2021 3 17

MECP Environmental Registry

**RE: HSP Draft Regulation - Comments**

Thank you for the opportunity to submit comments on this draft regulation. We realize there is a very short timeline that has been left to make any changes but I do hope that you will sincerely take into account this *Service Provider* commentary to ensure that it is incorporated into the fabric of this very important regulation. The Service Provider (SP) perspective has been a missing component in the past. Service Providers represent the environmental compliance as well as the employment opportunities of the circular economy the ministry and the government of Ontario tell us they are trying to promote.

Our company, Brendar Environmental Inc., is a waste management “Service Provider” company serving municipal collection programs and the ICI sector for over 25 years. We are, one of approximately 5-6 primary waste management companies that do extensive service in the household hazardous waste (HHW) now called Hazardous Special Products (HSP) space. As a service industry, working in this EPR space over 10 years now, we have experienced financial program deficiencies due to monopsonistic behaviours put into practice by stewardship organizations. This position was untenable since the Competitions Bureau claimed the stewardship groups had a Regulatory Defence provided by the existing Regulation. This new HSP regulation needs to correct this and make it a pillar of this Regulation -we hope.

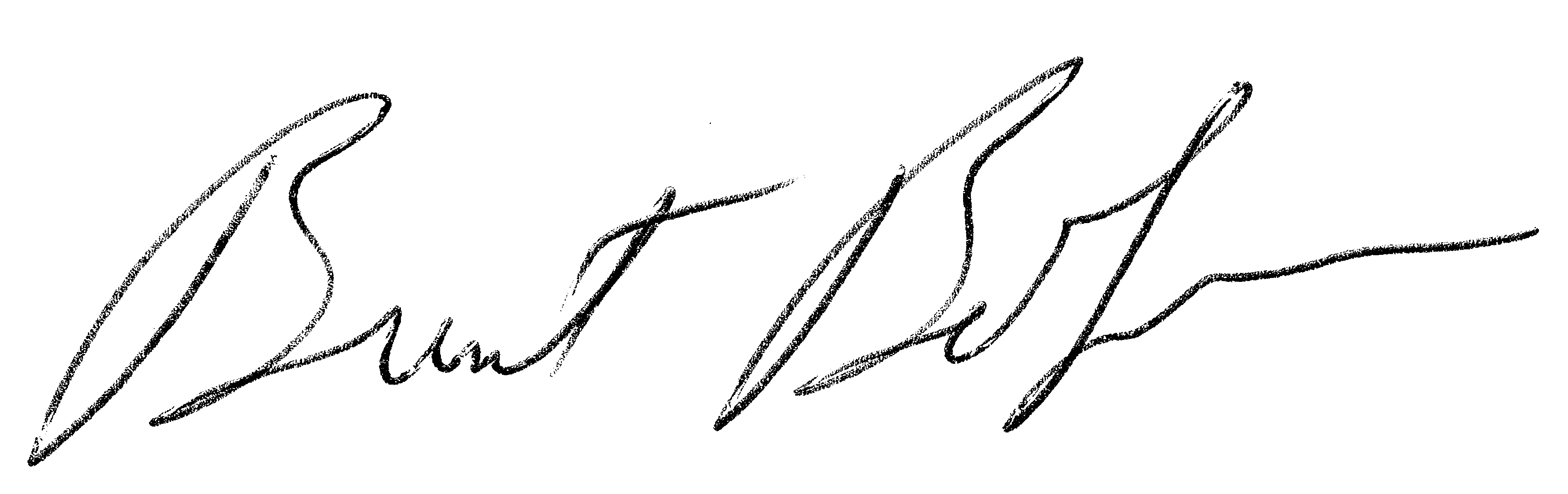
I know the ministry does not want to hear about financial burden, however, a fair and equitable market place requires a fair and equitable regulation to ensure proper support for a sustainable program. The waste management sector are THE *essence* of the program so it is important to realize this is a a two-sided coin - producer funding and Waste management sector delivery. To date the minister's office has conferred with industry… But it has been with the Producer network NOT with the waste management industry. The waste management industry is looking to the Policy Branch of the MECP to ensure the regulation is mapping out a regulation that will work fairly with the licenced waste management community who will be required to “deliver” the program set out by this HSP Regulation.

