

November 16, 2021

To: Ministry of the Environment, Conservation & Parks

From: <<Company Information removed to adhere to MECP Privacy Policy>>

RE: **FEEDBACK REPORT – ERO# 019-0045 –Administrative Penalties Regulation made under the Resource Recovery and Circular Economy Act, 2016 (Consultation)**

**Overview:**

This document consolidates the feedback from <<Company Information removed to adhere to MECP Privacy Policy>> regarding the MECP consultation related to the Administrative Penalties Regulation made under the RRCEA.

- A) General Comments and Summary of Main Points
- B) Administrative Penalties – Regulation (with detailed Comments)
- C) Administrative Penalties – Schedule 1 - Maximum base penalty amounts for non-continuing contraventions (with detailed Comments)
  - a. Table 1 – Contraventions of the Act
  - b. Table 2 – Contraventions of Regulation 225/18 (Tires)
- D) Administrative Penalties – Schedule 2 - Maximum base penalty amounts for non-continuing contraventions (with detailed Comments)
  - a. Table 1 – Contraventions of the Act
  - b. Table 2 – Contraventions of Regulation 225/18 (Tires)

**A) General Comments and Summary of Main Points**

**We would appreciate the opportunity to further discuss this feedback in more detail as you proceed with the consultation process.**

- (1) We recognize that penalties are a requirement to ensure that both the terms and the ‘spirit’ of the RRCEA are adhered to.
  - Penalties should be appropriate to the risk associated with a contravention
  - Penalties should be appropriate to the impact of the contravention
- (2) The concept of “Risk-Based Compliance” underpins the administration of the RRCEA and the associated regulations by the RPRA.
  - The Administrative Penalties Regulation should make clear reference to the “Risk-Based Compliance Framework” that has been developed to manage and structure compliance with the RRCEA and the associated regulations.
  - The Framework provides clear direction and appropriate escalation to structure how and when an administrative penalty should be ordered.
  - The Registrar or a Deputy Registrar is incentivized to issue administrative penalties and embedding the Risk-Based Compliance Framework into the Regulation will help provide an ‘administrative structural control’ and ensure a fair approach to achieving compliance across all entities/persons.
- (3) Several elements are unclear and/or not referenced in this regulation, which has a significant impact on how the penalties will be determined, served to appropriate persons, and ultimately whether the penalties are fair.
  - There appear to be considerable areas whereby it could be the Producer who will be ordered to pay a penalty, but it was the PRO who was ‘operationally responsible’ for the alleged contravention (and vice-versa)

- by not clarifying who/where the communication and/or compliance order would be issued, it will create unneeded confusion and administrative issues to 'sort things out' all the while possibly creating a situation where continued unintended contraventions could occur.
- RPRA has taken a position that 'it is the Producer that is responsible under the RRCEA, so [RPRA] will deal with the Producer', however, in practice, this does not seem to be a consistent approach (ie. the PRO is often 'brought in' to deal with issue(s) rather than to go through a Producer).

(4) Overall, the penalties seem excessive.

- A clearer understanding and/or insight into the penalty setting criteria is needed (ie. how were the daily maximums determined? How will actual penalties be assessed?)
- Without an understanding of the methodology that the Registrar or a Deputy Registrar will follow to determine the amount of penalty, the penalties could be unfairly distributed across the parties (ie. different penalties for different people for the same contravention)

## B) ADMINISTRATIVE PENALTIES

### Part 1 - General

	Comments
<b>Administrative penalty orders</b>	
<b>1.</b> The Registrar or a Deputy Registrar shall not issue an order under subsection 89 (2) of the Act except in accordance with this Regulation.	<b>RPRA’s “Risk-Based Compliance Framework” needs to be referenced in the context of this Regulation where relevant, as this provides the basis of Progressive Compliance which lead to the issuing of Administrative Penalties.</b>
<b>Prescribed provisions, persons</b>	
<b>2.</b> (1) The provisions set out in Column 1 of the Tables to Schedules 1 and 2 are prescribed under clause 89 (2) (f) of the Act.	
(2) For the purposes of clause 89 (3) (e) of the Act, a person who contravenes a provision set out in Column 1 of a Table to Schedule 1 or 2 is a prescribed person.	

### Part II – Procedure for Issuing Order

	Comments
<b>Notice of intention to issue order</b>	
<b>3.</b> (1) If the Registrar or a Deputy Registrar intends to issue an order to pay an administrative penalty under subsection 89 (2) of the Act to a person, the Registrar or Deputy Registrar shall serve upon the person a written notice containing the following information:  1. A statement of the Registrar or Deputy Registrar’s intention to issue an order and the name of the person to whom the Registrar or Deputy Registrar intends to issue the order.	<b>RPRA’s “Risk-Based Compliance Framework” needs to be referenced in the context of this Procedure for Issuing Order and throughout the Regulation where relevant.</b>  The proposed language does not seem to take into account the progressive actions that should have already been taken (ie. progressive steps 1-4 of the Framework) to address the non-compliance issue and seems to ‘jump’ directly to the notification of issuing of the Penalty Order.  The language seems to put the onus on the party being served with the order to provide the evidence or information that would alter/eliminate the need for the penalties order in the first place (ie. Guilty until proven innocent). The logic should follow that by the time the Administrative Penalty order is <u>required</u> to be issued (Step 5 of the Framework), all of the relevant information SHOULD have already been provided

