts are provided in Table 3 below.



**Table 3: Approved MHSW Wind Up Plan Surplus Fund Estimates**

	A	B	C	D	E
MHSW Material Reserves	Total Surplus Funds Available for Fee Reduction MHSW Wind Up Plan Dec 2019	SO Steward Share Split Wind Up Plan	SO Steward Share of Surplus Funds	ISO Member Share Split Wind Up Plan	ISO Member Share of Surplus Fund Estimate
1. Antifreeze	\$1,900,000	21%	\$399,000	79%	\$1,501,000
2. Oil Filters	\$9,550,000	23%	\$2,196,500	77%	\$7,353,500
3. Oil Containers	\$9,700,000	16%	\$1,552,000	84%	\$8,148,000
<b>4. Subtotal</b>	<b>\$21,150,000</b>		<b>\$4,147,500</b>		<b>\$17,002,500</b>
5. Fertilizers	\$195,000	15%	\$29,200	85%	\$165,800
6. Paints/Coatings	\$14,470,000	0.20%	\$28,900	99.80%	\$14,441,100
7. Pesticides	\$113,000	0%	\$0	100%	\$113,000
8. Solvents	\$1,320,000	33%	\$435,600	67%	\$884,400
<b>9. Subtotal</b>	<b>\$16,098,000</b>		<b>\$493,700</b>		<b>\$15,604,300</b>
10. PC (Non-Refillable)	\$0	100%	\$0	0%	0
11. PC (Refillable)	\$225,000	100%	\$225,000	0%	0
12. Single-Use Batteries	\$5,490,000	100%	\$5,490,000	0%	0
<b>13. Subtotal</b>	<b>\$5,715,000</b>		<b>\$5,715,000</b>		<b>0</b>
<b>14. Total</b>	<b>\$42,963,000</b>		<b>\$10,356,200</b>		<b>\$32,606,800</b>

\* From Approved MHSW Wind Up Plan Section 8: Surplus Funds pages 57 to 64.

The approved MHSW Wind Up Plan included fee reduction schedules for each MHSW material category identifying the total amount of surplus funds available for disbursement in each category and the Stewardship Ontario steward and ISO Member share of each surplus fund amount for each category. These amounts have been compiled into Table 3 above.

### **Stakeholder Feedback<sup>8</sup>**

Stakeholder feedback response to the proposed lump sum transfer was divided.<sup>9</sup> Non-ISO stewards and other MHSW stakeholders supported the proposal. ISO stakeholders argued that the amount of the lump sum transfer should be higher than the surplus funds referenced in the December 2019 approved Wind Up Plan.

<sup>8</sup> It should be noted that any reference to stakeholder positions related to matters addressed in proposed SO-ISO surplus fund transfer agreements are made without prejudice to the potential parties to those agreements and do not in any way reflect the agreement of potential parties to particular agreement provisions or positions.



Stewardship Ontario

Through the consultation, PCA stakeholders have continued to assert that the quantum of surplus funds should be established by reference to March 2020 amounts that were shared with the ISOs in the context of consultation on different terms, rather than the quantum of surplus funds identified in the December 2019 approved Windup Plan. PCA has indicated that it is generally agreeable to the other terms proposed by Stewardship Ontario, but only on the condition that the higher March 2020 numbers are transferred.

AMS provided feedback that it was willing to proceed on the basis of the December 2019 surplus fund amounts, but took issue with other aspects of Stewardship Ontario's proposed Surplus Funds Transfer Agreement, described below.

### ***Stewardship Ontario's Response***

While Stewardship Ontario acknowledges that different transfer amounts related to ISO surplus funds were discussed with ISOs in March 2020, it is important to recognize that those amounts were related to a completely different surplus fund transfer process than the one contemplated by the current Ministerial direction. Under the proposed March agreements, Stewardship Ontario proposed a surplus fund transfer schedule which enabled it to manage financial risks associated the termination of the MHSW program in a fiscally responsible manner, by holding back 10% of estimated ISO surplus funds. As it noted in its correspondence to the Minister on this issue:

*As fiduciaries, the Board takes its duty to safeguard IFO funds very seriously. As a government-mandated organization, Stewardship Ontario holds monies in trust to ensure that the Government's policy objectives are met, and that wind up occurs absent any financial or reputational risk. Stewardship Ontario must make prudent allowance for the possibility of regulatory delay and must have enough funds on hand in the event the Government requires additional time to implement new regulations.*

Nevertheless given the new Ministerial direction, Stewardship Ontario proposes to transfer updated lump sum amounts that are consistent with the share allocation methodology used in the Approved Wind Up Plan and reviewed and approved by the Stewardship Ontario Board in March. While the total amount is higher than the amount Approved in the December 2019 WUP, the proposal is consistent with the intent of the Ministerial direction. The numbers approved for discussion by the Board in March would increase the ISO transfer by approximately \$1 million over and above that required by the Ministerial direction. The amounts can be seen in Table 4 below:



**Table 4: Updated ISO Surplus Funds Based on 2019 Financials**

	A	B
MHSW Material Reserves	Approved ISO Surplus Fund Estimates December 2019 Wind Up Plan	Updated MHSW ISO Surplus Fund Estimates Based on 2019 Financials
1. Antifreeze	\$1,501,000	\$1,767,000
2. Oil Filters	\$7,353,500	\$8,326,500
3. Oil Containers	\$8,148,000	\$7,561,500
<b>4. AMS Materials Subtotal</b>	<b>\$17,002,500</b>	<b>\$17,655,000</b>
5. Fertilizers	\$165,800	\$298,400
6. Paints/Coatings	\$14,441,100	\$14,550,500
7. Pesticides	\$113,000	\$250,200
8. Solvents	\$884,400	\$891,500
<b>9. PCA Materials Subtotal</b>	<b>\$15,604,300</b>	<b>\$15,990,600</b>
<b>Total ISO Amounts</b>	<b>\$32,606,800</b>	<b>\$33,645,600</b>

While the updated 2019 financials increase the surplus fund estimates for most ISO categories it should be noted that the surplus fund estimate for oil containers is less than the Approved WUP. The adjustment does, however, address concerns raised by some stakeholders that surplus funds in particular categories should be updated to reflect 2019 program financial adjustments as well as the results of the annual audit.

While other reserve calculations apart from those shown above were discussed with ISOs during discussions in March, these numbers were neither verified nor approved by the Stewardship Ontario Board or its auditors. Nor were these potential lump sum amounts consistent with the share allocation methodology utilized to calculate the surplus fund estimates in the Approved WUP.

Stewardship Ontario is proposing the additional amounts set out above to address stakeholder concerns in a manner consistent with the intent of the Ministerial direction. In the view of Stewardship Ontario, the transfer of any additional amounts over and above these updated approved WUP estimates would create significant financial instability for the MHSW Program.<sup>10</sup>

Finally, it should be noted that regardless of how much money is transferred to ISOs pursuant to the surplus fund transfer agreement, all ISO and Stewardship Ontario stewards will receive their fair share of surplus funds available at the termination of the MHSW Program either through a surplus fund transfer or in the form of residual funds.

<sup>10</sup> Note: Adjusting lump sum payments based on updated 2019 financial results also results in small adjustments to ISO costs allocations associated with Stewardship Ontario proposed escrow amounts. See Returning Surplus funds to Stewardship Ontario in the Event of a Delay in the MHSW Program Transition below.



Stewardship Ontario

## Returning Surplus Funds to Stewardship Ontario in the Event of a Delay in MHSW Program Transition

The second key component of the April Ministerial direction is the requirement that the surplus fund transfer agreement include a provision, in the event of a program extension, for ISOs to return surplus funds to Stewardship Ontario to cover unexpected wind up cost increases. As per the Ministerial direction:

The amended Wind Up Plan will require that the one-time lump sum payments be provided pursuant to surplus transfer agreements between SO and 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.

With respect to the Ministerial direction allowing Stewardship Ontario to recover reasonable unexpected costs, as noted earlier, Stewardship Ontario provided stakeholders with a preliminary estimate of the potential general wind up cost increase associated with an 18-month program extension.

Table 5 below represents an estimate of each material category's share of a potential general wind up cost increase totalling \$2.235 million. The ISO-SO share of that allocation is then determined by the same share splits used to determine the ISO share of surplus funds in the approved MHSW Wind Up Plan.

Note: Stewardship Ontario has adjusted amounts provided during its consultation webinar (Columns B and C below) to reflect changes associated with adjusted SO Steward and ISO Member share of allocation consistent with updated financial results for 2019 (Columns D and E in Table 5 below). This aligns these amounts with Stewardship Ontario recommendations regarding the lump sum transfer.



**Table 5: Unfunded Stewardship Ontario Liability General Wind Up Costs by Material Category**

	A	B	C	D	E
Material Category	Unfunded Cost of Program Extension	SO Steward Share Program Extension	ISO Member Share Program Extension Reserve Recovery	Adjusted SO Steward Share Program Extension	Adjusted ISO Member Share Program Extension Reserve Recovery
1. Antifreeze	\$101,500	\$21,300	\$80,200	\$13,200	\$88,300
2. Oil Filters	\$428,000	\$98,500	\$329,500	\$59,500	\$368,500
3. Oil Containers	\$410,300	\$65,600	\$344,700	\$86,600	\$323,700
<b>4. Subtotal</b>	<b>\$939,800</b>	<b>\$185,400</b>	<b>\$754,400</b>	<b>\$159,300</b>	<b>\$780,500</b>
5. Fertilizers	\$16,700	\$2,500	\$14,200	\$1,200	\$15,500
6. Paints	\$674,100	\$1,400	\$672,700	\$2,000	\$672,100
7. Pesticides	\$15,000	\$0	\$15,000	\$0	\$15,000
8. Solvents	\$66,400	\$21,900	\$44,500	\$22,000	\$44,400
<b>9. Subtotal</b>	<b>\$772,200</b>	<b>\$25,800</b>	<b>\$746,400</b>	<b>\$25,200</b>	<b>\$747,000</b>
10. PC-NR	\$72,900	\$72,900	\$0	\$72,900	\$0
11. PC-R	\$23,700	\$23,700	\$0	\$23,700	\$0
12. Batteries	\$426,400	\$426,400	\$0	\$426,400	\$0
<b>13. Subtotal</b>	<b>\$523,000</b>	<b>\$523,000</b>	<b>\$0</b>	<b>\$523,000</b>	<b>\$0</b>
<b>14. Total</b>	<b>\$2,235,000</b>	<b>\$734,200</b>	<b>\$1,500,800</b>	<b>\$707,500</b>	<b>\$1,527,500</b>

Column A represents the total unfunded liability associated with an 18-month extension apportioned by material category based on each category's contribution to MHSW Program revenues/costs over the course of the Program.

Column B represents the portion of that liability attributable to Stewardship Ontario stewards based on the share splits associated with surplus funds from the approved MHSW Wind Up Plan.

Column C represents the portion of the liability associated with ISO members surplus funds based on the share splits associated with surplus funds from the approved MHSW Wind Up Plan.

Column D updates the portion of liability attributable to Stewardship Ontario stewards based on updated 2019 financials and the share split methodology associated with the approved MHSW Wind Up Plan.

Column E updates the portion of liability associated with ISO member surplus funds based on update 2019 financials and the share split methodology associated with the approved MHSW Wind Up Plan.



Stewardship Ontario proposed that a portion of the 100% surplus fund transfer be placed into escrow. Minimum escrow amounts would be equal to the amounts Stewardship Ontario may need to recover from ISOs in the event of an 18-month program extension (see column C Table 4 above). Approximately \$750,000 of the \$17 million transferred to AMS would be held in escrow. Approximately \$750,000 of the \$15.6 million transferred to PCA would be held in escrow.

If the transition to the RRCEA takes place as planned, on June 30, 2021, escrow funds would be released for disbursement as fee reductions by the ISOs. If the transition to the RRCEA framework is delayed, and Stewardship Ontario general reserves were not sufficient to cover general wind up costs, Stewardship Ontario could access these escrow amounts to recover general wind up cost increases.

Both the escrow fund amounts and the process by which Stewardship Ontario would recover “reasonable unexpected costs” would, consistent with Ministerial direction, be defined in surplus fund transfer agreements between Stewardship Ontario and the ISOs. Related to this issue, Stewardship Ontario posted draft surplus fund transfer agreements on its website and met with both ISOs (PCA and AMS) to develop those agreements in parallel with the process for developing this Addendum. With respect to recovery of reasonable unexpected costs, Stewardship Ontario proposed that in the event of a program extension, ISOs would return escrow fund amounts to Stewardship Ontario. Stewardship Ontario would then document for ISOs any use of these funds to pay for general wind up cost increases (subject to a dispute settlement process) (see Development of Surplus Fund Transfer Agreements below). As with the Approved wind up plan, any fund amounts not utilized to cover wind up costs, would eventually be disbursed to Stewards in the form of residual fund payments.

### ***Stakeholder Feedback<sup>11</sup>***

With respect to Stewardship Ontario’s recovery of wind up costs in the event of a program delay, stakeholder responses can be divided into three main groups: non-ISO stakeholders, AMS stakeholders and PCA stakeholders.

Non-ISO stakeholders, which includes Stewardship Ontario stewards and program service providers, universally supported the Stewardship Ontario escrow fund proposal. These stakeholders emphasized fiscal prudence in the management of Stewardship Ontario finances and the need to set aside adequate contingencies in relation to potential wind up cost increases associated with a Program extension.

Service providers raised concerns about the financial stability of the MHSW program and the need to set aside funds to guarantee ongoing Program solvency in the event of an extension. Non-ISO stewards emphasized the need for all program stewards, both current and former, to share general wind up costs fairly and emphasized that Stewardship Ontario needed to take steps to ensure that remaining program stewards did not face an undue cost burden associated with the MHSW wind up process.

