

Product Care-Municipal ISP Materials Services Agreement

THIS AGREEMENT is made as of the 30th day of June, 2015.

BETWEEN:

**PRODUCT CARE ASSOCIATION
("PCA")**

- and –

THE CORPORATION OF THE TOWN OF FORT FRANCES

collectively, the "Parties"

WHEREAS:

- A. By letter received by Waste Diversion Ontario December 12, 2006, the Minister of the Environment for the Province of Ontario required Waste Diversion Ontario ("WDO") to develop a waste diversion program for municipal hazardous or special waste ("MHSW") and that Stewardship Ontario ("SO") act as the Industry Funding Organization ("IFO") for the program;
- B. SO, at the direction of and in cooperation with WDO, developed a municipal hazardous or special waste program plan for 9 materials (the Phase 1 materials), which was approved for implementation by the Minister of the Environment by letter dated February 19, 2008;
- C. SO and the Municipality are parties to an agreement as amended (the "SO Phase 1 Agreement") concerning the provision of certain services by the Municipality to SO concerning the Phase 1 materials.
- D. On December 10, 2014 WDO approved PCA's Industry Stewardship Plan for Paints and Coatings pursuant to the provisions of s. 34 of the *Waste Diversion Act, 2002*.
- E. On March 25, 2015, WDO designated June 30, 2015 as the effective date of the ISP. .
- F. PCA and the Municipality wish to enter into an agreement concerning the provision of certain services by the Municipality to PCA concerning the Phase 1 material which is paints and coatings, and the containers in which they are contained as defined by the ISP.

NOW THEREFORE in consideration of the premises, the parties hereto agree as follows:

1.0 Definitions and Interpretation

1.1. Terms beginning with capital letters and used herein without definition shall have the meanings given to them in either the *Waste Diversion Act, 2002* (Ontario) or the *Municipal Act, 2001* (Ontario), as the case may be unless otherwise specified.

1.2. In this Agreement:

- (a) **“Agreement”** means this Agreement and includes all schedules and amendments thereto;
- (b) **“Business Day”** means Monday through Friday, excluding statutory holidays and any other day that the Government of Ontario has elected to be closed for business;
- (c) **“Claims Submission”** means submission to PCA of data required to validate claim for payment;
- (d) **“Collection Services”** means all the activities, including those conducted at Events and Depots operated by or on behalf of the Municipality, for the purpose of receiving, classifying, packing, storing and transferring ISP Materials onto transportation vehicles, including the manifesting of the MHSW prior to transportation away from the Event or Depot;
- (e) **“Commingled Materials”** means the ISP Materials listed in Schedule E that can be safely packed together for transportation as per the Packing Standards;
- (f) **“Current Price”** means the price for Post Collection Services for Commingled Materials in effect as of April 1, 2015 or subsequently approved by PCA;
- (g) **“Depot”** means a collection and transfer facility/location operated by or on behalf of the Municipality for receiving MHSW from the public and/or Exempt Small Quantity IC&I Generators and transferring same to transporters for processing or recycling;
- (h) **“Diversion Report”** means invoices, MHSW material tonnage reports, or other such documents as may reasonably be required by PCA from time to time for the validation of Claims Submissions;
- (i) **“End Processor”** means a Service Provider that processes collected ISP Materials;
- (j) **“Event”** means a one-day or other collection event, operated by or on behalf of the Municipality to collect, pack, transport, weigh, and process ISP Materials from the public and/or Exempt Small Quantity IC&I Generators;
- (k) **“Exempt Small Quantity IC&I Generator” or “Exempt SQG”** means a business that is not required to submit a Generator Registration Report with respect to MHSW under subsection 18 (1) of Regulation 347, made under the *Environmental*

Protection Act (Ontario), as amended from time to time;

- (l) **“FOB”** means free on board;
- (m) **“Generator”** means the final user who generates waste which will be reused, recycled or disposed;
- (n) **“Industry Stewardship Plan” or “ISP”** means the PCA Paints and Coatings waste diversion program dated May 23, 2014 as it applies to Phase 1 materials approved by Waste Diversion Ontario on December 10, 2014 to commence on the ISP Effective Date, pursuant to section 34 of the *Waste Diversion Act, 2002* (Ontario), and any amendments thereto and replacements thereof;
- (o) **“ISP Materials”** means paints and coatings, and the containers in which they are contained as defined in the ISP;
- (p) **“ISP Services”** means the Collection Services and/or Post-Collection Services provided by the Service Provider for the ISP Materials;
- (q) **“ISP Effective Date”** means June 30, 2015.
- (r) **“Lab Pack Audit”** means a lab pack study conducted by a third party, with optional observation by no more than two representatives of the Member Associations at their discretion, that follows a methodology designed by SO with input from Member Associations to achieve a high level of statistical confidence, the results of which, after providing an opportunity for representatives of the Member Associations to review them in confidence, are used to determine the proportionate share of each Commingled Material to be paid by PCA as set out in this Agreement;
- (s) **“Manifesting”** means those activities associated with preparing a manifest for Post-Collection Services in accordance with Regulation 347 made under the *Environmental Protection Act* (Ontario);
- (t) **“Member Associations”** has the meaning set out in Section 4.3;
- (u) **“Minister”** means the Minister of the Environment and Climate Change for the Province of Ontario;
- (v) **“Non-Commingled Materials”** means the materials listed in Schedule E that must be packed separately for transportation as per the Packing Standards;
- (w) **“Obligated MHSW”** means MHSW designated as Phase 1 in the Minister’s program request letter to Waste Diversion Ontario received on October 25, 2010 requesting a revised waste diversion program for Phase 1 MHSW and as may be further defined by the Minister from time to time;
- (x) **“Packing Standards”** means the Waste Packing Protocols listed in Schedule “E” as amended by PCA from time to time;
- (y) **“PCA Portal”** means PCA’s online system for uploading Claims Submissions.

- (z) **“Post-Collection Services”** means the management of ISP Materials after delivery of such ISP Materials to a transportation Service Provider FOB the Event or Depot location, including but not limited to transportation of ISP Materials from Events and Depots, consolidation, sorting, weighing, processing, recycling, and safe disposal of residual waste and other post-collection waste management activities;
- (aa) **“Service Provider”** means the Municipality and/or a commercial party that provides ISP Services to PCA or the Municipality as the case may be; and

2.0 ISP Services

- 2.1. Schedule “A” to this Agreement sets out schematically three different service location types for the provision of MHSW Services by the Municipality to PCA. These are as follows:

- (a) Depot
- (b) Event
- (c) Event (and transportation to Depot).

