

RPRA Consultation on Stewardship Ontario's proposed ISO Surplus Fund Transfer

Addendum to the MHSW Wind Up Plan

June 10, 2020

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Asking Questions

RPRA Consultation on Stewardship Ontario's proposed addendum to the Municipal Hazardous or Special Waste Wind-up Plan

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Agenda

- Purpose of the consultation
- Background
- Review of wind up costs
- **SO's proposed ISO Surplus Fund Transfer Addendum**
 - Proposal to transfer surplus funds to ISOs
 - Returning surplus funds to SO in the event of a delay in MHSW Program transition
- **SO-ISO Surplus Fund Transfer Agreement development process**
- **Clarifying amendment to MHSW Residual Fund Addendum**
- **Summary and next steps**

Purpose of the consultation

- The purpose of this consultation is to give stakeholders an opportunity to provide feedback on Stewardship Ontario's (SO) proposed amendments to the Municipal Hazardous or Special Waste (MHSW) Program Wind-Up plan regarding surplus funds.
- Stakeholders can provide their feedback to the Authority until **June 17, 2020**



Background

MHSW Program

- The Municipal Hazardous or Special Waste (MHSW) Program is operated under the authority of Ontario's *Waste Diversion Transition Act, 2016*
- The program collects certain hazardous or special waste materials, and ensures they are managed in an environmentally responsible way at end of life
- MHSW materials include:
 - single-use batteries
 - pressurized containers
 - oil containers
 - oil filters
 - antifreeze
 - paints and coatings
 - pesticides
 - solvents and
 - fertilizers



Industry Funding Organization and Industry Stewardship Organizations

- Under the *Waste Diversion Transition Act, 2016*, SO is the Industry Funding Organization responsible for operating the MHSW Program until it ceases operation on June 30, 2021
- The Act also permits management of such materials by Industry Stewardship Organizations (ISO):
 - **Product Care Association** which manages paints, coatings, pesticides, solvents and fertilizers
 - **Automotive Materials Stewardship** manages oil filters, oil containers, antifreeze and antifreeze containers
 - **SodaStream** which manages their own proprietary pressurized containers
- SO continues to operate battery and pressurized container programs
- SO continues to represent a small number of stewards in some of the other MHSW categories managed by the Industry Stewardship Organizations



Disbursement of surplus funds as described in the approved MHSW Wind Up Plan:

- Surplus funds in material reserves will be distributed to Industry Stewardship Plan members and SO Stewards in all MHSW categories as fee reductions according to the material-specific schedules
- Fee reductions will be divided between SO stewards (where applicable) and ISP members according to the projected supply share for each group by quarter (also referred to as the “**share split**”) during the wind up period.
- Total amount of the fee reduction for each quarter and the anticipated length of the fee reduction (i.e. number of quarters) were based on both the projected SO program costs for each material and the projected member fees payable to the Industry Stewardship Organizations with respect to their operational costs over the same period.
- The fee reduction would be implemented for ISO members through separate service agreements with their Industry Stewardship Organizations.

Surplus fund disbursement as per approved MHSW Wind-Up Plan

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
4. Subtotal	\$21,150,000		\$4,147,500		\$17,002,500
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
9. Subtotal	\$16,098,000		\$493,700		\$15,604,300
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
13. Subtotal	\$5,715,000		\$5,715,000		0
TOTAL	\$42,963,000		\$10,356,200		\$32,606,800

Surplus fund amounts and SO-ISO share splits from MHSW WUP Plan [Section 8: Reserves] approved December 2019

Minister's direction to transfer material specific surplus funds

Summary of April 1, 2020 direction letter:

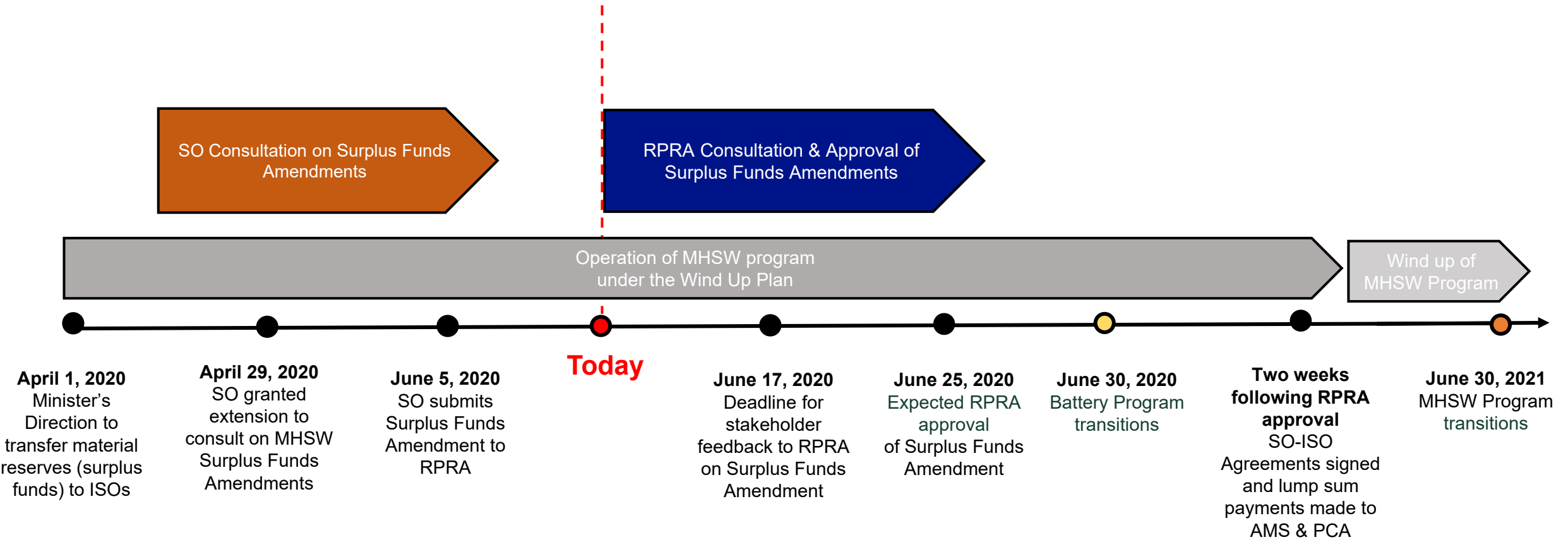
- Direction applies only to the MHSW material categories for which there are approved Industry Stewardship Plans (i.e. does not apply to single-use batteries and pressurized containers managed by SO)
- Ensure 100% of the surplus funds the Authority approved for fee reductions be returned in a one-time lump sum payment to Industry Stewardship Organizations
- The lump sum payments be provided pursuant to surplus transfer agreements between and SO and the Industry Stewardship Organizations that:
 - outline how the Industry Stewardship Organizations would return the full amount of the surplus to their members in the form of fee reductions, for the maximum benefit of consumers
 - allow SO to recover reasonable unexpected costs from the Industry Stewardship Organizations in the event of a delay in the wind up of the MHSW Program.
- SO must make the lump sum payments to the ISOs within **two weeks** of the proposed amendment being approved by the Authority

Minister's direction to transfer material specific surplus funds

Summary of April 29, 2020 direction letter:

- Due to the COVID-19 pandemic, the Minister granted SO an extension for the submission date of the wind up plan amendments to the Authority from **April 30, 2020** to **June 5, 2020**
- All other requirements set out in the **April 1, 2020** direction letter must be met by SO
- The Authority is expected to approve the amendments to the MHSW Wind Up Plan, consistent with the direction, by **June 25, 2020**

Process and timeline to approve surplus funds transfer amendments



Stewardship Ontario consultation on the proposal for the ISO Surplus Fund Transfer

