

# Extended Producer Responsibility for Household Hazardous Waste: Phase II Study

**FINAL REPORT**

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29 Stanhope Street  
Boston, MA 02116  
617.236.4855

[www.productstewardship.us](http://www.productstewardship.us)

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*Prepared by the Product Stewardship Institute, Inc.*

### **The Product Stewardship Institute**

The Product Stewardship Institute (PSI) is a national, membership-based nonprofit committed to reducing the health, safety, and environmental impacts of consumer products across their lifecycle with a strong focus on sustainable end-of-life management. Headquartered in Boston, Massachusetts, we take a unique product stewardship approach to solving waste management problems by mediating stakeholder dialogues and encouraging producer responsibility. With a membership base comprised of 47 state governments and hundreds of local government agencies, as well as partnerships with more than 95 companies, organizations, academic institutions and non-U.S. governments, we work to design, implement, evaluate, strengthen, and promote both legislative and voluntary product stewardship initiatives across North America.

### **Acknowledgements**

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### **Project Contact**

For more information, please contact Suna Bayrakal, PSI Senior Associate for Policy and Programs, at [suna@productstewardship.us](mailto:suna@productstewardship.us), or (617) 671-0616.

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## I. INTRODUCTION

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EPR programs for products categorized as household hazardous waste (HHW)—such as pesticides, solvents, and flammable liquids—are intended to create economic and operational efficiencies in the collection and management of toxic products that are not currently addressed by product-specific EPR legislation. With input from Metro, Oregon and other PSI members and partners, PSI previously completed Phase I research related to options for implementing EPR solutions in the U.S. for HHW. The Phase I scope of work focused on a review of the existing state of EPR for HHW programs in British Columbia (BC) and Manitoba (MB), Canada. Topics included the timeframe for the development of each provincial program, the scope of products included under the HHW designation, funding mechanisms, collection issues (e.g., convenience, environmentally sound waste management, and the role of current service providers), and the role and organization of producer responsibility organizations (PROs).

While Phase I research focused primarily on the current state of mostly operational aspects of Canadian HHW EPR programs, the purpose of this Phase II work is to learn from these Canadian programs to anticipate potential obstacles to program development and implementation in the United States. PSI, therefore, examined the HHW EPR program in Ontario (ON), and sought further insights into the BC and MB programs. The study was conducted through direct guided discussions with government representatives from these provinces, which took place on December 11, 2014 and January 15, 2015. The intent of these discussions was specifically to gain an appreciation for how these provincial programs emerged, the key issues faced during implementation, and the general challenges and lessons learned. This report summarizes the findings of this investigation. Note that although this study was limited, by funding, to gathering information from two conference call discussions with Canadian provincial government representatives and interested U.S. stakeholders, a number of key challenges and valuable lessons were identified, many of which are common to all three programs.

## II. BRITISH COLUMBIA: PROGRAM OVERVIEW AND KEY ELEMENTS

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The EPR for HHW program in BC is mandated through the performance-based Recycling Regulation (see Appendix A for product scope). Producers of HHW are required to submit a stewardship plan which addresses the regulatory requirements as stated in the Recycling Regulation, such as: performance measures (including recovery rates, consumer awareness targets, and accessibility targets); annual reporting; third party financial audits; and third party non-financial assurance. Producers can also appoint an agency to discharge their regulatory obligations, and the agency (PRO) must have an approved stewardship plan. Stewardship plans are on a five-year cycle, and plans are required to be reviewed before their fifth year anniversary. BC uses a cascading definition to define which producer is obligated under the regulation. As such, HHW producers are defined as the first person to make a profit on the sale of the product in BC. These producers have discharged their obligation to a single PRO (the Product Care Association) which manages collection depots owned by private vendors. The government's role is to ensure a level playing field and enforce the performance goals as stated in the stewardship plan. Producer compliance tracking takes place initially through the PRO, who makes the initial contact with the non-compliant party, and then follows up, as needed, with the BC Ministry of the Environment for enforcement. Producers in BC may choose to fund their stewardship program by charging a visible fee to the consumer, which the PRO for HHW does through eco-fees<sup>1</sup> at retail locations.

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<sup>1</sup> The cost of the recycling program is charged to the consumer at the retail point of sale and is typically applied as a separate charge in addition to the product's selling price.

