



Tire and Rubber  
Association  
of Canada

L'Association  
canadienne du pneu  
et du caoutchouc

## OFFICE OF THE PRESIDENT

January 22, 2018

Lisa Kingsmore  
Senior Policy Analyst  
Ministry of the Environment and Climate Change  
Climate Change and Environmental Policy Division  
Resource Recovery Policy Branch  
40 St. Clair Avenue West, Floor 8  
Toronto Ontario, M4V1M2

Dear Ms Kingsmore,

### **Subject: EBR Posting 013-1716, RRCEA Tire Regulation**

The Tire and Rubber Association of Canada, which represents sixteen major global tire manufacturers operating in Canada, as well as selected tire recyclers and suppliers, is pleased to offer our observations and recommendations to what is a very bold plan by Ontario to introduce individual producer responsibility for end-of-life tire management. Allowing individual market players to make choices on how they discharge their producer obligations may well prove over time to be a better approach, but we would urge caution to move slowly as this is an unproven model for tires. Moreover, the approaches in place in virtually every other province of Canada are working very well and achieve high collection and diversion results.

In our opinion, whether or not this bold new initiative can work in Ontario will be entirely dependent on the rules Government puts in place to achieve a level playing field and to not hinder normal market practices, for unlike many other designated materials, there is a thriving, robust end-of-life tire industry that collects, sorts, reuses and recycles the vast majority of used tires in the marketplace. The new rules must not disrupt this fine balance if it is to be successful.

To that end, the TRAC membership makes its commitment to do its level best to make this bold new idea work in the Ontario marketplace. With that said, here are our comments, observations and recommendations for your consideration.

#### **1. Definition of Producer**

The draft RRCEA Tire Regulation offers a hierarchal approach for identifying the responsible party, based on Ontario residency, effectively acknowledging the difficulty of enforcing against parties not resident in the province. It also differentiates between the replacement tire market and the Original Equipment tire market, which is a good idea as it is the vehicle manufacturer who decides to supply vehicles (and tires) in the province. On the OEM side, the hierarchy of responsible parties as drafted in the Regulation should work reasonably well as virtually all OEMs, whether they build vehicles in Ontario or elsewhere are resident

in the province, thereby ensuring a level playing for all OEMs. Not so on the Replacement side of the business and herein lies some of our concerns.

TRAC membership, which collectively supply 80% of the on-road tires sold in Canada are virtually split 50/50 – half the members are resident in the province, the others are not.

This version of Individual Producer Responsibility (IPR) creates multiple layers of obligated parties, notably targeting Ontario tire producers for higher costs than their major competitors. Simply put, Ontario based producers are fully obligated under the RRCEA, while their domestic competitors, who happen not to be resident in Ontario have no obligations under RRCEA. This can in no way be construed as a level playing field.

The problem is exacerbated, complicated and confusing to industry players and consumers alike as this scheme moves through the distribution channel. Whereas the Ontario based producer is fully obligated under RRCEA, their direct dealers are not. Conversely, the direct dealers of the non-resident producer (tire dealers and distributors) are all individually obligated under RRCEA. In essence, what this Regulation has achieved is a fully bifurcated marketplace. This Regulation makes it very possible that three tire retailers operating in the same community will have one retailer fully obligated under RRCEA and another partially obligated for some of the tires they sell, while the third retailer has no obligations. Is this really what was intended? We anticipate consumer confusion will be a concern.

The Ministry says out-of-province producers can do what they did under the OTS program and become a “volunteer producer” and effectively act on behalf of their direct dealers and distributors. But the two situations are not analogous. Under OTS, the volunteer producer’s only obligation was to pay the OTS eco fee for the tires supplied into Ontario on behalf of their dealers. Under RRCEA, the volunteer can offer to pay the service providers or pay a fee to a Producer Responsibility Organization such as eTracks, but the RRCEA obligations must remain with the responsible person – in this case the tire manufacturer’s direct customers. This makes the entire system inherently unfair and extremely complex for administrative purposes and in identifying the “responsible persons”.

To illustrate the complexity by example, a large out-of-province tire manufacturer may have dozens of direct dealers, if not hundreds, as well as selling to a number of Ontario-resident tire distributors. The direct dealers and distributors immediately now become the “producer” for that brand of tire. The out-of-province tire manufacturer may wish to volunteer on behalf of his customers to work with a PRO to help discharge the dealers’ obligations, but it is very likely that some dealers and some distributors may choose to manage their own obligations or choose a different PRO. The sheer complexity is staggering and our fear is it opens up the marketplace to many free-riders.

The RRCEA was enacted as Individual Producer Responsibility legislation but this definition of producer disadvantages both Ontario producers and non-resident producers alike, but for entirely different reasons. Ontario producers face higher costs borne by the RRCEA

obligations and non-resident producers carry higher risks that their Ontario customers may look for an Ontario based supplier rather than take on the RRCEA obligations themselves. TRAC notes the vast majority of actual tire producers are not obligated under this definition of producer. Our analysis suggests less than one third of the obligated persons captured by this definition are in fact real tire producers.