AMS stakeholders objected to the escrow fund proposal as unnecessarily expensive and raised issues regarding the quantum of potential wind up costs that an ISO would be subject to associated with a program extension. However, AMS proposed to substitute the escrow fund concept with a restricted reserve managed by their Board. AMS representatives rejected Stewardship Ontario’s proposal to return

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<sup>11</sup> It should be noted that any reference to stakeholder positions related to matters addressed in proposed SO-ISO surplus fund transfer agreements are made without prejudice to the potential parties to those agreements and do not in any way reflect the agreement of potential parties to particular agreement provisions or positions.



Stewardship Ontario

all escrow funds immediately in the event of a program extension, but acknowledged the requirement to contribute to potential wind up cost increases associated with a program extension. Stewardship Ontario discussions focused on developing a list of wind costs which Stewardship Ontario could submit to AMS for payment subject to a verification process (see Development of Surplus Fund Transfer Agreements below).

PCA stakeholders objected to the escrow fund proposal and initially objected to any allocation of ISO surplus funds in restricted reserves. PCA stakeholders also initially objected to any provisions related to compensable costs in the agreement other than reference to the Ministerial direction. During discussions of the draft surplus agreement, PCA stakeholders eventually offered to place funds in restricted reserves and agreed to a process whereby Stewardship Ontario recover compensable costs under the agreement but only on the condition that the quantum of surplus funds match the March 2020 forecasts and not the surplus funds referenced in the approved December 2019 Wind Up Plan. (see Development of Surplus Fund Transfer Agreements below).

### ***Stewardship Ontario's Response***

Stewardship Ontario has continued to work on draft surplus fund transfer agreements with ISOs as this Addendum was under development. Stewardship Ontario has considered alternatives to the escrow fund approach that is consistent with Stewardship Ontario's ability to recover surplus funds provided to ISOs in the event of a program extension.

With respect to confirming what are reasonable recoverable costs related to a Program extension, Stewardship Ontario is proposing that any claims or submissions to ISOs related to recoverable costs be provided to both ISOs and RPRA and, if disputed by ISOs, be reviewed by RPRA which would determine if those costs were consistent with the Agreements' definitions and payable by the ISO. The review of these costs submissions by RPRA, which has detailed information about Stewardship Ontario's budget and wind up costs given its role in overseeing the MHSW Wind Up process, should provide assurances to ISOs that the costs in question are legitimate and consistent with the fair allocation principles associated with the WDTA.

While discussions with ISOs have not resolved all differences of opinion as to how the Minister's direction should be reflected in surplus fund transfer agreements, Stewardship Ontario feels discussion on the agreements have been constructive and that a framework for those agreements have been constructive, subject to certain major issues remaining unresolved with each of PCA and AMS. The outstanding issues are different in the case of each ISO. The following section outlines key recommendations that Stewardship Ontario is making with respect to those agreements recognizing that ISOs have not consented to all of these recommendations.

### **SO-ISO Surplus Fund Transfer Agreement Development Process**

It is important to note, that both the April 2020 Ministerial direction and the Approved MHSW Wind Up Plan require Stewardship Ontario to enter into surplus fund transfer agreements with ISOs prior to the transfer of any surplus funds by Stewardship Ontario to ISOs in support of the anticipated fee reduction process. The SO-ISO surplus fund transfer agreements are the mechanism which ensures that fee reductions required by the MHSW Wind Up Plan are implemented in accordance with both the approved Wind Up Plan and related Ministerial directions.



Stewardship Ontario

Key Stewardship Ontario recommendations for the SO-ISO surplus fund transfer agreements related to the wind up fee reduction process are that these agreements:

1. Specify the amount of Stewardship Ontario's 100% ISO lump sum surplus fund transfer as the estimates approved in the December 2019 MHSW Wind Up Plan updated to reflect 2019 actual program results identified in Column B of Table 4 in this Addendum;
2. Identify minimum amounts ISOs must place in restricted reserves for potential recovery by Stewardship Ontario in the event of a delay in transition to the RRCEA identified in Column E of Table 5 of this Addendum;
3. Define a list of reasonable unexpected costs recoverable by Stewardship Ontario from ISOs in the event of a program extension:
  - a. Require RPRA to approve the amount of any Stewardship Ontario costs recoverable from ISOs in the event of a dispute between Stewardship Ontario and the ISO as to the legitimacy of those costs;
4. Include a provision that any surplus funds transferred by Stewardship Ontario to an ISO, subject to conditions associated with restricted reserve funds, be passed on to ISP members as fee reductions;
5. Include a requirement that notices issued to ISP members include acknowledgements recognizing the Ministerial expectation that fee reductions will benefit consumers;
6. Include provisions to ensure that fee reductions provided to SO Stewards and ISO Stewards in the same material categories in any particular time period are roughly equivalent on equivalent products supplied by those stewards;
7. Include provisions to ensure any surplus funds not disbursed as fee reductions by ISOs are disbursed as residual funds in Accordance with the Approved MHSW Residual Funds Addendum;
8. Provide for data sharing between the parties necessary to implement the terms of the Agreements.
9. Include a process for resolving any issues or disputes that may arise during the implementation of the agreements.

Finalization of the SO-ISO surplus fund transfer agreements will need to await final approval of this Addendum by RPRA and be consistent with any conditions associated with that approval. The Ministerial direction that Stewardship Ontario transfer surplus funds to ISOs within two weeks of RPRA approval means that agreements need to be in place to facilitate the transfer of those surplus funds prior to their disbursement. Stewardship Ontario recommendations for agreement terms will be subject to any related conditions associated with RPRA approval of this Addendum.



Stewardship Ontario

Stewardship Ontario will endeavour to work with ISO's following receipt of RPRA anticipated approval of the Addendum in order to complete these agreements in accordance with the Minister's direction and facilitate implementation of the fee reduction process.

### **Proposed Clarifying Amendment to MHSW Residual Fund Addendum**

As noted throughout this Addendum, there is a relationship between surplus funds and residual funds. Surplus funds are those amounts that Stewardship Ontario estimates are not needed to cover MHSW Wind Up costs and which can therefore, pursuant to the Approved Wind Up Plan, be returned to consumers via fee reductions for both Stewardship Ontario stewards and ISP Members.

Residual funds are any amounts left after the termination of the MHSW program when all costs and obligations associated with winding up the Program have been incurred.

Under the Approved Residual Funds Addendum, any residual funds held by Stewardship Ontario at the end of the program attributable to ISO members will be disbursed to the related ISO. ISOs would then disburse residual funds to individual members in proportion to the member's share of surplus funds received through the fee reduction process.

As the MHSW Residual Fund Addendum makes clear, ISOs and Stewardship Ontario would be obligated to disburse residual funds to both current and former members.

In the event that some current MHSW ISP members leave the ISO and make alternate arrangements to manage their legislative obligations under the RRCEA, ISOs would be required to disburse residual funds to former ISP members that had received surplus fund fee reductions during the wind up of the current MHSW Program.

This MHSW Residual Fund Addendum requirement accounts for the possibility that membership in both PCA and AMS may change as the MHSW Program is transitioned to the RRCEA legislative framework and that the disbursement of residual funds in relation to the current program will likely take place many months after the termination date for the current MHSW program.

This provision is important to ensure that existing ISOs do not have an unfair market advantage in transitioning to the RRCEA in relation to other potential producer responsibility organizations starting operations under that framework. Tying eligibility for a residual funds disbursement to future ISO membership would create a financial incentive for current ISP Members to stay with existing ISOs under the new statute.

As such Stewardship Ontario, in consultation with the RPRA, has developed a clarifying amendment to the MHSW Residual Funds Addendum that indicates that any residual funds disbursements made by ISOs or Stewardship Ontario to Stewards or former Stewards must be made on a cash basis. This approach will ensure closure on funding issues in relation to existing ISO and Stewardship Ontario operations under the MHSW Program and remove any perception of required membership in the any organization (after termination of the MHSW Program) for participation in such a disbursement.

Specifically, Stewardship Ontario is proposing that Page 3 of the Residual Funds Addendum be amended by adding an adding a fifth clause in relation to the Proposal.





Stewardship Ontario

5. Residual funds must be returned to Stewards or ISP members in the form of a payment and not as a credit that can be accessed at a later date.

This Amendment will clarify the process to be followed for final residual funds disbursements.

## Conclusions

Given the wide array of opinions with respect to a) the interpretation of the Minister's direction on surplus funds; b) the obligation of all stewards to fund general wind up costs regardless of whether they belong to an ISP; c) the methods to fairly allocate these costs among Stewardship Ontario and ISO stewards; and, d) how best to recover general wind up costs in the event the costs of a program extension depletes the general reserve, it has not been possible for Stewardship Ontario to achieve consensus on the April 2020 Minister's direction. The positions taken by some MHSW stakeholders are in direct opposition to the approach supported by other MHSW stakeholders.

Throughout the MHSW Wind Up process, Stewardship Ontario has endeavoured to develop a financial plan that is consistent with WDTA financing principles; fair for all program participants and which winds down the MHSW Program in a responsible manner with prudent consideration of potential financial risks. It believes its proposal to address the April 2020 Ministerial direction is consistent with these objectives.

Following RPRA's anticipated approval of this Addendum, final SO-ISO surplus fund transfer agreements will be developed for approval by the respective organizations as well as RPRA. The finalized agreements will need to be consistent with Ministerial direction and any conditions imposed by RPRA in relation to this Addendum. It is Stewardship Ontario's intention to enter into these agreements as quickly as possible after RPRA approval in order to facilitate the implementation of fee reductions for both Stewardship Ontario registered stewards and members of ISPs.

# **APPENDIX A**

March 17, 2020

SENT VIA EMAIL: [minister.mecp@ontario.ca](mailto:minister.mecp@ontario.ca)

The Honourable Jeff Yurek  
Minister of Environment, Conservation and Parks  
College Park 5<sup>th</sup> Floor, 777 Bay Street  
Toronto, ON M7A 2J3

Dear Minister Yurek:

I am writing to inform you that the Stewardship Ontario Board of Directors decided, at its meeting on March 10, to proceed with paying out reserve funds for certain Municipal Hazardous or Special Waste (MHSW) to Industry Stewardship Organizations (ISOs).

The Stewardship Ontario MHSW Wind Up Plan was developed to meet the requirements of ministerial direction letters and received approval from the Resource Productivity and Recovery Authority (RPRA) on December 27, 2019. The approved wind up plan requires the return of surplus program funds to consumers through the implementation of a fee reduction for stewards of both Stewardship Ontario and Industry Stewardship Plans (ISPs). Under the wind up plan, this fee reduction was to be implemented gradually over the final 18 months of the program by way of fee reductions on steward invoices.

Subsequent to the Wind Up Plan's approval, Stewardship Ontario staff and the Board learned of stakeholders' requests to advance the payment of reserve funds. In response, Stewardship Ontario held a special Board meeting on March 10, 2020 to assess whether accelerated reserve fund payouts could be implemented in a financially responsible manner consistent with the wind up plan and in a way that is both fair and reasonable for all producers of Municipal Hazardous or Special Materials (MHSM).

The Board considered your July 2019 direction letter, which states "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."

Board members agreed that to carry out this direction, sufficient funds needed to be maintained in the MHSW reserves to deal with the inherent uncertainties and risks of the wind up, including a potential extension of the wind up timeline. Depleting the MHSW reserves could pose a significant risk to Stewardship Ontario in the event new regulations to replace the MHSW program are delayed. For example, the extension of termination dates for waste diversion programs, including MHSW, has already added costs to the wind up of Industry Funding Organizations (IFO), such as Stewardship Ontario. As such, the possibility of a further extension of the MHSW program is something that the Stewardship Ontario Board needed to carefully consider.

If further delay were to occur and reserves were not sufficient, stewards of materials that are not part of an ISO would bear the cost of wind up, which would be an unfair and unreasonable result that could be challenged by a number of stakeholders. The directors were bound to consider these matters as part of their deliberations on how to prudently fulfil the requirements of the direction letters.

As fiduciaries, the Board takes its duty to safeguard IFO funds very seriously. As a government-mandated organization, Stewardship Ontario holds monies in trust to ensure that the Government's policy objectives are met, and that wind up occurs absent any financial or reputational risk. Stewardship Ontario must make prudent allowance for the possibility of regulatory delay and must have enough funds on hand in the event the Government requires additional time to implement new regulations.

With respect to stakeholder impacts, it should be noted that accelerating the payment of reserve funds to ISOs will not generate any benefits for their stewards. The timing by which stewards would be eligible to receive fee reductions is set to occur on a monthly or quarterly basis and would not be affected by front-end loading payments to their stewardship organizations, which would be holding these funds.

After careful consideration of the front-end load request, the Board of Directors determined that 90% of the reserve funds could be advanced to ISOs by April 30 provided that the remaining 10% of ISP funds are held back to provide a buffer for unforeseen events. These hold-back amounts would be disbursed in the last quarter of the program to offset stewards' final invoices as anticipated under the approved wind up plan.

Under this proposal, and subject to agreements with ISOs on permitted uses of advanced reserve funds, Automotive Materials Stewardship (AMS) would receive approximately \$15.9 million, and approximately \$14.4 million would be distributed to Product Care Association (PCA). Stewardship Ontario would hold back a modest \$3.4 million to be distributed to AMS and PCA later in the wind-up process.

The Board's decision now provides a mandate for Stewardship Ontario staff to start negotiations with the ISOs on fee reduction agreements. We would like to begin these negotiations as soon as possible to ensure that the reserve funds can be advanced to the ISOs by April 30.

Staff are available to review the details of program financing with your staff and answer any questions they may have about our Board's decision. Board Directors are also available to meet with you or discuss if you have questions about the attached.

