

Packaged Fertilizer and the Consolidated Municipal Hazardous or Special Waste Program

The Consolidated Municipal Hazardous or Special Waste Program (CMHSW) is designed to divert designated waste from landfill and is funded by the producers or first importers of these designated products. Fertilizer is included in the list of designated products. In the first phase of the MHSW program the definition used for fertilizer limited the products involved to those in packages of 30 kg/l or less that require registration under the Fertilizers Act. This definition was used as the initial focus of the program which primarily targeted “Weed & Feed” products. In 2009, the Ministry of Environment proposed changes to the definition used for fertilizer in the CMHSW program. For the new consolidated phase, the definition was expanded to include all products regulated under the Fertilizers Act and sold as ‘plant nutrients’ in packages of 30kg/l or less. This change in definition created a situation whereby all packaged fertilizer (including for agricultural operations) would be captured by the consolidated program which takes effect July 1, 2010. It should be noted that bulk fertilizer is NOT covered under this program – that it only applies to fertilizer in packages of 30 kg/l or less.

OABA has been working on this issue for almost a year. On numerous occasions over the past year, we have lobbied both the Ministry of Environment and Stewardship Ontario in efforts to change the program, and have been successful in negotiating an agreement with all fertilizer stewards that would allow packaged fertilizer for agricultural use to be excluded from the requirements of the CMHSW program. The following contains background information on the program and the procedures for stewards and agri-retailers that will allow for the agricultural exclusion.

What is the CMHSW Program?

The CMHSW is the next phase of a waste collection and diversion plan designed to ensure that certain consumer hazardous and special wastes are managed in an environmentally appropriate way. The overall objective is to divert these products from landfill and, as much as possible, into the 3 Rs (reduce, reuse, recycling).

Twenty-three materials have been identified for the program, including packaged fertilizer. Those Ontario based companies that are the brand owner or first importer of the materials designated under the program are considered ‘stewards’. Stewards are obligated to register, file reports and remit fees to Stewardship Ontario based on the designated materials that are sold into the Ontario market. The fees paid by stewards to Stewardship Ontario are used to cover the costs for the collection, transportation and recycling (or safe disposal) of the waste.

During OABA discussions with the Ministry of Environment and Stewardship Ontario, it became readily apparent that agricultural operations were never intended to be included in the CMHSW program. The focus is on residential and small industrial, commercial and institutional waste generators. The challenge was to develop a method that would segregate packaged fertilizer (30 kg/l or less) being sold to agricultural operations from the product sold to non-agricultural customers.

Agricultural Exclusion

Stewardship Ontario has agreed to a process that will allow retailers to exclude fertilizer in packages of 30 kg or less sold to agricultural operations from the CMHSW requirements.

In order to participate in the agricultural exclusion the retail location must either:

- register as a steward with Stewardship Ontario or,
- sign a Remitter's agreement with the steward that they are purchasing packaged fertilizer from for re-sale.

A retailer should register as a steward if:

- They are the brand owner of the product they are selling. Whoever's company name is on the bag is considered the steward even if they did not bag the product, or;
- If they are the first importer of fertilizer packaged outside of Ontario.

Additional information on being a steward can be found at the Stewardship Ontario website <http://www.stewardshipontario.ca/werecycle/index.html>

Remitter's Agreement

If you do not qualify as a steward, you must then sign a Remitter's Agreement with the steward (or stewards) that you purchase your packaged fertilizer from. A copy of the agreement can be found on the Stewardship Ontario website <http://www.stewardshipontario.ca/mhsw/stewards/remitters.html> . Each agreement must be signed by the remitter and the steward and then approved by Stewardship Ontario.

As a remitter, the retailer will be responsible for reporting to Stewardship Ontario all sales of packaged fertilizer to non-agricultural customers and remitting the appropriate fees. In order to qualify for the agricultural exclusion, the farm customer must provide a valid Farm Business Registration (FBR) number. If the customer is unable to provide a FBR number, the retailer will charge the customer the program fee at the prescribed fee rate.

Farm businesses that gross more than \$7,000 in farm income annually are legally required to register their business with Agricorp. It is the same program farmers use to register with one of the general farm organizations. More information on the Farm Business Registration number can be found at http://www.agricorp.com/en-ca/programs/farm_registration.asp

At the end of each quarter (March 31, June 30, September 30, December 31) the retailer as per requirements under the Remitter's Agreement will report the amount of packaged fertilizer sold to non-agricultural users and remit the associated fees to Stewardship Ontario.

Record Keeping

Stewards and retailers with Remitter's Agreements are responsible for maintaining records of all sales of fertilizer in packages of 30 kg or less (both agricultural and non-agricultural sales). Stewardship Ontario has the ability to audit program participants to ensure that only packaged fertilizer sold to verifiable agricultural operations are excluded from the CMHSW program and the associated fees.

Requirements for Customer Invoices

As part of the record keeping process, the retailer must include the following two items on all invoices issued to the farmer for purchases of packaged fertilizer:

- 1) the invoice must include the farmer's Farm Business Registration number, and
- 2) the invoice must include the following statement, ***"Any fertilizer in packages of 30 kg/l or less covered by this invoice are designated for use as a crop input in an agricultural operation"***.

Program Fees

Stewardship Ontario establishes the program fee for packaged fertilizer and announces it to program participants prior to the date that it becomes effective. In this case, the amount of the program fee for packaged fertilizer will be announced prior to July 1st, 2010. To establish the fee, Stewardship Ontario surveys stewards to determine the amount of product (in this case fertilizer in packages of 30 kg/l or less sold for domestic and non-agricultural commercial use). Stewardship Ontario then divides that amount into their estimate of the cost associated with managing any fertilizer returned to hazardous waste depots to establish the fee level.