### III. MANITOBA: PROGRAM OVERVIEW AND KEY ELEMENTS

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Manitoba has been working on EPR since 1993, and introduced programs for packaging and motor oil in 1995. Given the government expense of managing HHW (approximately \$1.5 million per year), EPR for HHW was introduced in 2010 with the program plan approved in 2011. The program was modeled on that of BC, and Product Care played an instrumental role in opening the door to consultations with industry on how to develop an effective and efficient program. A key aspect of program development was the use of a Canadian Standards Association (CSA) standard in defining product scope (see Appendix B for product scope). Using the CSA standard gave industry a concrete sense of the products to be targeted. The companies involved are the same as in the U.S., but appear to take different positions in Canada than in the U.S. There did not appear to be major opposition from industry other than from those who manufacture bleach. The Retail Council of Canada is a major player, and Product Care developed a decision-making tool for retailers to determine which products they needed to manage and how. Industry was allowed to work with retailers to design a program without direct government involvement. Enforcement has not been a significant challenge; a single outreach to a noncompliant entity by the Ministry has generally resulted in bringing them into compliance. The approach to financing the program (e.g., whether an eco-fee or cost internalization) has been left up to producers.

### IV. ONTARIO: PROGRAM OVERVIEW AND KEY ELEMENTS

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Ontario's EPR for HHW program emerged to cover the scope of products that was not covered in rules for large industrial waste generators, as well as those products frequently returned to municipal HHW collection centers that contributed to approximately 80 percent of the waste management costs incurred (see Appendix C for product scope). Ontario's program was implemented originally in 2008 (with nine categories of products, including solvents and pesticides). In 2010, the EPR program expanded to 22 material categories (including flammable and corrosive products), but was subsequently rolled back in the same year (to the nine original categories), in large part due to consumer confusion and outcry over visible fees.

In Ontario, the definition of a "producer" or "industry steward" starts with the brand owner (resident in Ontario), and if a brand owner who is physically located in Ontario cannot be identified, then the manufacturer becomes the responsible party. If neither the manufacturer nor brand owner is located in Ontario, the first importer is designated. The PRO for the program is Stewardship Ontario. Producers are required to belong to Stewardship Ontario unless they can prove that they are able to achieve results similar to, or better than, the regulated program under Stewardship Ontario. In December 2014, Waste Diversion Ontario (WDO) – the organization that provides oversight for waste diversion programs – approved a separate program for paint and coatings producers, and once it is implemented it will be the first time producers will operate a program independently from the required program. A recent proposal by battery producers to establish their own program was rejected by WDO.

The foundation of the collection infrastructure is municipal depots and collection events. Although it is not mandatory for a PRO program to use municipal depots, they ultimately provide the convenience and accessibility needed for the program. Some large retail hardware stores also voluntarily serve as collection sites (e.g. for paint and single-use batteries). Stewardship Ontario conducts waste audits to understand the extent of covered and non-covered materials being collected.

While the Ontario Ministry of the Environment and Climate Change specifies the designated waste material in the regulatory requirements, producers describe in greater detail (in the program plan) the corresponding products, in order to determine which producers are charged fees and which wastes are collected. In terms of enforcement, the Ministry has the legislative authority to take enforcement action against producers when fees are not paid. The government faces challenges enforcing program performance targets because they are not set in the legislation or regulation. If the targets are not met, the government cannot penalize producers or the PRO with fines. However, the Minister can direct the organization to take various actions to improve program performance.

## **V. SUMMARY OF KEY CHALLENGES AND LESSONS LEARNED IN CANADA**

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While there are differences in the design and operation of the three provincial programs, there are common features of program development and implementation that emerged from the study and from which valuable lessons can be learned. Key challenges specific to individual provinces are also discussed below.

### ***Engage Industry through Use of Technical Standards and Connection to Existing EPR Programs***

While the research was limited, it appears that industry opposition was not seen to be a major obstacle in the development of the EPR for HHW programs in BC, MB, or ON. Two important factors may have contributed to the willingness of industry to engage in this initiative. First, the use of the CSA standard for HHW (CSA Standard Z752-03 published in 2003) to define product scope helped reduce industry uncertainty about the products set to be targeted under an EPR for HHW legislated program. Note that MB and ON did not, however, limit the product scope to this definition. Both provinces reference the standard in their requirements, but go beyond it in defining product scope. In addition, Ontario expanded the definition of HHW to include small quantity institutional, commercial, and industrial (ICI) generators.