## **2. Accessibility Targets**

Today in Ontario there are over 7,000 collection points for consumers to drop off used tires. These are small, medium and large tire dealers and retail chains, as well as auto recyclers and municipalities among others. It is fair to say that tire consumers across the province have more than ample locations to return used tires. Moreover, there is no indication whatsoever that accessibility was ever a problem.

The Act calls on Producers to “establish and operate as many tire collection sites as are equal to or greater than 75 per cent of the number of retail locations.” However, many tire producers sell to large distributors and have no visibility to the retail sites carrying their tires. Moreover, that information is proprietary to the Distributor, who would have no interest in divulging their customer list to Producers. That said, under this new definition of producer, all ON based Tire Distributors will become the Responsible Party under RRCEA for Producers who are out-of-province and they will have visibility of the retail locations and will be required to report same to RPRA.

In addition, given the new definition of producer, many tire dealers will now be captured by the Act. Are they now required to produce a list of all their small wholesale accounts and provide that list to RPRA so they can audit for compliance to the 75 per cent target? Surely that can't be what the legislature had in mind. And what of the tire dealer's local competitor who is not a producer? It is not fair to impose accessibility targets on one but not the other.

TRAC's recommendation is that the accessibility targets are of little to no value to anyone and are unnecessary and therefore should not be included in this tire regulation.

## **3. Tire Collection Targets**

The Act calls for an audited baseline collection target based on the average of each producer's 2014 -2016 tire sales in Ontario. That data is then converted to tonnage and multiplied by .85 to reflect the reduction in weight caused by tire wear.

This effectively means tire producers must capture virtually 100% of their average tire supply. We know of no jurisdiction, nor any other designated material that would have such a high threshold for collection. In fact, even OTS, with their immeasurable financial and technical resources was not able to achieve this target (see Table 1). During this 2014-2016 period, OTS total average supply was 174,496 tonnes, but collected only 139,180 Tonnes. Taking .85 of 174,496 yields a target of 148,322, so OTS would have been short of their target by 9,142 tonnes.

Table 1	OTS Tire Supply and Collection						
	Tonnes						
	2014	2015	2016	Total	Average	Target	Shortfall/Surplus
PLT						0.85	
Supply	109414	113524	116230	339168	113056	96098	
Collected	91156	88835	90036	270027	90009		6089
MT							
Supply	40027	44858	45448	130333	43444	36928	
Collected	28167	32122	34155	94444	31481		5446
OTR							
Supply	17341	18422	18225	53988	17996	10798	
Collected	18184	16472	18412	53068	17689		-6892
TOTAL							
Supply	166782	176804	179903	523489	174496	148322	9142
Collected	137507	137429	142603	417539	139180		

TRAC realizes Table 1 is not a completely accurate portrayal of what an individual producer will experience, because while their individual target will be based on 2014-2016 supply, their actual volume will be 2019 supply. But herein lies one of our major concerns - not all producers grow their business at the same time. Yes, the total market may be growing at a 1-2% annual pace, but the market is very dynamic and not all players share in that growth. All the more reason perhaps for producers to join a PRO to mitigate some of the risk. That said, OEMs in particular will be very vulnerable with this collection target model precisely because vehicle sales were very strong 2014-2016, but forecasts are for slower growth in 2019-20.

TRAC understands there are many valid reasons for the collection shortfall including high vehicle sales during this 3 year period, strong winter tire sales, strong exports of used tire casings etc. We also believe that through this period there were virtually no public complaints of abandoned tire piles, nor did tire dealers complain of not getting pick-up service. In our view, as long as all the tires that are available for pick-up are collected, then that is what is most important and what we should all be focused on - outcomes.

The requirement that each producer's three year data must first be audited is a significant cost and undertaking, though in principle we agree it is a better approach than requiring the data to be audited by RPRA. For producers operating under the current OTS regime, OTS already has their data – and OTS conducts rigorous audits themselves every year. We suggest RPRA simply use the current OTS individual producer data for 2019 through to 2022 using this approach:

- For 2019, use OTS data from 2014, 2015, 2016
- For 2020, use OTS data from 2015, 2016, 2017
- For 2021, use OTS data from 2016, 2017, 2018
- For 2022, use OTS data from 2017, 2018, 2019 3rd Party audit

For tire dealers who will now be captured by the Act, we recommend RPRA accept the data the tire dealer gives them and only ask for audited data if RPRA plans to conduct an audit.

TRAC does not have definitive data on whether or not .85 is a fair measure of tire wear, though it is probably reasonable. In addition, TRAC believes there should be a common conversion factor to convert tire supply to tonnage.

TRAC does seek clarification on Paragraph 8, where it says, “Every producer shall establish and operate a collection system for tires”. It is TRAC’s understanding that producers will contract for services from providers who already have established and operate a collection system, not that producers must each individually create such an enterprise to compete with those who currently do this work. We recommend MOECC clarify this view.

