



TRAC

Tire and Rubber
Association
of Canada

Submission re Bill 151, Waste-Free Ontario Act

[Abstract](#)

TRAC Submission of the Issues, Challenges and Opportunities for End-of-Life Tire Management in Ontario

Tire and Rubber Association of Canada Submission**Re: Bill 151, Waste-Free Ontario Act****Executive Summary**

The Tire and Rubber Association of Canada (TRAC) commends the Government of Ontario for its visionary plan for a waste free Ontario. And while today a waste-free Ontario may be aspirational, we know it can become a reality because our own sector is very near to becoming 100% waste-free. Getting that final way will require a partnership between industry and government but with a common cause, purpose and resolve we believe we can achieve our mutual objectives.

The current Used Tire Program operated by Ontario Tire Stewardship (OTS) has realized gains for Ontarians and industry stakeholders since its inception in 2009. Ontario has increased from 50% to 100% used tire diversion and begun investing in R&D, recycled rubber manufacturing and consumer education. OTS created sophisticated computer systems, manifest tracking and reporting and technological prowess for end-of-life tire (ELT) management. As intended by the enabling legislation, these gains were paid for by tire producers, brand owners and first importers and supported by a legion of processors, transporters, recycled rubber manufacturers and retailers, tire dealers and consumers.

Bill 151, Waste-Free Ontario Act will create a new ELT management scheme called Individual Producer Responsibility (IPR), in lieu of the OTS. Indeed, OTS will wind up, transition its assets and liabilities. TRAC understands the Government's policy imperative for repealing the Waste Diversion Act, and we understand OTS cannot exist in its present form. That said, TRAC supports a transition going forward that is careful to preserve the important gains made to date and transfers the existing assets and liabilities in such a way that the industry and Ontario do not lose the successes and investments to-date.

TRAC does have some concerns with the new Act, notably with regards to the mandate, scope and potential cost of the new Resource Productivity and Recovery Authority as well as concerns around producer obligations. For example, the new Authority should not replicate the data gathering infrastructure for which the industry has already bought and paid, currently operated by OTS. And while the enforcement mandate can be a useful tool, we remind the Authority that even without enforcement tools, OTS garnered near universal support and compliance from producers. All of which is to say enforcement requirements in our sector are modest and audits should be focused on outliers and free-riders.

The Act allows for some other provisions for future rule making which concerns TRAC. We caution against setting individual collection and accessibility targets as this is impractical given the diverse distribution network across the province. Setting individual diversion targets will also be problematic given that not all producers sell the same type of tires in all markets. All of which is to say that a collective approach to tire stewardship is a preferred industry model because it amalgamates the many disparate sub-sectors into a cohesive whole.

TRAC believes the correct response to Bill 151 from the major tire producer sectors which includes national retailers, vehicle manufacturers, independent tire dealers and tire manufacturers should be to coalesce around a single not-for-profit collective which would take responsibility for managing end-of-life tire obligations and to work with the new Authority to harmonize the Ontario tire program with the rest of Canada.

This paper contains recommendations by TRAC with respect to some of the concerns raised by Bill 151 and hereafter summarized at the end of this submission. Bill 151 relies extensively on regulations for many aspects of its eventual practical application. While we understand the reasons for such process, it is impossible to speculate and comment at this time on many important questions concerning such regulations and we may therefore issue further comments and recommendations as the information becomes available.

Introduction

The Tire and Rubber Association of Canada (TRAC) is pleased to offer comments on the proposed Bill 151, Waste-Free Ontario Act, 2015. TRAC, an organization which represents the interests of tire manufacturing and tire processing members on this issue, has a longstanding history and experience with end-of-life-tire (ELT) management in Canada. For many years, tire manufacturers across North America and around the world have demonstrated responsibility and support for ELT management. In fact, since the early 1990s, whether operating in a free market system, a tax-based system or a shared responsibility system, the tire industry has consistently achieved very high diversions (80%-90%). More specifically, TRAC members participate as directors of Ontario Tire Stewardship and so have a very keen interest in this legislation and its effect on the used tire program in Ontario.

Current Used Tire Management in Ontario

The tire industry in Ontario, including manufacturers, tire dealers and retailers, transporters, rubber processors and others can be justifiably proud of their combined efforts since the start-up of the used tire program by Ontario Tire Stewardship in September 2009. In the span of six short years, this industry sector, with capable leadership from OTS staff has made the Ontario tire program the envy of tire stewardship in North America and around the world:

- OTS has achieved diversion rates of effectively 100% of tires available for recycling
- OTS has caused over 80 Million tires to be responsibly recycled in Ontario
- OTS has attracted over \$70 million of new processing investment in Ontario
- OTS has spear-headed the creation of over 300 direct jobs and many more indirectly
- OTS as financed over \$3 Million in R&D funding to encourage tire recycling innovations
- OTS has responsibly cleaned up 100% of existing stockpiles
- OTS has invested over \$1 Million a year in consumer promotion and education since inception
- OTS has consistently reduced the per tire cost, going from \$5.84 to \$4.25 and going lower
- OTS has invested over \$5 Million in data collection technology and infra-structure
- OTS enjoys wide support from stewards and service providers

By any measure, OTS is extraordinarily effective, efficient and adds tangible value to Ontarians.