Second, the prior existence of a paint EPR program in both BC and MB was helpful in laying the groundwork for further development of the HHW program. This served the HHW initiative in three ways. First, it allowed the government to enlist the help of an existing PRO (Product Care) in connecting with and engaging industry in this effort. Second, the paint program helped facilitate industry appreciation for what might be required for HHW given their prior experience with EPR. Finally, the provincial government representatives felt that industry: 1) understood that the material needed to be managed and generally recognized their responsibility in this task; and 2) preferred self-management to government management to avoid perceived inefficiencies, excessive cost, and prescriptive requirements, as well as to potentially spur innovation.

### ***Acknowledge the Significant Role of Retailers in Consumer Education***

All three provinces emphasized that the role of retailers should not be underestimated. In Canada, among other retail stakeholders, the Retail Council of Canada was active in the development of the CSA standard. While retailers may not always be designated as a responsible party, they play an essential role as the interface between the consumer and manufacturer/producer. Retailers 1) will often serve as a collection point; 2) are often an important part of program promotion and consumer education, and how retailers fulfill that role can affect program performance; and 3) charge and collect the eco-fee (if the system is funded in that way). These last two aspects come together to affect public perception of the program (which was a key challenge in ON in particular); retailers can play a key role in ensuring that the consumer understands that they are paying for the management of the product and that the fee is not a government tax.

### *Include Convenience Measures in Addition to Recycling Performance Goals*

Specific to BC, a key implementation challenge has been that performance measures for recycling did not help drive the convenience and accessibility of collection as envisioned. BC does not define convenient access in their regulations, but now sees the need for this definition since there exists a rural/urban divide with respect to access to collection sites. The government brought this to the PRO and asked them to develop a standard on which public feedback has subsequently been solicited.

### *Consider the Implications of Single and Multiple Producer Responsibility Organizations*

There is an ongoing EPR policy discussion in both Canada and the United States regarding whether producers should be represented by a single organization, or if there are benefits to having multiple organizations. An additional dimension to this discussion is whether the single PRO should be required by the authorizing regulation or statute, or whether the single PRO arises somewhat “naturally” from the obligated industries wanting to collectively fulfill their stewardship obligations. Some of these issues are highlighted by the case of Ontario, which generally requires producers to participate in the program operated by Stewardship Ontario (the single PRO). One concern about Ontario’s system is that it inhibits producer choice on how they fulfill their obligations, including how a program is operated and the associated costs. Additionally, there are concerns about single PRO systems with conjunction with the ability of the PRO to leverage its position as the sole or primary buyer of collection and management (recycling or disposal) services for the covered products (these concerns are sometimes referred to as “monopsony” issues).

The use of a single PRO is not legislated in BC or Manitoba, and the HHW EPR programs in these two provinces have been almost exclusively operated by a single PRO (Product Care). The public benefits of having a single PRO in the three provinces, arising either by law or by industry choice, include: 1) it is easier for government to oversee and regulate a single program; 2) government can assign the single PRO to perform the majority of the compliance activity, as industry has an incentive to bring free riders into compliance with costs spread out over more stewards; and 3) promotion and education about the program can be province-wide and more standardized than if these were performed by multiple PROs.

### *Advance the Program through Links to Related Initiatives*

A Canadian Council of Ministers of the Environment (CCME) Canada-Wide Action Plan for EPR has also helped advance EPR for HHW in Canada, although provinces are moving at different rates based on their own provincial priorities. The plan was developed and approved in 2009 to create a harmonized approach to EPR across Canada. This plan identified priority products for which provinces were to commit to developing EPR legislation or regulations. The first phase, with a deadline of 2015, included mercury-containing lamps, other mercury-containing products, household hazardous and special waste, and automotive products.

### *Clarify Roles and Responsibilities*

Lack of clarity with respect to roles and responsibilities has also been a key challenge of the Ontario program; Waste Diversion Ontario (WDO), which oversees the development, implementation and operation of waste diversion programs, as well as Stewardship Ontario, also plays a policy role that sometimes overlaps with the role of the Ontario Ministry of Environment and Climate Change. Additionally, despite its oversight role, WDO has had challenges accessing Stewardship Ontario data and program activity information.