For the purpose of this Agreement, PCA and the Municipality have agreed that the service location types marked with an “X” below will be the ones under which the Municipality will provide ISP Services to PCA.

[] Depot

[X] Event

[] Event (and transportation to Depot)

- 2.2. PCA and Municipality may agree in writing at any time to change the service location type under which Municipality is providing ISP Services to PCA herein to the other service location type listed above and described in Schedule “A” hereto or to add another service location type, and this Agreement shall be deemed to have been amended accordingly.
- 2.3. The Parties recognize that there may be changes, including addition or removal of some materials, to the ISP. In the event of such changes, either Party may request appropriate amendments to this Agreement to reflect those changes, and the Parties will negotiate same in good faith, failing which the matter will be resolved by arbitration in accordance with the provisions hereof.
- 2.4. In the event that PCA submits to WDO a new Industry Stewardship Plan for other Obligated MHSW, then PCA shall provide to the Municipality at least 90 days before the effective date of the new Industry Stewardship Plan, a proposal for an amendment to this Agreement.

3.0 Price and Payment

3.1. Price

- (a) ISP Materials Services – Depot. As described in Schedule “A” hereto, PCA will pay for MHSW Services provided by the Municipality as follows:
- (i) PCA will pay the Municipality the hourly rate as set out in Schedule “C” for the Total Reimbursable Hours of Operation as specified in Schedule “B” for the Collection Services.
 - (ii) PCA will pay the Municipality PCA’s proportionate share (weight of ISP Materials as a proportion of total weight of transported MHSW) of the Post- Collection Services transportation costs for the Commingled Materials to a maximum of the Current Price as defined in Section 3.6 of this Agreement. The proportionate share will be based on the most recent Lab Pack Audit conducted by or on behalf of by an authorized representative of PCA.
 - (iii) Post-Collection Services for Non-Commingled ISP Materials collected at Depots will be paid directly to Service Providers by PCA as part of the PCA Municipal Depot Transportation and Processing Incentive Program (“MDTPIP”)
- (b) ISP Materials Services - Event. As described in Schedule “A” hereto, PCA will pay for MHSW Services provided by the Municipality as follows:
- (i) PCA will pay the Municipality an amount per tonne as set out in Schedule “C” for the Collection Services and Post-Collection Services for Events approved by PCA in accordance with Schedule “B”. The actual weight of the ISP Materials as determined by the Service Provider providing the Post-Collection Services will be used. PCA will pay the Municipality PCA’s proportionate share (weight of ISP Materials as a proportion of total weight of transported MHSW) for the Commingled Materials. The proportionate share will be based on the most recent Lab Pack Audit conducted by or on behalf of by an authorized representative of PCA.
- (c) ISP Materials Services – Event (and transportation to Depot). As described in Schedule “A” hereto, PCA will pay for MHSW Services provided by the Municipality as follows:
- (i) PCA will pay the Municipality an amount per tonne as set out in Schedule “C” for the Collection Services and transportation of ISP Materials to a Depot for Events approved by PCA in accordance with Schedule “B”. The actual weight of the ISP Materials as determined by the Service Provider providing the Post-Collection Services will be used. PCA will pay the Municipality PCA’s proportionate share (weight of ISP Materials as a proportion of total weight of transported MHSW) for the Commingled Materials. The proportionate share will be based on the most recent Lab Pack Audit conducted by or on behalf of by an authorized representative of PCA.

- (ii) PCA will pay the Municipality for Post-Collection Services (transportation from Depot and end processing) as set out in Section 3.1(a)

3.2. Payment

(a) ISP Materials Services – Depot.

- (i) For Depot Collection Services payable pursuant to Section 3.1(a)(i), PCA will pay the Municipality pursuant to this Agreement within thirty (30) days of the end of each calendar month.
- (ii) To receive payment for Depot Post-Collection Services for the Commingled Materials, the Municipality must upload a Claims Submission via the PCA Portal and send PCA a copy of the shipping manifest(s) and Diversion Report(s) from the End Processor with respect to the Commingled Materials. The Claims Submission is to be submitted by Municipality to PCA within thirty (30) days of Municipality receiving the related Diversion Report(s) but no later than the end of the following calendar quarter. PCA will validate the Claims Submission with the manifest(s) and Diversion Report(s) received from Municipality within thirty (30) days of receipt and PCA will pay the Municipality pursuant to this Agreement within thirty (30) days of the date on which PCA determines the claim to be correct and accurate. If any errors or omissions are found, PCA will issue a payment adjustment and PCA may require a corrected Claims Submission from the Municipality.

(b) ISP Materials Services - Event.

- (i) To receive payment for Event Collection Services and Post-Collection Services, the Municipality must upload a Claims Submission via the PCA Portal and send PCA a copy of the shipping manifest(s) and Diversion Report(s) from the End Processor with respect to the ISP Materials. The Claims Submission is to be submitted by Municipality to PCA within thirty (30) days of Municipality receiving the related Diversion Report(s) but no later than the end of the following calendar quarter. PCA will validate the Claims Submission with the Diversion Report(s) received from Municipality within thirty (30) days of receipt and PCA will pay the Municipality pursuant to this Agreement within thirty (30) days of the date on which PCA determines the claim to be correct and accurate. If any errors or omissions are found, PCA will issue a payment adjustment and PCA may require a corrected Claims Submission from the Municipality.

(c) ISP Materials Services – Event (and transportation to Depot).

- (i) To receive payment for Event Collection Services and transportation of ISP Materials to a Depot, the Municipality must upload a Claims Submission via the PCA Portal and send PCA a copy of the shipping manifest(s) with respect to the ISP Materials. The Claims Submission is to be submitted by Municipality to PCA within thirty (30) days of Municipality receiving the related manifest(s) but no later than the end of the following calendar quarter.

PCA will validate the Claims Submission with the manifest(s) received from Municipality within thirty (30) days of receipt and PCA will pay the Municipality pursuant to this Agreement within thirty (30) days of the date on which PCA determines the claim to be correct and accurate. If any errors or omissions are found, PCA will issue a payment adjustment and PCA may require a corrected Claims Submission from the Municipality.