Which begs the question: Do we really want or need to wind-up OTS? What problem is the Government trying to achieve by causing the dismantling of OTS and compelling the industry into an unproven model that, so far as TRAC is aware, has never been tried anywhere in the world for tires?

TRAC understands the Government's policy imperatives behind their individual producer responsibility (IPR) approach, and while we believe it is **not** the right model for tires and does create an inordinate and unnecessary level of uncertainty and risk to an otherwise very successful program, we also understand that with the repeal of the Waste Diversion Act, OTS will be wound-down, however regrettable. The important thing now is to understand why OTS was successful and to preserve the many good things the industry has created.

Reasons Why the Ontario Tire Program is Successful

As noted earlier, there are some very good used tire management systems operating around the world in either a tax-based system, a producer responsibility system or the free-market. The success of these systems comes from several factors: used tires are naturally returned to tire retailers when consumers purchase new tires, so the collection system is very well established and relatively low cost; secondly, the scrap tire itself has several unique attributes that can be used in different secondary markets. For example, scrap tires have approximately 25% more Btu value than comparable coal, so in many jurisdictions, notably Europe, US and Japan, scrap tires will supplement coal usage, with the added benefit of burning more cleanly and reducing SOx and NOx emissions.

But even without the fuel markets, innovators and entrepreneurs have always looked at the polymeric properties of tire rubber and found markets for its unique elastic attributes. And as processing equipment became more refined and dedicated to tire recycling, the resultant material of rubber and steel, less so fibre, became more refined and of a higher quality. As a result today we have important secondary markets in sports fields, asphalt road-building, engineered matting and as a light-weight fill in engineered construction projects, among others. And, with improving technological sophistication we also see used tire rubber completing the loop back into new tire manufacturing.

All of which is to say, having good strong viable sustainable markets is one of the key ingredients in the secret sauce of a successful tire stewardship program. But there never seem to be enough sustainable markets, that is, markets which can stand on their own without any financial assistance from an outside agency or processor 'gate-fee' for the scrap tire. Which is another way of saying the scrap tire still has 'negative-value' meaning it still costs to dispose of it.

Every province in Canada has an agency, whether a Government department, a delegated authority, or a non-Crown agency with full responsibility to manage their scrap tire program. And while there are many different challenges owing to the diverse geo-political, regional, economic differences in Canada, it is fair to say all the tire programs are successful in that they efficiently manage 100% of the scrap tires within their domain.

Ontario Tire Stewardship is indeed an important ingredient of the secret sauce to the success of the tire program. The key is that *a single entity is responsible*. Had OTS not been responsible, who would have cleaned-up the stockpiles? Who would have invested in R&D? Who would have ensured complete collection coverage across the province? Who would have ensured the scrap tires were only sent to approved, environmentally responsible end uses?

Bill 151 asserts that all producers will be individually responsible for these things. Our concern is that if everyone is responsible, then no one is responsible. Efficiencies will be lost, costs duplicated and the end state will be impaired. Put another way, the whole will be much less than the sum of its parts.

TRAC Comments and Concerns with the Waste-Free Ontario Act

After reading the Act and attending several Ministry consultations, TRAC has narrowed its comments to the most important areas we believe impact the tire program:

1.0 Resource Productivity and Recovery Authority (the “Authority”)

While TRAC appreciates the need for an Authority, (because someone needs to be responsible), we do have serious concerns about the scope of the mandate and the potential for duplicative efforts which will do little but to add unnecessary costs and bureaucracy to many producers.

Specifically, the Government Strategy document, Building the Circular Economy says *“the proposed Authority would operate a data clearinghouse and provide independent, robust oversight, and compliance and enforcement of producer responsibilities”*.

TRAC raises several concerns: first, tire producers, through their fees to OTS, have invested over \$5 Million in data collection technology to help build an efficient transport collection and tracking system to reduce costs and minimize fraud. TRAC believes it is the best, most robust tire data collection system in the world. Are we now to pay fees to a new Authority to build another system? Respectfully, that makes no sense.

Secondly, OTS has always performed an auditing function of stewards and service providers to ensure a level playing field. Importantly, the audit function is less about uncovering fraud and more about ensuring companies are reporting within the right categories and products etc. Fraud is more likely to occur where firms are trying to avoid being captured under the OTS umbrella and not playing on a level field. This is where the compliance and enforcement provisions of the Authority can be properly marshalled. If the Authority truly wants to add value to the used tire program, it should focus its efforts on identifying and prosecuting the outliers and free-riders.

