Ontario Tire Stewardship Changes FAQ’s (Updated 01-15-18)

The following FAQ’s and their answers were provided by Maury Shnier of Tire Recovery Ontario and Jonathon Cocker – head of Baker McKenzie’s Environmental Practice in Canada. If you have further questions or would like clarification they may be contacted directly.

What is Changing and Why?

Current Government Tire Program

Since 2009, Ontario Tire Stewardship (OTS, the province’s designated entity responsible for tire diversion in Ontario) has been responsible for managing the collection, hauling, processing and remanufacturing of tires at the end of their life. It was funded by a “Brand Owner/First Importer” model whereby suppliers to the market simply paid a per-tire fee upon selling tires in Ontario. The fee-per-tire varied across 2 on-road categories and 16 different categories of off-the-road (OTR) tires, with passenger tires paying the lowest rate and giant OTR tires paying the highest rate. This funding mechanism financed the waste diversion stream for the vast majority of tires in the province. Working within the framework of the current legislative regime, which strove to create and support an Ontario-based industry around tire recycling, OTS approved all firms who supplied these diversion services in Ontario and set the respective fees and tariffs each party could charge. Cumulatively, these fees and costs average between $60-$70M per year.

New Individual Producer Responsibility Program

In November 2016, the Resource Recovery and Circular Economy Act (RRCEA) was passed by the Ontario legislature. Along with the Waste Diversion Transition Act (WDTA), this created an Individual Producer Responsibility (IPR) framework in which OTS will be phased out and the direct responsibility (and liability) for continuing the tire recycling process has been shifted to “Producers”, which includes Original Equipment Manufacturers.

The RRCEA treats waste as a resource and strives to foster beneficial “circular economy” activities in the province as a means to accomplish increased rates of waste diversion and enhanced economic benefits around it.

In the past, OEMs were simply obligated to pay a fee to OTS based upon the number of tires introduced into the province. Beginning January 1st, 2019, Producers are individually responsible to ensure the process continues for a quantity of tires in proportion to their supply of tires into the province. While a producer can “sub out” these processes they cannot transfer the liability for failure to meet diversion targets.
OEMs and their dealers are responsible to ensure they manage the end-of-life process for used tires and the regulatory compliance obligation and civil liability rests with them. While tires are the first waste stream impacted by the move to IPR in the province, other waste streams relevant to AEM members will follow, such as:

- Electronics and Electrical Equipment
- Hazardous and Special Wastes
- Lights
- Used Oils and Filters
- Printed Paper & Packaging

**What is the new Law?**
The RRCEA is the first broad-based circular economy legislation in North America. Along with the WDTA, the RRCEA mandates a transition to IPR. The two relevant acts as well as the draft regulations for tires can be found at the following links:

- **RRCEA** - https://www.ontario.ca/laws/statute/16r12
- **WDTA** - https://www.ontario.ca/laws/statute/16w12

**What are my obligations as a Tire "Producer"?**
RRCEA makes tire OEMs directly obligated for 6 major responsibilities relating to the end-of-life supply chain for used tires:

1. Registration, as described in Sec 66
2. Waste reduction, as described in Sec 67
3. Collection, as described in Sec 68
4. Management, as described in Sec 69
5. Promotion and Education, as described in Sec 70
6. Reporting and record keeping, as described in Sec 72

The Ontario Resource Productivity and Recovery Authority (RPRA) will fundamentally require you to be able to answer the following questions:

1. How many tires have you shipped into Ontario?
2. How many tires have you managed through an end-of-life supply chain (collection, hauling, processing, remanufacturing)?
3. If and when asked, can you verify by providing a supporting audit trail?

**What are my options for addressing this issue?**

1. Manage the process yourself by establishing a verifiable system to collect, haul, process and remanufacture the used tires.
2. Subcontract diversion and verification services by either:
   a. Constituting your own (or industry) collective PRO (Producer Responsibility Organization)
   b. Enlist with an existing PRO

**Is this Individual Producer Responsibility framework idea unique to Ontario and to tires?**
Ontario is the first province in Canada to go in this direction. Other waste streams in the province will go this way in the near future. Extended Producer Responsibility Frameworks, with some level of individual producer obligation, have been in place in Europe for a while across many waste streams. PROs are the principal entities tasked with circular economy obligations in Europe, with over 250 PROs currently in operation.
What distinguishes Ontario’s IPR generally from the EU models is the privatized, individual legal liability around producer’s responsibilities. The Ontario government (through RPRA) is regulating results while leaving the day-to-day oversight of the recovery of used tires to Producers and their PROs.

