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RE: NGO response to ERO 019-0045: The proposed administrative penalties regulation under the *Resource Recovery and Circular Economy Act*

The undersigned organizations are responding to the ERO 019-0045: The proposed administrative penalties regulation under the Resource Recovery and Circular Economy Act (RRCEA). We are pleased to see a draft regulation on administrative penalties (AMP) under the RRCEA. This regulation should be in place to support and advance the Province's goals to achieve a zero waste Ontario and zero greenhouse gas emissions from the waste sector, including work towards the elimination of waste as committed under its Strategy for a Waste-Free Ontario: Building the Circular Economy.

However, we offer the following concerns and recommendations on the draft administrative penalties regulations.

1) *Benefits of Administrative Penalties should be supplementary to Effective Prosecution Strategy under RRCEA*

CELA and other groups provided substantial comments in response to the use of administrative penalties to address non-compliance matters under various environmental legislations, including the latest response in 2019 regarding proposals to amend the Environmental Protection Act (Posting of ERO 019- 0023). Our submissions noted that there is:

merit in the use of AMPs as an additional enforcement tool to address those offences which pose a minor risk of environmental harm while prosecutions should continue to be utilized for those violations having greater consequences. It is important that the use of AMPs be regarded as a supplement but not a replacement for environmental prosecutions. MoE staff should thus be trained in the use of AMPs to ensure that they are used in a manner that is proportionate and appropriate to the violation in question.¹

¹ <https://cela.ca/wp-content/uploads/2019/07/1269-AdministrativeMonetaryPenalties.pdf>

The use of administrative penalties under the RRCEA should be accompanied by a well developed strategy for prosecutions for matters that result in significant harm to the environment.

Administrative penalties are more appropriate for non-compliance matters that have minor risks to the environment and prosecutions should be pursued for violations under the RRCEA and its regulations that result in greater environmental and health impacts. Unfortunately, the release of the draft regulations on administrative penalties did not include details on greater enforcement and prosecution activities of such offenses under RRCEA.

Recommendation: Administration Penalties Regulations should be part of a larger government strategy outlining broader enforcement and prosecution activities.

2) *Annual Reports on Enforcement activities including Administrative Penalties, Fines and Prosecution*

The proposed regulations do not outline requirements for RPRA to collect and publicly release annual reports on enforcement activities including on administrative penalties. To ensure public accountability and transparency on the effectiveness of RRCEA, annual reports outlining the number of notices, orders and penalties issued should be collected and released annually. Key elements of an annual report should include the following information at a minimum:

- the number of AMPs issued by the RPRA annually
- the person to whom AMPs were issued
- the types of violations subject to AMPs
- the time period for issuing an AMP upon discovery of a violation
- the number of violations which were corrected
- the length of time it took for a facility to come into compliance
- the penalties imposed for each violation
- the total amount of annual penalties imposed under AMPs
- the number of AMPs which were not paid within the time specified and the government's collection efforts
- the number of appeals that were made to the Ontario Land Tribunal (OLT)
- the outcome of these appeals

Recommendation: Add requirements in the draft regulations for the RPRA to produce annual reports associated with administrative penalties with minimal information listed above.

Recommendation: The annual report should specifically include detailed information on each violation including name of violator, the violation under the RRCEA and its regulations, the penalty applied to the violation, status of compliance and resolution to the violation, status of violation under review by OLT.

3) *Administrative Penalties Fees*

The schedule in the draft regulations outlines administrative penalties for each designated waste stream (e.g., Tires Regulation, Batteries Regulation, EEE Regulation, Blue Box Regulation, and HSP Regulation). However, no rationale is provided in the supporting materials to outline how the fees have been established for each designated material covered in these regulations. Similarly, there are no

requirements provided in the draft regulations to review and assess the effectiveness of these penalties to deter non-compliance to the RRCEA and its regulations. Establishing sufficiently high fees for non-compliance activities is essential in achieving the zero waste goals set out in the Strategy for a Waste-Free Ontario.

The proposal does not provide any details on how the fines collected under the draft Administrative Penalties regulations are collected and used. The administrative penalties regime under the EPA indicated that fees are directed to be used for environmental protection programs.

Recommendation: The regulations should include mechanisms to review and update the Administrative Penalties outlined in the Schedule of the Regulations to ensure that they are sufficiently high to promote compliance to the RRCEA and its regulations for designated materials.

Recommendation: The regulation should also include a mechanism to automatically add administrative penalties for new regulations for added designated waste under the RRCEA.

Recommendation: The regulation should commit to use fees collected from administrative penalties to support extended producer responsibility regime and improve environmental protection from the impacts of waste and the public should be given the opportunity to make input into how penalties are used.

4) Timelines and lack of public transparency for notice of intent and issuing of orders

The draft administrative penalties regulation specifies timelines for a person who receives a notice of intent by the Registrar/Deputy Registrar, allowing that person to submit in writing, within 15 days, additional information to be submitted related to the contravention. However, no timelines are outlined when issuing an order (Section 5). The absence of timelines placed on the Registrar/Deputy Registrar to issue an order could have significant implications supporting continued non compliance by a person or company and potential harm to the environment.

The regulations include an appeal process available only to industry and any person receiving the orders of non-compliance. This process lacks transparency and denies opportunities for the public to engage in the process to determine the administrative penalties to be applied. Significant consideration should be given to provide more transparency and public involvement in the regime outlined in the draft regulations.

Recommendation: Incorporate transparency and opportunities for public involvement in the whole process from issuing notice of intents to issuing of orders under the regulation.

5) Lack of criteria to establish “best efforts”

Section 11 of the draft regulations, “No penalties re “best efforts” provisions”, states that:

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.

We reject the inclusion of section 11 of the draft regulation. No definition, criteria or conditions are outlined that would provide justification on how to meet “best efforts.” The discretion is given to the Registrar to determine what is meant by ‘best efforts.’ The inclusion of this provision weakens the administrative penalties regime.

Recommendation: Section 11 of the draft regulation should be deleted.

We welcome the opportunity to discuss these concerns and our recommendations further.

Sincerely,

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