	Comments
<p>2. The provision that, in the Registrar or Deputy Registrar’s opinion, the person has contravened.</p> <p>3. A description of the contravention.</p> <p>4. A description of the day, days or parts of days on which the contravention occurred.</p> <p>5. The proposed amount of the administrative penalty, including,</p> <ul style="list-style-type: none"> <li>i. the proposed base penalty amount determined by the Registrar or Deputy Registrar in accordance with section 8 and a description of the manner in which it was determined, and</li> <li>ii. the proposed amount for economic benefit determined by the Registrar or Deputy Registrar in accordance with section 9, and a description of the calculations, variables and assumptions that led to the determination of that amount</li> </ul> <p>6. In the case of a contravention that is continuing and that, as of the date of the notice, has not been remedied, a statement that because of the continuing nature of the contravention,</p> <ul style="list-style-type: none"> <li>i. the final base penalty amount may exceed the proposed base penalty amount, unless the proposed base penalty amount set out in the notice cannot be exceeded under the applicable limit set out in the applicable Table to Schedule 2, and</li> <li>ii. the final amount for economic benefit may exceed the proposed amount for economic benefit.</li> </ul> <p>7. Information about the person’s right to make a request under section 4, including the date by which the request must be made.</p>	<p>as inputs into steps 1-4 of the Framework, and fully assessed by RPRA and the Registrar or a Deputy Registrar. The likelihood that additional pertinent information would be forthcoming by the time the Penalty Order is issued should be low (but not zero) <b>if the progressive steps are followed</b>. There should always be an ability to provide additional information, however.</p> <p>We recognize that RPRA may ‘skip’ steps depending on the non-compliance situation (ie. High-risk/high-impact situations or egregious contraventions may start at “step 4” for instance); however, this should not prevent a proper account of the efforts made to resolve the issue prior to issuing a Penalty Order.</p> <p><u>Possible clarification to the wording:</u></p> <p><b>(1) In accordance with the Risk-Based Compliance Framework, if</b> the Registrar or a Deputy Registrar intends to issue an order to pay an administrative penalty under subsection 89 (2) of the Act to a person, the Registrar or Deputy Registrar shall serve upon the person a written notice containing the following information:</p> <ol style="list-style-type: none"> <li>1. A statement of the Registrar or Deputy Registrar’s intention to issue an order and the name of the person to whom the Registrar or Deputy Registrar intends to issue the order.</li> <li>2. The provision that, in the Registrar or Deputy Registrar’s opinion, the person has contravened.</li> <li>3. A description of the contravention.</li> <li>4. A description of the day, days or parts of days on which the contravention occurred.</li> </ol> <p><b>5. An account of the actions, timelines and subsequent outputs of the efforts made to resolve the non-compliance situation, in accordance with the steps of the Risk-Based Compliance Framework.</b></p> <p>...</p> <p>6.....(renumbered from 5)</p>
<p>(2) A notice may apply in respect of one or more contraventions.</p>	

	Comments
(3) The Registrar or Deputy Registrar may, in writing, amend a notice after it has been served.	
<b>Request to Registrar or Deputy Registrar</b>	
<p><b>4.</b></p> <p>(1) A person who is served with a notice of the Registrar or Deputy Registrar’s intention to issue an order, or an amendment to a notice, may request, in writing, that the Registrar or Deputy Registrar consider any of the following information:</p> <ol style="list-style-type: none"> <li>1. Any additional information related to the contravention.</li> <li>2. Any information relevant to the Registrar or Deputy Registrar’s determination of the proposed base penalty amount or the proposed amount for economic benefit.</li> <li>3. Information about any actions the person has taken to remedy the contravention since it occurred.</li> </ol>	<p>There should always be an ability to provide additional information</p> <p>Re: 3.</p> <p>As indicated above, any “Information about any actions the person has taken to remedy the contravention <b>since it occurred</b>” SHOULD already be known to RPRA and the Registrar or a Deputy Registrar if the progressive steps of the Risk-Based Compliance Framework had been followed. Any information to be subsequently considered would be new information from the time of the last interaction to resolve the non-compliance (ie. Step 4 – Compliance Order) to the time the Penalty Order (step 5) was issued.</p>
(2) A request shall be made no later than 15 days after the date on which the notice or amendment was served.	<p>As indicated above, assuming the Registrar or a Deputy Registrar is issuing the Penalty Order in accordance with the progressive steps of the Risk-Based Compliance Framework, this amount of time should be enough to make a request.</p> <p><b>If the progressive steps of the Risk-Based Compliance Framework have <u>not</u> been followed</b> (ie. steps have been ‘skipped’ for some reason as decided by RPRA), and the person served with penalty notification is now required to compile any and all pertinent information (which would have been obtained in the normal course had the progressive steps of the Framework been followed), <b>this amount of time may not be enough to adequately address all of the requirements for the request and/or resolve the non-compliance issue.</b></p>
(3) If the notice or amendment applies to more than one contravention, a request may be made in respect of any of the contraventions.	
(4) A request shall include all information and supporting documentation that the person wants the Registrar or Deputy Registrar to consider with respect to the request.	

