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***Transmission by email***

Dear Christopher Goode:

***Re: NGOs response to EBR#012-0678 – Technical Discussion Paper on Proposed Recycling Standards for End-of-Life Vehicles***

Please consider the following comments by the Canadian Environmental Law Association (CELA), Toronto Environmental Alliance (TEA), and Environment Hamilton in response to the posting of *EBR #012-0678 – Technical Discussion Paper on Proposed Recycling Standards for End-of-Life Vehicles* posted for public comments on February 5<sup>th</sup> 2014.

The comments below are not intended to address every requirement in the proposed recycling standards for End-of-Life vehicles (ELV), but will provide our general perspective on the approach and respond to specific requirements outlined in the proposed standards.

**GENERAL COMMENTS ON THE ELV PROPOSAL**

In keeping with the commitments made under the Ontario Waste Diversion Strategy released in May 2013, we are pleased that the Ministry of Environment (MoE) has released the proposed recycling standards for ELV for public review and comment. In Ontario, based on current estimates, there are approximately 650,000 vehicles taken off the road annually,<sup>1</sup> Ontario, therefore faces a growing challenge to manage the disposal and processing of hazardous materials and other waste from ELV and this problem is very likely to increase in the future. At the same time, there is a clear recognition in Ontario that waste diversion programs should make progress to support Extended Producers Responsibility. In 2011, the Canadian Environmental Law Association prepared a report , *Improving the Management of End-of-life Vehicles in Canada*,<sup>2</sup> which recognized the significant amount of waste generated from ELV in Canada. The report noted:

*In effect, there are two significant problems arising from the current way in which ELVs are managed in Ontario, and more generally in Canada. First, there is the sheer volume of waste from vehicles going to landfills in*

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<sup>1</sup> Ministry of Environment. Presentation: End-of-Life Vehicles – Project Update, Stakeholder Update, February 27, 2014.

<sup>2</sup> Canadian Environmental Law Association (CELA). 2011. *Improving the Management of End-of-life Vehicles in Canada*. Accessed at <http://www.cela.ca/sites/cela.ca/files/784.ELV%20April%202011.pdf>.

*Ontario every year – 300 million pounds or 136,000 tonnes – which could be significantly reduced through better recovery and recycling of parts and materials. Second, there is the unnecessary contamination of vehicle waste going to landfills because of the lack of requirements for depollution prior to shredding.<sup>3</sup>*

Unfortunately the MoE's proposal on ELVs, as currently drafted, is not a sufficiently robust Extended Producer Responsibility proposal. The proposal does not support a lifecycle approach to manage materials from the design and manufacturing phase to its final management phase, including recycling and ultimate disposal. The Province is therefore missing an opportunity to establish the necessary links between the vehicle manufacturers and the end of life products for disposal and processing. The proposal would be improved if it included the following elements:

- Ø□ A clear outline of the role and responsibilities for vehicle manufacturers in the proposed recycling standards, particularly in the depollution regime for ELV.
- Ø□ An assessment of how materials processed through recycling of ELVs are reprocessed for use in the vehicle manufacturing industry. This data should be utilized to establish a requirement for vehicle manufacturers who receive materials and hazardous substances collected from ELVs to be integrated for reuse in the manufacturing process. These requirements may create necessary incentives in the industry to promote innovation in the design and dismantling process of the vehicles' parts.

### **Need for consistency for processors**

It is essential that the program requirements and regulations be comprehensible to ensure that the regulated community is able to readily understand and comply with MoE's regulatory requirements. The MoE should also undertake a communications and education program prior to implementation, particularly for smaller operators. In order to ensure the success of this program, the MoE should carry out an effective inspections programme and regularly inspect sites during the first two years of implementation, to ensure compliance.

There must be a plan to address toxic substances and product depollution gaps and overlap. Most importantly, the program should avoid sending 'mixed messages' to ELV processors by requiring specific handling and reporting on some toxic substances, but providing no information, programs or support for handling other or similar toxic substances.