### *Future Research*

Future work in this area could seek to better understand the use of technical standards in the practical implementation of collection and cost allocation, including how programs apportion cost per manufacturer and product if these materials are collected in a single location. Further exploration of the elements of a model bill might also help uncover other key issues related to implementation of EPR for HHW in the U.S. A closer review of legislation and regulations in BC, MB, and ON may be helpful to identify the range of approaches within these elements.

## APPENDIX A: PRODUCT SCOPE TABLE FOR BRITISH COLUMBIA

**Table 1. Summary of HHW Products Managed Under the BC Recycling Regulation**

Residual Product Categories (BC Recycling Regulation Schedule 2)

Solvents, Flammable Liquids, Gasoline and Pesticides: Year of Program Implementation – 1997

Material Managed	Specifications/Definition	Additional Information
Solvents and Flammable Liquids	<ul style="list-style-type: none"> <li>Products with a flash point of less than 61 degrees Celsius, as tested by the ASTM D1310 Tag Open Cup Test Method</li> <li>Paint strippers containing methylene chloride</li> </ul>	Flammable liquids must have a maximum container size of 10L and a flame symbol or phrase similar to “keep away from open spark or flame” on the label.
Pesticides	Products registered under the Canadian Pest Control Products Act that are required to show the domestic product class designation and a poison hazard symbol on the label.	These must be consumer pesticides, must have a maximum container size of 10L, and have both the poisonous (skull and cross bones) symbol and a Pest Control Product (PCP) number.
Gasoline	Sold for use in spark ignition engines and returned in an approved Underwriters Laboratories of Canada (ULC) container.	Gasoline must have a maximum container size of 25L and be in approved ULC containers.

Products not accepted include: (1) products that cannot be identified (unknowns); (2) products that are leaking or improperly sealed; (3) commercial, industrial or agricultural products; (4) cosmetics and health and beauty aids; (5) insect repellents, disinfectants, and pet products; (6) diesel, propane, and butane fuels; (7) fertilizer; and (8) acids, cleaners, bleach, and other corrosive materials.

## APPENDIX B: PRODUCT SCOPE TABLE FOR MANITOBA

**Table 2. Summary of HHW Products Managed under Manitoba’s Stewardship Regulations**

Household Hazardous Material and Prescribed Material Stewardship Regulation (MR 16/2010)

Waste Household Hazardous Materials: Year of Program Implementation - 2012

Pesticides: Year of Program Implementation – 2012

Material Managed	Specifications/Definition	Additional Information
Waste Household Hazardous Materials		
Flammable Materials	Devices, equipment, material, products, and substances that meet the criteria for Waste Household Hazardous Materials as set out in the CSA Standard Z752-03, Definition of Household Hazardous Waste.	<ul style="list-style-type: none"> <li>• Applies to products that display the flammable symbol, including liquids, aerosols, and waste gasoline.</li> <li>• Gasoline is accepted only in an approved gas can with a maximum size of 25L.</li> <li>• Maximum accepted container size for flammable liquids is 10L and 660g or 24oz for aerosols.</li> </ul>
Corrosive Materials	Devices, equipment, material, products, and substances that meet the criteria for Waste Household Hazardous Materials as set out in the CSA Standard Z752-03, Definition of Household Hazardous Waste.	<ul style="list-style-type: none"> <li>• Products that display the corrosive symbol and are liquids, aerosols, or solids.</li> <li>• Maximum accepted container size is 10L or 660g, or 24oz for aerosols.</li> </ul>
Physically Hazardous Materials	<p>Devices, equipment, material, products, and substances that meet the criteria for Waste Household Hazardous Materials as set out in the CSA Standard Z752-03, Definition of Household Hazardous Waste.</p> <p>Includes, but is not limited to, explosives (but not including ammunition), and medical sharps carrying pathogens.</p>	<ul style="list-style-type: none"> <li>• Products that display both the flammable symbol and explosive symbol.</li> <li>• Maximum container size is 5kg and not refillable.</li> </ul>