- 3.3. Municipality will provide any additional back-up/supporting information reasonably requested by PCA to verify the accuracy of the Claims Submissions from time to time.
- 3.4. The Municipality will not charge residential Generators of ISP Materials for collection of ISP Materials at its Depots or Events.
- 3.5. Late Submission Penalties
 - (a) PCA may reduce amounts payable under Claims Submissions which are not submitted to PCA within the time periods set out in section 3.2(a)(ii), (b) and (c) by five (5%) per cent per month. PCA will have no responsibility to pay and Municipality will forfeit the right to claim for, any Claim Submission in respect of a calendar year which is not received by PCA within three (3) months of the end of that calendar year.
- 3.6. Within seven days of execution of this Agreement, and if the Municipality is providing Depot Collection Services, the Municipality shall provide to PCA a schedule of Current Prices. The Municipality shall not submit a Claim Submission to PCA for Post-Collection Services, and PCA shall not pay for Post-Collection Services, at a price higher than the Current Price without the Municipality first obtaining prior written approval from PCA. The Municipality shall request in writing to PCA approval for a price change, providing the number of bids, the accepted bid prices, the lowest bid prices (keeping the name of the bidder confidential if required), and any changes to the Current Price.

For greater certainty, payments made subject to section 3.2(a)(ii) shall not exceed the Current Price.

4.0 Term

- 4.1. The initial term of this Agreement will be for a period commencing on ISP Effective Date and unless otherwise extended or terminated earlier in accordance with the provisions of this Agreement shall continue for eighteen (18) months ending on December 31, 2016.
- 4.2. At the expiry of the Initial Term this Agreement will automatically renew for successive renewal terms (each a "Renewal Term") of twelve (12) months each unless written notice of termination is provided by either party to the other party at least ninety (90) days prior to the expiry of the Initial Term or the then current Renewal Term, as applicable. The Initial Term and if applicable, any Renewal Terms, are referred to as the "Term" of this Agreement.
- 4.3. At least one hundred and fifty (150) days prior to the expiration of the Initial Term or the

then current Renewal Term (as applicable) PCA will invite representatives from the Regional Public Works Commissioners of Ontario, the Association of Municipalities of Ontario, and the Municipal Waste Association (the "Member Associations") to meeting(s) hosted by PCA with the purpose of sharing any changes to the Lab Pack Audit methodology and results, and to discuss possible changes to the Collection Accessibility Schedules and Payment for Collection Services as set out in Schedule "B" and Schedule "C" respectively. PCA's position on changes to Schedule "B" and Schedule "C" following the foregoing meeting(s) will be communicated to the Municipality within one hundred and twenty (120) days of the expiration of the Initial Term or the then current Renewal Term (as applicable).

5.0 Title and Compliance with Laws

- 5.1. Title to all ISP Materials collected by Municipality at Events and Depots will belong to PCA from the time of collection, and whether the ISP Materials is transported to the End Processor by the Municipality's Service Providers or PCA's Service Providers. Any contract entered into between Municipality and an End Processor for ISP Materials must provide that title transfers to the End Processor in accordance with the Processor Standards in Schedule "E", as amended from time to time. Notwithstanding the foregoing, if the Municipality operates a reuse program for any ISP Materials, title to the ISP Materials being reused shall transfer to municipality one (1) second prior to being given to the person or entity requesting it for reuse purposes.
- 5.2. In performing the MHSW Services hereunder, Municipality represents and warrants that it will at all times, and will require its service providers to, have all Certificates of Approval/Environmental Compliance Approval and any other approvals required and that it will otherwise comply at all times and require its service providers to comply, with all applicable laws, regulations and requirements of any governmental authority having jurisdiction, including without limitation the Ontario Ministry of the Environment and Climate Change and the Ontario Ministry of Labour.

6.0 PCA Policies, Standards and Guidelines

- 6.1. PCA may develop or propose amendments, from time to time, to policies, standards and guidelines relative to the provision of ISP Services. PCA will endeavour to provide the Member Associations sufficient time to comment on the proposed amendments for the purposes of reaching consensus in support of implementing the proposed amendments, and for clarifying potential impacts to the Municipality.
- 6.2. The PCA ISP Collection Site Standards in effect at the time of entering into this Agreement are included in Schedule "E".
- 6.3. Municipality will use best efforts to comply with and will require that any of its contractors supplying ISP Services use best efforts to comply with, the provisions of all such policies, standards and guidelines as they pertain to the provision of the ISP Services. PCA will communicate any new or amended such policies, standards and guidelines to Municipality via the email in section 10 and will post copies of such new or amended policies, standards and guidelines on PCA's website as they are developed.
- 6.4. Municipality may provide written notice within thirty (30) days of receiving such

communication that it does not wish to comply with a new or amended policy, standard or guideline, and in the event that the Municipality provides such written notice either Party may exercise the termination provisions of 19.4(b).

7.0 Promotion and Education

- 7.1. Proper education and promotion of the ISP is essential to its success. Municipality will work cooperatively with PCA in undertaking such promotion and education activities with respect to the ISP and collection of the ISP Materials as set out in Schedule “D” and as may otherwise be reasonably requested by PCA from time to time.

8.0 Indemnity and Insurance

- 8.1. Each party (the “Indemnifying Party”) hereby indemnifies and saves harmless the other party (the “Indemnified Party”) on its behalf and as trustee for, its respective council members, directors, officers, contractors, employees and agent, from and against any and all manner of actions or causes of actions, damages (but not including consequential damages), costs, loss or expenses of whatever kind (including related legal fees on a full indemnity basis) which the Indemnified Party, its council members, directors, officers, contractors, employees and agents may sustain, incur or be put to by reason of or directly or indirectly arising out of any breach of this Agreement by the other party or any wilful misconduct or negligence of the Indemnifying Party or any person for whom the Indemnifying Party is, at law, responsible, in relation to matters arising out of this Agreement.
- 8.2. The Municipality will, during the term of the Agreement, self-insure, maintain at its expense and/or require any Service Provider to maintain at either the Municipality’s or Service Provider’s expense Comprehensive General Liability coverage with limits of not less than \$5,000,000 (five million dollars) per occurrence. For clarity, only the Municipality can self-insure.
- 8.3. The Comprehensive General Liability policy of insurance referred to in this section will include PCA as an additional insured.
- 8.4. Unless the Municipality wholly self-insures, the Municipality will deliver a copy of Certificate(s) of Insurance maintained by the Municipality or a Service Provider pursuant to this Agreement, upon the effective date of this Agreement, and annually upon renewal of the Municipality or Service Provider’s insurance, naming PCA as an additional insured with the following language:

“Product Care Association and its affiliated entities, officers, partners, directors, employees, representatives and agents are included as Additional Insureds for Comprehensive General Liability. Such coverage is primary and non-contributing.”

If the Municipality wholly self-insures, the Municipality will deliver a letter stating such self-insurance to PCA upon the effective date of this Agreement, and annually upon each automatic renewal of this Agreement.