Thank you for your attention to this matter.

Sincerely,



Debbie Baxter, Independent Director  
Chair of the Finance, Audit & Performance Committee  
**CMC, FCPA, FCMA, ICD.D**

CC:

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357-2020-577

Ms. Robyn Collver  
Chair, Stewardship Ontario  
1 St Clair Avenue West, 7<sup>th</sup> 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:

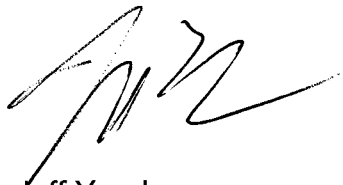
- Outline how the ISO would return 100 per cent of the material-specific surplus funds to ISP stewards in the form of fee reductions, for the maximum benefit of consumers.
- In the case that there is a delay in the transition of the MHSW program to individual producer responsibility under the *Resource 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 be 'JY', written over a light blue horizontal line.

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

April 6, 2020

SENT VIA EMAIL: [minister.mecp@ontario.ca](mailto:minister.mecp@ontario.ca)

The Honourable Jeff Yurek  
Minister of the Environment, Conservation and Parks  
College Park 5<sup>th</sup> Floor, 777 Bay Street  
Toronto, ON M7A 2J3

Dear Minister Yurek:

I am writing on behalf of the Stewardship Ontario (SO) Board of Directors to respond to your letter, sent on April 1, 2020, which provides new directions on the management of the Municipal Hazardous or Special Waste (MHSW) program.

#### **Blue Box Consultation Extension**

I would, first, like to thank you for extending the deadline for submitting the Blue Box Transition Plan to August 31, 2020. Stewards are facing unprecedented challenges with keeping store shelves stocked and the supply chain moving amid the COVID-19 pandemic. We have heard repeatedly from stewards that they have very limited time to dedicate to consultations right now, so we thank you for your understanding and look forward to advancing the Blue Box transition process through the summer.

#### **Request for MHSW Consultation Extension**

We believe similar relief should be provided to MHSW stewards. Prior to receiving the new direction letter, we were very close to concluding fee-reduction agreements with the industry stewardship organizations (ISOs): Product Care Association (PCA) and Automotive Materials Stewardship (AMS). These agreements were structured around the approved MHSW wind-up plan and the SO Board's decision on March 10 to accelerate the payment of surplus funds to ISOs.

#### **MHSW Return of Surplus Funds: Request for the Minister's Reconsideration**

The MHSW wind-up plan requires the return of surplus program funds to consumers through the implementation of a fee reduction for stewards of both SO and Industry Stewardship Plans (ISPs). Under the wind-up plan, this fee reduction was to be implemented gradually over the final 18 months of the program by way of fee reductions on steward invoices.

On March 10, 2020, the Board agreed to accelerate payments to ISOs in a manner that met the directions in your July 2019 letter, which states, "Any proposal to return surplus funds to [Municipal Hazardous or Special Materials] 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."





Stewardship Ontario

The agreements that were being negotiated between SO and the ISOs would have transferred 90% of the material reserves to the ISOs by April 30 while holding back 10%, which would be provided to the ISOs at the end of the MHSW program. The Board approved the 10% holdback to ensure sufficient funds would be available to operate the program and execute the wind-up in the event that the MHSW program was extended because of a delay in the development and implementation of new regulations under the *Resource Recovery and Circular Economy Act*. Given the current circumstances, a delay seems more likely. The full rationale of the Board's decision on this matter was outlined in our letter to you on March 17 (which is attached).

Discussions between SO and the ISOs were productive and were observed by the Resource Productivity and Recovery Authority (RPPRA). This process required no amendment to the wind-up plan, no external consultation and was near completion. Now, with the direction to amend the wind-up plan, payments will likely not be made until June, following RPPRA's approval of the amendment.

We have also discussed with RPPRA the requirement to consult on the proposed amendment. Similar to our observations regarding the ability of Blue Box stewards to consult at present, launching consultations on an amendment to the MHSW wind-up plan in the midst of the COVID-19 pandemic does not provide a fair and equal opportunity for businesses to meaningfully engage. There are substantive matters to be considered by stewards during a consultation. The primary concern will be if the MHSW program were extended and reserves were not sufficient, stewards of materials that are not part of an ISO, such as pressurized containers, would bear the cost of wind up, which would be an unfair and unreasonable result that could be challenged by a number of stakeholders.

Many businesses are temporarily closed and making significant sacrifices. Retailers and brand holders are both focusing their efforts on getting much needed supplies to Ontarians. Undertaking a condensed consultation process right now creates added stress for businesses, especially as sales drop and Ontarians lose their jobs.

All organizations are adjusting to the present circumstances, including Stewardship Ontario. As stewards face financial hardship, many will struggle to pay their stewardship bills. With the prospect of stewards defaulting on their payments to SO, we must prepare for this risk by ensuring enough reserves are available to keep the organization and programs running.

As fiduciaries, the Board takes its duty to prepare for risk and safeguard stewards' funds very seriously. Stewardship Ontario holds monies in trust to ensure that the Government's policy objectives are met, and that wind up occurs absent any financial or reputational risk. SO must make prudent allowance for the possibility of regulatory delay and must have enough funds on hand in the event the Government requires additional time to implement new regulations.



Stewardship Ontario

We do not believe a clawback is a suitable measure to protect SO from financial risk. Providing all funds to ISOs at the start of the fee-reduction schedule leaves SO in a precarious position if the MHSW program is extended. If an ISO either did not have the funds or chose not to compensate SO for a “reasonable unexpected cost,” our only recourse would be the courts. However, enforcing a legal agreement through the courts requires more money, and the MHSW program will have limited funds for such an action as it approaches the end of the wind-up.

With the challenges our organization and stewards are facing as a result of the COVID-19 pandemic, we believe the most prudent course of action would be to return to the discussions we were undertaking with the ISOs to finalize the fee-reduction agreements we were on the verge of completing.

We would respectfully request a meeting with you to discuss the implications of amending the MHSW wind-up plan. We look forward to hearing back from you.

Sincerely,

Debbie Baxter, Independent Director  
Chair of the Finance, Audit & Performance Committee

CC:

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Stewardship Ontario

April 23, 2020

SENT VIA EMAIL: [minister.mecp@ontario.ca](mailto:minister.mecp@ontario.ca)

The Honourable Jeff Yurek  
Minister of the Environment, Conservation and Parks  
College Park 5<sup>th</sup> Floor, 777 Bay Street  
Toronto, ON M7A 2J3

Dear Minister Yurek:

I am writing on behalf of the Stewardship Ontario (SO) Board of Directors in response to your letter, sent on April 1, 2020, which provides new directions on the management of the Municipal Hazardous or Special Waste (MHSW) program.

The SO Board has met and is ready to start consultations on proposed amendments to the MHSW wind-up plan, which is required under subsection 14(17) of the *Waste Diversion Transition Act*. However, we require more time to conduct meaningful consultations with stewards, municipalities and other stakeholders as required by the Act.

We respectfully request a 35-day extension on the deadline to submit the proposed amendments to the Resource Productivity and Recovery Authority (the Authority) in order to ensure that stewards have enough time to provide feedback.

We, again, appreciate the two-month extension that you granted on the deadline to submit the Blue Box Program Transition Plan to the Authority given the challenges stewards are facing during the COVID-19 pandemic. Similar to our observations regarding the ability of Blue Box stewards to consult at this time, launching a condensed consultation process on amendments to the MHSW wind-up plan in the second month of a global pandemic does not provide a fair and equal opportunity for businesses to meaningfully engage.

There are substantive matters to be considered by stewards during a consultation. The April 1 direction letter requires the immediate payment of 100% of the surplus funds that the Authority approved for fee reductions in December 2019 and February 2020 to industry stewardship organizations (ISOs). SO is then required to enter into transfer agreements with the ISOs that would allow SO to recover “reasonable unexpected costs related to the materials managed by the ISOs.”

As the effect of the direction is to increase financial risk for stewards of materials that are not part of an ISO, such as pressurized containers, our consultation process will need to highlight this impact to the steward community and collect their feedback.



Stewardship Ontario

Many businesses are temporarily closed and making significant sacrifices. Retailers and brand holders are both focusing their efforts on getting much needed supplies to Ontarians. Undertaking a condensed consultation process right now creates added stress for businesses, especially as sales drop and Ontarians lose their jobs.

To relieve some of the pressure on the Ontario business community, we believe providing more time for the consultation process will support better public policy outcomes.

We look forward to hearing back from you on this matter.

Sincerely,

Debbie Baxter, Independent Director  
Chair of the Finance, Audit & Performance Committee

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357-2020-676

April 29, 2020

Ms. Debbie Baxter  
Chair of the Finance, Audit and Performance Committee  
Stewardship Ontario  
1 St Clair Avenue West, 7th Floor  
Toronto ON M4V 1K6  
Email: [dbaxter@deloitte.ca](mailto:dbaxter@deloitte.ca)

Dear Ms. Baxter:

Thank you for your letter of April 23, 2020 about the direction I provided on April 1, 2020 regarding amendments to the Municipal Hazardous or Special Waste (MHSW) wind up plan.

In terms of the timelines in the April 1, 2020 direction letter, I understand that given the current situation with the COVID-19 pandemic, Stewardship Ontario (SO) will need further time to ensure it can undertake meaningful consultation with stakeholders on amendments to the MHSW plan.

Given these circumstances, I am granting an extension for the submission date of the MHSW amendments to the Resource Productivity and Recovery Authority (the Authority) from April 30, 2020 to June 5, 2020. It is my expectation that the Authority will approve amendments to the MHSW wind up plan, consistent with this direction, by June 25.

I am further re-iterating my direction to require that SO make the one-time lump sum payments of 100% of the material-specific surplus funds described in my April 1, 2020 letter to the Industry Stewardship Organizations within two weeks of the proposed amendments being approved by the Authority.

With the exception of the changes noted above, all other requirements set out in the April 1, 2020 direction letter must be met by SO.

Lastly, it is my expectation that SO will post this direction and the one from April 1, 2020 on its website.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Yurek", written over a light blue circular stamp.

Jeff Yurek  
Minister of the Environment, Conservation and Parks

Ms. Debbie Baxter

Page 2.

c: Serge Imbrogno, Deputy Minister, MECP  
Glenda Gies, Chair, Resource Productivity and Recovery Authority  
Frank Denton, CEO, Resource Productivity and Recovery Authority  
Geoff Rathbone, Director of Transition, Resource Productivity and Recovery Authority  
Charles O'Hara, Director, Resource Recovery Policy Branch, MECP  
Mark Kurschner, President, Product Care Association  
David Pearce, Vice-President, Canadian Stewardship Services Alliance  
Automotive Materials Stewardship  
Stewardship Ontario Board of Directors:  
Robyn Collver, Canadian Tire Corporation Limited  
Diane J. Brisebois, Retail Council of Canada  
Paul Methot, Pizza Pizza Limited  
Farook Hanif, The Clorox Company of Canada Limited  
Sylvain Mayrand, A. Lassonde Industries Inc.  
Tim Faveri, Maple Leaf Foods Inc.  
Ron Soreanu, Coca-Cola Limited



# **APPENDIX "**



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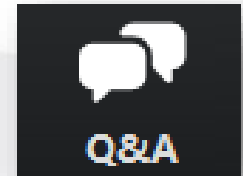
Stewardship Ontario

# **MHSW Program Wind Up Consultation Return of Surplus Funds to MHSW Stewards**

May 12 & 13, 2020

# Using the Webinar Platform

- To ask a question, click the Q&A button on the bottom of your screen.
  - You may have to toggle your cursor on the screen to show the Q&A button.
  - You can ask questions on the content of this presentation at anytime during the webinar.
  - Any question we don't get to we will answer in the Q&A document which will be posted on our website.
  - All questions and answers will be included in the consultation report that will be submitted to RPRA.
- This presentation and webinar recording will be available on the MHSW Wind Up webpage by tomorrow:  
[StewardshipOntario.ca/MHSW-WindUp/](http://StewardshipOntario.ca/MHSW-WindUp/).



# Board of Directors



**Debbie Baxter (Independent)**  
VP, Corporate Real Estate,  
Deloitte



**Faroek Hanif**  
Vice President of Finance,  
The Clorox Company Canada



**Diane Brisebois**  
President and CEO,  
Retail Council of Canada



**Sylvain Mayrand**  
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**Tim Faveri**  
VP, Sustainability and Shared Value,  
Maple Leaf Foods Inc.



**Ron Soreanu**  
VP Public Affairs and  
Communications, The Coca-Cola  
Company



**Gulnara Gabidullina, (Vice-Chair)**  
Director, Global Product  
Stewardship, Procter & Gamble Inc.



# 5 Key Objectives re: Proposed Amendment to MHSW Wind Up

- Meet the requirements of the Minister's direction letters and the provisions of the *Waste Diversion Transition Act* (WDTA);
- Be transparent with stewards, municipalities and other stakeholders with respect to the risks and obligations related to MHSW Wind-Up;
- Enable prudent financial provisions in the event there is a potential delay in development and implementation of an individual producer responsibility (IPR) regulation to transition the management of municipal hazardous or special materials (MHSM) under the *Resource Recovery and Circular Economy Act* (RRCEA);
- Treat all stewards fairly with respect to the allocation of cost of MHSW Wind-Up; and
- Consider feedback and respond to stewards, municipalities and other stakeholders following meaningful consultation.