Material Managed	Specifications/Definition	Additional Information
Toxic Materials	Devices, equipment, material, products, and substances that meet the criteria for Waste Household Hazardous Materials as set out in the CSA Standard Z752-03, Definition of Household Hazardous Waste.	<ul style="list-style-type: none"> <li>• Products that display the poison symbol, have the word “danger” printed on their label, and are liquids or aerosols.</li> <li>• Maximum accepted container size is 10L and 660g, or 24oz for aerosols.</li> </ul>
Environmentally Hazardous Materials	<p>Devices, equipment, material, products, and substances that meet the criteria for Waste Household Hazardous Materials as set out in the CSA Standard Z752-03, Definition of Household Hazardous Waste.</p> <p>Includes those considered "toxic," "persistent," or "bioaccumulative," as described in Clauses 7.6.2.2. to 7.6.2.4. of the CSA Standard Z752-03.</p>	
Pesticides		
Pesticides	<p>Products defined by and registered under Canada’s Pest Control Products Act that:</p> <ul style="list-style-type: none"> <li>• are required to be labeled with the product class designation "Domestic"; and</li> <li>• display the symbol shown in Schedule III of Canada’s Pest Control Products Regulation for the signal word "Poison."</li> </ul>	<ul style="list-style-type: none"> <li>• Liquid and solid pesticides are accepted.</li> <li>• Aerosol containers are accepted.</li> <li>• Maximum container size is 10L.</li> <li>• Consumer pesticides are those that bear the poisonous symbol (skull and crossbones), the Pest Control Product (PCP) Number, and the word “Domestic” on the label.</li> </ul>

Consumer guidance on the scope of accepted products:

- Flammable materials include gasoline, methanol, methyl hydrate, mineral spirits, paint stripper, paint thinners, paint and varnish remover, turpentine, varsol, other flammable solvents, acetone, BBQ lighter fluid, camping fuel, fondue fuel, kerosene, flammable degreasers, flammable lubricants, flammable liquid adhesives, flammable fuel treatment and additives, and leftover, stale, or old gasoline contaminated with oil or water.
- Corrosive materials include rust removers, masonry cleaners, grout cleaners, pool chemicals, pool and hot tub cleaners, and paint strippers.
- Physically hazardous materials include fuel cylinders, camping cylinders, and butane cylinders.
- Toxic materials include non-flammable furniture strippers, fuel and automotive additives, lubricants, and tar and bug remover.

Waste Household Hazardous Materials not accepted include:

- Products that are unlabelled or cannot be identified (unknowns)
- Products that are leaking or improperly sealed
- Commercial, industrial or agricultural products
- Cosmetics, health and beauty aids
- Insect repellents, disinfectants and pet products
- Lead acid batteries
- Oil/antifreeze
- Mercury switches
- Fertilizer
- Non-aerosol automotive paint
- Non-aerosol craft paint
- Quick-drying or line-marking paint
- Two-part or component paint containing catalyst or activator
- Paint in glass containers
- Brushes, rags and rollers
- Wine and distilled spirits
- Refillable propane cylinders
- Ammunition
- Drugs and medicines
- Caulking compound
- Diesel
- Medical sharps
- Powder forms (solid) of masonry products, cement, grout, mortar, plaster of Paris
- Non-liquid flammable materials
- Gasoline not returned in an approved container

## APPENDIX C: PRODUCT SCOPE TABLE FOR ONTARIO

**Table 3. Summary of HHW Products Regulated under Ontario’s Household Hazardous Waste Framework**

Applicable Regulations

- Regulations under the Waste Diversion Act, 2002
  - Municipal Hazardous or Special Waste (Ontario Regulation 542/06)
  - Used Oil Material (Ontario Regulation 85/03)
- Regulations under the Environmental Protection Act
  - Collection of Pharmaceuticals and Sharps – Responsibilities of Producers (Ontario Regulation 298/12)

Definitions

- IC&I – Industrial, commercial and institutional
- Small quantity IC&I waste generators – IC&I locations that generate hazardous waste in amounts not requiring registration and manifesting, or in quantities less than 100 kg (whichever is less)

Material Regulated	Specifications/Definition	EPR program?
<i>Designated waste under Ontario Regulation 542/06 – Municipal Hazardous or Special Waste</i>		
Paints and coatings, and their containers	Latex, oil and solvent-based architectural coatings, including paints and stains, whether tinted or untinted, supplied in containers equal to or less than 30 litres.  Generated by residential and small quantity IC&I waste generators.	Mandatory EPR program  (implemented 2008)
Oil filters	Generated in residential and all IC&I. Does not include filters with no significant metal content.	Mandatory EPR program  (implemented 2008)
Oil containers	Containers that have a capacity of 30 litres or less. Generated in residential and all IC&I.	Mandatory EPR program  (implemented 2008)