- 8.5. The Certificate(s) of Insurance, referred to in subsection 8.4, must also provide that PCA will be provided with thirty (30) days advance written notice of cancellation, termination, non-renewal or material change.

9.0 Assignment

- 9.1. The Municipality may not subcontract or assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of PCA.
- 9.2. Notwithstanding subsection 9.1, the Municipality may assign any of its rights or obligations under this Agreement or any part thereof without the prior written consent of, but with written notice to, PCA:
- (a) from a Lower-tier Municipality to an Upper-tier Municipality or vice versa;
 - (b) to a municipal service board pursuant to sections 194 to 202 of the Municipal Act, 2001, as amended; or
 - (c) to a municipal business corporation pursuant to section 203 of the Municipal Act, 2001, as amended

10.0 Notices

Any notice, request, demand or other instrument or communication herein provide, permitted or required to be given by either PCA or the Municipality will be in writing and sufficiently given if delivered personally, by facsimile transmission or other electronic means of written communication tested prior to transmission to the extent such testing is available (unless otherwise expressly provided herein) or if sent by registered mail to the following respective address hereinafter set out, namely:

Notices to PCA will be delivered to:

President
Product Care Association
105 West 3rd Avenue
Vancouver BC V5Y1E6
Facsimile: 604-592-2982
Email: contact@productcare.org

Notices to The Municipality will be delivered to:

Operations & Facilities Manager
THE CORPORATION OF THE TOWN OF FORT FRANCES
320 Portage Avenue
Fort Frances, ON
P9A 3P9
Fax: (807) 274-7360
Email: dbrown@fort-frances.com

Any such notice if delivered personally, by facsimile transmission or by other electronic means will be conclusively deemed to have been given on the day of personal delivery, or facsimile transmission or electronic communication (and if after 5 p.m. E.T. the next following Business Day), or if mailed as aforesaid, will be conclusively deemed to have been received on the fifth (5th) business day following the day on which such notice is mailed as aforesaid (except during a postal strike in which case such notice shall be delivered via courier). Either party may, at any time, give written notice to the other of any change of address (postal and/or email) of the party giving such notice and from and after the giving of such notice the address therein specified shall (in the absence of knowledge to the contrary) be deemed to be the address of such party for the giving of notices thereafter.

11.0 No Partnership or Joint Venture

- 11.1. This Agreement does not create and will not in any circumstances create or be deemed to create a partnership or joint venture between the parties. For all purposes Municipality will be an independent contractor.

12.0 Severability

- 12.1. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct. To the extent that any such provision is found to be invalid, illegal or unenforceable, the parties hereto will act in good faith to substitute for such provision, to the extent possible, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

13.0 Amendment and Waivers

- 13.1. No amendment or waiver of any provision of this Agreement will be binding on any party unless consented to in writing by such party. No waiver of any provision of this Agreement will constitute a waiver of any other provision, and no waiver will constitute a continuing waiver unless otherwise provided.

14.0 Further Acts

- 14.1. Each party will execute all such documents and do all such other acts and things as may be necessary or desirable from time to time in order effectively to carry out the provisions of this Agreement and will not to take any action, or omit to take any action, that would constitute a breach of this Agreement.

15.0 No Third Party Beneficiaries

- 15.1. No person or entity which is not a party hereto will have any rights or obligations pursuant to this Agreement or be permitted to place any reliance on anything in this

Agreement or on the continuation of this Agreement.

16.0 Counterparts and Facsimile

- 16.1. This Agreement may be executed in counterparts, and may be transmitted by facsimile or secure electronic document (PDF) each of which will constitute an original and all of which taken together will constitute one and the same instrument.

17.0 Force Majeure

- 17.1. In the event that either party hereto is delayed or hindered in the performance of any act required herein by reason of Acts of God, riots, insurrection, war or other reasons of a like nature not the fault of such party (an "Event of Force Majeure"), then the performance of such act will be excused for the period of the delay and the period for performance of any such act will be extended for a period equivalent to the period of such delay. The party whose performance of this Agreement is or may reasonably be expected to be affected by an Event of Force Majeure will promptly notify the other party of the existence of such circumstances and will use its best efforts to resume and complete performance. Whenever a party is reasonably certain that such an Event of Force Majeure is likely to occur, it will notify and consult with the other party as soon as practicable. All time periods for the performance of obligations hereunder will be extended by a period corresponding to the time period of any delay caused by the occurrence of an Event of Force Majeure.

18.0 Dispute Resolution

- 18.1. All disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, that cannot be resolved within thirty (30) days by a senior representative of each party, will upon written notice by any party to the others be arbitrated and finally resolved by one (1) arbitrator qualified by education, experience or training to render a decision upon the issues in dispute and who has not previously been employed by any party or any of their affiliates, and does not have a direct or indirect interest in any party or the subject matter of the arbitration. Such arbitrator will either be mutually agreed upon by the parties within thirty (30) days after written notice from any party requesting arbitration or, failing agreement, Waste Diversion Ontario may appoint the arbitrator on behalf of the Parties after receiving written submissions from both.

19.0 Termination

- 19.1. If, in the reasonable opinion of either party, there has been a breach of this Agreement by the other party (the "defaulting party"), the Municipality or PCA (the "party giving notice") may give the defaulting party written notice to remedy the breach or default within sixty (60) days, failing which the Agreement may be terminated. In the event that the remedy of such breach reasonably requires more than sixty (60) days, the defaulting party will so advise the party giving notice forthwith and provide a revised timetable for remedying the breach. The party giving notice will notify the defaulting party in writing as to whether the revised time line is acceptable and, if it is, the revised

time line to remedy such breach will apply.

- 19.2. On the date of termination neither party shall have any obligations, financial or otherwise, hereunder save and except for matters and payment obligations arising prior to the date of termination.
- 19.3. Either Party may terminate this Agreement for any reason whatsoever save and except for matters arising from sections 19.1 & 19.4, without cause, cost or penalty, save and except for matters arising prior to termination, upon providing the other Party with ninety (90) days prior written notice of its intention to terminate this Agreement.
- 19.4. Either Party may terminate this agreement immediately upon written notice to the other Party, except as expressly stated, if:
 - (a) Either Party assigns or subcontracts any of its rights or obligations under this Agreement or any part thereof except as expressly provided for herein; or
 - (b) the Municipality provides written notice that it will not comply with any new or amended policies, standards and guidelines developed by PCA as per section 6.4; or
 - (c) the Municipality fails to keep the terms of this Agreement confidential as per section 26.1, in such instances only PCA may terminate this agreement; or
 - (d) a receiver or trustee is appointed for any part of the assets of PCA.