# Agenda

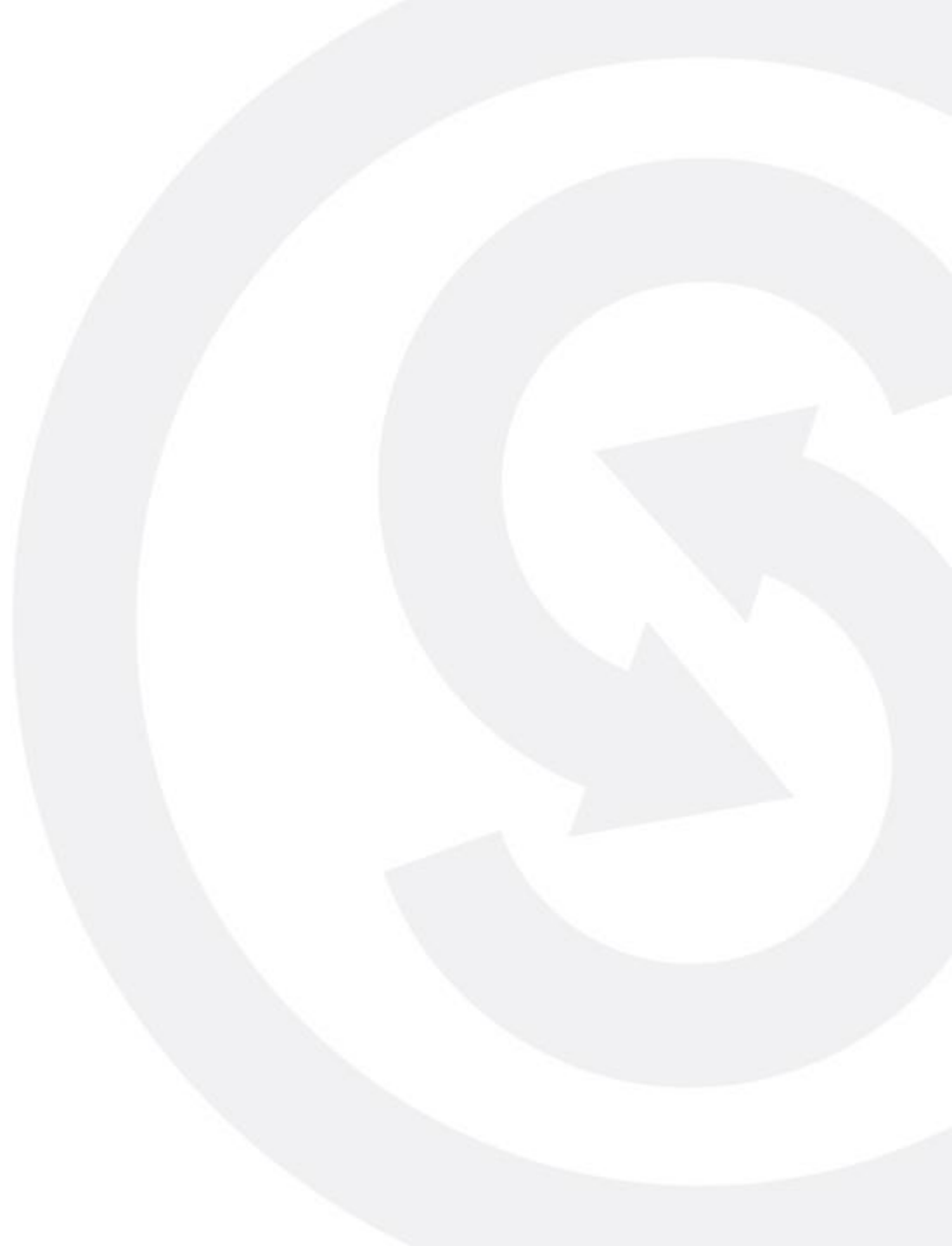
1. Background
2. Process & Timelines for Consulting on New Direction
3. Principles & Important Financial Concepts
4. Proposal for Meeting the Minister's Direction
5. New Risks Post-COVID-19
6. SO-ISO Agreements
7. Stakeholder Feedback



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# 1. Background



# Program Overview

- The Municipal Hazardous or Special Waste (MHSW) program, known to consumers as Orange Drop, launched in 2008.
- The program is designed to collect household hazardous or special waste and manage these materials at their end of life, ensuring they are recycled or disposed of safely.
- The program includes nine materials:
  - Anti-freeze
  - Batteries
  - Oil Filters
  - Pressurized Containers
  - Oil Containers
  - Pesticides
  - Paint
  - Fertilizers
  - Solvents



# Program Overview

- SO is responsible for the overall administration of the MHSW program. It is required to maintain data and records related to all materials and to conduct reconciliations between SO and ISOs. It is also responsible for developing and implementing a Wind Up Plan for the MHSW program.
- Stewardship Ontario also oversees end-of life management for pressurized containers and single-use batteries.
- Industry Stewardship Plans introduced over the years are responsible for the end of life management of the other MHSW materials:
  - **2015: Product Care** – paints and coatings.
  - **2016: Product Care** – pesticides, solvents and fertilizers.
  - **2017: Automotive Materials Stewardship** – oil filters, oil containers, antifreeze and antifreeze containers.

# MHSW Wind Up to Date

<b>April 12, 2018</b>	The Environment Minister issued direction to develop a plan to wind up the MHSW program, and submit the plan to RPRA for approval by June 30, 2019.
<b>December 11, 2018</b>	The Environment Minister amended the wind up date for single-use batteries to June 30, 2020.
<b>March/April 2019</b>	Stewardship Ontario held consultations with stakeholders on its MHSW Wind Up Plan proposals.
<b>July 2, 2019</b>	The Environment Minister sent a direction letter requesting amendments to the MHSW Wind Up Plan around how surplus funds would be managed and returned to consumers. The Minister also extended the program termination date to June 30, 2021.
<b>August 2019</b>	Stewardship Ontario consulted with stakeholders on the amendments directed in the Minister's July letter.
<b>September 30, 2019</b>	Stewardship Ontario submitted its amended MHSW Wind Up Plan to RPRA for approval.

# MHSW Wind Up to Date

<b>October/November 2019</b>	RPRA consulted on Stewardship Ontario's MHSW Wind Up Plan.
<b>December 20, 2019</b>	New Ministerial direction was received clarifying the management of residual funds.
<b>December 27, 2019</b>	RPRA approved the MHSW Wind Up Plan with certain conditions.
<b>January 2020</b>	Stewardship Ontario consulted with stakeholders on its residual funds addendum proposals.
<b>January 16, 2020</b>	Stewardship Ontario submitted its residual funds addendum to RPRA for approval.
<b>January 22 – 31, 2020</b>	RPRA held consultations on Stewardship Ontario's residual funds addendum.
<b>February 19, 2020</b>	RPRA approved the residual funds addendum.

# Recent Events

- On April 1, 2020 the Minister directed SO to develop amendments to the wind up plan that would ensure that 100% of the surplus funds RPRA 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 ISOs that operate the ISPs.
- The amended wind up plan will require one-time lump sum payments be provided pursuant to agreements that:
  - Outline how ISOs are to return surplus funds to Industry Stewardship Plan (ISP) stewards "in the form of fee reductions for the maximum benefit of consumers" and;
  - In the case that there is a delay in the transition of the MHSW program under the RRCEA, allow Stewardship Ontario to recover "**reasonable unexpected costs** related to the materials managed by the ISOs."



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## **2. Process & Timelines for Consulting on New Direction**

# Process for Implementing Minister's April 1 Direction



April 29, 2020	Ministerial direction granting an extension for submitting the amendments to RPRA to June 5, 2020 in order to allow sufficient meaningful consultation with stakeholders given the current situation with the COVID-19 pandemic.
April/May, 2020	Stewardship Ontario develops a proposal that meets the Minister's direction and is in accordance with the <u>WDTA</u> * and its regulations.
May 12/13, 2020	Stewardship Ontario conducts consultations and provides stakeholders with the opportunity to submit feedback.
May 22, 2020	Stakeholder feedback due to Stewardship Ontario. Stewardship Ontario develops the required amendments to the WUP based on stakeholder feedback received.
June 5, 2020	Stewardship Ontario submits the amendments to RPRA for consultation and subsequent approval.

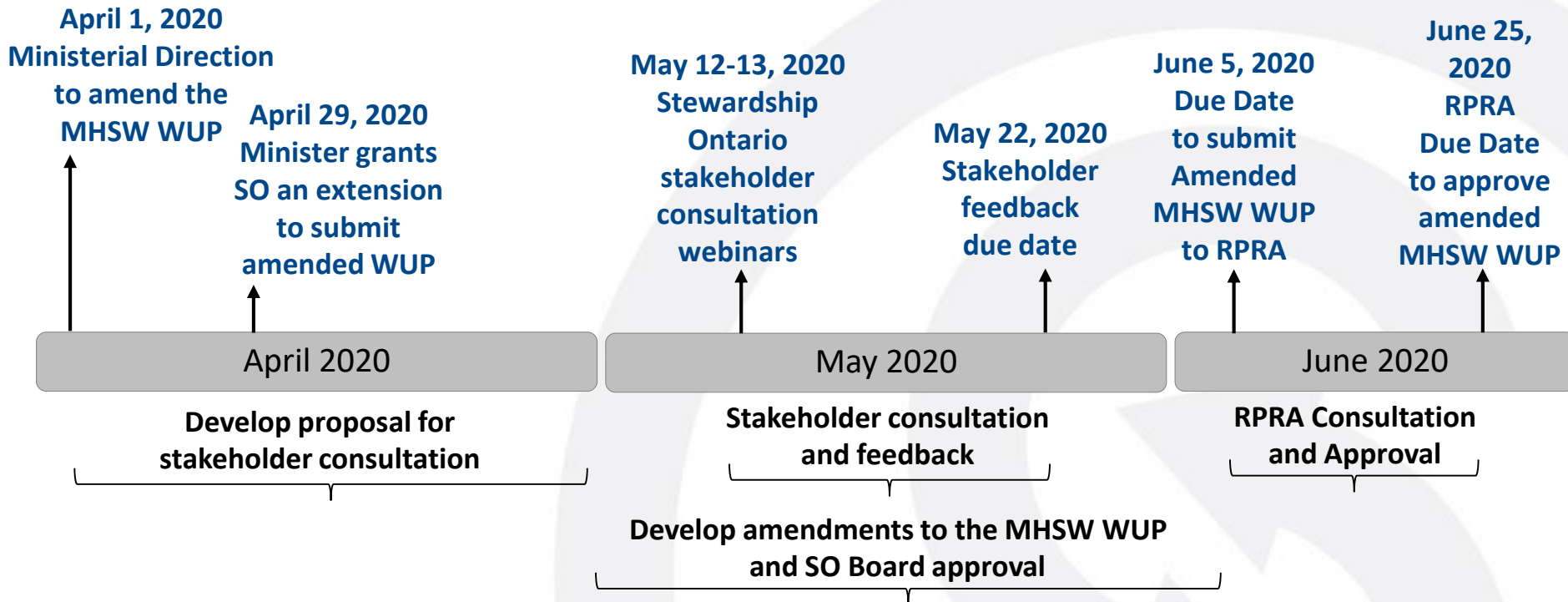
\* Waste Diversion Transition Act, 2016

# Process for Implementing Minister's April 1 Direction

<b>June 10, 2020</b>	RPRA's tentative consultation date.
<b>June 17, 2020</b>	Stakeholder feedback due to RPRA.
<b>June 25, 2020</b>	Date the Minister anticipates RPRA will approve the surplus fund amendments.
<b>Two weeks following approval</b>	SO-Industry Stewardship Organization Agreements signed and lump sum payments made to AMS & PCA.

# Process & Timelines

## Amended MHSW Wind Up Plan Timeline







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## **3. Principles & Important Financial Concepts**

# Introduction to Wind Up Costs

- The wind up of a stewardship program and subsequently the Industry Funding Organization (IFO), such as Stewardship Ontario, requires funding. For example, the costs of this wind up plan amendment proposal, consultation and regulatory oversight are all wind up costs.
- To avoid having to bill stewards for wind up costs as they were incurred, the SO Board made provisions through its reserve policies to set aside money for winding up its stewardship programs, including the MHSW program.
- The total cost of wind up will vary depending on a number of factors: how long the wind up takes, the amount of resourcing required to meet government direction(s) and address stakeholder issues, and the fees for regulatory oversight.

# Introduction to Wind Up Costs

- While SO makes every effort to control administrative costs, including those related to wind up, many of these costs are outside of SO's control, particularly the costs associated with reporting requirements, regulatory delays as well new directions, which require policy development, consultation and regulatory approval.

# Foundational Principles

- Two important principles underpin IFO wind up plans:
  1. Prior to the distribution of surplus funds, Stewardship Ontario is required to allocate sufficient funds to cover the costs to wind up a program.
  2. One material category cannot cross-subsidize the costs of another material category.
- These principles are grounded in legislation, specifically, the WDTA, s.33(5) and s.35(2), and cited in the Minister's direction.

# WDTA Wind Up Funding Provisions: Section 33(5)

- IFOs are permitted to use fees paid into diversion programs for the purpose of wind up; specifically for:
  - The costs of developing and implementing a plan to wind up all or part of the program.
  - The costs incurred by the organization or the Authority to wind up all or part of the program.
  - The costs incurred by the organization or the Authority to wind up the organization.
- Moreover, fees “paid by a steward should fairly reflect the proportion of the sum that is attributable to the steward.”

# What constitutes a Wind Up Cost as per s.33(5) WDTA?

- Costs to **develop** the MHSW Wind Up Plan:



- Management & professional fees, accounting, communication, consultation with stakeholders, legal costs associated with Wind Up Plan development and approvals;
- Including development of subsequent Wind Up Plan amendments.

- Costs to **implement** the MHSW Wind Up Plan once approved:



- Costs associated with implementing all the activities described in the Wind Up Plan. (e.g. administering fee reduction agreements, terminating contracts with service providers, staff severance, corporate dissolution, wind up plan regulatory reporting, on-going stakeholder communication and associated management of the wind up.)