Moreover, it is important to note that substances and products that have to be depolluted are also subject to other regulations and stewardship programs. Some electronic waste, for example, is already subject to stewardship programs. This should not be used as a reason to exclude electronic waste from the depollution requirements. Instead, the regulation must ensure that all electronic waste is depolluted, and that information is provided to the direct processors to the relevant stewardship agency for the products covered by stewardship agreements. We note also that mercury switches in vehicles are collected and recycled under a mercury switch stewardship program. However, other common hazardous mercury-containing materials, such as halogen bulbs or e-waste are not collected by the same program or other programs. Waste diversion programs should

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<sup>3</sup> Ibid.

ensure that other stewardship programs and relevant regulations are well coordinated. It is imperative that this overlap does not result in lower standards or a lack of government oversight.

## **SPECIFIC COMMENTS ON THE ELV PROPOSAL**

We are providing brief comments on the key elements of the proposal.

### **Modification of the Derelict Motor Vehicle Exemption**

The proposal to establish an exemption under Part V and Regulation 347 for ELV sites needs further consideration. ELV sites meeting the following criteria are proposed to be exempt:

- Ø□ *at any time have no more than ten (10) ELVs stored at the site;*
- Ø□ *receive no more than two (2) ELVs at the site per year; and*
- Ø□ *do not flatten, crush, shear or shred an ELV or part of an ELV<sup>4</sup>*

The proposal above will mean that small operators will not be burdened with registration requirements. However, this exemption may pose unforeseen risks to the environment and human health if operators of small ELV sites are in the practice of storing waste and hazardous substances collected from ELVs on-site before collection is arranged. The list of criteria to exempt ELV sites should be expanded to include a maximum for volume, quantity and type of waste stored on-site to avoid potential situations where hazardous materials are not being processed in a timely manner.

### **Depollution Standards**

We recommend that the proposal provide a clear mechanism to review, evaluate and add products and substances to the required depollution list. Electronic devices and computers are increasingly present in modern vehicles and thus the safe removal and handling of e-waste should be included. If there is overlap or a link to an existing stewardship program, that program should be explicitly linked to the ELV program.

The proposal outlines a number of substances and products that are to be removed from ELVs. We consider this list to be a good starting point and may be consistent to the approach taken by the industry and practiced in other jurisdictions. However, there is no mechanism in the proposed standards to suggest that new products or substances will be added to the list. Indeed, the list should be accurate and current and provisions should be in place to require that substances and materials be added to the list. This provision is integral to an effective strategy on the ELV recycling program. There is a growing body of evidence demonstrating harm to the environment and human health from the use of certain toxic chemicals. Brominated flame retardants, for example, may be used extensively in car seats and electronic mechanisms in cars and have been associated with significant health impacts. We note that endocrine disruptors, reproductive and developmental toxicity, neurological toxicant and other impacts are not listed in the depollution standards. It is important to include these health impacts on the list to ensure the list is accurate and comprehensive. It may also provide an incentive to the vehicle manufacturing industry to consider the design of vehicles and review its

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<sup>4</sup> MoE. 2014.

manufacturing process to assess whether these materials can be reduced or replaced with less hazardous materials.

The CELA 2011 Report provided relevant commentary regarding materials and hazardous materials that should be targeted for depollution. Among the recommendations include:

- Ø□ Improvements in the rate of recycling of windshield glass.
- Ø□ The need for significant improvements in the recovery and recycling of end-of-life vehicles. This should be made by facilitating the methods of removal and recovery, by developing markets for these materials and by improving the identification of materials used in manufacturing, particularly plastics.
- Ø□ Seek mandatory reductions and elimination by vehicle manufacturers of toxic chemicals, which banned in the EU but may still be present in North American vehicles.
- Ø□ The Ontario government should encourage research and development in the design of vehicles and their parts and materials through existing research centres.<sup>5</sup>

### **Depollution Notice**

We recommend that the MoE make depollution notices publicly available in an annual report.