20.0 Survival

- 20.1. Articles 8, 19.2 and 26 of this Agreement will survive termination or expiry and continue in full force and effect.

21.0 Additional Conditions

- 21.1. The parties shall execute such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

22.0 Entire Agreement

- 22.1. This Agreement constitutes the entire agreement between the parties with respect to all of the matters herein and supersedes and replaces all previous agreements, whether oral or written, concerning the same or similar subject matter.

23.0 Headings for Convenience Only

- 23.1. The division of this Agreement into articles and sections is for convenience of reference only and will not affect the interpretation or construction of this Agreement.

24.0 Governing Law

- 24.1. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the non-exclusive jurisdiction of the Courts of such Province.

25.0 Legislation References

- 25.1. Any reference in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body will be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

26.0 Confidentiality

- 26.1. Subject to any legal requirements, including those included in the *Municipal Act, 2001* and the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), Municipality will at all times treat Schedule "C" and the financial terms contained therein as private and confidential information. Notwithstanding the foregoing, Municipality may provide Schedule "C" and the financial terms contained therein to the Member Associations solely for the purpose of discussion with PCA as set out in section 4.3 of this Agreement.

To the extent permitted under MFIPPA, Municipality will inform PCA of any request made of Municipality under MFIPPA for any records related to this Agreement that may reveal a trade secret or scientific, technical, commercial, financial or labour relations information supplied in confidence by PCA to Municipality so that PCA will have an opportunity to make representations to Municipality with respect to the proposed disclosure.

27.0 Rights and Remedies

- 27.1. The rights, remedies and privileges in this Agreement given to the Parties:
- (a) are cumulative and any one or more may be exercised;
 - (b) are without prejudice to and are in addition to and apply notwithstanding any other provisions in this Agreement; and
 - (c) are not dependent or conditional upon, or in any way lessened, restricted or affected by any other provisions of this Agreement.

28.0 Schedules

28.1. Schedules "A" through "E" are attached hereto and incorporated in and form part of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first set out above.

PRODUCT CARE ASSOCIATION

by: _____

Mark Kurschner, President

THE CORPORATION OF THE TOWN OF FORT FRANCES

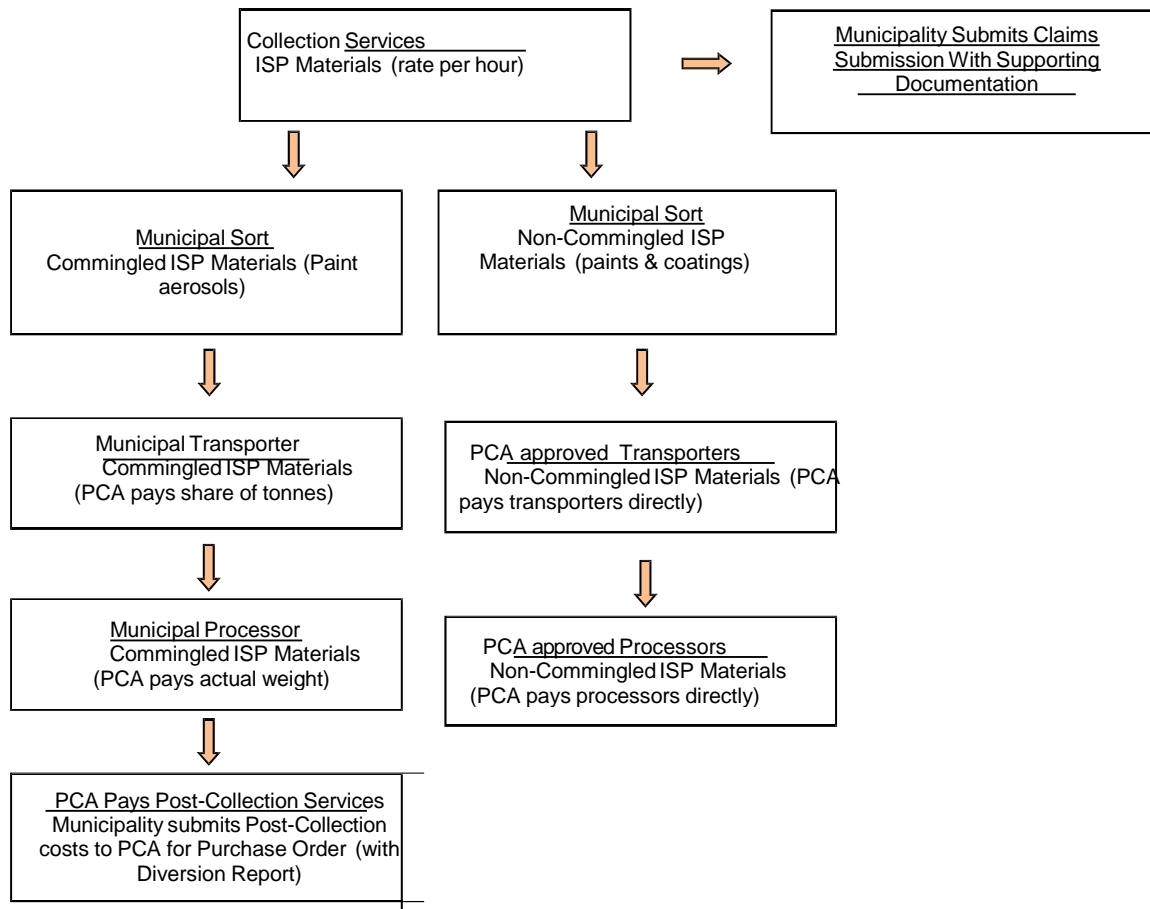
by: _____

Name: _____

Title: _____

SCHEDULE “A” – ISP SERVICES

DEPOT

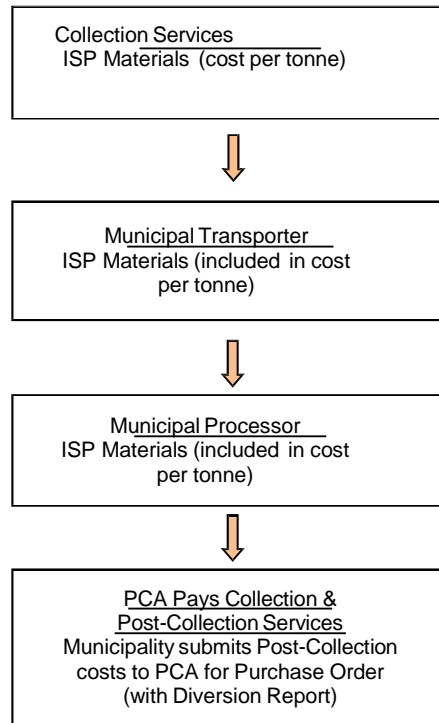


The Municipality or the Municipality's Service Provider provides Depot Collection Services for ISP Materials. PCA pays the Municipality an hourly rate for the Collection Services.