- RPRA fees for **oversight** associated with wind up of MHSW program.



- Distinct from oversight of normal MHSW program operations.

**These costs are known as “General Wind Up Costs” because they apply to all MHSW materials and are shared among all stewards.**

# How are General Wind Up Costs Funded?

- In 2010, the Stewardship Ontario Board created a **General Reserve Fund** for the purpose of paying for general wind up costs when the time came to wind up the MHSW program.
- The General Reserve Fund was financed by setting aside the interest earned on the investment of MHSW funds in any given year.
- This accounting policy allowed monies already contributed by stewards to earn the necessary funds to discharge their shared obligations for wind up on a proportional basis.
- The General Reserve Fund was established to avoid having to charge stewards directly for general wind up costs.

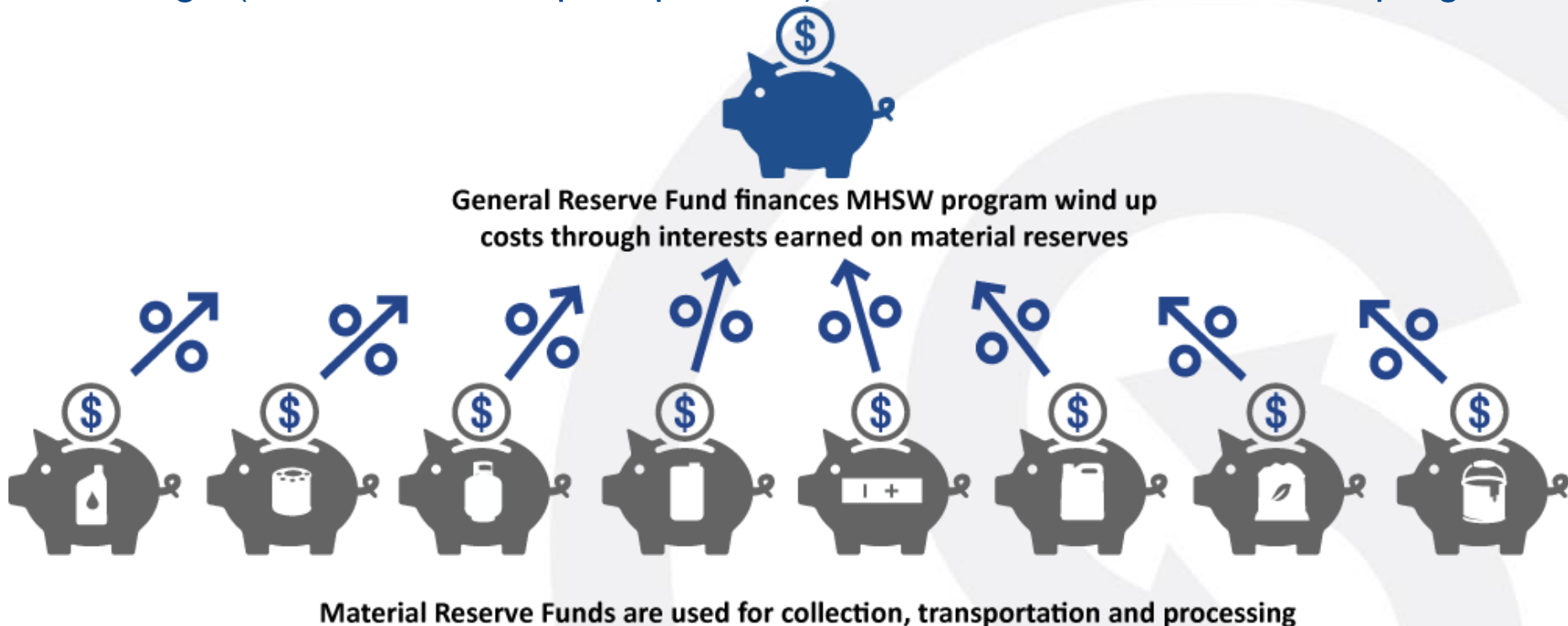


**General Reserve  
Fund**



# How are General Wind Up Costs Funded?

- The interest in the General Reserve Fund was earned on the Material Reserve Fund balances which consisted of any monies stewards paid to manage (i.e. collect, transport, process) their MHSW materials in the program.



- Interest accumulates on material balances when there is a time lag between when fees are collected and when program expenses are paid AND when there are surpluses at year end that are set aside in material reserves.



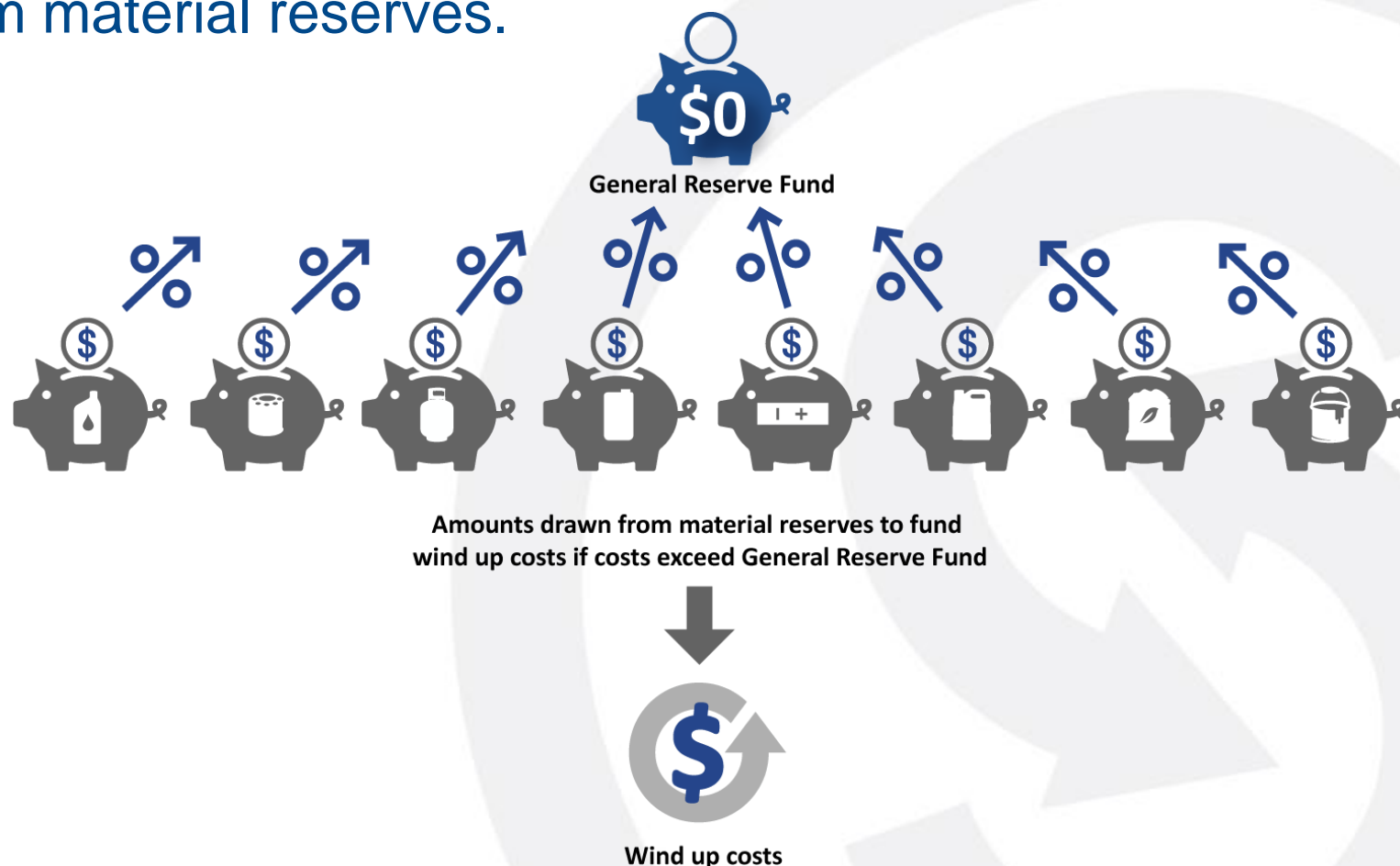
# Where did the interest in the General Reserve Fund come from?

- Today, over 70% of the material reserve balances relate to a 2018 Federal Court decision which ruled in SO's favour to return HST payments that were collected on steward fees from 2011-2018.
- The Canada Revenue Agency returned approx. \$30M to SO which has been accumulating interest for the benefit of all MHSW stewards whether they are members of SO or an ISP.



# What if the General Reserve Fund cannot cover all general wind up costs?

- In the event general wind up costs exceed what is set aside in the General Reserve, additional amounts will need to be drawn from material reserves.



# How will costs be allocated to replenish the General Reserve Fund?

- Costs will be allocated on the basis of each materials' historic share of revenue contribution to the MHSW program.
- **For example:**
  - If Material X contributed 10% of the revenue in SO's MHSW program over time;
  - And general wind up costs increase by \$10,000; then
  - Material X pays  $\$10,000 \times 10\%$  or \$1,000 towards the increased costs.
  - All stewards in Material X are therefore sharing those costs through a deduction from their material reserve fund.



# Why would wind up costs increase beyond what has been budgeted?

Events that could increase costs:

1. **Regulatory Delay:** The MHSW program is extended beyond June 2021 because new regulations under the RRCEA are not yet promulgated. Keeping the program running increases Wind Up Plan implementation costs because most wind up activities as well as overhead must continue Business As Usual for an extended period of time.
2. **Ministerial Directions:** Each additional Direction imposes costs for duplicate consultations (IFO + RPRA), professional fees for drafting proposals, technical, administrative and communications support.

# Why do stewards that are now in ISPs have to share in SO's wind up costs?

- Without the MHSW program to set standards/benchmarks for environmental performance no ISP would exist.
- Once ISPs are established SO is required to maintain its program even if there are zero stewards left in a particular material category. SO's role is to function as a “home base” for stewards in the event the ISP cannot meet performance requirements OR in the event stewards wish to return to SO.
- In addition, SO is required to continue certain activities on behalf of all stewards even once an ISP is approved. The cost for these administrative activities must be allocated fairly amongst all stewards, regardless of how or who manages the reverse supply chain for their materials.



Stewardship Ontario



Automotive  
Materials  
Stewardship



# Why do stewards that are now in ISPs have to share in SO's wind up costs?

- SO and the ISOs are interdependent and are engaged in a continuous flow of information and data. Stewardship Ontario regularly conducts complex transactions and reconciliations on behalf of ISP stewards and is responsible for maintaining related data and records until final wind up.
- SO has always operated on the basis that all MHSW stewards carry an obligation to provide both for its start up and wind up. SO has no source of funding other than steward contributions. SO could not unfairly burden stewards who did not or could not join ISPS with all the costs of winding up SO.



Stewardship Ontario



Automotive  
Materials  
Stewardship





# In Summary...

- The approach that the SO Board took in 2010, of having interest on material reserves fund the General Reserve has provided enough money in the General Reserve to cover anticipated costs at the time the WUP was approved.
- If there are no events that increase costs beyond those planned expenditures, stewards will not be required to pay additional fees to SO for wind up.
- If there are unplanned costs, it is possible that stewards will have to pay additional fees to SO for wind up. As noted, SO's original intention was that funds would be drawn from material reserves to cover unplanned costs, rather than charging stewards additional fees.



# For your Consideration When Submitting Written Feedback

- Is further clarification required to illustrate what constitutes an IFO wind up cost?
- In your opinion, are there events in addition to regulatory delay and additional Ministerial directions that could increase costs, in your opinion?
- Would any additional information help stakeholders understand why there is a risk of unplanned costs?
- What steps can stewards, SO, ISPs and other stakeholders take to avoid the risk of unplanned costs occurring?
- How important is it for SO to have the ability to recover "reasonable unexpected costs" from the ISOs if there is a delay in the transition of the MHSW program to the RRCEA?





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Stewardship Ontario

## **4. Proposal for Meeting the Minister's Direction**

# The Minister's Direction



Stewardship Ontario

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  
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Tel.: 416-314-6750

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357-2020-577

Ms. Robyn Collver  
Chair, Stewardship Ontario  
1 St Clair Avenue West, 7<sup>th</sup> 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 the Authority and the ISOs.

- Outline how the ISO would return 100 per cent of the surplus funds to ISP stewards in the form of fee reductions to consumers.
- In the case that there is a delay in the transition of individual producer responsibility under the *Resource Management and Recovery Act, 2016*, allows SO to recover reasonable costs to the materials managed by the ISO's. This shall be similar in scale to prior years' wind up plan.

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.