The proposal to require depollution notices for ELV is considered a necessary step for transparency and accountability of ELV operators. In particular, inclusion of vehicle identification numbers (VIN) for all ELVs on depollution notices will reduce the incidences where operators failing to meet its obligations to depollute vehicles could be tracked. Currently, the process to monitor depollution activities in Ontario remains in the hands of the operators involved in the various processes (crushing, shredding). The public is not provided information and validation on the depollution of ELVs. As part of the waste diversion program in Ontario, a summary of depollution notices completed for Ontario should be prepared and released annually to the public.

### **Environmental Activity and Sector Registry (EASR)**

The Environmental Activity and Sector Registry (EASR) allows businesses to register prescribed activities in the EASR instead of seeking an Environmental Compliance Approval (ECA). Since 2011, our organizations have submitted numerous comments regarding our concerns on the modernization of approvals and the use of EASR for specific activities such as transportation of hazardous waste.<sup>6</sup> In 2012, the Canadian Environmental Law Association (CELA) and Ecojustice, for example, expressed their opposition to the proposal to exempt transportation of hazardous waste from ECAs and alternative registration to the EASR. We stated that the proposal to use the EASR to apply to the transportation of hazardous waste was inappropriate as it posed a

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<sup>5</sup> CELA, 2011.

<sup>6</sup> See: Canadian Environmental Law Association and Ecojustice. 2012. Letter to Minister of the Environment dated April 18, 2014. Re: Exemption of Transportation of Hazardous Waste from Licensing Requirements. Access at [www.cela.ca](http://www.cela.ca).

“substantial risk” to the environment and health. Furthermore, we noted the poor compliance rate of hazardous waste handlers to existing regulations. Given that depolluting ELVs also involves the management of hazardous substances, we have ongoing concern with the proposal to allow for a majority of the ELV operators in the province to register to the EASR as opposed to the requirement to apply for an ECA. Operators that register to the EASR for ELV processing and management must meet regulatory requirements related to air and waste. However, these requirements are too general in scope and in some cases no rationale has been provided to support these requirements. Moreover, there is very little guidance on acceptable practices. ER-5, for example, which deals with torching and lancing of materials, outlines a “minimum distance of 10 metres away from all property boundaries of the facility.”<sup>7</sup> However, no scientific data has been provided to justify the minimum distance of 10 metres. Similarly, the requirement to establish a limit of “4 hours on any day under normal operations” for lancing and torching activities has not been fully justified. A substantial profile of the materials subject to torching and lancing should be assessed and better data needs to be collected prior to establishing these requirements. We have concerns that facilities subject to these requirements will exceed allowable time for lancing and torching activities. Furthermore, air emissions of toxic substances (e.g. fine particulate matter) that are persistent and toxic could have long term effects on workers and the community. These factors do not appear to have been considered in ER-5.

Due to the uncertainties regarding the amount and dispersion of toxic emissions associated with lancing and torching activities, we strongly recommend that facilities that undertake torching and lancing activities be subject to ECAs and not be covered through the EASR framework alone. Scrapyard facilities based in Hamilton that want to use oxypropane cutting torches must apply for an ECA (air) in order to do so. The experience of scrapyard facilities in Hamilton show that these facilities are a source of emissions for fine particulate matter (including from toxic metals). Scrapyard facilities subject to ECAs to control metal cutting torch activities are required to apply control technologies that operate year round (e.g., including in conditions below freezing) to effectively control emissions. Violations of the requirements of the ECAs provide a mechanism for MoE to assess facility compliance to existing regulations that may not be present in the EASR.

ER-6 which deals with crushing equipment outlines minimum distance of 250 m from property boundary, or a barrier with a minimum density of 20 kg/m<sup>2</sup> have been proposed to address noise levels. Justification for proposing these numbers are not available in the technical document and would be difficult to assess if the safety margins required for neighbouring communities that would be subjected to the noise from crushing processes is adequate. It is unclear if ER-6 excludes shredding equipment/ automotive shredders. Further discussions on the proposed distance for equipment location are required as these activities are a source of noise as well as potential sources of toxic chemicals (including fine particulate matter and other harmful contaminants that might result from the low temperature ‘smouldering’ of foam and plastic shredder fluff within a shredder) that may have the ability to travel distances from their origin. Other factors may also need to be considered in setting these limits. For example, cumulative impacts from other noise sources should be considered when determining adequate distance, or barriers consider height along with desired density. We would also add that such

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<sup>7</sup> Ministry of the Environment. 2014. Technical Discussion Paper on Proposed Recycling Standards for End-of-Life Vehicle.

requirements be applicable to all operators that are involved in crushing ELVs to ensure that noise protection is integrated in facility planning.