Each of the ten provinces and three territories in Canada regulates waste differently, and there is significant focus on the changes being implemented in Ontario, Canada’s most populous province. In general, for many waste streams most jurisdictions have recognized that they have failed to create the conditions whereby waste diversion targets are achieved. The introduction of an IPR framework is a market-based strategy to hold producers responsible for the end-of-life costs of their products and drive innovation through realigned economic incentives.

**What additional direction to producers is coming under the Used Tire Regulation?**

The draft Used Tire Regulation under RRCEA was circulated in early December, along with government consultations. It is clear that the government does not intend to manage the operational decisions of Producers in resource recovering used tires.

The Used Tire Regulation does recognize that PROs will likely serve as the entities assuming Producers’ responsibilities under RRCEA. A final version of the Used Tire Regulation is anticipated shortly.

**When do I need to have a solution in place?**

All Producers are required by law to have their solutions operational by January 1, 2019 and must register with RPRA, or have their PROs do so on their behalf, by **June 1st, 2018**.

**Is there any discussion regarding the potential of a PRO being developed to specifically address the needs of our industry?**

OTS distinguished between on-road and OTR tires and, in fact, continues to seek repayment for a "deficit" from OEMs for their share of OTR program costs. There remains distinctions between the end-of-life supply chains of the two tire types. AEM is facilitating discussion of the pros and cons of an industry specific PRO, focused on the OTR obligations of AEM members, with Maury Shnier and Jonathan Cocker who represents Tire Recovery Ontario.

They can be reached at:

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Additional questions and Answers:

1. **What are the consequences for a company that does not have place any process to address this issue?**

There are a range of enforcement mechanisms available in the event of non-compliance with this new law:

1. Compliance orders requiring a producer to comply or cease non-compliance, which can include an order precluding the introduction of further tires into Ontario;

2. Administrative Penalties which have yet to be specified; and
3. Prosecutions against either producers and/or their directors, officers or other guiding individuals (employees or agents) as follows:

(7) An individual who is guilty of an offence under this section is liable, on conviction,
   i. in the case of a first conviction, to a fine of not more than $50,000 for each day or part of a day on which the offence occurs or continues; and
   ii. in the case of a subsequent conviction, to a fine of not more than $100,000 for each day or part of a day on which the offence occurs or continues.

(8) A corporation that is guilty of an offence under this section is liable, on conviction,
   i. in the case of a first conviction, to a fine of not more than $250,000 for each day or part of a day on which the offence occurs or continues;
   ii. in the case of a subsequent conviction, to a fine of not more than $500,000 for each day or part of a day on which the offence occurs or continues.

Multiple forms of enforcement can be imposed for the same violations and the Ministry and Ontario Authority appear committed to ensuring producer compliance in this first circular economy legal regime.

2. If I use an intermediary an importer of record) to place my products into Ontario for sale are they not the entity responsible for these importation issues?

This is currently the case, as many manufacturers sell to their Canadian dealers through their US domiciled entity and have no Canadian or Ontario company to transact through. At present, most of these dealers are remitting their tire stewardship fees as required. Ultimately, we estimate that approximately 50% of the OEM OTR obligations are paid in by the equipment manufacturers. However, if your dealer does not meet their responsibilities under the act, the act and regulations allow the Ontario Authority to assess liability on the importer. This mechanism is not unlike how the regulations contemplate dealing with internet sales. The act is structured in such a way as to view the end-consumer as the last entity the Ontario Authority wishes to hold liable; rather the intention is to seek enforcement efforts further up the supply chain.

While there is some question as to the resources of the Ontario Authority to effectively pursue and enforce these claims, there is a risk here that needs to be managed. Beyond that, given the similarity of the OEM manufacturers and their dealer’s requirements, there are advantages to managing these like-products & customers with a program designed for their own needs.

3. My company imports all of the products we sell across Canada through an entity in Ontario. Will I be expected to track the tires for every unit shipped into Ontario regardless of the final province it which it is sold to an end user? Or only for those sold in Ontario? How do you differentiate?

Your company and/or the Ontario entity will be required to track the tires only for vehicles that are ultimately sold in Ontario. Merely shipping them into Ontario for further distribution, which could often be outside of the province, will not trigger the obligation to track the tires and pay for their end of life diversion costs. When the tires (or in an OEM case, the equipment they are on) are sold in the province of Ontario, the obligation to contribute a proportionate amount to the diversion costs will be triggered. In the event that the Ontario Authority chooses to audit this Ontario entity, this entity will need to verify the number of vehicles/tires sold into the Ontario market and demonstrate that they have contributed to the diversion cost, either directly or through a Producer Responsibility Responsibility Organization (or PRO).