	Comments
<b>Consideration of request, issuing of order</b>	
<p><b>5.</b></p> <p>(1) After receiving a request from a person under section 4 or after the time period described in subsection 4 (2) has expired, whichever is earlier, the Registrar or Deputy Registrar shall,</p> <p style="padding-left: 20px;">(a) consider any information contained in a request received; and</p> <p style="padding-left: 20px;">(b) decide whether or not to issue an order to the person.</p>	
<p>(2) If the Registrar or Deputy Registrar decides not to issue an order to the person, the Registrar or Deputy Registrar shall, in writing, notify the person of the decision.</p>	<p>It is requested that the notification of the decision not to issue an order also outline the details and/or particulars about the reason for making the decision and ‘closing’ the issue (ie. “we have decided to not issue a penalty order for the following reasons: ...”), thus providing context into the decision-making.</p>
<p>(3) Subsection (2) does not limit a Registrar or Deputy Registrar’s ability to issue a subsequent notice to the person with respect to the same contravention.</p>	<p>The Registrar or a Deputy Registrar should outline the reasons why a subsequent notice for the same contravention is being issued considering that the issue was, for all intents and purposes, ‘closed’. (ie. “We are issuing a subsequent notice to the previously addressed issue for the following reasons: ...new information has come to light; the contravention was not resolved as was previously believed; etc.)</p> <p>It should be expected that the progressive steps of the Risk-Based Compliance Framework would be followed in the case where a ‘closed’ issue was subsequently re-opened and escalated to the point where a subsequent notice would need to be issued.</p>
<p>(4) If the Registrar or Deputy Registrar decides to issue an order to the person, the Registrar or Deputy Registrar shall determine the final amount of the administrative penalty in accordance with Part III and issue the order in accordance with section 6.</p>	
<b>Issuing of order</b>	
<p><b>6.</b></p> <p>(1) Without limiting the contents required under subsection 89 (7) of the Act, an order issued to a person who is required to pay an administrative penalty in respect of a contravention shall,</p>	<p>The order should provide an account of the efforts made (by both RPRA and the person being issued the order) to resolve the issue prior to issuing a Penalty Order.</p> <p><b><u>Possible clarification to the wording:</u></b></p>

	Comments
<p>(a) describe the contravention to which the order relates, and, as part of the description, specify the provision that the person has contravened and the day, days or parts of days on which the contravention occurred;</p> <p>(b) set out the final amount of the administrative penalty, and as part of specifying the final amount of the administrative penalty, specify the final base penalty amount and the final amount for economic benefit, including,</p> <p>(i) a description of the manner in which the final base penalty amount was determined,</p> <p>(ii) a description of the calculations, variables and assumptions that led to the determination of the final amount for the economic benefit, and</p> <p>(iii) any consideration given by the Registrar or Deputy Registrar to any request made under section 4;</p> <p>(c) give particulars respecting the time for paying the penalty and the manner of payment; and</p> <p>(d) provide details of the person’s right to require a hearing under section 91 of the Act.</p>	<p>(1) Without limiting the contents required under subsection 89 (7) of the Act, an order issued to a person who is required to pay an administrative penalty in respect of a contravention shall,</p> <p>(a) describe the contravention to which the order relates, and, as part of the description, specify the provision that the person has contravened and the day, days or parts of days on which the contravention occurred;</p> <p><b>(b) describe the actions, timelines and subsequent outputs of the efforts made to resolve the contravention(s), in accordance with the steps of the Risk-Based Compliance Framework.</b></p> <p>(c) set out the final amount of the administrative penalty, and as part of specifying the final amount of the administrative penalty, specify the final base penalty amount and the final amount for economic benefit, including,</p> <p>...</p> <p>...</p> <p><b>(d) (renumbered)...</b></p> <p>...</p>
<p>(2) A single order may require a person to pay an administrative penalty in respect of one or more contraventions.</p>	

### PART III – Determination of Administrative Penalty Amount

	Comments
<p><b>Administrative penalty amount, general</b></p>	
<p>7.</p>	<p>The “Risk-Based Compliance Framework” needs to be referenced in the context of this Determination of Administrative Penalty.</p>

	Comments
<p>(1) Subject to subsections (2), (3) and (4), the amount of an administrative penalty required to be paid under subsection 89 (2) of the Act in respect of a contravention shall consist of the following, determined in accordance with this Regulation:</p> <ol style="list-style-type: none"> <li>1. A base penalty amount.</li> <li>2. An amount for economic benefit.</li> </ol>	<p>The Act provides RPRA with the discretion to assess situations and determine whether penalties would be applied based on the specific facts/situation that has transpired.</p> <p>It is essential that there is appropriate review and determination of the appropriate “Progressive Compliance and Compliance Tools” (of which Administrative Penalty Order is a progressive ‘step 5’ Compliance Tool of a 6-step framework)</p> <p>This becomes increasingly important when there are facts/situations that are beyond the control/ability of the person being served the order to meet the compliance requirement (ie. it may be IMPOSSIBLE for a person to collect and manage the required amount (see specific comments under Schedule 1) <u>but still be ordered to pay</u> an administrative penalty.)</p>
<p>(2) Subject to subsection (3), the amount of the administrative penalty required to be paid in respect of a contravention shall not exceed \$1 million.</p>	
<p>(3) The administrative penalty amount shall not exceed the difference between \$1 million and the total amount of any previous administrative penalties that meet all of the following conditions:</p> <ol style="list-style-type: none"> <li>1. The administrative penalty was imposed by a previous order under subsection 89 (2) of the Act during the 365-day period preceding the day on which the current order is to be issued.</li> <li>2. The previous order was in respect of a contravention of a provision set out in Column 1 of a Table to Schedule 2.</li> <li>3. The contravention with respect to which the current order is to be issued is a continuation of the contravention in respect of which the previous order was issued.</li> </ol>	<p>This amount seems excessive. What was the basis for \$1 million ‘cap’ in a 365-day period?</p>
<p>(4) If, after determining the amount of the administrative penalty in respect of a contravention in accordance with subsections (1), (2) and (3), the Registrar or Deputy Registrar determines that, due to its magnitude, the imposition of the administrative penalty is punitive in nature having regard to all the circumstances, including any other administrative penalties required to be paid in respect of contraventions under the</p>	<p>What is considered ‘punitive’? How is this threshold determined?</p> <p>there are times when a penalty for a same or substantively similar contravention <b>is</b> punitive to one organization/person but not another, which could create an ‘uneven playing field’.</p>