# Summary of Surplus Funds Transfer MHSW Category

	A	B	C	D	E
MHSW Material Reserves	Total Surplus Funds Available for Fee Reduction MHSW WUP Dec 2019	SO Steward Share Split WUP	SO Steward Share of Surplus Funds	ISO Member Share Split WUP	ISO Member Share of Surplus Fund Estimate
1. Antifreeze	\$1,900,000	21%	\$399,000	79%	\$1,501,000
2. Oil Filters	\$9,550,000	23%	\$2,196,500	77%	\$7,353,500
3. Oil Containers	\$9,700,000	16%	\$1,552,000	84%	\$8,148,000
<b>4. Subtotal</b>	<b>\$21,150,000</b>		<b>\$4,147,500</b>		<b>\$17,002,500</b>
5. Fertilizers	\$195,000	15%	\$29,200	85%	\$165,800
6. Paints/Coatings	\$14,470,000	0.2%	\$28,900	99.8%	\$14,441,100
7. Pesticides	\$113,000	0%	\$0	100%	\$113,000
8. Solvents	\$1,320,000	33%	\$435,600	67%	\$884,400
<b>9. Subtotal</b>	<b>\$16,098,000</b>		<b>\$493,700</b>		<b>\$15,604,300</b>
10. PC (Non-Refillable)	\$0	100%	\$0	0%	0
11. PC (Refillable)	\$225,000	100%	\$225,000	0%	0
12. Single-Use Batteries	\$5,490,000	100%	\$5,490,000	0%	0
<b>13. Subtotal</b>	<b>\$5,715,000</b>		<b>\$5,715,000</b>		<b>0</b>
<b>TOTAL</b>	<b>\$42,963,000</b>		<b>\$10,356,200</b>		<b>\$32,606,800</b>

Surplus fund amounts and SO–ISO share splits from Approved MHSW WUP Plan Section 8: Reserves

# 100% Surplus Fund Transfer Amounts Automotive Materials

MHSW Material Reserves Automotive Materials	Total Surplus Funds Available for Fee Reduction MHSW WUP Dec 2019	SO Steward Share Split WUP	SO Steward Share of Surplus Fund Estimate	AMS Member Share Split WUP	AMS Member Share of Surplus Fund Estimate
1. Antifreeze	\$1,900,000	21%	\$399,000	79%	\$1,501,000
2. Oil Filters	\$9,550,000	23%	\$2,196,500	77%	\$7,353,500
3. Oil Containers	\$9,700,000	16%	\$1,552,000	84%	\$8,148,000
<b>TOTAL</b>	<b>\$21,150,000</b>		<b>\$4,147,500</b>		<b>\$17,002,500</b>

Surplus fund amounts and SO–AMS share splits from the December 2019 Approved MHSW WUP Plan Section 8: Reserves

**80% of SO's reserves in the automotive materials' category will be transferred to AMS.**

# 100% Surplus Fund Transfer Amounts PCA MHSW Materials

MHSW Material Reserves PCA Materials	Total Surplus Funds Available for Fee Reduction MHSW WUP Dec 2019	SO Steward Share Split WUP	SO Steward Share of Surplus Fund Estimate	PCA Member Share Split WUP	PCA Member Share of Surplus Fund Estimate
1. Fertilizers	\$195,000	15%	\$29,200	85%	\$165,800
2. Paints/Coatings	\$14,470,000	0.2%	\$28,900	99.8%	\$14,441,100
3. Pesticides	\$113,000	0%	\$0	100%	\$113,000
4. Solvents	\$1,320,000	33%	\$435,600	67%	\$884,400
<b>TOTAL</b>	<b>\$16,098,000</b>		<b>\$493,700</b>		<b>\$15,604,300</b>

Surplus fund amounts and SO-PCA share splits from Approved MHSW WUP Plan Section 8: Reserves

**97% of SO's reserves in the above categories will be transferred to PCA.**

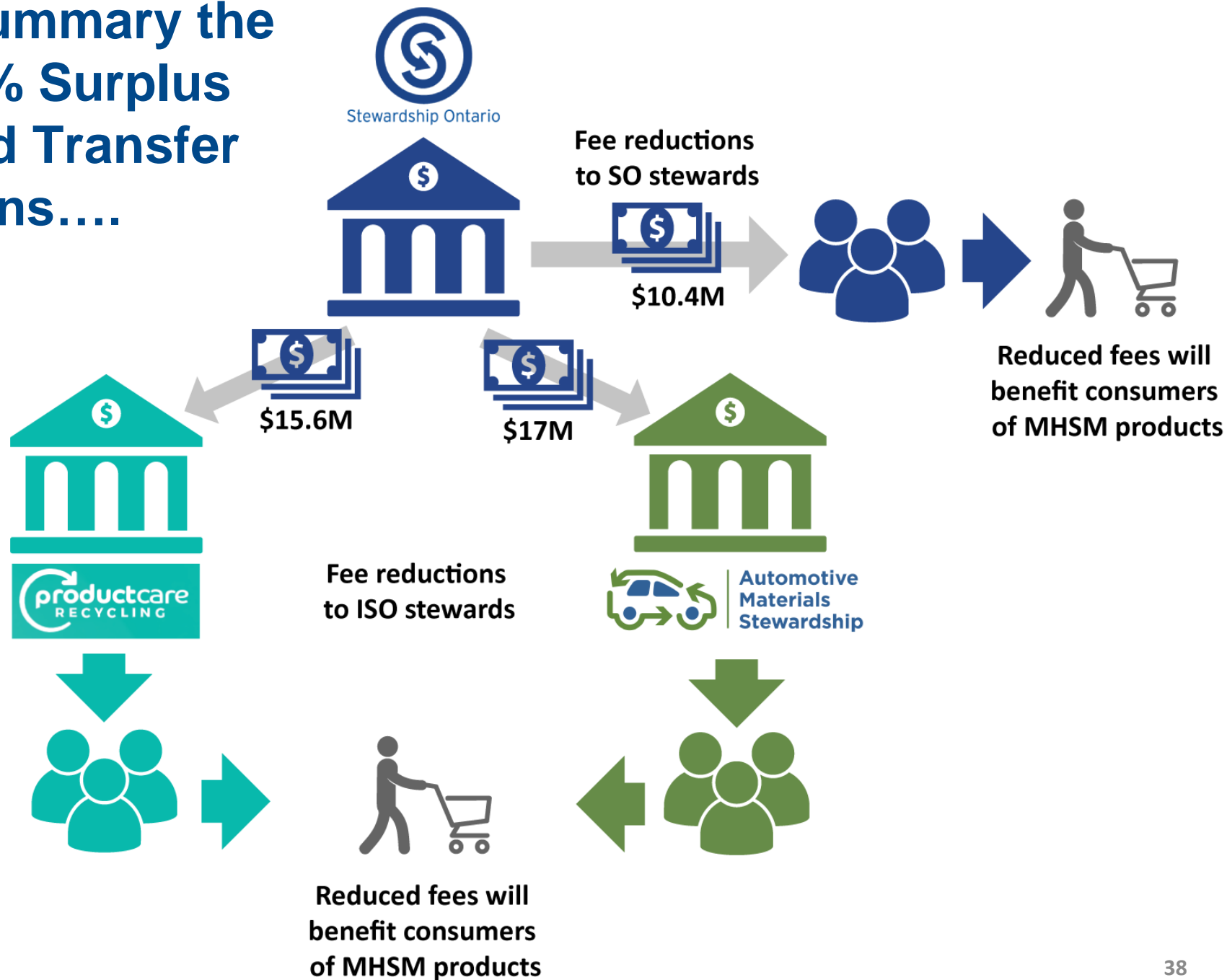
# Surplus Fund Amounts SO Managed Materials

MHSW Material Reserves	Total Surplus Funds Available for Fee Reduction MHSW WUP Dec 2019	SO Steward Share Split WUP
1. PC (Non-Refillable)	\$0	100%
2. PC (Refillable)	\$225,000	100%
3. Single-Use Batteries	\$5,490,000	100%
<b>TOTAL</b>	<b>\$5,715,000</b>	

**100% of reserves in the above categories for which there are no ISPs remain at SO.**

Surplus fund amounts and SO–ISO share splits from Approved MHSW WUP Plan Section 8: Reserves

# In summary the 100% Surplus Fund Transfer means....



# Summary of Effect of Minister's Direction

## Approved Wind Up Plan

- Reserves would have been disbursed to AMS and PCA in six quarterly installments from Q1 2020 to Q2 2021.

## Effect of the Minister's Direction

- Stewardship Ontario will disburse the full amount of reserves that were set out in the approved WUP to AMS and PCA in Q3 2020.





# Summary of Effect of Minister's Direction

## Approved Wind Up Plan

- ISOs disburse surplus funds to ISP stewards “in the form of **fee reductions** for the maximum benefit of consumers.”
- Fee reductions are applied to stewards' quarterly/monthly invoices.



## Effect of Minister's Direction

- No change



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## **5. New Risks Post-COVID-19**

# The Minister's Direction

Ministry of the Environment,  
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Ministère de l'Environnement,  
de la Protection de la nature et des  
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357-2020-577

Ms. Robyn Collier  
Chair, Stewardship Ontario  
1 St Clair Avenue West, 7<sup>th</sup> Floor  
Toronto ON M4V 1K6

Dear Ms. Collier:

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 sub-section 10(1) of the *Waste Diversion Transition Act, 2016*.

This direction applies only to the MHSW material categories approved by SO under the approved Industry Stewardship Plans (ISPs) and does not relate to material categories managed exclusively by SO (i.e. single-use batteries and light bulbs).

Pursuant to feedback from stakeholders, I am directing SO to develop the wind up plan that would ensure that 100 per cent of the surplus funds are returned to the Productivity and Recovery Authority (the Authority) approved by the Minister of the Environment and Climate Change in December 2019 and February 2020 for stewards who are paid for the materials returned in one-time lump sum payments to the Industry Stewardship Ontario (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 Authority.

- Outline how the ISO would return 100 per cent of the surplus funds to ISP stewards in the form of fee reductions, for example, for 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.

...2

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.

# Summary of Effect of Minister's Direction

## Approved Wind Up Plan

- The declining balance of reserve funds would have continued to be held in trust by SO.
- In the event of unplanned wind up expenses, SO retained control over all material reserves and could fund the deficiency from the remaining balances.

## Effect of the Minister's Direction

- AMS and PCA manage their reserve funds.
- In the event of “reasonable unexpected costs” related to regulatory delay, which exceed the funds available in the General Reserve, SO can recover these costs from the remaining material reserves held by both SO and the ISOs.



# SO's Wind Up Budget assumes Transition to RRCEA will be on Time

SO's wind up budget was developed in July 2019.

The budget is a forecast based on two critical assumptions:

1. The wind up will end as follows:
  - Program for single-use batteries would terminate on June 30, 2020;
  - Program for other MHSW material would terminate on June 30, 2021;
  - The final six-months of 2021 would consist only of one-time close down costs associated with “clean up, tally up, close down”.
2. The General Reserve Fund would be sufficient to cover general wind up costs over this period of time.

# Post-MHSW Wind Up Plan

## Financial Risks

- COVID-19 crisis increases the risk of a delay in transitioning to RRCEA framework:
  - MHSW program termination date only 14 months away.
  - More difficult for government/stakeholders to participate in required regulation development process in current economic climate;
  - No draft regulations have been released.
  - Greater likelihood of current program extension.

# Est. Impact of Program Extension on Wind Up Costs

Approved MHSW Wind Up Budget (\$'000) <sup>1</sup>	2019	2020	2021	2022	Total
Plan Development & Implementation	\$995	\$1,230	\$894		\$3,121
RPRA Fees	\$450	\$450	\$610		\$1,510
HR Severance			\$110		\$110
Litigation/Dispute Resolution			\$500		\$500
Corporate Wind Up			\$50		\$50
<b>TOTAL</b>	<b>\$1,446</b>	<b>\$1,681</b>	<b>\$2,165</b>		<b>\$5,291</b>
<b>Program Extension (Unfunded)</b>			<b>\$735</b>	<b>\$1,500</b>	<b>\$2,235</b>

<sup>1</sup> From Approved MHSW WUP: Section 4: Financial Forecast and Budget: Table 19 – Page 46.

**General wind up costs that are ongoing depending on the term of the wind up.**  
One-time costs associated with wind up post-termination.

**Program extension costs for general windup exceed the amounts in the General Reserve Fund.**

# How would a program extension be funded from material reserves?

Material Category	Unfunded Cost of Program Extension	Percentage for Each MHSW Category
1. Antifreeze	\$101,500	4.5%
2. Oil Filters	\$428,000	19.1%
3. Oil Containers	\$410,300	18.4%
5. Fertilizers	\$16,700	0.7%
6. Paints	\$674,100	30.2%
7. Pesticides	\$15,000	0.7%
8. Solvents	\$66,400	3.0%
10. PC-NR	\$72,900	3.3%
11. PC-R	\$23,700	1.1%
12. Batteries	\$426,400	19.1%
<b>TOTAL</b>	<b>\$2,235,000</b>	<b>100.0%</b>

- The personnel and overhead costs associated with extending the MHSW program run approx. \$125K month.
- These costs are borne by the General Reserve Fund but once this is depleted in June 2021, these costs must be drawn from material reserves.
- They are to be shared by all stewards (SO/ISO).
- The formula utilized by SO to draw from material reserves to cover general wind up costs is based on each category's contribution to the revenue of the program since its inception.
- This table shows how an 18-month program extension (\$2.2M) would be allocated to each material category.



# How would costs of a program extension be shared between SO and the ISOs?

Material Category	Unfunded Cost of Program Extension	SO Steward Share Program Extension	ISO Share of Program Extension
1. Antifreeze	\$101,500	\$21,300	\$80,200
2. Oil Filters	\$428,000	\$98,500	\$329,500
3. Oil Containers	\$410,300	\$65,600	\$344,700
<b>4. Subtotal</b>	<b>\$939,800</b>	<b>\$185,400</b>	<b>\$754,400</b>
5. Fertilizers	\$16,700	\$2,500	\$14,200
6. Paints	\$674,100	\$1,400	\$672,700
7. Pesticides	\$15,000	\$0	\$15,000
8. Solvents	\$66,400	\$21,900	\$44,500
<b>9. Subtotal</b>	<b>\$772,200</b>	<b>\$25,800</b>	<b>\$746,400</b>
10. PC-NR	\$72,900	\$72,900	\$0
11. PC-R	\$23,700	\$23,700	\$0
12. Batteries	\$426,400	\$426,400	\$0
<b>13. Subtotal</b>	<b>\$523,000</b>	<b>\$523,000</b>	<b>\$0</b>
<b>TOTAL</b>	<b>\$2,235,000</b>	<b>\$734,200</b>	<b>\$1,500,800</b>



Automotive  
Materials  
Stewardship



Potential amounts SO must recover from ISOs to ensure material reserve adjustments are consistent with statutory requirements.