Commingled ISP Materials may be packed in transportation containers with other non-Phase 1 ISP Materials at municipal Depots as per Packing Standards. For Commingled ISP Materials, the Municipality is to contract for transportation and processing of such Commingled ISP Materials and PCA will pay its proportionate share of the transportation (by weight as determined by Lab Pack Audit) and processing (by actual weight) costs for the ISP Materials.

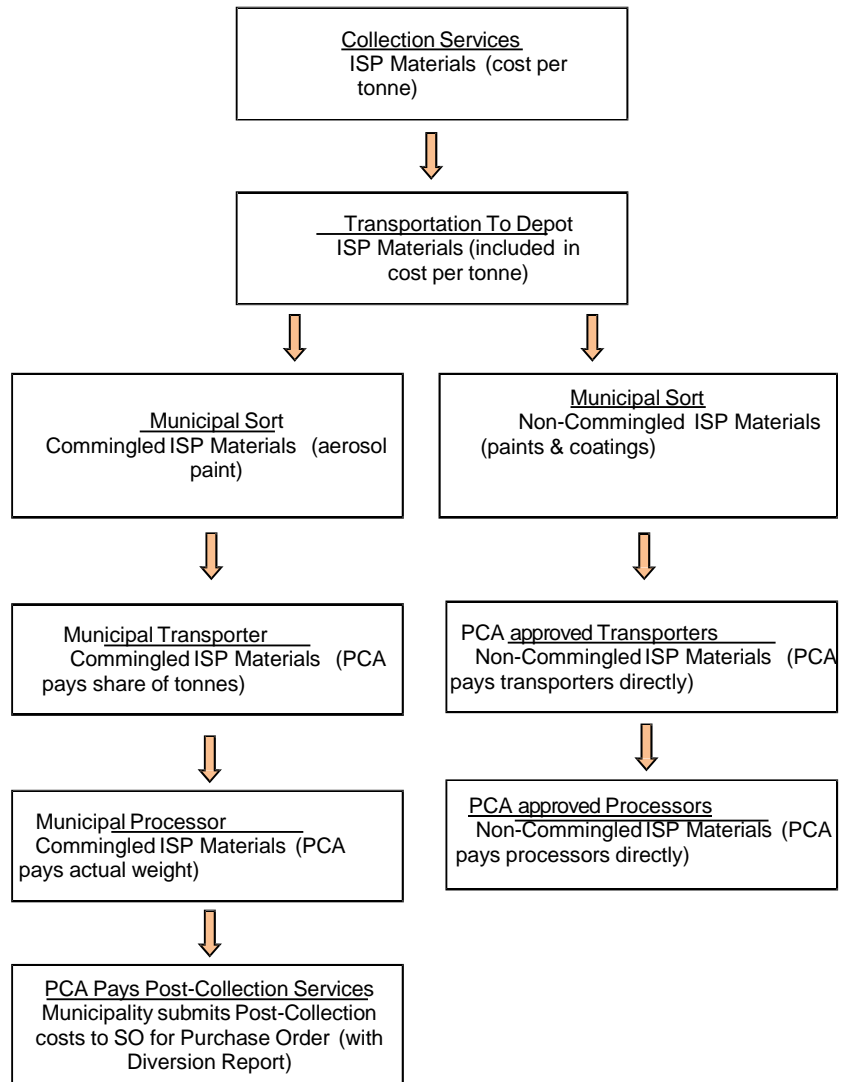
Non-Commingled ISP Materials are to be separately sorted by material as per Packing Standards by the Municipality at its Depots and made ready for pick-up by approved PCA transporters.

EVENT



The Municipality or the Municipality's Service Provider provides Event Collection Services for ISP Materials. The Municipality may combine Events with other activities, including collection of other Phase 1 and non-Phase 1 MHSW. PCA pays the Municipality a cost per tonne of ISP Materials as per Schedule "C" for the Collection and Post-Collection Services.

EVENT (and transportation to Depot)



The Municipality or the Municipality's Service Provider provides Event Collection Services for ISP Materials and transports the collected ISP Materials to a Depot. PCA pays the Municipality a cost per tonne.

Commingled ISP Materials may be commingled with other Phase 1 or non-Phase 1 MHSW materials at municipal Depots as per Packing Standards. For Commingled MHSW, the Municipality is to contract for transportation and processing of such Commingled MHSW and PCA will pay its proportionate share of the transportation (by weight as determined by Lab Pack Audit) and processing (by actual weight) costs for the Commingled ISP Materials.

Non-Commingled ISP Materials are to be separately sorted by material as per Packing Standards by the Municipality at its Depots and made ready for pick-up by an approved PCA transporter.

SCHEDULE "B" – COLLECTION SERVICES

Municipality will collect ISP Materials from its residents according to the following Collection Services.

Depots

MHSW Depot Name	Address	Days & Hours of Operation	Operating Season	Notes
Not Applicable				

Total Reimbursable Hours of Operation: _0_ hours

Events:

Municipality will use commercially reasonable efforts to submit Event Schedules to PCA for approval by March 31st of the calendar year in which the Events will be held, and in all cases will submit Event Schedules not less than sixty days prior to the next planned Event. Once approved by PCA, the updated information on Event Schedules will be deemed to be incorporated into this Agreement.

INITIALLED BY MUNICIPALITY: _____

SCHEDULE “C” – PAYMENT FOR COLLECTION SERVICES

PCA will pay the Municipality for ISP Materials Collection Services as follows:

For ISP Services – Depot, PCA will pay the Municipality the Hourly Rate (defined below) per hour plus applicable taxes for the Total Reimbursable Hours set out in Schedule “B”, to be paid in twelve (12) equal monthly instalments. For greater clarity, the monthly instalment will be calculated as Total Reimbursable Hours divided by twelve (12) and multiplied by the Hourly Rate.

The “**Hourly Rate**” is \$ 0.00.

For ISP Services – Event, PCA will pay the Municipality a rate of \$ 2200.00 per tonne of ISP Materials plus applicable taxes.

For ISP Services – Event (and transportation to Depot), PCA will pay the Municipality a rate of \$ 0.00 per tonne of ISP Materials plus applicable taxes.