	<b>Comments</b>
<p>same order, the Registrar or Deputy Registrar shall reduce the amount such that the imposition of the administrative penalty is consistent with the purposes set out in subsection 89 (1) of the Act.</p>	<p>Administrative Penalties are an identified and legislated alternate revenue stream for RPRA (ie. RPRA is ‘incentivized’ to issue penalty orders whenever possible). As a result, and based on the verbiage in this Regulation, there is an increased likelihood that the Registrar or a Deputy Registrar will defer to issuing penalties rather than working with the persons who may be in contravention to make them aware and work with them to resolve the contravention without the need to resort to financial penalties (ie. systematically moving through the progressive steps of the Risk-Based Compliance Framework).</p> <p>Given this ‘incentivization to penalize monetarily’, it seems possible, even likely, that for the same or substantively similar contravention there will be different ‘punitive thresholds’ for different persons (ie. a ‘larger’ organization/person with ‘deeper pockets’ will not be afforded the same deference as a ‘small’ organization/person if the contravention was identical or substantively similar in nature), as it could be considered ‘punitive’ to a ‘smaller’ organization/person. This can create/exacerbate an ‘uneven playing field’ where possible ‘bad actors’ (ie. some ‘smaller organizations/persons’) can still operate and contravene the Act as long as they are willing to pay penalties (which cannot be ‘punitive’) along the way, while other ‘good participants’ are required to pay even higher penalties despite trying to work to in good faith to correct issues (whereas the ‘bad actors’ are not trying to correct the issues).</p>
<p><b>Base penalty amount, determination</b></p>	
<p><b>8.</b></p> <p>(1) For the purposes of setting out the proposed base penalty amount in a notice under subsection 3 (1) and the final base penalty amount set out in an order under subsection 6 (1), the Registrar or Deputy Registrar shall determine the base penalty amount in accordance with the following rules:</p> <ol style="list-style-type: none"> <li>1. The Registrar or Deputy Registrar shall consider the following factors: <ol style="list-style-type: none"> <li>i. The contravention’s impact, if any, on the Authority’s ability to carry out its objects.</li> <li>ii. The contravention’s impact, if any, on resource recovery and waste reduction of a class of materials designated for the purposes of section 60 of the Act.</li> <li>iii. With respect to the person who carried out the contravention,</li> </ol> </li> </ol>	<p>There needs to be reference to the “<b>Risk-Based Compliance Framework</b>”, as this provides the compliance steps/framework by which to assess the various elements related to the contravention’s impact and result in course of action to be taken prior to even determining or issuing a penalty.</p> <p><b><u>Possible clarification to the wording:</u></b></p> <p>(1) For the purposes of setting out the proposed base penalty amount in a notice under subsection 3 (1) and the final base penalty amount set out in an order under subsection 6 (1), the Registrar or Deputy Registrar shall determine the base penalty amount in accordance the following rules <b><i>and in keeping with the Risk-Based Compliance Framework:</i></b></p> <p>...</p> <p>...</p>

	Comments
<p>A. the person’s history, if any, of complying or not complying with the Waste Diversion Transition Act, 2016 or its regulations or with the Act or its regulations, and</p> <p>B. any information available to the Registrar regarding whether the person has remedied the contravention or is in the process of remedying the contravention, and how quickly the contravention was or is being remedied.</p> <p>2. For a contravention of a provision set out in Column 1 of a Table to Schedule 1, the base penalty amount shall not exceed the amount set out opposite the contravention in,</p> <p>i. Column 3 of the applicable Table to Schedule 1, if the person who contravened the provision is a corporation, or</p> <p>ii. Column 4 of the applicable Table to Schedule 1, if the person who contravened the provision is an individual.</p> <p>3. For a contravention of a provision set out in Column 1 of a Table to Schedule 2, the following rules apply:</p> <p>i. The daily amount of the base penalty shall not exceed the maximum amount set out opposite the contravention in,</p> <p>A. Column 3 of the applicable Table to Schedule 2, if the person who contravened the provision is a corporation, or</p> <p>B. Column 4 of the applicable Table to Schedule 2, if the person who contravened the provision is an individual.</p> <p>ii. The daily amount of the base penalty shall be multiplied by the number of full or partial days during which the contravention continued before it was remedied.</p>	

	Comments
<p>iii. The result of the calculation under subparagraph ii shall be reduced such that it does not exceed the amount set out opposite the contravention in,</p> <p>A. Column 5 of the applicable Table to Schedule 2, if the person who contravened the provision is a corporation, or</p> <p>B. Column 6 of the applicable Table to Schedule 2, if the person who contravened the provision is an individual.</p> <p>4. Despite subparagraph 3 iii, the maximum base penalty for the contravention shall not exceed the difference between the relevant maximum base penalty under subparagraph 3 iii and the total amount of any base penalties imposed with respect to the same contravention during the 365-day period preceding the day on which the current order is to be issued if all of the following circumstances apply:</p> <p>i. The base penalty was imposed by a previous order under subsection 89 (2) of the Act during the 365-day period preceding the day on which the current order is to be issued.</p> <p>ii. The previous order was in respect of a contravention of a provision set out in Column 1 of a Table to Schedule 2.</p> <p>iii. The contravention with respect to which the current order is to be issued is a continuation of the contravention in respect of which the previous order was issued.</p>	
<p>(2) For the purposes of paragraph 3 of subsection (1), a contravention of a provision set out in Column 1 of a Table to Schedule 2 that requires a person to do something within a particular time period shall be considered to have been remedied when the person has done it, even if the person has done it after it was required to be done.</p>	<p>It is unclear whether the penalty would still be levied if the contravention was remedied? This is particularly important if the contravention was only just made known to the person, and in good faith it took more time to remedy the situation.</p> <p>If following the Risk-Based Compliance Framework, this type of contravention should have been addressed/resolved long before a penalty order would be contemplated/issued.</p>
<p><b>Amount for economic benefit, determination</b></p>	