Program extension based on potential 18-month delay in termination.

# Stewards who Remain with SO Would Bear the Full Burden Cost

Material Category	SO Steward Share of Surplus Funds	Unfunded Cost of Program Extension	Revised SO Surplus Fund Estimate
1. Antifreeze	\$399,000	\$101,500	\$297,500
2. Oil Filters	\$2,196,500	\$428,000	\$1,768,500
3. Oil Containers	\$1,552,000	\$410,300	\$1,141,700
4. Fertilizers	\$29,200	\$16,700	\$12,500
5. Paints	\$28,900	\$674,100	-\$645,200
6. Pesticides	\$0	\$15,000	-\$15,000
7. Solvents	\$435,600	\$66,400	\$369,200
8. PC -NR	\$0	\$72,900	-\$72,900
9. PC -R	\$225,000	\$23,700	\$201,300
10. Batteries	\$5,490,000	\$426,400	\$5,063,600
<b>TOTAL</b>		<b>\$2,235,000</b>	

This table shows what would happen to SO steward reserves if ISOs did not contribute their share towards the cost of a program extension.



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## 6. SO-ISO Agreements

# SO-ISO Agreements Key Tool

- The “surplus transfer agreements” between SO and the ISOs are a key tool in the execution of the Minister’s direction letters and are a necessary condition for the lump-sum payments.
- The agreements have two critical objectives:
  1. Outline how the ISOs would return 100% of the surplus fund to stewards for the maximum benefit of consumers.
  2. Define conditions under which SO can recover reasonable costs in the event of a program extension.

# Cost Recovery Provision Objectives

- Ensure a fair allocation of costs between SO stewards and ISO stewards in the event of a program extension.
  - Cost share formula to provide for proportionate contributions from all stewards according to their contributions to program revenue while at SO;
- Avoid cross-subsidization whereby
  - Only existing SO stewards pay for all program extension costs either through depletion of their material reserves or in the case where their material reserves are insufficient, through additional invoicing
  - Costs are shifted to Blue Box stewards once MHSW funds are depleted.
  - These scenarios would violate the cross-subsidization principles of the WDTA.

# The ISO Agreement will set out ....

- The surplus funds to be transferred to each ISO as per the Minister's direction.
- The amount of funds that could potentially be recovered in the event of a program extension.
  - How those amounts are calculated.
  - The criteria that must be met for those funds to be paid to SO.
  - How those funds are to be safeguarded during the wind up to ensure they are available if needed.
- The process for returning surplus funds to stewards through fee reductions.
- The conditions that ISO stewards must meet to be eligible for fee reductions.
- The data sharing and reporting requirements related to the use of surplus funds.

# Safeguarding Funds for Potential Program Extension

- SO is proposing that a portion of the 100% ISO surplus fund transfer be placed into escrow:
  - Escrow amounts would be equal to the amount SO may need to recover from ISOs in the event of an 18-month program extension (see slide 48):
    - Approx. \$750K for each of AMS & PCA;
  - If the transition to the RRCEA framework takes place as planned on June 30, 2021, escrow funds would be released to stewards;
  - If the transition to the RRCEA framework is delayed, and SO General Reserves are not sufficient to cover SO wind up costs, escrow amounts would be utilized to cover SO wind up costs as per terms of the SO-ISO surplus fund transfer agreement.



# Provisions to Ensure Fee Reductions Benefit Consumers

- Terms for transferring surplus funds to ISOs will specify that:
  - They be be utilized strictly for fee reductions.
  - That only stewards in “good standing” receive fee reductions.
  - That stewards receiving fee reductions acknowledge the Minister’s Direction that the funds will benefit consumers.
  - ISOs develop fee reduction schedules and report to RPRA on the outcome of fee reductions.



# ISP Agreements to be Posted for All Stakeholders

- The draft ISO agreements will be posted at the same time as this presentation on Wednesday May 13, 2020.
- Stakeholders who have questions about the key provisions of the proposed SO-ISO Agreement can contact us at [mhswwindup@stewardshipontario.ca](mailto:mhswwindup@stewardshipontario.ca).

# For your Consideration when Submitting Feedback

- The Minister's direction requires that surplus transfer agreements outline a process for SO to "recover reasonable unexpected costs" related to regulatory delay. The direction does not consider the possibility of unexpected costs related to further ministerial directions or other events. Should SO have the ability to recover costs other than those related to a program extension?
- Do the proposed terms of the agreements with ISOs strike the right balance to protect stewards who are not in ISOs from having to pay more than their proportionate share of unplanned costs?

# For your Consideration when Submitting Feedback

- Is the dispute-resolution process proposed in the legal agreement reasonable in order to resolve any potential disputes between SO and the ISOs over funding reasonable unexpected costs?
- Would any additional information help stakeholders understand why there is a risk of unplanned costs?
- What steps can stewards, SO, ISOs and other actors take to avoid the risk of unplanned costs occurring?



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## **7. Stakeholder Feedback**

# Feedback Requested

- Feedback is required by **Friday May 22, 2020**:
  - Email feedback to [mhswwindup@stewardshipontario.ca](mailto:mhswwindup@stewardshipontario.ca); or
  - Submit feedback via the online [feedback form](#).
- Stewardship Ontario will review and consider all comments, as well as additional stakeholder feedback in developing the amended MHSW Wind Up Plan.
- Stewardship Ontario will submit the amended MHSW Wind Up Plan to RPRA by **June 5, 2020**.

# Consultation and Wind Up Materials

- MHSW Wind Up information is available at: [stewardshipontario.ca/mhsw-windup](https://stewardshipontario.ca/mhsw-windup)
- Today's webinar recording and presentation will be available on the above webpage by end of day on Wednesday, May 13, 2020.
- Q&A document with questions received during the webinar will be posted with webinar materials.



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**Thank you**

# **MHSW Wind Up Plan**

## **Surplus Fund Amendments Consultation Report**





Stewardship Ontario

# MHSW WIND UP PLAN SURPLUS FUND AMENDMENTS CONSULTATION REPORT

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## 1. INTRODUCTION

The Resource Productivity and Recovery Authority (RPRA) approved Stewardship Ontario's Municipal Hazardous or Special Waste (MHSW) Program Wind Up Plan in December, 2019 with some [conditions](#). RPRA also approved Stewardship Ontario's [Residual Funds Addendum](#) to the MHSW Wind Up Plan in February 2020.

On April 1, 2020, the Minister sent Stewardship Ontario [new direction](#) for the organization to develop amendments to the approved MHSW Wind Up Plan which would return 100% of the surplus funds RPRA approved for fee reductions in December 2019 to Industry Stewardship Organizations (ISOs) in one-time lump sum payments. On April 29, 2020, the Minister [granted an extension](#) for submitting the amendments to RPRA to June 5, 2020 in order to allow sufficient meaningful consultation with stakeholders given the current situation with the COVID-19 pandemic. The Minister expects RPRA to approve the amendments no later than June 25, 2020, and the lump sum payments made to ISOs two weeks following the approval.

In response to the April Ministerial direction, Stewardship Ontario ensured meaningful consultation as it engaged with stakeholders on its proposed amendments to the management of surplus funds during the wind up of the MHSW Program. This report outlines the consultation process and summarizes the feedback received.

## 2. STAKEHOLDER COMMUNICATION

While developing the MHSW Wind Up Plan surplus fund amendments, Stewardship Ontario communicated with stakeholders through its website and email notifications.

### 2.1 Website

Stewardship Ontario used its MHSW Wind Up-specific webpage, [StewardshipOntario.ca/MHSW-WindUp](https://StewardshipOntario.ca/MHSW-WindUp), to house all information, updates and consultation materials for stakeholders to easily access.

### 2.2 Email Notifications

Email notifications were sent to stakeholders throughout the consultation period. Note that number sent to fluctuates based on autoreply bounce backs. Stewardship Ontario ensures its stakeholder list is up to date.

Date sent	Stakeholder group	Subject and link	Number sent to	Open rate	Click rate
May 1, 2020	All	<a href="#">Minister directs amendments to MHSW Wind Up Plan</a>	2,910	30%	20%
May 6, 2020	All	<a href="#">Reminder: Consultations on MHSW Wind Up Plan Amendments May 12 and 13</a>	2,867	27%	17%
May 11, 2020	All	<a href="#">Reminder: Consultations on MHSW Wind Up Plan Amendments May 12 and 13</a>	3,001	25%	19%
May 13, 2020	All	<a href="#">Consultation Materials on MHSW Wind Up Plan Surplus Fund Amendments Now Available</a>	3,029	25%	11%
May 20, 2020	All	<a href="#">Feedback on MHSW Wind Up Plan Surplus Fund Amendment Proposals due May 22</a>	2,941	24%	10%



### 3. CONSULTATION APPROACH

#### 3.1 Consultation Webinars

Stewardship Ontario held two consultation webinars on May 12 and 13, 2020 to review its proposal for addressing the Ministers April 2020 direction including:

- Identifying the amount of the 100% ISO surplus funds approved for fee reductions by RPRA in December 2019 to be transferred as one-time lump sum payments; and
- In the case that there is a delay in the transition of the MHSW program under the *Resource Recovery and Circular Economy Act, 2016*, outline how the surplus fund transfer agreements, required by Ministerial direction, would allow Stewardship Ontario to recover “reasonable unexpected costs related to the materials managed by the ISOs.”

The content was the same for both webinars. The webinar presentations, replays and Q&As were emailed to all stakeholders and made available on the [MHSW Wind Up webpage](#).

##### May 12, 2020 webinar:

- 160 registrants
- 133 attendees
- 50 questions

##### May 13, 2020 webinar:

- 129 registrants
- 84 attendees
- 21 questions

#### 3.2 One-on-one Consultation Meetings

Stewardship Ontario reached out to specific stakeholder groups to receive input and feedback on its surplus fund amendment proposals, as well as the SO-ISO Agreements. The below table outlines the one-on-one meetings that occurred.

Stakeholders	Date	Number of attendees
Canadian Consumer Specialty Products Association (CCSPA) Canadian Paint and Coatings Association (CPCA) Product Care Association (PCA)	May 19, 2020	11
Association of Municipalities of Ontario (AMO) Ontario Waste Management Association (OWMA)	May 20, 2020	7
Automotive Materials Stewardship (AMS)	May 20, 2020	8
National Electrical Manufacturers Association (NEMA)	May 20, 2020	7
Canadian Manufacturers and Exporters (CME) Canadian Propane Association (CPA) Canadian Tire Costco Retail Council of Canada (RCC)	May 21, 2020	13

## 4. SUMMARY OF FEEDBACK

Stakeholders were given until May 22, 2020 to submit written feedback on the surplus fund amendment proposals presented during the consultation webinars. Stewardship Ontario received written feedback from 15 stakeholders, as well as additional verbal feedback during one-on-one meetings noted above and comments during the consultation webinars.

The 15 feedback submissions were received from the following stakeholders:

- Association of Municipalities of Ontario (AMO), City of Toronto, Municipal Waste Association, Regional Public Works Commissioner of Ontario
- Automotive Materials Stewardship (AMS)
- Canadian Consumer Specialty Products Association (CCSPA)
- Canadian Paint and Coatings Association (CPCA)
- Canadian Propane Association (CPA)
- Canadian Tire Corporation
- Costco Wholesale Canada
- General Motors of Canada Company
- National Electrical Manufacturers Association (NEMA)
- Niagara Region
- Ontario Waste Management Association (OWMA)
- Premiere Tech Home & Garden
- Product Care Association (PCA)
- Retail Council of Canada (RCC)
- Scotts Canada

The feedback received is summarized below, organized by topic.

### 4.1 100% ISO Surplus Fund Transfer Amount

During consultation Stewardship Ontario identified ISO surplus fund amounts approved for fee reductions by RPRA in December 2019. It proposed to transfer 100% of these amounts as one-time lump sum payments subject to conditions associated with the surplus fund transfer agreement. Stewardship Ontario provided totals by material category which are found in both the consultation webinar and the Addendum submitted to RPRA. PCA amounts totaled approximately \$15.6 million, and AMS amounts totaled approximately \$17 million.

#### 4.1.1 Stakeholder Feedback<sup>1</sup>

Stakeholder feedback response to the proposed lump sum transfer was divided. Non-ISO stewards and other MHSW stakeholders supported the proposal. ISO stakeholders argued that the amount of the lump sum transfer should be higher than the surplus funds referenced in the approved Wind Up Plan.

Through the consultation, PCA stakeholders have continued to assert that the quantum of surplus funds should be established by reference to March 2020 amounts that were shared with the ISOs in the context of consultation on

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<sup>1</sup> It should be noted that any reference to stakeholder positions related to matters addressed in draft SO-ISO surplus fund transfer agreements are made without prejudice to the potential parties to those agreements and do not in any way reflect the agreement of potential parties to particular agreement provisions or positions.



different terms, rather than the quantum of surplus funds identified in the December 2019 approved Windup Plan. PCA has indicated that it is generally agreeable to the other terms proposed by Stewardship Ontario, but only on the condition that the higher March 2020 numbers are transferred.

AMS provided feedback that it was willing to proceed on the basis of the December 2019 surplus fund amounts, but took issue with other aspects of Stewardship Ontario's proposed Surplus Funds Transfer Agreement, described below.