- SO held two consultation webinars on **May 12 and 13, 2020** to review its proposal for addressing the Minister's April 2020 direction which were attended by 217 stakeholders
- Webinar presentations, replays and Q&As were emailed to all stakeholders and made available on the SO website
- SO also held five “one-on-one” meetings with specific stakeholder groups to receive input and feedback on its ISO Surplus Fund Transfer Addendum proposals, as well as the related SO-ISO Agreements
- Stakeholders were given until **May 22, 2020** to submit written feedback on the surplus fund amendment proposals presented during the consultation webinars
- SO received written feedback from 15 stakeholders, as well as additional verbal feedback during the one-on-one meetings and comments provided during the consultation webinars, all of which is summarized in Appendix B of the submitted Addendum (**Stewardship Ontario Consultation Feedback Summary**)

Questions

Do you have any questions about the Minister's direction letters from April 2020?

Do you have any questions regarding the process or timelines required to approve the ISO Surplus Funds Transfer Addendum?

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Review of Wind-Up Costs

How Industry Funding Organizations can use steward fees to pay for wind up costs

Waste Diversion Transition Act, 2016

Section 33(5) of the Act describes that the Industry Funding Organization (IFO) can use steward fees to pay for costs incurred by the organization or Authority related to wind up, including:

- Costs for developing and implementing a plan to wind up all or part of the program
- Costs incurred to wind up all or part of the program
- Costs incurred to wind up the organization

The fee paid by a steward should fairly reflect the proportion of the sum that is attributable to the steward.

Review of SO's Wind-Up Plan Financing Principles

SO's financing was guided by two key principles which are derived from the *Waste Diversion Transition Act, 2016* and the Minister's directions:

1. Prior to the distribution of surplus funds, SO 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.

General Wind Up Costs vs Material Management Costs

SO's General Wind Up Costs

- Wind Up Plan Development Costs
 - Development of Wind Up Plan Proposals
 - Consultation costs
 - Wind Up Plan Submission
- Implementation of Wind Up Plan
 - Ongoing Wind Up Costs
 - One-time Wind Up Costs

SO's Material Management Costs

- Cost associated with managing the collection, transportation, processing/disposal of those materials
- Material Management costs continue to be paid for by fees collected from registered SO stewards

Contingency financing of wind-up costs in the event of program extension

In April 2020, the Minister directed SO to develop surplus fund transfer agreements with the Industry Stewardship Organizations that would allow SO to recover reasonable unexpected costs in the case of a delay in the transition of the MHSW Program to individual producer responsibility under the *Resource Recovery and Circular Economy Act, 2016*.

SO's proposed Surplus Fund Transfer Addendum identifies the following events that could significantly increase MHSW Program wind up costs:

1. Regulatory delay:

- The MHSW program may be extended beyond June 30, 2021 if new regulations under the RRCEA are not available
- Keeping the MHSW program running increases wind up implementation costs because wind-up activities as well as overhead must continue for an extended period

2. Additional Ministerial Directions:

- Each additional direction imposes costs for consultations, professional fees for drafting proposals, technical, administrative and communications support



Financing wind up costs due to program extension

SO estimates for an 18-month program extension

\$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
Total	\$1,446	\$1,681	\$1,345	\$1,500	\$1555	\$7,526
Program Extension Unfunded				\$1,500	\$735	\$2,235

Questions

Do you have any questions regarding the Industry Funding Organization (SO) costs recoverable by steward fees?

Do you have any questions about general wind up costs?

Do you have any questions about SO's additional general wind up costs to be incurred in the event of a program extension?