	Comments
<p><b>9.</b></p> <p>The Registrar or Deputy Registrar shall consider the following factors when determining, with respect to a contravention of a provision set out in Column 1 of a Table to Schedule 1 or 2, the proposed amount for economic benefit to be set out in a notice under subsection 3 (1) and the final amount for economic benefit to be set out in an order under subsection 6 (1):</p> <ol style="list-style-type: none"> <li>1. Costs that the person avoided incurring by failing to comply with the provision.</li> <li>2. Costs that the person delayed incurring by delaying compliance with the provision.</li> <li>3. Gains that the person has accrued by failing to comply with the provision.</li> </ol>	<p>What is the formula/basis to determine the economic benefit?</p> <p>This seems to make sense on its face <u>provided there is an ABILITY to BECOME COMPLIANT</u> (and the person chooses not to for economic reasons). But if a person will not be able to meet the compliance requirement despite making every effort to do so, is the person STILL required to incur financial burden when it is foreseen that they will remain non-compliant?</p> <p><b>Example:</b> A person needs to recover an additional 100,000kg of recovery material in order to be compliant. There is only 30,000kg of recovery material available to obtain in the system, <b>so no matter what, the person CANNOT BE COMPLIANT</b> (there is not enough material in the system, so they will be 70,000kg ‘short’ of their compliance obligation even if they acquire the 30,000kg). Does this create an ‘economic benefit’ for the person if they do not obtain the 30,000kg of recovery material that is available? They will still be non-compliant despite incurring additional financial burden to obtain the 30,000kg of recovery material should they do so.</p> <p>In such a scenario, the person is not ‘choosing’ not to comply with the provision; they are simply NOT ABLE TO MEET the requirements of the provision for reasons <u>completely independent</u> of the person’s control.</p>
<p><b>Determination of final amount of administrative penalty</b></p>	
<p><b>10.</b></p> <p>(1) The Registrar or Deputy Registrar shall apply the following rules for the purposes of determining the final administrative penalty amount to be set out in an order:</p> <ol style="list-style-type: none"> <li>1. The Registrar or Deputy Registrar shall re-apply section 8 and re-determine the base penalty amount if the Registrar or Deputy Registrar considers it to be appropriate based on any additional information now available to the Registrar or Deputy Registrar that was not available at the time of giving the notice under subsection 3 (1), which may include information regarding the continuation of the contravention following the giving of the notice.</li> <li>2. The Registrar or Deputy Registrar shall re-apply section 9 and re-determine the amount for economic benefit if the Registrar or Deputy Registrar considers it to be appropriate based on any additional information now available to the Registrar or Deputy Registrar that was not available at the time of giving the notice under</li> </ol>	

	Comments
subsection 3 (1), which may include information regarding the continuation of the contravention following the giving of the notice.	
(2) In making the determinations under subsection (1), the Registrar or Deputy Registrar shall consider any information contained in a request received under section 4.	
<b>No Penalties re “best efforts’ provisions</b>	
<p><b>11.</b></p> <p>Despite anything else in this Regulation, the Registrar or Deputy Registrar shall not issue an administrative penalty in respect of a person’s contravention of a requirement to make best efforts to do something.</p>	<p>This section should be revised to reflect that <u>there are situations whereby it is IMPOSSIBLE to meet a regulatory requirement when there is not enough material in the system to allow for full compliance</u> (see comments under Schedule 1 for specific examples).</p> <p><b><u>Possible clarification to the wording:</u></b></p> <p>Despite anything else in this Regulation, the Registrar or Deputy Registrar shall not issue an administrative penalty in respect of a person’s contravention of a requirement to make best efforts to do something, <b><i>or if it is not possible to meet the requirement due to circumstances outside of the person’s ability to meet the requirement.</i></b></p>

## C) SCHEDULE 1 MAXIMUM BASE PENALTY AMOUNTS FOR NON-CONTINUING CONTRAVENTIONS

**TABLE 1 CONTRAVENTIONS OF THE ACT**

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty For Corporations	Column 4 Maximum Amount of Base Penalty for Individuals	COMMENTS
1.	Subsection 50 (4)	Failure to file complete and accurate information, reports, records or documents required by the Registrar	\$50,000	\$10,000	<p>The level of penalty seems excessive on its face. What would the 'scale/criteria' of progressive penalties look like?</p> <p>Related to #3 (below), what is '<i>complete and accurate information, reports, records or documents</i>' considering that information provided is the best-known information at the time (see #3, below).</p> <p>For instance, RPRAs require monthly reporting (For Tires - due the 15<sup>th</sup> of the month following) related to YTD Collection and Resource Recovery. Based on service provider 'real-world' operational constraints and future required adjustments (as new information/production data becomes available), it is not possible to be 100% accurate with the data. Is this considered a 'failure to file complete and accurate information' that would now be subject to an administrative penalty? We would think not, as the information was the 'best known and accurate' at the time of submission (ie. it is not 'knowingly false or misleading information')</p>
2.	Subsection 99 (1)	Hindering or obstructing an officer, employee or agent of the Authority in the performance of his or her duties	\$120,000	\$24,000	<p>The level of penalty seems excessive on its face, especially considering the very broad possible definition of 'hindering or obstructing'. What would the 'scale/criteria' of progressive penalties look like? What does 'hindering' look like in practice?</p>
3.	Subsection 99 (2)	Giving or submitting false or misleading information to a specified person	\$120,000	\$24,000	<p>The level of penalty seems excessive on its face. What would the 'scale/criteria' of progressive penalties look like?</p> <p>We agree that false or misleading information should not be submitted, however information <u>can</u> change from time to time when new information comes to light.</p> <p>There is a difference between <i>knowingly</i> providing false or misleading information versus providing information that is <i>believed to be correct</i> at the time it is provided. There should not be a penalty levied</p>