### **4.1.2 Stewardship Ontario's Response**

While Stewardship Ontario acknowledges that different transfer amounts related to ISO surplus funds were discussed with ISOs in March 2020, it is important to recognize that those amounts were related to a completely different surplus fund transfer process than the one contemplated by the current Ministerial direction. Under the proposed March agreements, Stewardship Ontario proposed a surplus fund transfer schedule which enabled it to manage financial risks associated with the termination of the MHSW program in a fiscally responsible manner, by holding back 10% of estimated ISO surplus funds.

Nevertheless, given the new Ministerial direction, Stewardship Ontario proposes to transfer updated lump sum amounts that are consistent with the share allocation methodology used in the Approved Wind Up Plan and reviewed and approved by the Stewardship Ontario Board in March. While the total amount is higher than the amount Approved in the December 2019 WUP, the proposal is consistent with the intent of the Ministerial direction. The numbers approved for discussion by the Board in March would increase the ISO transfer by approximately \$1 million over and above that required by the Ministerial direction.

While other reserve calculations were discussed with ISOs during discussions in March, these numbers were neither verified nor approved by the Stewardship Ontario Board or its auditors. Nor were these potential lump sum amounts consistent with the share allocation methodology utilized to calculate the surplus fund estimates in the Approved WUP.

Stewardship Ontario is proposing the additional amounts set out in Table 4 of the ISO Surplus Fund Transfer Addendum to address stakeholder concerns in a manner consistent with the intent of the Ministerial direction. In the view of Stewardship Ontario, the transfer of any additional amounts over and above these updated approved WUP estimates would create significant financial instability for the MHSW Program.<sup>2</sup>

Finally, it should be noted that regardless of how much money is transferred to ISOs pursuant to the surplus fund transfer agreement, all ISO and Stewardship Ontario stewards will receive their fair share of surplus funds available at the termination of the MHSW Program either through a surplus fund transfer or in the form of residual funds.

## **4.2 Returning Surplus Funds to Stewardship Ontario in the Event of a Delay in Transition**

The second key component of the April Ministerial direction is the requirement that the surplus fund transfer agreement include a provision, in the event of a program extension, for ISOs to return surplus funds to Stewardship Ontario to cover unexpected wind up cost increases.

With respect to the Ministerial direction allowing Stewardship Ontario to recover reasonable unexpected costs, as noted earlier, during consultation Stewardship Ontario provided stakeholders with a preliminary estimate of the potential general wind up cost increase associated with an 18-month program extension. Stewardship Ontario proposed that a portion of the 100% ISO surplus fund transfer be placed into escrow. Minimum escrow amounts would be equal to the amounts Stewardship Ontario may need to recover from ISOs in the event of an 18-month program extension.

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<sup>2</sup> Note: Adjusting lump sum payments based on updated 2019 financial results also results in small adjustments to ISO costs allocations associated with Stewardship Ontario proposed escrow amounts. See ISO Surplus Fund Transfer Addendum for details.



Approximately \$750,000 of the \$17 million transferred to AMS would be held in escrow. Approximately \$750,000 of the \$15.6 million transferred to PCA would be held in escrow.

If the transition to the RRCEA takes place as planned, on June 30, 2021, escrow funds would be released for disbursement as fee reductions by the ISOs.

If the transition to the RRCEA framework is delayed, and Stewardship Ontario general reserves were not sufficient to cover general wind up costs, Stewardship Ontario could access these escrow amounts to recover general wind up cost increases. With respect to recovery of reasonable unexpected costs, Stewardship Ontario proposed that in the event of a program extension, ISOs would return escrow fund amounts to Stewardship Ontario. Stewardship Ontario would then document for ISOs any use of these funds to pay for general wind up cost increases (subject to a dispute settlement process). As with the approved Wind Up Plan, any fund amounts not utilized to cover wind up costs, would eventually be disbursed to stewards in the form of residual fund payments.

In addition to reviewing the general proposal during consultation, Stewardship Ontario posted draft ISO surplus fund transfer agreements on its website and entered into discussions with ISOs regarding the terms of the draft agreements.

### **4.2.1 Stakeholder Feedback<sup>3</sup>**

With respect to Stewardship Ontario's recovery of wind up costs in the event of a program delay, stakeholder responses can be divided into three main groups: non-ISO stakeholders, AMS stakeholders and PCA stakeholders.

Non-ISO stakeholders, which includes Stewardship Ontario stewards and program service providers, universally supported the Stewardship Ontario escrow fund proposal. These stakeholders emphasized fiscal prudence in the management of Stewardship Ontario finances and the need to set aside adequate contingencies in relation to potential wind up cost increases associated with a program extension.

Service providers raised concerns about the financial stability of the MHSW program and the need to set aside funds to guarantee ongoing Program solvency in the event of an extension. Non-ISO stewards emphasized the need for all program stewards, both current and former, to share general wind up costs fairly and emphasized that Stewardship Ontario needed to take steps to ensure that remaining program stewards did not face an undue cost burden associated with the MHSW wind up process.

AMS stakeholders objected to the escrow fund proposal as unnecessarily expensive and raised issues regarding the quantum of potential wind up costs that an ISO would be subject to associated with a program extension. However, AMS proposed to substitute the escrow fund concept with a restricted reserve managed by their Board. AMS representatives rejected Stewardship Ontario's proposal to return all escrow funds immediately in the event of a program extension, but acknowledged the requirement to contribute to potential wind up cost increases associated with a program extension. Stewardship Ontario discussions focused on developing a list of wind costs which Stewardship Ontario could submit to AMS for payment subject to a verification process (see Development of Surplus Fund Transfer Agreements below).

PCA stakeholders objected to the escrow fund proposal and initially objected to any allocation of ISO surplus funds in restricted reserves. PCA stakeholders also initially objected to any provisions related to compensable costs in the agreement other than reference to the Ministerial direction. During discussions of the draft surplus agreement, PCA stakeholders eventually offered to place funds in restricted reserves and agreed to a process whereby Stewardship

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<sup>3</sup> It should be noted that any reference to stakeholder positions related to matters addressed in draft SO-ISO surplus fund transfer agreements are made without prejudice to the potential parties to those agreements and do not in any way reflect the agreement of potential parties to particular agreement provisions or positions.



Ontario recover compensable costs under the agreement but only on the condition that the quantum of surplus funds match the March 2020 forecasts and not the surplus funds referenced in the approved December 2019 Wind Up Plan.

### **4.2.2 Stewardship Ontario's Response**

Stewardship Ontario continued to work on draft surplus fund transfer agreements with ISOs as the Addendum was under development. Stewardship Ontario has considered alternatives to the escrow fund proposal that are consistent with Stewardship Ontario's ability to recover surplus funds provided to ISOs in the event of a program extension.

With respect to confirming what are reasonable recoverable costs related to a program extension, Stewardship Ontario is proposing that any claims or submissions to ISOs related to recoverable costs be provided to both ISOs and RPRA and, if disputed by ISOs, be reviewed by RPRA which would determine if those costs were consistent with the Agreements definitions and payable by the ISO. The review of these costs submissions from an independent third party, which has detailed information about Stewardship Ontario's budget and wind up costs given its role in overseeing the MHSW wind up process, should provide assurances to ISOs that the costs in question are legitimate and consistent with the fair allocation principles associated with the WDTA.

While discussions with ISOs did not resolve all differences of opinion how the Ministers direction should be reflected in surplus fund transfer agreements, Stewardship Ontario felt discussion on the agreements was constructive and that a framework for those agreements has been advanced. Stewardship Ontario's Addendum also included recommendations outlining the key elements of the ISO surplus fund transfer agreements which addressed not only the April 2020 Ministerial direction but other required elements of the approved MHSW WUP (that were unaffected by the April direction).

### **4.3 Other Issues**

During consultation, some stakeholders commented on issues outside of the scope of the April 2020 Ministerial direction and Stewardship Ontario's proposed WUP Amendments. These included:

- Comments related to how Stewardship Ontario manages bad debt;
- Exemption of certain MHSW materials from the RRCEA regulatory framework;
- Objections to the disbursement of surplus funds as fee reductions; and
- Transparency regarding Stewardship Ontario accounting processes and reporting.

#### **4.3.1 Stewardship Ontario's Response**

While correspondence and stakeholder feedback received in relation to the Addendum is provided to RPRA, some of the issues raised lie outside Stewardship Ontario's statutory role. Stewardship Ontario for example, is not responsible for the content of RRCEA regulations. Other issues, lie outside the scope of the Ministerial direction and have already been resolved in the approved Wind Up plan. To the extent that stakeholder comments on the proposed Addendum have relevance to the ongoing implementation of the Wind Up Plan, Stewardship Ontario will continue to work individually and collectively with stakeholders to address concerns raised and communicate in an open and transparent manner.

## **5. STAKEHOLDERS WHO PARTICIPATED IN CONSULTATIONS**

Below is a list of stakeholders who participated Stewardship Ontario's consultations and/or submitted feedback on the surplus fund amendment proposals.

- |                                 |  |
|---------------------------------|--|
| • 3M Canada                     | • Almaguin recycling initiative            |
| • ACH Food Companies, Inc       | • Ascensia                                 |
| • Advanced Battery Systems Inc. | • Association of Municipalities of Ontario |
| • Air Liquide Canada            | • Augusta Township                         |





- Automotive Materials Stewardship
- Benjamin Moore
- Best Buy Canada
- Big Red Oil Products Inc
- BMW Canada Inc.
- Brendar Environmental Inc.
- Bruce County
- Canadian Consumer Specialty Products Association
- Canadian Manufacturers & Exporters
- Canadian Paint and Coatings Association
- Canadian Propane Association
- Canadian Tire
- Church & Dwight
- City of Barrie
- City of Brantford
- City of Clarence-Rockland
- City of Guelph
- City of Hamilton
- City of Kenora
- City of Kingston
- City of Peterborough
- City of Stratford
- City of Thunder Bay
- City of Toronto
- Cleanfarms Inc.
- Coleman
- Compliance & Government Relation Department
- ConstantineLegal
- Costco Wholesale
- County of Lambton
- County of Peterborough
- County of Simcoe
- County of Wellington
- Crown Battery of Canada Ltd.
- District Municipality of Muskoka
- Drain-All Ltd
- Duracell
- Earnscliffe
- EPRA
- eTracks Tire Management Systems
- EWSWA
- FCA Canada
- Feldcamp Equipment Limited
- FGX Canada Corp.
- Ford
- Fresh Hemp Foods
- FUJIFILM NORTH AMERICA CORPORATION
- Fulcrum Advocacy
- General Motors of Canada Company
- GFL Environmental Inc.
- Giant Tiger Stores Limited
- Glen Dimplex Americas Limited
- Global Automakers of Canada
- Greenview Environmental Management Limited
- Haldimand County - Waste Management
- Halton Region
- HAWKESBURY JOINT RECYCLING
- HBC
- Home Hardware Stores Limited
- Honda Canada Inc.
- HYDAC CORPORATION
- Iko Industries Ltd.
- KCI
- Kleen-Flo Tumbler Ind. Ltd.
- Kleenoil Filtration Canada Ltd.
- Lenovo
- LINCit
- Loblaws Inc.
- Lowe's Canada
- Lowes Canada
- LOWE'S Canada
- MacEwan University
- MECP
- Metro Ontario Inc.
- Miller Environmental
- Ministry of the Environment, Conservation and Parks
- Mitsubishi Motor Sales of Canada
- Mitsubishi Motor Sales of Canada, Inc.
- Mobius PRO Services
- Municipal Waste Association
- Municipality of Bayham
- Municipality of Greenstone
- Municipality of Hastings Highlands
- Municipality of Highlands East
- Municipality of Huron Shores
- Municipality of North Grenville
- Municipality of West Perth
- National Electrical Manufacturers Association
- Nestle Purina PetCare
- Niagara Region
- Nica Power Battery Corp





- Ontario Waste Management Association
- Orgill Inc
- Orgill, Inc.
- Ottawa Valley Waste Recovery Centre
- P&H Milling Group
- P38 Inc.
- Panasonic
- Performance Initiatives Inc.
- Petro Canada Lubricants Inc
- Pharmasave
- Pnewko Brothers Ltd
- PPG Architectural Coatings Canada Inc
- PPGAC
- Premier Tech Home and Garden
- Product Care Association of Canada
- propane levac
- QLO Management
- Quinte Waste Solutions
- Raw Materials Company
- Recipe Unlimited
- Redi Recycling
- Region of Durham
- Region of Niagara
- Region of Peel
- Regional Public Works Commissioner of Ontario
- Retail Council of Canada
- RLGA
- RPRA
- Rustoleum Canada
- RWDI
- Ryse Solutions
- S.C. Johnson and Son Ltd
- Sagis Ltd
- Scotts Canada Ltd.
- Scout Environmental
- Sharp Electronics
- Shell Canada Products
- Stewardship Ontario
- Sussex Strategy Group
- TCL
- TE
- Team Truck Centres Limited
- The City of Guelph
- The City of Peterborough
- The Home Depot of Canada
- The Resource Productivity and Recovery Authority
- The Sherwin Williams Company
- TJX Canada
- Town of Atikokan
- Town of Carleton Place
- Township of Chatsworth
- Township of Malahide
- Township of Minden Hills
- Township of North Glengarry
- Township of South Algonquin
- Township of Southgate
- Trent University
- Veolia ES Canada Industrial Services Inc.
- Volkswagen
- Volvo Group Canada
- Wakefield Canada
- WFS LTD.
- Yamaha Motor Canada
- York Region
- York University

## 6. NEXT STEPS

The feedback received during the MHSW Wind Up Plan surplus fund amendment consultation period was reviewed and considered as Stewardship Ontario finalized its proposed surplus fund amendments. The amendments were submitted to RPRA on June 5, 2020, as directed by the Minister.

RPRA will be consulting with stakeholders on Stewardship Ontario's amendments in mid-June, 2020. The Minister expects RPRA will approve the amendments no later than June 25, 2020.