The comments provided on the following pages are intended to suggest regulatory edits to be workable for both the Producers, Municipalities and Waste Management as we understand them.

I thank you for your attention to this very important perspective and I welcome you to contact me directly if you should have any questions or require clarification. I can be reached at 613-540-3678 or via email at brent@brendar.com. Once again, thank you for your attention to this very important matter for this long awaited regulation.

Thank you

Take care,



Brent Bolger Hon. B.Sc.

Technical Director

**EXECUTIVE SUMMARY**

Outlined below are snippets from this document as a summary of the points of concern for this draft   
Regulation. The expanded versions follow:

**1 BACKGROUND**

HSP materials versus other EPR program materials - these materials ARE SIGNIFICANTLY different than tires, electronics, and blue box materials. These end of life products present a high potential for environmental and health and safety impacts and need to be considered differently than other programs.

**2 (1) COLLECTION - Collection Site and Events**

”HSP Collection Site” - needs to be better defined what this means relative to availability to the public.

E*vent* collection - MORE events within 30 days should be allowed

Take Back to Retail- should **NOT be eligible** for product exemption status and should require ECA licencing as required by the Waste Management industry.

**3 (1) PROCESSING - Transfer Station Primary Processing**

These facilities represent a significant investment in facility infrastructure, employment and training supporting the Ontario circular economy. Operating under these licenses is a regulatory compliance necessity and requires the support of the Ministry. It is imperative that this element be identified as part of the ***Processor network*** for the management of HSP materials.

The inclusion of Transfer Facilities in the Processing component has been missed due to the producer centric bias in this draft regulation and it is important that these supply chain elements be recognized into the regulation directly and by the “authority”… RPRA.

**4 (1) SUSTAINABILITY IMPACTS**

This regulation has addressed the financial sustainability for “ *the authority*” and PROs.

*On the service provider side there is no such certainty.*

There needs to be more accountability that the Producers will be funding the program on a timely basis based on collected volumes.

**Historical**

-Refillable Gas cylinders- are currently not being adequately funded - what certainty will there be that the future will be different?

-The paint program has run over 10 years without a rate increase to the service providers despite regular increases assessed *on the producers* by the Stewardship / ISP organizations. We must subsidize the paint program which is inadequately funded - this represents nearly 50% of the program.

-Regulations require dispute resolution mechanisms since the “trust” with Stewardship Organizations has and continues to be less than honourable in most cases.

**4 (2) Competition Bureau Compliant**

It is imperative that the Regulation ensures that the Producers and PRO’s must operate with fair business practices subject to Competition Bureau of Canada Regulations.

**EXECUTIVE SUMMARY**

**4 (3) Sustainability - Cornerstone Principles**

There needs to be clarity in the Regulation -

***-100% OF PRODUCT AND PACKAGING COLLECTED AND MANAGED MUST BE REPORTED AND FUNDED ON A TIMELY BASIS*** - THIS NEEDS TO BE EXPRESSED IN CLEAR LANGUAGE

-“***Producer Responsibility***” is “**WHAT**” this regulation is all about ….

-“***100% collected, managed, and reported on a timely basis***” is the “**HOW**” this regulation must work.

**4 (5) PROGRAM MANAGMENT**

Quarterly “interim reporting benchmarks” must be reviewed with “the authority” by the Producers to ensure they are on plan

**5 (1) Producer Reportability - Best Practices**

Best practices would dictate a quarterly *unaudited* submission to “the authority”. There is not a Producer who would have their business run with management reporting requirements set at 1 to 1 1/2 years AFTER THE FACT - this is totally unacceptable

**5 (2.1) Targets - Historical Minimum Start Point**:

It is important to have collection targets that are based upon historical information.

These volumes should not be misconstrued to be “ceilings" but rather they are the base minimum.

**5 (2.2) Targets - Small Producer Exemption**

Smaller Producers should NOT be exempted from the Regulation

**6 PROs - Producer Responsible Organizations**

-The incumbent Stewardship Organization or ISP has a marked advantage moving into the role of a PRO.

-Access to their Producer and Service Provider network information data should be made available to Service Providers and Producers and other PROs for fairness.