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty For Corporations	Column 4 Maximum Amount of Base Penalty for Individuals	<b>COMMENTS</b>
					<p>when a person, in good faith, seeks to revise/restate information once it becomes known to be different than the information originally submitted.</p> <p>For instance, performance results must be reported into the Registry by May 31 of a given year. RPRA has stated that it is an <u>offence to report incorrect information</u> (in the May 31 reporting). The Regulation specifies that an audit report must be provided by <b>October</b> of a given year (5 months AFTER the May reporting). It is POSSIBLE that when the audit is undertaken (to be provided by October) that NEW information may come to light (ie. some collection or recovery was NOT included in the original reporting for some reason) and the information reported in May would need to be restated. Based on this section, such a restatement could be considered a contravention and subject to penalties, despite the information that was provided previously was believed to be correct.</p> <p>RPRA's stated position is that the initially reported information would be considered 'false information' if it was subsequently modified/restated; that it would therefore be in the reporting party's best interest to do the audit in time for the May 31 reporting so that the performance results being reported are already audited and 'correct.' Given the timing of the Resource Recovery period end (ie. March of a given year), to expect the completion of a full 3<sup>rd</sup> party audit 2 months from the date the performance year concludes and the reporting is required, borders on unreasonable. This is particularly relevant given the natural systemic/industry delays in confirming information with service providers, etc. It would appear that the 'spirit of the regulation' was to have the different 'reporting' dates, to signal that one would have adequate time to conduct a thorough 3<sup>rd</sup> party audit and submit the appropriate report and/or restatements (if required) once fully audited and should thus NOT be subject to administrative penalties if a restatement was made.</p> <p><u>Possible clarification to the wording:</u>  <b>Knowingly giving</b> or submitting false or misleading information to a specified person</p>
4.	Subsection 99 (3)	Including false or misleading information in any document or data required to be created, stored or submitted	\$120,000	\$24,000	<p>The level of penalty seems excessive on it's face. What would the 'scale/criteria' of progressive penalties look like?</p> <p>Similar to above - there is a difference between <b>knowingly</b> including false or misleading information in any document or data versus including information in any document or data that is <b>believed to be correct</b> at the</p>

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty For Corporations	Column 4 Maximum Amount of Base Penalty for Individuals	COMMENTS
					<p>time it is provided. This is especially relevant when information can change (ie. monthly reporting) if there are various adjustments that need to happen in subsequent months after the reports are submitted.</p> <p><u>Possible clarification to the wording:</u>  <b>Knowingly including</b> false or misleading information in any document or data required to be created, stored or submitted</p>
5.	Subsection 107.1 (6)	Failure to comply with a rule made under subsection 107.1 (2) of the Act in respect of the collection of blue box material	\$120,000	\$24,000	The level of penalty seems excessive on it's face, especially if the 'rule' is not able to be met by the person.

**TABLE 2 CONTRAVENTIONS OF ONTARIO REGULATION 225/18 (TIRES)**

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty For Corporations	Column 4 Maximum Amount of Base Penalty for Individuals	Comments
1.	Subsection 4 (1)	Failure to collect minimum amount of tires in accordance with section 4	\$200,000	\$40,000	<p>The level of penalty is excessive, particularly considering that the minimum amount is a formula-based amount calculated using historical SUPPLY data (using broad assumptions of 'wear') that is not reflective of ACTUAL 'END OF USE' AVAILABILITY in the market at the time to be 'collected.'</p> <p>The Tires Regulation is the only regulation that has a minimum <b>collection</b> target (the others are a 'best efforts management target'), which is not specifically tied to a 'best efforts' basis.</p> <p>It has been shown for the past 3+ years that there are <u>not enough</u> 'used and collected in Ontario' end-of-life tires <u>in the entire system</u> (ie. ON-wide) to meet the calculated collective Producer Minimum Collection</p>

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty For Corporations	Column 4 Maximum Amount of Base Penalty for Individuals	Comments
					<p>Obligation (ie. it appears that <u>all</u> of the End-of-Life tires used and collected in Ontario <u>available in a given year are being collected</u> – there have not been issues/complaints of ‘tires not being collected’).</p> <p><b>Analogy:</b> One must build a <u>minimum</u> of 5000 wooden boats. But the wood can only come from Ontario trees. There are only enough Ontario trees available to build 4,500 wooden boats. By this logic, the builder would be considered non-compliant, because they were 500 wooden boats ‘short’ of the <u>required minimum</u> 5,000, even though there is <u>no way</u> for the builder to be compliant (ie. they cannot use non-ON trees to build the remaining boats). They would therefore be subject to penalties for not being able to meet the minimum requirement.</p> <p>RPRA has already stated that <b><i>“if there simply are not enough tires in the system for producers to collectively meet their collection obligation by the end of the performance period, there will be no compliance consequences”</i></b>. It would be our expectation that this be somehow incorporated into the verbiage so that there is clarity from the start:</p> <p><u>Possible clarification to the wording:</u></p> <p>Failure to collect minimum amount of tires in accordance with section 4, <b><i>where it can be shown that there is sufficient quantity of end-of-life tires available in the system for producers to collectively meet their collection obligation .</i></b></p>
2.	Subsection 11 (1), in respect of requirements under subsections 11 (2) to (5)	Failure to establish or operate a system for managing collected tires in accordance with the requirements set out in subsections 11 (1) to (5)	\$200,000	\$40,000	The level of penalty seems excessive on it’s face, particularly considering the term ‘operate’ has broad-reaching interpretation.
3.	Subsection 11 (1), in	Failure to ensure that specified activities under	\$2,500	\$500	