#### **4. Tire Management**

The Act requires that, of the tires collected in a year, at least 85% of the weight be managed which includes using the tires for re-use or re-treading or processed to make new products, packaging or other things. It would be very helpful and prudent for MOECC to provide more clarity to “other things” otherwise the floodgates may open to new and novel ideas such as tire walls and tire fences etc.

TRAC makes the observation that if a producer is concerned he cannot achieve the 85% target he will be predisposed not to collect more tires than the target.

There is also a prohibition on crediting any weight for material that are disposed on land, or used as a fuel supplement. Given that passenger and light truck tires generate approximately 15% of their weight in fibre, which generally is used as a fuel supplement or landfilled, suggests the target will be a stretch target, not readily attained. Commercial truck tires generally have no fibre, so the target is more likely achievable. Off-the-road tires will also have a significant fibre content, making the target less likely to be achievable.

TRAC does seek clarification on Paragraph 9, where it says, “Every producer shall... establish and operate a system for managing the collected tires”. It is TRAC’s understanding that producers will contract for services from providers who already have established and operate a system for managing collected tires, not that producers must each individually create such an enterprise to compete with those who currently do this work. We recommend MOECC clarify this view.

The ability to include re-use tires may provide some relief to help achieve the 85% target. OTS data over 2014-16 indicates re-use at 3.6% of total collections. That said, from a practical perspective it is difficult to assess how an individual producer could quantify a re-use amount.

The decision to consider retreaders as processors and allow their volume to count as a credit towards meeting the 85% management target needs to be analyzed and understood more fully. For example, what weight is credited, the full weight of the tire, the casing, or the tread stock? Who gets credit? For example, some major tire manufacturers have their own retreading shops and some have franchise operations, while other retreaders are completely independent. It's pretty clear who gets credit in the instance where the tire manufacturer owns the facility, but what of the independent retreader? Can the retreader sell his credit? Does the retreader volume only apply to the Medium Truck and OTR categories or can it be applied to PLT as well?

TRAC has looked at the macro OTS data from 2014-16 which seems to indicate 85% is achievable when including a re-use (culling) of 3.6%. TRAC does not have any information on retread tonnage, so it is difficult to comment how important that data will become.

## **5. Seamless Transition**

Seamless transition has been the objective of Government and Industry since this legislation was first proposed. That said, TRAC has serious reservations concerning the ability to achieve a seamless transition to IPR by January 1, 2019 in spite of everyone's best intentions, for several reasons:

- a) The definition of producer brings many new "responsible persons" in as producers, who doubtlessly have no idea they will be obligated under RRCEA
- b) There is no organization(s) actively working as PROs to sign up the 700+ producers who will be obligated, save for eTracks, which has a narrow scope of business
- c) The transition funding to service providers leaves a gap between the end of the OTS payment cycle and the beginning on the IPR payment cycle, which will be disruptive
- d) There is no mechanism to transition experienced, knowledgeable staff into a new enterprise
- e) There is no legal mechanism for out-of-province producers to accept the RRCEA obligations on behalf of their customers
- f) It will be too easy for free-riders to operate, at least in the short to mid-term
- g) The proposed fee holiday, coupled with the gap in OTS funding to service providers will severely limit the ability to fund the transition.

TRAC believes there are several steps which should be considered to provide a better chance for a smoother transition:

1. Find a way to allow a legal transfer of obligations amongst responsible parties
2. Eliminate the proposed fee holiday
3. OTS should pay all service provider claims from 2018

## **Summary of TRAC Observations and Recommendations**

1. The definition of "responsible persons" for the Replacement Tire sector captures many different businesses at different levels of the supply chain and is administratively near impossible to manage. MOECC must find a way to allow a legal transfer of obligations between parties.

2. The Accessibility Targets under the RRCEA are completely unnecessary as there are over 7,000 collection points throughout the province. Moreover, producers have limited visibility of where their tires are sold.
3. The Regulatory language which requires producers to “establish and operate a collection site” or to “establish and operate a collection system” should be clarified to indicate producers may contract for these services
4. Producers operating under the OTS program from 2014-16 should be able to allow their data to go to RPRA without the need for an audited report
5. The industry should come up with a simple conversion factor from tire unit to weight
6. MOECC must clarify how retreaders weight data can be used and by whom?
7. Producers paid stewardship fees to OTS right up to and including Dec 31, 2018, therefore OTS must pay all service provider claims relating to the universe of material in inventory and in-process at that time. To not do so, and compel producers to pick up these service provider costs for 2018 material will mean Producers are paying twice for the same material, which is unfair.
8. TRAC understands the OTS Wind-up Plan is now in the hands of the Resource Productivity and Recovery Authority, but MOECC can and should exert its influence to encourage an early transition of the TreadMarks IT program and to stop the Fee Holiday proposal, or at minimum change the timing to May-July 2018 in an effort to minimize disruption during transition.

Again, we thank you for the opportunity to comment and to offer recommendations to move forward under the Resource Recovery and Circular Economy Act.

Best regards,



Glenn Maidment  
c.c. TRAC Board