-These organizations in the past have exercised abuse of their position and power and therefore allowance for 100% enrolment of the Producers or Service Providers should **NOT** be permitted.

* Enrolment of Producers and Service Providers should be restricted to “signing” a maximum of 90% of the total Producer or Service Provider enrolment. This eliminates exclusivity in the marketplace and encourages competition amongst the PROs.

- It should be encouraged that Producers and Service Providers have direct service affiliations and affiliations with more than one PRO.

**EXECUTIVE SUMMARY**

**7 RECYCLING INITIATIVES**

We have heard this is a ***“Circular Economy” Regulation? …But is it??***— Producers should be mandated where feasible to incorporate the recycling of their HSP material. The circular economy, without end use outlets changes from a complete circle (O) to a broken one (C). **This is a failure if not implemented here.**

**8 HSP MATERIALS - Handling / Exemptions**

Refillable Propane - It is recommended that these NOT be excluded.

Fertilizers although encouraged to be used, they should not be discouraged from being properly managed by disposing at a proper collection site.

Empty Containers - 100% of Empty containers for all HSP materials should be collected and recycled

**HSP DRAFT REGULATION COMMENTS**

**1 BACKGROUND**

This producer centric regulation, is required to be focused on Producer responsibilities and the expectation they will be funding these requirements. We understand that, however, there is a large role that has been played by the Waste Management “Service Provider” sector since 2008 in this EPR space that needs to be acknowledged and adapted to address certain **operational** aspects of this regulation.

One of the main differences for HSP materials versus other EPR programs is that these materials ARE SIGNIFICANTLY different than tires, electronics, and blue box materials. These end of life products **cannot** just be gathered at the corner of the building like other EPR products since they present a high potential for environmental and health and safety impacts. These materials are typically identified with health and safety markings and warnings as set out under the Consumer Products regulations, WHMIS, TDG, and MECP Regulation 347 for subject waste. The management and handling of these products require ***exceptional car*e** (perhaps such a term should be included denoting the difference from other programs and sets the underlying tone for some of the *exceptionalities* that apply to the HSP Regulation vs all of the other programs). Managing these *exceptionalities* has been part of the past and current practices followed by Service Providers, utilizing our ECA licenced facilities and transport for the management of these Hazardous **Special** Products all along - perhaps this awareness may not be as prominent with Producers and the general public and stewardship organizations- but I believe it is worthy of inclusion in the “tone” of the Reg to distinguish it from other EPR Programs and specialty considerations - everything is NOT a paint can or dry cell battery. Furthermore, these materials are just the initial phase of end of life products that will be included. These products are **NOT** anything like tires, electronics, or blue box products.

**2 (1) COLLECTION - Collection Site and Events**

It has been discussed during consultation discussions that the ”HSP Collection Site” needs to be better defined in terms of what this means relative to availability to the public. At this point the number of sites is identified but it is not clear as to whether these sites are required to operate daily, weekly, monthly etc. or if having one site for a set number of days represents a certain collection criteria for the producer. In addition, if a site is setup and available for multiple days per month or week, does this represent an equivalent additional number of sites? (EG in Kingston with approximately 140,000 population paint collection requires 4 sites as per calculation but is this one site open 4 times during a specific period? What constitutes a site and its availability for collection.

In addition, the E*vent* collection is being restricted by section 14 (3) …”must be held at least 30 days AFTER the last day of the previous HSP collection event”. The Producer should be permitted to offer MORE events, should they choose, without this restriction providing it meets the ***Collection, Processing and Disposal Procedure*** as set out by “the authority”.

***2 (1.1) Summary***

This section requires much needed clarity if scaling for these collection sites and event collection.

**HSP DRAFT REGULATION COMMENTS**

**2 (2) COLLECTION - Take Back to Retail**

The type and nature of many of these products present hazards for flammability, corrosivity, toxicity, reactivity, and potential liquid environmental impacts. This requires safe management of materials using ECA licenced **TSDF (Transfer Station Disposal Facilities)** using trained staff.