INITIALLED BY MUNICIPALITY: _____

SCHEDULE “D” – PROMOTION & EDUCATION

The Municipality will actively promote the collection of ISP Materials and the PaintRecycle brand through municipal publications, events and activities that support the Municipality’s waste management strategy. The Municipality will not charge PCA for any promotion or education activities unless PCA has agreed to such charges in advance in writing. PCA’s decision not to pay for specific promotion and education activities does not discharge the Municipality from its obligation to inform the Municipality’s residents of its Collection Accessibility Schedules (see Schedule “B”).

PCA’s plan for promotion and education for the ISP Materials is outlined in s. 9 of the ISP.

If the Municipality has a waste management webpage then the Municipality may post the Collection Accessibility Schedules, the PaintRecycle logo and a link to <http://www.regeneration.ca/> on the aforementioned webpage at no cost to PCA.

The Municipality must submit to PCA draft copies of all publications using PCA trademarks and logos for approval, which PCA may withhold for any reason.

The Municipality, its employees and Service Providers will not engage in any activity that may cause or perceive to cause harm to Product Care Association or any brand owned by PCA, such as PaintRecycle.

The Municipality will periodically educate its residents about the BUDS message:

- Buy only what you need
- Use it all up
- Divert
- Safely dispose of the rest

SCHEDULE “E” – PCA STANDARDS

Commingled Materials

- Aerosols, as defined under Paints & Coatings that are ISP Materials;

Non-Commingled Materials

- Paints and Coatings, and containers in which they are contained, that are ISP Materials;

The following are PCA’s ISP Materials Collection Site Standards applicable to this Agreement as of the date of this Agreement. PCA will provide advance notice of proposed revisions to these standards to the Municipality in accordance with this Agreement. Revisions to these standards will be posted on [//www.regeneration.ca/service-partner-support/ontario/](http://www.regeneration.ca/service-partner-support/ontario/)



ISP Materials Collection Site Standards

Effective: June 30, 2015

To the extent that there is any conflict between these Product Care Association ISP Materials Collection Site Standards and the requirements of applicable laws and regulations, the requirements of applicable laws and regulations apply. The collection site operator is required to comply with the requirements of the applicable laws and regulations. For greater certainty, in the event that the Product Care Association standards impose requirements that are more stringent or additional to the requirements of applicable laws and regulations but do not conflict with such laws and regulations, the collection site operator is required to comply with the PCA standards as well as with applicable laws and regulations

Background:

PCA operates the Industry Stewardship Plan (“ISP”) to ensure certain hazardous and special wastes are collected and recycled or otherwise safely disposed of in an environmentally appropriate way.

Product Care Association was authorized by Waste Diversion Ontario to plan, implement and operate the ISP for paints and coatings, and the containers in which they are contained as defined in the ISP:

The ISP, rules and material definition can all be viewed on the PCA website at <http://www.regeneration.ca//service-partner-support/ontario/>

Purpose:

The ISP Collection Site Standards define the minimum operating requirements to qualify as a Product Care Association collection site for ISP Materials. All locations wishing to act as a collection site on behalf of PCA must be approved by PCA.

The ISP Collection Site Standards do not absolve collection sites from any federal, provincial and/or municipal legislation and regulations applicable to their operation. It is the collection site's responsibility to be aware of, and abide by, all such legislation and regulations.

PCA reserves the right to review and revise these standards on an ongoing basis. The most current version will be posted on the PCA website. PCA will, as a courtesy, provide notification of changes to active collection sites for which it has current email addresses; however, it is the collection site's responsibility to regularly check the PCA website for revisions.

Who this applies to:

For the purposes of these standards, a *Collection Site Operator* means the operator of a location at which ISP Materials are received from the public and/or a small quantity or IC&I generator, or via the site's internal operations from which a transporter will pick up ISP Materials and transport it to an approved ISP Materials processor. These standards apply to the following two types of collection sites:

1. **Type 1 sites:** Sites that receive a wide range of MHSW, and
2. **Type 2 sites:** Sites that collect only: Paints and coatings;

Enforcement of these Standards:

Collection site operators shall:

- Provide PCA with all reasonable information relating to these standards or any matter that relates to the ISP or procedures of PCA;
- Acknowledge that PCA has a right of access to any and all such information during normal business hours and on 24 hours' notice.

Moreover, PCA may verify compliance information provided by collection site operators, either directly or through a third party acting on its behalf. Please note that all parties acting on behalf of PCA are bound by strict confidentiality agreements.

1. General Requirements

All ISP Materials collection site operators shall:

- 1.1 Possess a valid business licence if they are a commercial operation.
- 1.2 Either self-insure, or possess comprehensive or commercial general liability insurance, including coverage for bodily injury, property damage, complete operations and contractual liability.

- 1.3 Identify and comply with all applicable legislation and approvals, including but not limited to:

Type 1 collection sites shall be:

- In possession of and in compliance with all terms in their MOECC Environmental Compliance Approval (ECA);
- Registered with the MOECC's Hazardous Waste Information Network (HWIN);
- In compliance with the Ontario *Environmental Protection Act, 1990* (including R.R.O. 1990, O. Reg. 347, General – Waste Management);
- In compliance with the federal *Transportation of Dangerous Goods Act* (TDGA);
- In compliance with applicable municipal zoning bylaws or other bylaws, such as fire codes, parking and hours of operation.
-

Type 2 collection sites shall be:

- In compliance with the Ontario *Environmental Protection Act, 1990* (including R.R.O. 1990, O. Reg. 347, General – Waste Management);
- In compliance with the federal *Transportation of Dangerous Goods Act*;
- In compliance with applicable municipal zoning bylaws or other bylaws, such as fire codes, parking and hours of operation.

- 1.4 Maintain a documented process to identify, assess and ensure compliance with this standard and all applicable legislative and regulatory requirements, including but not limited to:
- Environmental regulations, including permits or certifications for operating, air emissions, or other discharges;
 - Occupational health and safety regulations;
 - Hazardous waste management regulations (storage, handling).
- 1.5 Implement and maintain an emergency response plan to prepare for and respond to emergency situations including fires, spills and medical events.
- 1.6 Maintain all records for a minimum of two years or longer as required by law, including manifests, bills of lading and waste records.
- 1.7 Provide notice to PCA of any fines or regulatory orders in the previous five years and, going forward, within 60 days of any new fine or regulatory order as it relates to the ISP.