### **Operating Requirements**

Generally, the operational requirements in the proposal do not give full consideration to the potential impacts from waste and air emissions associated with ELVs on neighbouring communities.

OR-7 which outlines notification requirements for storing waste longer than 90 days is already a requirement under Regulation 347 but no further requirements are outlined in OR-7 to notify when the waste has to be removed or stored on site. OR-7 does not consider cumulative or aggregate storage of waste on-site. OR-7 should be amended to give the local MOE district office information on the timing of waste removal and the amount and type of waste to be stored on site. The local district MOE office should also require written confirmation of waste removal to be submitted within 5 days. This information should be made publicly available to ensure transparency and accountability of the province's waste management programme.

OR-8 requires that "*Subject waste must not be stored on site for longer than 24 months*" OR-8 is an important provision that may be difficult to monitor effectively. A requirement to apply for an ECA for waste stored longer than 24 months can perpetuate the potential risks associated with the waste. The ECA process should ensure that application for waste storage is fully reviewed for waste remediation plans and includes proposed timeframes for removal of waste. The current proposal does not indicate when an application for an ECA is required to maintain compliance with OR-8. The inspections of facilities that submit notices for waste storage on site longer than 90 days should be undertaken under this regime.

OR-13 outlines weekly inspection requirements for storage areas for spills and/or leaks. The requirement does not specify who conducts the inspection, what criteria or framework is followed for conducting the inspection, or how the inspection is documented.

OR-15 outlines spills prevention and management plans outlining requirements for specific information. OR-15 does not include an explicit requirement to inform the community, although requirement for information of "the names of the persons who are to be notified in the event of a spill" could include notification to the affected community. The spills prevention and management plan should also require establishing a database to record spills occurring on site and accessible to the public.

OR-18 requires management of fugitive dust on facility roads and unpaved areas. Dust management may involve the use of toxic chemicals as dust suppressants, which themselves could pose a health risk to applicators and the nearby communities and also adversely impact the natural environment. Consideration should be given to provide additional conditions on what would constitute good housekeeping practices to ensure "that there is no track-out of particulate matter on roadways adjacent to the entry points to the facility." The absence of criteria for good housekeeping practices would result in inconsistent practices from facility to facility and does not provide certainty that particulate matters or other toxic chemicals are not emitted to the air or released to waterways.

OR-19 and OR-20 outline training requirements for employees and the documents associated with personnel training. It is critical that all employees of ELV sites are trained, particularly those handling or exposed to hazardous materials and chemicals. These ORs do not outline how frequent training or retraining is required or whether certified training is required. Retraining will ensure that employees receive current knowledge on best practices which may assist in preventing potential accidents on site. Similarly, the proposed regulations should also require that certification should be obtained to demonstrate a level of competency to work in an ELV facility.

Our groups recognize the opportunity available to the province in improving how ELV facilities are managed and operate. The present proposal lacks key elements that advance the Extended Producers Responsibility framework for ELVs in Ontario. In particular, we note the absence of responsibility outlined for vehicle manufacturers in the proposed framework. We encourage you to review the proposal with an aim to strengthen provisions to advance the Extended Producers Responsibility principles. Furthermore, the proposal sets out exemptions criteria that seeks to promote the registration of all ELV facilities to the EASR. This approach is a concern in that it will require only a few operators to submit applications for ECAs (as it applies to air releases, noise and wastewater releases). It is unclear how many facilities would require applications for ECAs. Finally, the proposed depolluting standards for ELV require substantial changes to ensure that the list of materials and substances targeted for depollution is expanded and coordinated with stewardship programs and existing regulations. It is our recommendation that ELV operators that are involved in depolluting vehicles, that involves handling hazardous waste and substances, should be subject to the requirements of an ECA, without exception.

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