***2 (2.1) Summary***

Considerations for "take back to retail" should **NOT be eligible** for exemption status (ie batteries and paint exempted status) and should require ECA licences with applicable financial assurances, training, and insurance in accordance with Regulation 347 as required by the Waste Management industry. This should be a level playing field and would be like removing the licencing requirements from the Waste Management sector. These regulations have been developed for the safe care of environmental concerns and should not be compromised in the interest of EPR programs.

**3 (1) PROCESSING - Transfer Station Primary Processing**

Ontario has a vast geography over which its population is disbursed and it is this population that this EPR service is required to serve. The waste industry has addressed this challenge through its networks of transfer stations across the province. These facilities, in concert with municipal sites, mobile event collection, Depot's, and transportation networks, are how the EPR sector has been serviced. It has been disappointing that in the current regulatory iteration of the EPR program, the Stewardship Organizations , ISPs, and Producers “missed“ this Service Provider element. These ECA licensed facilities were merely dismissed as “***transportation***” components in the collection network. These licenced facilities represent much more than a transporter with a significant investment in facility infrastructure, employment and training supporting the Ontario circular economy. These operations were never fairly reimbursed for their contribution to the supply chain due to abuse of power by these organizations with a “take it or leave it” control of dominance by stewardship organizations in the marketplace. Operating under these licenses is a regulatory compliance necessity and requires the support of the Ministry’s own ECA licencing program.

It is imperative that these facilities be identified as part of the ***Processor network*** for the management of the HSP materials under this regulation.

**3 (2) Transfer Facility Operation**

Transfer and *processing* facilities are the inherent language used by the Ministry for ECAs. These are the primary processing locations that receive, consolidate, and “triage” waste materials before redirecting them for appropriate recycling or disposal as set out under the programs and regulations. These materials are managed based upon their chemical nature, TDG requirements, MECP Reg 347 waste classes, downstream waste receiver requirements, and general health and safety handling for personnel - all of these are incorporated into the Transfer Facility operations. It is with this awareness in mind that we implore that transfer stations and disposal facilities are grouped in amongst the processing network and should **NOT** be relegated to being a transport only component as was imposed by the previous Producer practices. It is in this way that we can properly protect residents, producers, service providers, and the environment with the proper management of these ***Hazardous Special Products***.

**HSP DRAFT REGULATION COMMENTS**

***3 (3) Summary***

The inclusion of Transfer Facilities in the Processing component has been missed due to the producer centric bias in this draft regulation and it is important that these supply chain elements be recognized into the regulation directly as well as by the “authority”… RPRA.

**4 (1) SUSTAINABILITY IMPACTS**

This regulation has addressed the financial sustainability of “ *the authority*” by requiring producers to submit a report and a funding program based upon information such as HSP materials sold into the marketplace over the past years etc. Based upon these criteria it can be established and funding can be set by *“the authority” to be able to financially implement and meet their administration and oversight obligations*.

*On the service provider side there is no such certainty.* There is a gap that needs to be addressed and underlying fundamentals that need to be more clearly stated. It is important to ensure that one gets paid for services rendered for the continued operation of a business. If a Service Provider collects and manages product or “an excess” of product is collected (ie exceeds Producer or PRO “plan” requirements), there needs to be certainty of payment to the Serv ice Provider. We have been advised this is addressed by contract arrangements, however, this is giving too much trust and control to the PRO organizations in the system- there needs to be more accountability and assurance by the Producers under the Reg. Regulations should also provide dispute resolution mechanisms since historically the “trust” with Stewardship Organizations has and continues to be less than honourable in most cases.

**4 (1) Examples - History of Concern for Service Providers**

1- A situation is currently at play in the electronics program from the collection underway in Jan and Feb 2021. Since all of the Producers are yet to be “signed up” by Jan 31 - 1 month AFTER the program has begun, the Service Providers are expected to continue collecting materials without payment until everything is set up in the new Reg for electronics. This is just an example of the “dumping” of responsibilities onto Service Providers to “work it out”. This is presented here to represents the unfair expectation that has been and continues to be downloaded onto service providers without acknowledgement of their role and abuses continue in the current programs. This needs to be corrected.

2- Currently, we are being drastically underfunded (if paid at all) for certain EPR products (eg Refillable Gas cylinders- we are currently having to subsidize the majority of these materials collected from municipalities with no recourse to the ISP or Stewardship Organization involved for reimbursement). We have no recourse to resolve this situation and we are concerned this type of abuse of power will continue if it is not addressed in the new Reg.