2. Occupational Health and Safety

All collection site operators shall:

- 2.1 Identify and comply with all applicable health and safety legislation, including but not limited to:
- *Employment Standards Act, 2000*;
 - *Occupational Health and Safety Act, 1990*;
 - *Workplace Safety and Insurance Act, 1997*;

- *Canada Labour Code.*
- 2.2 Possess workers' compensation coverage through either a provincial (WSIB) program or a private insurance policy.
 - 2.3 Be compliant with the Workplace Hazardous Materials Information System (WHMIS), including training requirements.
 - 2.4 Maintain an occupational health program that includes processes to safeguard the health and safety of employees by:
 - Providing regular documented health and safety training;
 - Providing and enforcing the correct use of personal protection equipment; and
 - Safeguarding hazardous mechanical processes.

3. Staff Training

All collection site operators shall:

- 3.1 Train staff on their emergency response plan.
- 3.2 Train staff to identify and pack ISP Materials in its appropriate waste class according to Waste Packing Protocols (refer to Appendix A).
- 3.3 Train staff to differentiate between ISP Materials that is eligible for collection services under the ISP and those that are not (refer to Appendix A).
- 3.4 Update staff training based on any changes made to the Collection Site Standards.
- 3.5 Document and maintain records of staff training.

4. Waste Packing Protocols

All collection site operators shall:

- 4.1 Pack waste according to the MOECC's waste classes and PCA Waste Packing Standards as outlined in Appendix A.
- 4.2 Ensure that ISP Materials are handled and stored as follows:

For Type 1 collection sites:

In accordance with the conditions laid out in their respective Environmental Compliance Approval and all applicable laws and regulations.

For Type 2 collection sites:

- Have the ability to receive wastes from the public in a controlled manner (direct supervision or monitored) in a customer drop-off area;
- Have adequate infrastructure to shelter material from inclement weather in

- a consolidation storage area;
 - Have sufficient space to receive, sort, store and prepare transportation containers for shipment:
 - Paints and coatings: minimum of eight (8) 205 L drums/two standard UN gaylord boxes or one week of paints and coatings received at each collection site;
 - As applicable, have material-handling equipment with the ability to move containers onto transport vehicles;
 - Be accessible to transport vehicles for pick-up of ISP Materials ; and
 - Have adequate security measures in place to prevent ISP Materials from being tampered with by anyone at the site or using the collection facility at unauthorized times.
- 4.3 All waste must be packed in an approved UN container¹ and all materials transported must be contained in accordance with TDGA requirements.
- 4.4 Transportation containers must be filled to capacity, except if this practice contravenes either a ministry order or the Collection Site Operator's Environmental Compliance Approval Storage Requirements. Transportation containers used at event days should be filled to capacity and it is understood the last container filled of the day may not be filled, it may be partially filled.
- 4.5 If applicable, make use of vermiculite in sufficient quantity to cover and protect the waste material from breakage when there is a potential for spillage or breakage of containers in a lab pack during transport:
- 4.6 Place large pails (25 litres or more) on skids and shrink wrap to prevent shifting of waste during transport. Alternatively, gaylord boxes may be used placing 25L pails on the bottom layer.
- 4.7 Contamination allowances
- The maximum contamination allowance is 5%. This is a weight-based allowance assessed on individual drums for a given waste class.
 - Contamination levels in transport containers (mis-packed ISP Materials, non-program wastes as identified in Appendix A) will be monitored by PCA or by its authorized agent through random sampling. ISP Materials collection site operators will be required to take corrective action if contamination allowances are exceeded. PCA reserves the right to apply a financial penalty to collection site operators who exceed the contamination allowance or revoke the collection site's approval status if corrective action is not taken as requested by PCA.

¹ Refers to containers that meet the requirements established by the United Nations Committee of Experts on the Transportation of Dangerous Goods; these requirements provide a uniform international system for identifying and packaging Class 3, 4, 5, 6.1, 8 and 9 dangerous goods for transport.

Appendix A –ISP Materials Packing Standards

Please note: This table references all ISP materials as approved in the Ontario Paint ISP Program. Product Care Association (PCA) requires that waste materials in each individual row (as numbered in the first column on the left) be packed separately (even though they may be packed under the same waste class)

#	Waste Class / UN#	Sorting Requirements	Examples of Inclusions	Examples of Exclusions	Instructions	Eligible Generators
1	Aerosols - 331 UN 1950	Commingled¹	<ul style="list-style-type: none"> Includes paints and coatings, managed through PCA's ISP program and waste not managed through PCA's ISP program that are packaged under pressure in a non-refillable self-closing container that contains a propellant in gaseous form. 	<ul style="list-style-type: none"> Pressurized containers (refillable or non-refillable) Fire extinguishers (including in aerosol format) Inhalers Hair Spray Insect Repellent 		<ul style="list-style-type: none"> Residential Designated IC&I Businesses (small quantity generator)

9	Paints, Stains and Coatings - 145	Non-Commingled²	<ul style="list-style-type: none"> • All architectural paint including latex, oil and solvent-based coatings, including paints and stains, whether tinted or un-tinted, and their containers. • All architectural paints and coatings for household and industrial use. • Includes all driveway and roof sealants. • Includes non-pesticide containing marine paints • Note: Architectural coatings means organic coatings intended for onsite applications at ambient temperatures to interior or exterior surfaces of residential, commercial, institutional, industrial, or government structures including exterior and interior house paints, stains, under coaters, primers and sealers. Structures include all components and attachments of both buildings and non-buildings, including but not limited to driveways, furniture (indoor and outdoor) appliances, floors, cabinets and doors, but with the 	<ul style="list-style-type: none"> • Automotive and anti-fouling marine paints and coatings • Products that match the definition of both Paints & Coatings and a Pesticide are to be packed with Pesticides • All paints and coatings in aerosol containers are to be packed with 331 - Aerosols • Stucco and spackling compounds • Waxes and polishes • Paints & Coatings supplied in containers with a volume greater than 25 litres 	Collection/transport containers should be packed with larger paint containers at the bottom, any spaces filled with smaller containers, and smaller paint containers on top. Paint and coating containers must be stacked upright in the collection/transport containers.	<ul style="list-style-type: none"> • Residential • Designated IC&I Businesses (small quantity generator)
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1 - Commingled refers to waste managed under Product Care Association's program that are packed with waste that is not managed by Product Care Association because separating them at the collection site is not possible or practical. Product Care Association uses allocation models derived from audits conducted on its behalf to calculate its financial obligations to collectors and its collection performance for reporting purposes.

2 - Non-Commingled refers to the sorting of waste such that only wastes managed under Product Care Association's program are packed in the same shipping container.

INITIALLED BY MUNICIPALITY: _____