Collecting Fees

Stewardship Ontario does not mandate how fees are collected only that it is the responsibility of the steward or 'remitter' to pay the prescribed fees to Stewardship Ontario as set out in their respective agreements. OABA would recommend that the retailer has the option of either incorporating the fee into the retail price of fertilizer sold to non-agricultural customers or charging the fee as a separate line item on top of the retail price. The fee will be subject to HST if included as a separate line item.

OABA would also like to remind stewards and retailers that they should take into account the costs associated with administering the agricultural exclusion for their customers and should consider these costs when establishing product pricing.

Frequently Asked Questions

OABA has been asking Stewardship Ontario staff questions to clarify aspects of the agricultural exclusion for packaged fertilizer. As more issues arise we will be updating this list of questions for distribution to the membership.

If a company is producing bagged fertilizer which they are selling to an agri retailer and the agri retailer has multiple locations does the steward have to have a Remitter's Agreement with each location or with the retailer head office?

If a company is selling to an agri-retailer with multiple locations the Steward will have a Remitter's Agreement with the retailer head office who will report on behalf of their multiple locations.

What about the fertilizer the steward sells directly to farmers? Do they just follow the same process as if they were a remitter?

Yes, when a Steward sells fertilizer directly to farmers, the Steward will be responsible for reporting those sales in their methodology as sales to farmers and must include the farm business registration number. If a Steward only sells fertilizer to farmers they may have difficulty entering their methodology. If this is the case please direct them to contact Steward Services.

The Remitter's Agreement contract mentions an administration fee (7.3) payable to Stewardship Ontario, what is the fee?

There is no charge - the condition has been removed.



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Proposal for Exclusion of Packaged Fertilizers for Agricultural Operations under the Consolidated Municipal Hazardous or Special Waste (CMHSW) Program

May 27, 2010

Proposal Objective: Provide exclusion in the CMHSW for packaged fertilizer sold to a 'farmer' for use as a crop input in an 'agricultural operation' as defined in the Nutrient Management Act, 2002.

Definitions from the Nutrient Management Act, 2002

'Agricultural Operation' means an agricultural, aquacultural, horticultural or silvicultural operation and includes,

- a) Draining, irrigating or cultivating land,
- b) Growing, producing or raising farm animals
- c) The production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass, and any additional agricultural crops prescribed by the regulations,
- d) The production of eggs, cream and milk.
- e) The operation of agricultural machinery and equipment,
- f) Ground and aerial spraying,
- g) The management of materials containing nutrients for farm purposes,
- h) The processing by a farmer of the products produced primarily from the farmer's agricultural operation,
- i) Activities that are a necessary but ancillary part of an agricultural operation such as the use of transport vehicles for the purposes of the agricultural operation, and
- j) Any other agricultural activity prescribed by the regulations, conducted on, in or over agricultural land;

'Farmer' for the purposes of this proposal means the owner or operator of an agricultural operation and has a valid Farm Business Registration number.

Other Definitions Specific to this Proposal

'Agricultural Operation' also includes government and university agricultural research stations.

'Agri - Retailer' for the purposes of this proposal, Agri-Retailer is defined as a company whose primary business activity is supplying products and services to farmers for use on their agricultural operations.

'Retailer' includes agri-retailer and traditional consumer retail outlets such as Canadian Tire, Home Hardware, Home Depot, etc.

'Packaged Fertilizer' for the purposes of this proposal, packaged fertilizer is defined as being sold in a package weighing 30 kg or less.

Application

Stewardship Ontario Responsibilities

- Stewardship Ontario will re-survey Stewards to determine the fee to be paid by stewards for sales of packaged fertilizer for non-agricultural use.
- Stewardship Ontario will communicate fee to stewards prior to the reporting period.

Steward Responsibilities

- Report sales of packaged fertilizer to non-agricultural users and pay associated fees in accordance with the Stewardship Ontario Rules.
- Maintain records of all sales of packaged fertilizer.
- Provide agri-retailers with the option of signing a Remitter's Agreement under which the agri-retailers will report sales of packaged fertilizer for non-agricultural use to Stewardship Ontario on behalf of the Steward (and thereby exclude sales made to agricultural users)
- Communicate to agri-retailers that they must report sales of packaged fertilizer for non-agricultural use to Stewardship Ontario and remit associated steward fees on such sales pursuant to the Remitters Agreement

Agri - Retailer Responsibilities

- In order to participate in this exclusion the agri-retailer must sign a Remitter's Agreement with the Steward(s) that is approved by Stewardship Ontario. The agreement can be found on Stewardship Ontario's website.
- Agri-Retailer must obtain proof – in the form of a valid Farm Business Registration number – that the customer purchasing packaged fertilizer is a farmer and the fertilizer is for use as a crop input in an agricultural operation.
- The invoice the Agri-Retailer issues to the agricultural operation must include the customer's valid Farm Business Registration number and the wording: 'Any fertilizer in packages of 30 kg or less covered by this invoice are designated for use as a crop input in an agricultural operation'
- If the customer is unable to provide a valid Farm Business Registration number the retailer is required to include such sales in its report to Stewardship Ontario and remit the associated fees at the end of the quarter during which the fertilizer was sold.
- The Agri-Retailer is responsible for documenting sales of all packaged fertilizer to agricultural and non-agricultural customers. All sales of packaged fertilizer may be subject to verification and/or audit by the Steward and/or Stewardship Ontario.

Agricultural Exclusion for Fertilizers Under CMHSW Program