**HSP DRAFT REGULATION COMMENTS**

3- Similarly, the paint program has run over 10 years without a rate increase to the service providers despite regular increases assessed *on the producers* by the Stewardship / ISP organizations. Furthermore, the ISP organizations have leveraged the municipalities by negotiating “no charge paint” as a route to control the Service Providers (SP) - so if a SP wants to bid on the current MHSW program we have to accept whatever the ISP is offering if we want to have a chance to get the remainder of the materials from the municipal depot. Effectively we must make our profits on the other business in the program and subsidize a breakeven or loss on the paint which accounts for nearly 50% of the program.

**4 (2) Competition Bureau Compliant**

These practices of abuse identified above are currently possible because the Stewardship Organizations have been able to exercise their monopsonistic abuse of power on the marketplace and we have had no ability to challenge them through the Competition Bureau due to their “regulatory defence”.

It is imperative that the Regulation ensures that the Producers and PRO’s must operate with fair and open business practices subject to Competition Bureau of Canada Regulations.

**4 (3) Sustainability - Cornerstone Principles**

There needs to be some clarity in the Regulation -

***100% OF PRODUCT AND PACKAGING COLLECTED AND MANAGED MUST BE REPORTED AND FUNDED ON A TIMELY BASIS -*** THIS IS OF PARAMOUNT IMPORTANCE TO ENSURE PRODUCER CONTRIBUTION IS BEING MET WHEN VOLUMES EXCEED PROJECTED “PLAN” VOLUMES

- THIS NEEDS TO BE EXPRESSED IN CLEAR LANGUAGE

If “***Producer Responsibility***” is the “**WHAT**” this regulation is all about ….

then “***100% collected and managed must be reported and funded on a timely basis***” is the “**HOW**” this regulation must work.

Please incorporate this clearly into the Reg to ensure sustainability of the Service Provider network!!

**4 (4) Sustainability - Reporting Principles**

The uncertainty of “a timely basis” arises due to the nature of reporting. Producers are **not** required to file reporting with RPRA- “the authority”- **until April 2023** and then annually thereafter. This is a long time for a company to wait to ensure that the materials collected have been paid for and it provides RPRA WITH NO RECOURSE to get that Producer back in-line with their obligations - *the horses have left the barn* as they say and you’re not getting them back at that point.

The necessity for “100% of materials collected (contents **and** containers), being managed and funded”. Is to ensure financial stability to the Service Provider network and to encourage a competitive market environment amongst the PROs.

**HSP DRAFT REGULATION COMMENTS**

***4 4 (5) PROGRAM MANAGMENT***

By ensuring that Producers are meeting “interim reporting benchmarks” (eg quarterly) by reviewing with “the authority”, one can ensure that Producers are engaged, on plan and can adjust the plan to meet their obligations for the remainder of the year. These benchmarks can include product collection, by volume, by geography or by the educational / promotional programs. In this way it ensures that materials *are being collected and managed*  rather than just notifying “the authority” after the fact (eg April 2023 is 1 1/2 years after the program begins). “By the way, we missed our target” and now it’s too late for any reparatory measures to be implemented. From the service provider perspective reporting also incentivizes the Producers and the PROs to ensure any additional materials will be collected and managed and funded on a timely basis.

***RPRA and PRO’s will have been paid in advance***

***- this assurance is NOT available to the Service Providers!!***

***(6) Summary***

We request that there be a regular update required by the Producer with”the authority” (unaudited) which can be incorporated into the framework of the Regulation and “the authority” controlled Procedures. In this way “the authority” can be certain that the Producer’s program is operating and effective with their plan.

**5 (1) Producer Reportability - Best Practices**

Best practices would dictate a quarterly or at very least semi annual unaudited submission to “the authority” as a minimum requirement. There is not a Producer who would have their business run with management reporting requirements set at 1 to 1 1/2 years AFTER THE FACT - this is totally unacceptable and the management team would be fired by the board - why would we tolerate less? As a

Service Provider in this space I am looking for this certainty that Producers are “looking to meet” their HSP commitments from the Service Providers on a timely basis.