Material Regulated	Specifications/Definition	EPR program?
Solvents and their containers	<p>Turpentine, alcohols (methanol, isopropanol, ethanol), ketones (acetone, methyl ethyl ketone), xylene, toluene, mineral spirits, linseed oil, naphtha, methylene chloride.</p> <ul style="list-style-type: none"> <li>• Products marketed as paint thinners, lacquer thinners, automotive body resin solvents, contact cement thinners, paint strippers and degreasers</li> <li>• Solvents in aerosol containers that match the definition of Solvents</li> <li>• Solvents supplied in containers equal to or less than 30 litres and/or 30 kilograms</li> <li>• Residential and small quantity IC&amp;I waste generators</li> </ul>	Mandatory EPR program (implemented 2008)
Batteries (single use)	<p>All Single Use Dry Cell Batteries including but not limited to the following chemistries:</p> <ul style="list-style-type: none"> <li>• Alkaline-Manganese</li> <li>• Lithium</li> <li>• Silver Oxide</li> <li>• Zinc Air</li> <li>• Zinc-Carbon</li> </ul> <p>Generated in residential and all IC&amp;I.</p>	Mandatory EPR program (implemented 2008)
Batteries (rechargeable)		Voluntary EPR program
Antifreeze, and their containers	<p>Includes premixed (water diluted) and concentrated product</p> <ul style="list-style-type: none"> <li>• Antifreeze Supplied in all container sizes including Bulk and Packaged</li> <li>• Bulk is Supplied in containers greater than 30 litres (e.g. delivered using a tanker trailer)</li> <li>• Packaged is Supplied in containers equal to or less than 30 litres</li> </ul> <p>Generated in residential and all IC&amp;I.</p>	Mandatory EPR program (implemented 2008)
Pressurized containers	<p>Non-refillable and refillable cylinders, such as seamless cylinders and tubes, welded cylinders and insulated cylinders, previously containing material such as propane.</p> <p>Generated by residential and small quantity IC&amp;I waste generators.</p>	Mandatory EPR program (implemented 2008)

Material Regulated	Specifications/Definition	EPR program?
Fertilizers, and their containers	Fertilizers with pesticides (e.g., “weed and feed” products)  Generated by residential and small quantity IC&I waste generators.	Mandatory EPR program (implemented 2008)
Fungicides, herbicides, insecticides or pesticides, and their containers	Pesticides meeting the definition that bear the “DOMESTIC” classification <ul style="list-style-type: none"> <li>• Pesticides in aerosol containers that match the definition of Pesticides</li> <li>• Pesticides Supplied in containers equal to or less than 30 litres and/or 30 kilograms</li> </ul> Generated by residential and small quantity IC&I waste generators.	Mandatory EPR program (implemented 2008)
Portable fire extinguishers		No EPR Program
Fluorescent light bulbs or tubes		Voluntary EPR program
Mercury-containing thermostats, thermometers, barometers or other measuring devices		Voluntary EPR program
Aerosol containers		Empty aerosol containers are collected as part of municipal blue box programs (partial EPR – implemented in 2004).  No EPR program for full containers
Corrosives, and their containers		No EPR Program
Flammables, and their containers		No EPR Program
Leachate toxics, and their containers		No EPR Program
Reactive materials, and their containers		No EPR Program

Material Regulated	Specifications/Definition	EPR program?
Toxic materials, and their containers		No EPR Program
<i>Regulated under Ontario Regulation 298/12 – Collection of Pharmaceuticals and Sharps –Responsibilities of Producers</i>		
Pharmaceuticals	<p>Leftover or expired pharmaceuticals (for humans and pets) that consumers have in their homes. Includes:</p> <ul style="list-style-type: none"> <li>• Prescription and over the counter drugs</li> <li>• Natural health products (e.g., vitamins)</li> <li>• Containers used to transport the above materials to collection locations</li> </ul>	Mandatory EPR requirements (implemented 2012)
Sharps, including syringes	Applies to leftover sharps (for both humans and pets) that consumers have in their homes	Mandatory EPR requirements (implemented 2012)
<i>Designated waste under Used Oil Material (Ontario Regulation 85/03)</i>		
Used Oil		No EPR Program