



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

February 2, 2007

**BY FAX**

Lisa Mychajluk, Senior Policy Coordinator  
Waste Management Policy Branch  
135 St. Clair Avenue West, 7<sup>th</sup> Floor  
Toronto, ON M4V 1P5

Dear Ms. Mychajluk:

**RE: PROPOSED REGULATORY BAN ON TIRE INCINERATION  
EBR REGISTRY NO. RA06E0024**

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On behalf of the Canadian Environmental Law Association (CELA), I am writing to provide our comments on the Ministry's recently announced proposal to pass a regulation to temporarily prohibit tire incineration in Ontario for a 24 to 36 month period.

These comments are being provided to you in accordance with the above-noted EBR Registry Notice.

**SUMMARY OF PROPOSAL**

According to the EBR Registry Notice, the Ministry has proposed to pass a time-limited regulation under the *Environmental Protection Act* (EPA) that would prohibit tire incineration for 2 years, commencing in the spring of 2007. This ban does not affect any existing facility that currently has approval to burn tires as fuel, and no new approvals will be issued while the ban is in effect. The ban could be extended by another year under certain circumstances.

The apparent rationale for the proposed ban is to allow the collection of test data from existing facilities to "confirm the environmental performance of facilities that incinerate tires." Significantly, the EBR Registry Notice notes that "no facility in Ontario incinerates tires," and that the Ministry "has had no experience monitoring the environmental performance of facilities that incinerate tires."

Unfortunately, the above-noted EBR Registry Notice contains no details on the actual wording of the proposed EPA regulation. Similarly, the EBR Registry Notice does not contain any links to a draft regulation, discussion paper, or background documentation related to tire incineration in Ontario.

In addition, it appears that the proposed regulatory ban was not preceded by any meaningful consultation with interested environmental stakeholders prior to the Ministry's public announcement of the ban on December 21, 2006.

## **SUMMARY OF CONCERNS**

CELA has a number of fundamental concerns about the timing and content of the proposed regulatory ban.

### *(a) Timing of Ban*

Notice of the proposed regulatory ban was posted on the EBR Registry on December 21, 2006 for a 45 day public comment period. This was the very same day that the Ministry posted notice of two EPA approvals granted to Lafarge Canada Inc. to permit the burning of tires (and other municipal waste) as “alternative fuel” at Lafarge’s cement manufacturing plant at Bath.

In the circumstances, there can be little doubt that the proposed ban and the Lafarge approvals are inextricably linked. Indeed, it can only be concluded that the Ministry deliberately timed the issuance of Lafarge’s EPA approvals so that the Lafarge facility would not be affected by the proposed provincial ban on tire incineration. The environmental rationale for the Ministry’s preferential treatment of Lafarge is unstated and unclear. Moreover, we strongly submit that this regulatory exemption for the Lafarge project is unwarranted and unacceptable, especially in light of the substantive deficiencies of Lafarge’s EPA approvals, as described below.

The linkage between the proposed ban and the Lafarge approvals is further confirmed by the fact that both matters are addressed within the same Ministry press release dated December 21, 2006, which describes the Lafarge initiative as a “pilot project” and indicates that the temporary ban will allow Ministry staff to gather and analyze data from facilities that incinerate tires.<sup>1</sup> It is our understanding that although the ESSROC facility in Picton is authorized to burn tires, it is unlikely to do so in the foreseeable future. In effect, then, the Ministry appears to have ensured that the Lafarge facility at Bath may be the only site in Ontario to incinerate tires during the proposed ban.

It should be further noted that CELA and other parties are currently seeking leave to appeal the two Lafarge approvals under the third-party appeal provisions of the *Environmental Bill of Rights*. In essence, these leave-to-appeal applications present evidence and argument indicating that the issuance of the EPA was unreasonable and could result in significant environmental harm, particularly given the inadequacy of the monitoring conditions within the approvals.

At the present time, these applications are still pending before the Environmental Review Tribunal, and it remains to be seen whether the Tribunal will grant leave to appeal. However, if leave is granted, and if the appellants are ultimately successful at the main hearing, then it is open to the Tribunal to wholly revoke the Directors’ issuance of Lafarge’s EPA approvals. Therefore, until these appeal proceedings are fully and finally adjudicated (and unless these proceedings are resolved in Lafarge’s favour), it is our submission that it is premature for the Ministry to even consider granting Lafarge an exemption from the proposed province-wide ban.

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<sup>1</sup> MOE, “Province Imposes Strict Conditions on Lafarge for Testing of Used Tires as Fuel: Further Tire Burning to Halt while Pilot Project Undertaken” (December 21, 2006).

*(b) Content of Ban*

Permitting Lafarge to incinerate tires during the proposed ban – and possibly allowing other companies to do likewise after the expiry of the ban – is a regressive approach that reflects poor public policy and poses considerable risk to the environment and public health. For example, it is well-documented in the technical and scientific literature that burning tires as fuel can cause significant increases in various toxic pollutants released into the environment.<sup>2</sup>

Moreover, CELA submits that facilitating or permitting tire incineration in Ontario is inconsistent with:

- the public interest purposes of the EPA and EBR;
- the Ministry's *Statement of Environmental Values* (SEV) commitments to the ecosystem approach, the precautionary principle, and resource conservation;
- recent governmental initiatives aimed at protecting local air quality; and
- governmental 3Rs policies and programs aimed at ensuring the maximum diversion of waste materials from disposal (i.e. landfilling or incineration).

For example, “used tires” have been prescribed as a “designated waste” under the *Waste Diversion Act, 2002*,<sup>3</sup> and section 25(2) of the Act specifies that waste diversion programs shall not promote the burning of designated wastes. Given the Act's legislative direction to prevent the burning of designated wastes, it is our submission that it would be imprudent and contrary to the *Waste Diversion Act* to allow Lafarge or any other proponent to incinerate tires on an experimental or operational basis, now or in the future.

In our view, the bottom line is that tires should not be incinerated for any purpose in Ontario, especially by cement kilns built decades ago. Simply put, tires are not built to be burned, and cement kilns are not specifically intended or designed to burn tires.

Accordingly, CELA hereby recommends that the Ministry should:

1. Immediately withdraw or discontinue the current regulatory proposal;
2. Immediately pass a new EPA regulation<sup>4</sup> that strictly – and permanently – bans the incineration of tires everywhere in Ontario without exception; and

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<sup>2</sup> See, for example, Sierra Legal's EBR submissions on the Lafarge approvals dated March 31, 2006.

<sup>3</sup> See O.Reg.84/03.

<sup>4</sup> Cf. Ontario Regulation 555/92, which prohibited new municipal waste incinerators. However, this regulation was repealed in 1996 by the Harris Government in fulfillment of a political campaign promise: see Environmental Commissioner of Ontario Annual Report 1994-1995, page 35.

3. Take all necessary steps to revoke or suspend all existing approvals that purport to authorize tire incineration in Ontario.

Please contact the undersigned if you have any questions or comments about this submission.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Richard D. Lindgren  
Counsel

cc. Gord Miller, Environmental Commissioner  
Robert Wright, Sierra Legal  
Mark Mattson, Lake Ontario Waterkeeper

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