In addition, the short timeline for implementation of the Reg lends itself to rollover of the incumbent stewardship organizations into a once again dominant PRO role. Whatever measures can be provided to provide fair competition should be considered.

**Side-note:** There has been commentary on the point that this reporting is too onerous on the Producers and “the authority” however, I assure you, that in the past such items are just downloaded onto the service providers and we have been required to prepare and submit the data to ensure payment. So I loudly suggest that waiting one to one and a half years to realize the program is not operating as it should is **totally unacceptable**.

*If this is to work as business to business it needs good business principles.*

**HSP DRAFT REGULATION COMMENTS**

**5 (2.1) Targets - Historical Minimum Start Point**:

It is important to have collection targets that are based upon historical information. These programs have been successfully operating for many years and this can be the baseline “minimum” for the product and container programs. It is imperative that these numbers be incorporated into the Reg as targets to ensure “the foot is not taken off the EPR gas pedal”. These volumes should not be misconstrued to be “ceilings" rather they are the base from which to grow the collection model.

**5 (2.2) Targets - Small Producer Exemption**

The Regulation has imposed Producer Responsibility for the materials however, small quantity producers have been exempted. This means that these quantities do not get included in any target data for the HSP - it is also requiring that the “other Producers” should have to cover the costs for these smaller producers. To pass along the competitors’ costs onto larger Producers would not seem right ….. but I’m sure the Producers will have more to say about that injustice. Smaller Producers should NOT be exempted from the Regulation.

**6 PROs - Producer Responsible Organizations**

It has been observed in all of the other programs that the incumbent Stewardship Organization or ISP will experience a marked advantage moving into the role of a PRO. Access to their Producer and Service Provider network information data should be made available to Service Providers and Producers and other PROs for fairness.

These organizations in the past have exercised abuse of their position and power and therefore allowance for 100% enrolment of the Producers or Service Providers should **NOT** be permitted. Incumbent groups in the PRO role have most typically abused this responsibility and power in the market place (ie Competition Bureau investigation in the electronics program currently underway). The paint and automotive programs have both exerted their control on Service Providers in the current program because they were not able to be held accountable with competitive forces. In order to foster fair competitive options for Producers and Service Providers PROs should be restricted to “signing up” a maximum of 90% of the Producer or Service Provider enrolment. In addition it should be encouraged that Producers and Service Providers have direct service affiliations and affiliations with more than one PRO.

**7 RECYCLING INITIATIVES**

We have heard this is a ***“Circular Economy” Regulation? …But is it??***

It is recommended that the Producers should be mandated where feasible to incorporate and encourage the recycling of their HSP material. The circular economy, without end use outlets changes from a complete circle (O) to a broken one (C). This is a fundamental principle of recycling and if not encouraged in a “Circular Economy Act” then WHERE will it be encouraged? This is an imperative Cornerstone principle!!

**HSP DRAFT REGULATION COMMENTS**

**7 RECYCLING INITIATIVES**

So for example Post Consumer content paint should be encouraged by Regulation and by “the authority” procedures and enforced. (I have worked as a paint recycler and this is an honourable and doable outcome but it requires “motivation” for the industry - this motivation needs to come in the form of a Regulation.)

On the other hand it is not expected that banned pesticides should be reconstituted into a usable product. Similarly, the aerosol contents may not be recycled as a product but perhaps they can be used as a supplemental fuel and the container recycled.

It is important to complement this HSP program with the higher ideology and vision of recycling of the HSP materials making Ontario a leader in this space - we can do this!!

**8 HSP MATERIALS - Handling / Exemptions**

Propane Cylinders - Exempted materials have been identified to include refillable propane cylinders. It is recommended that these are NOT excluded. The situation where a resident is trying to *shed* the container (ie not needing a refill) comes out to the collection sites for their disposal / recycling. Removing these products would once again leave the Service Provider left to manage a non program material. Leaving them in and encouraging take back of the refillable containers is the preferred option.

Fertilizers although encouraged to be used, should also not be discouraged from being properly managing by disposing of them at a collection site.

Empty Containers - 100% of Empty containers for all HSP materials should be recycled.