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty For Corporations	Column 4 Maximum Amount of Base Penalty for Individuals	Comments
	respect of requirement under subsection 11 (6)	subsection 11 (3) are undertaken with respect to tires as required under subsection 11 (6)			
4.	Section 25	Failure to keep records in a paper or electronic format that can be examined or accessed in Ontario for specified period of time	\$120,000	\$24,000	<p>The level of penalty seems excessive on its face.</p> <p>The term 'electronic format that can be examined or accessed in Ontario' is sufficiently broad that a contravention can still be assessed despite having a robust electronic infrastructure that captures required information.</p>

## D) SCHEDULE 2 MAXIMUM BASE PENALTY AMOUNTS FOR CONTINUING CONTRAVENTIONS

**TABLE 1 CONTRAVENTIONS OF THE ACT**

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
							<p>GENERAL:</p> <p>The very nature of a ‘per day base penalty’ raises significant concerns related to overall oversight of the Penalty issuance given the very real possibility that the Registrar or a Deputy Registrar may choose to simply issue penalty orders and ‘let the person served do what they need to do to respond/rectify/dispute the penalty’ (ie. Guilty until proven innocent) – should the Registrar or a Deputy Registrar subsequently choose to enforce the penalty, the only recourse to the person would be the tribunal. This seems administratively (and possibly monetarily) burdensome, prohibitive and punitive to the person served when the issue could have been addressed/resolved through the progressive steps of the “Risk-Based Compliance Framework”.</p> <p><b>RPRA’s “Risk-Based Compliance Framework” needs to be referenced in the context of this Regulation and associated Schedules where relevant, as this provides the basis of Progressive Compliance which subsequently lead to the issuing of Administrative Penalties. To not reference this framework and subsequently not expect the Registrar or a Deputy Registrar to follow the progressive steps of the framework only serves to highlight and exacerbate the inherent conflict of RPRA being incentivized to earn revenue through excessive penalties.</b></p> <p>This is especially important when considering the possibility of ‘continuing contraventions’ when a person may not know they are in contravention for a period of time and/or don’t know / are unsure of what needs to happen to be in compliance, and as a result may be faced with significant penalties based on a per-day basis, which could have been avoided/resolved by moving through the progressive steps of the Risk-Based Compliance Framework.</p>

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
1.	Subsection 41 (5)	Failure to pay a fee, cost or charge to the Authority at a time specified by the Authority	\$2,500	\$500	\$75,000	\$15,000	<p>The level of penalty seems excessive on it's face, especially the per day penalties.</p> <p>As indicated previously, RPRA is incentivized under the RRCEA and this Regulation to maximize the Administrative Penalties as a revenue stream, and it becomes 'in their interest' to impose an unrealistic '<i>time specified by the Authority</i>' in order to maximize the potential per-day revenue.</p>
2.	Subsection 68 (3)	Failure to ensure that no charge is imposed at the time of collection	\$2,500	\$500	\$75,000	\$15,000	<p>The level of penalty seems excessive on it's face, especially the per day penalties</p> <p>Given the nature of the Service Provider relationships in the 'real world', it is impossible for a person to 'police' every collection point in person's collection system.</p> <p><b>Possible clarification of the wording:</b> Failure to ensure that no charge is imposed at the time of collection <b><i>once it is made known to the person that a charge has been imposed at the time of collection and the situation has not been resolved through the progressive steps of the Risk-Based Compliance Framework.</i></b></p>
3.	Subsection 75 (1)	Marketing of prescribed material in a designated class to a person in Ontario	\$6,700	\$1,340	\$200,000	\$40,000	<p>The level of penalty seems excessive on it's face, especially the per day penalties</p> <p>It is unclear what this contravention would look like in practice.</p>
4.	Subsection 78 (6)	Failure to provide, upon being required to do so by an inspector, a copy of a record retained in	\$4,000	\$800	\$120,000	\$24,000	<p>The level of penalty is <u>extremely</u> excessive on it's face, especially the per day penalties.</p> <p>Again, RPRA is incentivized under the RRCEA and this Regulation to maximize the Administrative Penalties as a revenue stream. It becomes in RPRA's interest to request documentation, whether it is required for a legitimate purpose or not, in order to generate per-day revenue if the time-period to provide the information is unrealistic.</p>

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
		electronic form to an inspector on paper or electronically, or both					<b>Possible clarification to the wording:</b> Failure to provide <i>within a reasonable timeframe</i> , upon being required to do so by an inspector, a copy of a record retained in electronic form to an inspector on paper or electronically, or both
5.	Subsection 79 (1)	Failure to respond to a reasonable inquiry of an inspector	\$4,000	\$800	\$120,000	\$24,000	The level of penalty seems excessive on it's face, especially the per day penalties.  Again, RPRA is incentivized under the RRCEA and this Regulation to maximize the Administrative Penalties as a revenue stream. It becomes in RPRA's interest to request documentation, whether it is required for a legitimate purpose or not, in order to generate per-day revenue if the time-period to provide the information is unrealistic/unreasonable.
6.	Section 88	Failure to comply with an order	\$2,500	\$500	\$75,000	\$15,000	
7.	Subsection 99 (4)	Refusal to provide information to a specified person	\$4,000	\$800	\$120,000	\$24,000	