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SO's Proposed ISO Surplus Fund Transfer Addendum

ISO surplus funds transfer proposal

SO's proposed amendment to the MHSW Wind Up Plan contains two key elements to ensure that the payment of the material-specific surplus funds to the ISOs is consistent with the Minister's direction:

1. Amount of the 100% lump sum transfer
2. Returning Surplus Funds to Stewardship Ontario in the event of a delay in MHSW Program transition

Amount of the 100% Lump Sum Transfer to the ISOs

SO is proposing to use surplus fund estimates based on updated 2019 audited financials and the allocation methodology from approved MHSW Wind Up Plan to determine the SO-ISO share of each material reserve

	A	B	C
MHSW Material Reserves	ISO Surplus Fund Estimates from Approved Wind Up Plan [Share Allocation Based on Fee Revenue)	<u>UPDATED</u> ISO Surplus Fund Amounts Based on 2019 Financials [Share Allocation Based on Steward Fee Revenue)	<u>UPDATED</u> ISO Surplus Fund Amounts Based on 2019 Financials [Share Allocation Based on Tonnage Supplied)
1. Antifreeze	\$1,501,000	\$1,766,992	\$1,883,700
2. Oil Filters	\$7,353,500	\$8,326,524	\$8,747,200
3. Oil Containers	\$8,148,000	\$7,561,443	\$8,054,200
4. AMS Materials	\$17,002,500	\$17,654,959	\$18,685,100
5. Fertilizers	\$165,800	\$298,376	\$289,900
6. Paints/Coatings	\$14,441,100	\$14,550,489	\$14,590,600
7. Pesticides	\$113,000	\$250,224	\$250,200
8. Solvents	\$884,400	\$891,540	\$1,240,200
9. PCA Materials	\$15,604,300	\$15,990,629	\$16,370,900
Total ISO Amounts	\$32,606,800	\$33,645,588	\$35,056,000

Returning Surplus Funds to Stewardship Ontario in the event of a delay in MHSW Program transition

- According to the Minister's direction, the surplus fund transfer agreements must include a provision for ISOs to return surplus funds to SO to cover reasonable unexpected costs in the event of a program extension
- SO has provided a preliminary estimate of each material category's share of a potential general wind up cost increase totaling **\$2.235M** based on a potential **18-month** delay in termination
- The ISO-SO share of the unfunded cost of program extension would be determined by the same allocation methodology (aka "share splits") used to determine the ISO share of material-specific surplus funds
- 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



Returning Surplus Funds to Stewardship Ontario in the event of a delay in MHSW Program transition

	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
4. Subtotal	\$939,800	\$185,400	\$754,400	\$159,300	\$780,500
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
9. Subtotal	\$772,200	\$25,800	\$746,400	\$25,200	\$747,000
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
13. Subtotal	\$523,000	\$523,000	\$0	\$523,000	\$0
14. Total	\$2,235,000	\$734,200	\$1,500,800	\$707,500	\$1,527,500

In the event of an 18-month delay, the following amounts could be required to be recovered by SO:

Product Care Association:
\$747,000*

Automotive Materials
Stewardship:
\$780,500*

****Note that the SO and ISO shares of unfunded program extension cost (Columns D and E) use the share allocation based on forecasted Steward Fee Revenue***

Questions

Do you have any questions regarding:

- The amount of the 100% lump sum transfer?
- The reserve share allocation methodology to determine the “ISO-SO share split”?
- SO’s recovery of reasonable unexpected costs related to the materials managed by the ISOs?



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SO-ISO Surplus Fund Transfer Agreement Development Process

SO-ISO Surplus Fund Transfer Agreement Development Process

- The Approved MHSW Wind Up Plan and April 2020 Minister's directions require that SO enter into surplus fund transfer agreements with ISOs prior to the transfer of any surplus funds
- The transfer agreements are the mechanism to ensure that fee reductions required by the wind up plan are implemented in accordance with both the plan and related Ministerial directions
- Since receiving the April 2020 Minister's directions, SO and the ISOs have been negotiating to draft surplus fund transfer agreements consistent with Ministerial directions, the approved MSHW Wind Up Plan, and the WDTA



ISO Surplus Fund Transfer Agreements

Key SO recommendations:

