

Global Automakers of Canada Comment on Ontario's Proposed Administrative Penalties Regulation

On behalf of the 15 members of the Global Automakers of Canada (GAC) we are providing the following comment on Ontario's Administrative Penalties regulation to be made under the *Resource Recovery and Circular Economy Act, 2016* (RRCEA). All our member companies are subject to multiple resource recovery regulations under the RRCEA and represent one of the industries in Ontario that participates in the widest array of recovery programs. As such we are well placed to provide comment on the proposed administrative penalties regulation. At the outset, we want to be clear that we support the development of policy tools that will ensure a level playing field in Ontario's resource recovery regime. Administrative monetary penalties (AMPS) represent one avenue for ensuring a fair compliance environment. However, there is a need to balance tools that will punish free riders, such as AMPS, with the danger of adding additional compliance burdens on other market participants. Our comments on the draft regulation are intended to help Ontario's Ministry of Environment Conservation and Parks (MECP) find this balance.

1. Change the period to request an amendment order from 15 days to 30 days.

Part II Section 4 of the draft regulation describes how a person who is served notice of the Registrar or Deputy Registrar's intention to issue a penalty may request, in writing, that the Registrar consider further information related to the contravention, information related to the determination of the base penalty amount, or information related to measures taken to remedy the contravention. This request must be made within 15 days of receiving notice from the Registrar or Deputy Registrar.

We strongly recommend that MECP change this 15-day period to a 30-day period. The complexities of Ontario's individual producer responsibility resource recovery model mean that producers, who would be receiving such a notice from the registrar, may have to undergo significant internal investigations and discussions with the producer responsibility organizations (PROs) they have contracted with to determine whether any information needs to be passed to the Registrar in such a request. This could take time as these PROs are often engaged with multiple producers and even more service providers.

Ontario should follow the example of British Columbia where a similar the Administrative Penalties Regulation under the Environmental Management Act allows producers 30-days to make a similar request:

"A person wishing to make representations under subsection (1) must make a request, in writing, to the director within 30 days after the date the person receives the notice under section 2."¹

¹ British Columbia's British Columbia's [Administrative Penalties Regulation](#), Part 1 Paragraph 3 (2)

2. MECP must clarify in the regulation what measures will be in place to ensure that producers are not subject to double penalization for contraventions that are potentially continuing and non-continuing.

The draft regulation details how penalties for continuing and non-continuing contraventions may be issued. The proposed schedules in the regulation detail the base penalty amount for these contraventions, both continuing and non-continuing. However, we are concerned that these schedules leave some room for interpretation as far as what is a continuing contravention or a non-continuing contravention. For instance, the Table 1 of Schedule 1 describes the base penalty amount for failure to complete reports required by the Registrar a seemingly non-continuing contravention. However, it is unclear if this type of one-time contravention would also be subject to additional penalties if it takes place over a continuous period of time as outlined in items 13 and 14 of Table 2 of Schedule 2, for example. (i.e. penalties based on the number of days before the required report is submitted).

The MECP should provide additional clarity in the schedule of penalties as to which contraventions can be assessed as continuous and which cannot. There should be measures in place so that producers who are penalized over a non-continuous contravention are not then again double penalized for a continuous contravention of the same offence.

3. The above recommendations must be considered given the absolute liability producers are subject to under the RRCEA.

The RRCEA requires that obligated producers be subject to absolute liability under the administrative penalty rules. Therefore, even if a producer can demonstrate that they have taken all reasonable steps to prevent a contravention and/or that at the time of contravention a person had a reasonable belief that they were not in contravention of the rules, they are still liable.

This sort of absolute liability presents considerable risk for producers in Ontario's resource recovery environment. The individual producer responsibility model has been designed to allow producers to designate producer responsibility organizations (PROs) to meet producer's obligations under the RRCEA. These PROs in turn use a network of service providers that may be many degrees separated from the producers themselves. This presents a complicated network of obligation, delegation, and implementation. In the end producers are subject to absolute liability for contraventions that may have taken place in this network. This is why we believe MECP must consider the above requests concerning the 30-day notice period and clarity on continuing vs. non-continuing contraventions.

We appreciate this opportunity for comment and look forward to further dialogue with the Ministry on this matter.