**TABLE 2 CONTRAVENTIONS OF ONTARIO REGULATION 225/18 (TIRES)**

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
							<p><b>RPRA’s “Risk-Based Compliance Framework” needs to be referenced in the context of this Regulation and associated Schedules where relevant, as this provides the basis of Progressive Compliance which subsequently leads to the issuing of Administrative Penalties. To not reference this framework and subsequently not expect the Registrar or a Deputy Registrar to follow the progressive steps of the framework only serves to highlight and exacerbate the inherent conflict of RPRA being incentivized to earn revenue through excessive penalties.</b></p> <p>This is especially important when considering the possibility of ‘continuing contraventions’ when a person may not know they are in contravention for some time. If they don’t know/are unsure of what needs to happen to be in compliance, they may be faced with significant penalties, based on a per-day basis as a result, which could have been avoided/resolved by moving through the progressive steps of the Risk-Based Compliance Framework.</p>
1.	Subsection 5 (1)	Failure to establish and operate collection system for tires in accordance with the requirements set out in sections 6 to 10	\$6,700	\$1,340	\$200,000	\$40,000	<p>The level of penalty seems excessive on its face, especially the per day penalties.</p> <p>When considering ‘operate’ the collection system, there can be considerable interpretation of ‘operate’, which in turn could lead to considerable penalties being levied. Again, highlighting the importance of following the “Risk-Based Compliance Framework” before assessing and subsequently issuing a penalty order.</p>
2.	Section 12	Failure to implement promotion and education program	\$2,500	\$500	\$75,000	\$15,000	<p>(Promotion &amp; Education, Producers)</p> <p>This level of penalty seems excessive on its face, ESPECIALLY the ‘per day’ penalties.</p>
3.	Section 13	Failure to publish and clearly display	\$2,500	\$500	\$75,000	\$15,000	<p>(Promotion &amp; Education, Retailers)</p> <p>This level of penalty seems excessive on its face, ESPECIALLY the ‘per day’ penalties.</p>

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
		information on website					
4.	Section 14	Failure to implement promotion and education program	\$6,700	\$1,340	\$200,000	\$40,000	(Resource Recovery Charges) This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
5.	Subsection 15 (1)	Failure to register with the Authority within required period of time or failure to submit information	\$4,000	\$800	\$120,000	\$24,000	(Registration, Producer) This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
6.	Subsection 15 (5)	Failure to submit updated information within required period of time	\$2,500	\$500	\$75,000	\$15,000	(Registration, Producer) This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
7.	Subsection 16 (1)	Failure to register with the Authority within required period of time or failure to submit information	\$4,000	\$800	\$120,000	\$24,000	(Registration, PRO) This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
8.	Subsection 16 (2)	Failure to submit updated information within required period of time	\$2,500	\$500	\$75,000	\$15,000	(Registration, PRO) This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.

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9.	Subsection 17 (1)	Failure to register with the Authority within required period of time or failure to submit information	\$2,500	\$500	\$75,000	\$15,000	(Registration, Collector, Hauler, Processor, Retreaders)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
10.	Subsection 17 (2)	Failure to register with the Authority within required period of time or failure to submit information	\$2,500	\$500	\$75,000	\$15,000	(Registration, Collector, Hauler, Processor, Retreaders)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
11.	Subsection 17 (3)	Failure to register with the Authority within required period of time or failure to submit information	\$2,500	\$500	\$75,000	\$15,000	(Registration, Collector, Hauler, Processor, Retreaders)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
12.	Subsection 17 (5)	Failure to submit updated information within required period of time	\$2,500	\$500	\$75,000	\$15,000	(Registration, Collector, Hauler, Processor, Retreaders)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
13.	Subsection 18 (1)	Failure to submit report to the Authority by specified date	\$2,500	\$500	\$75,000	\$15,000	(Reports, Producers)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
14.	Subsection 18 (2)	Failure to submit report to the	\$2,500	\$500	\$75,000	\$15,000	(Reports, Producers)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
		Authority by specified date					
15.	Section 19	Failure to submit report to the Authority by the specified date	\$2,500	\$500	\$75,000	\$15,000	(Reports, PROs)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
16.	Section 20	Failure to submit report to the Authority by specified date	\$2,500	\$500	\$75,000	\$15,000	(Reports, Tire Collectors)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
17.	Section 21	Failure to submit report to the Authority by specified date	\$2,500	\$500	\$75,000	\$15,000	(Reports, Tire Haulers)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
18.	Section 22	Failure to submit report to the Authority by specified date	\$2,500	\$500	\$75,000	\$15,000	(Reports, Tire Processors)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties.
19.	Section 23	Failure to submit report to the Authority by specified date	\$2,500	\$500	\$75,000	\$15,000	(Reports, Tire Retreaders)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties
20.	Section 24	Failure to submit report to the Authority by specified date	\$6,700	\$1,340	\$200,000	\$40,000	(Reports, Resource Recovery Charges)  This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties

Item	Column 1 Provision Contravened	Column 2 Description of Contravention	Column 3 Maximum Amount of Base Penalty per day For Corporations	Column 4 Maximum Amount of Base Penalty per day for Individuals	Column 5 Maximum Amount of Total Base Penalty for Corporations	Column 6 Maximum Amount of Total Base Penalty for Individuals	Comments
21.	Section 26	Failure to cause audit to be undertaken, failure to cause audit to be conducted by an independent auditor, or failure to prepare and submit copy of report by specified date	\$6,700	\$1,340	\$200,000	\$40,000	<p>(Audit, Management Systems)</p> <p>This level of penalty seems excessive on its face, ESPECIALLY the 'per day' penalties given the wide range of possible contraventions in this Section.</p> <p>For instance, there is a <u>significant</u> difference between "Failing to cause an audit to be undertaken" and a 'failure to submit a copy of report' by a specified date, however the way this is structured would indicate that the level of penalty could be the same.</p>

We would appreciate the opportunity to further discuss this feedback in more detail as you proceed with the consultation process.

Respectfully submitted,

<<Company Name omitted to adhere to MECP Privacy Policy>>