1. Specify the amount to be transferred to the ISOs as a 100% lump sum surplus fund transfer, consistent with the 2019 financials provided in the proposed Addendum
2. Identify minimum amounts ISOs must place in restricted reserves for potential recovery by SO in the event of a delay in transition to the RRCEA
3. Define a list of reasonable unexpected costs recoverable by SO from ISOs in the event of a program extension:
 - a) Require RPRA to approve the amount of any SO costs recoverable from ISOs in the event of a dispute between SO and the ISO as to the legitimacy of those costs
4. Include a provision that any surplus funds transferred by SO to an ISO, subject to conditions associated with restricted reserve funds, be passed on to ISP members as fee reductions

ISO Surplus Fund Transfer Agreements

Key SO recommendations:

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 members 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 ISO Surplus Fund Transfer Agreements

- Finalization of the SO-ISO Surplus Fund Transfer Agreements cannot occur until the Authority approves SO's proposed ISO Surplus Fund Transfer Addendum
- The SO-ISO Surplus Fund Transfer Agreements will need to be consistent with any conditions to the Addendum required by the Authority
- It is the Minister's expectation that SO transfer the lump sum payments to the ISOs within two weeks of the Addendum being approved by the Authority
- SO-ISO Surplus Fund Transfer Agreements will need to be in place to facilitate the transfer of the surplus funds prior to their disbursement

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Clarifying Amendment to MHSW WUP Residual Fund Addendum

Clarifying Amendment to MHSW WUP Residual Fund Addendum

Stewardship Ontario is proposing that Page 3 of the Residual Funds Addendum be amended by adding a fifth clause:

“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.”

Rationale:

- Ensures that existing ISOs do not have an unfair market advantage in transitioning to the *Resource Recovery and Circular Economy Act, 2016*
 - Tying eligibility for a residual funds disbursement to future ISO membership would create a financial incentive for members to stay with existing ISOs under the new statute.
- Reinforces that any residual funds disbursements made by ISOs or SO to Stewards or former Stewards must be made on a cash basis
- Ensures closure on funding issues in relation to existing ISO and Stewardship Ontario operations under the WDTA
 - Removes any perception of required membership in the organization (after termination of the MHSW Program) to receive residual funds



Summary

Summary of SO's Proposed ISO Surplus Fund Transfer Addendum to the MHSW WUP

1. Amount of the 100% lump sum transfer to the ISOs will be based on audited 2019 financials and not the estimates published in the MHSW Wind Up Plan.
2. If there is a delay to the MHSW Program transition, SO will be able to recover “reasonable unexpected costs” related to materials managed by the ISOs. The estimated amounts to be recovered in the event of an 18-month transition delay will be defined within the Surplus Fund Transfer Agreements between SO and the ISOs.
3. Key terms to be included in the SO-ISO Surplus Fund Transfer Agreements, consistent with Ministerial directions, the approved MHSW Wind Up Plan and the approved ISO Surplus Fund Transfer Addendum.
4. Clarifying amendment to MHSW Residual Fund Addendum requiring that residual funds must be returned to Stewards or ISO members in the form of a payment and not as a credit that can be accessed at a later date.



Questions and Feedback

Do you have any questions regarding:

- The amount of the 100% lump sum transfer?
- SO's recovery of reasonable unexpected costs related to the materials managed by the ISOs?
- SO-ISO Surplus Fund Transfer Agreements?
- The clarifying amendment to the MHSW Residual Fund Addendum?

RPRA is also requesting stakeholder feedback on the use of a reserve share allocation methodology based on SO and ISO fee revenue or tonnage supplied.



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Next steps

- A recording of this webinar, the presentation slides and SO's Proposed ISO Surplus Fund Transfer Addendum will be emailed to webinar participants
- You can provide your feedback by emailing your comments to consultations@rpra.ca until **June 17, 2020**
- Final approval of The ISO Surplus Fund Transfer Addendum to the MHSW WUP will be considered by the Authority no later than **June 25, 2020**
- The materials from this consultation as well as the [MHSW Wind Up Plan](#) and all other documents relating to the wind up of the MHSW Program will be available on the Authority's website: <https://rpra.ca/consultations/mhsw-wind-up-plan/>