We caution and fear the Authority will become very large, very quickly because of its appetite for data and its compliance and enforcement mandate. It is telling for TRAC that even without any enforcement capabilities, OTS has been able to get virtually all producers and service providers under their umbrella. There may be one or two percent non-compliance, but the amounts are small and have virtually no

bearing or risk to the integrity of the program. Throwing huge muscle (and cost) in the form of the Authority at a very small problem is not in the interests of producers.

We believe the Authority should have limits and/or controls to prevent “mission creep” as a way to control potential cost escalation. One such initiative would be to ensure a minimum of a third of the board be appointed or elected as representatives of brand owners. Another such initiative would be to cap the Authority’s statutory Objects so that the Authority is limited to its Act, and not “or any other Act” as currently drafted in Section 24.

TRAC Recommendations:

- 1) The Authority and the Industry Collective(s) should agree in principle to share the data gathering systems of the collective(s), subject to suitable confidentiality protections etc.***
- 2) The Authority’s compliance and enforcement provisions should only be exercised against producers when outcomes have not been achieved. Otherwise audit and enforcement should be directed against outliers and free-riders.***

2.0 Individual Producer Responsibility

The proposed Strategy places a great emphasis on the need for Individual Producer Responsibility in order to “kick-start” waste diversion. As demonstrated with the tire program, the collective approach has shown to be a very effective and sophisticated model which is well established and not in need of any legislative stimulus. But might IPR (in the way it is presented under Bill 151) be a workable model for tires? We do not think so. In fact, we believe the tire program would collect and recycle fewer tires under IPR and more importantly, TRAC feels we would lose many of the gains OTS has created. What of R&D Funding; financial incentives to recycled rubber manufacturers; robust consumer education and new investment—all elements of the current program that have earned its success? Even if the Authority were to mandate elements of these basic OTS deliverables it would seem a certainty that an IPR model could not deliver such in an effective and thoughtful manner.

Indeed the danger is that under Bill 151, these important stewardship initiatives will all fall away, as the only metric that will matter is the \$\$/tonne cost to meet the tire producers legal obligations. The Act is intended to drive a competitive market—which it undoubtedly will—though it remains to be seen whether consumers or the environment will be winners under this approach.

TRAC is very concerned about the IPR model as identified in the Act. This model presents a host of risks, without seemingly any reward for the program, the stakeholders, consumers or the environment. We do however believe that if given sufficient time to plan and organize, the key tire producer groups can come together with a program model that would preserve the gains made to-date and protect the future integrity of scrap tire management in Ontario.

3.0 Producer Obligations under Bill 151

Under Part IV of the Resource Recovery and Circular Economy Act, 2015, a brand holder may be required to carry out a number of responsibilities. TRAC wishes to comment on a few of the most pertinent sections:

a) Sec. 67 Responsibility to Reduce Waste

*A Regulation may require a responsible person to **design material** so as to:*

- i. Increase the material's reusability and recyclability*
- ii. Reduce or eliminate any impact the material may have on the recyclability of other materials in the class*
- iii. Reduce the amount of waste generated at the end of the product's life*
- iv. Reduce or eliminate the use of any substance in the material*
- v. Increase the use of recovered resources in the making of the material*

The tire industry is very focused on the circular economy concept of designing for recycling, reuse or repurposing. Manufacturers dedicate significant R&D investments not only to tire safety, but also to creating greener products that can both reduce environmental impact of the tire during its useful life, but also allow for better repurposing of the product at the end of its life. Ultimately manufacturers hope to achieve recyclability of tires, but achievements to date in designing tires for reuse (retreading) and repurpose (as fuel, as a component in asphalt, synthetic turf, playgrounds, building materials and the like) is phenomenal. TRAC appreciates government recommendations to design for environment, but does not believe imposing requirements for enforced recyclability of products (rather than reuse or repurpose) would be beneficial to maintaining safety standards in tires at this time.

TRAC Recommendation:

3) Government should not assign Design for Environment requirements on tire manufacturers

b) Sec. 68 Responsibility for Collection System

- A regulation may provide that a person mentioned in section 61 or 62 is responsible for establishing and operating a collection system for prescribed material in a designated class in accordance with the prescribed requirements.*

TRAC asserts that compelling individual brand holders and producers of tires to establish and operate a collection system for their designated material is tantamount to forcing them into the waste management business. This approach serves nobody's interests and is misguided and unhelpful. Producers should not have this obligation imposed upon them as it is not their expertise. Such expertise does, however, reside in OTS and could be passed on to a successor organization.

For example, if a producer sells some unique tire sizes in Northern Ontario, that producer will need to demonstrate somehow that they have a collection plan or a service agreement to ensure said tires are collected in that region.

This is the approach the Ministry took when it introduced the collection of pharmaceuticals and sharps, which required all producers of these products to ensure that they had collection facilities in all pharmacies across the province. This approach may work for pharmaceuticals and sharps because all

producers of these materials want to be on the shelves on all pharmacies across the province. This is not the case with tires. We see two primary issues with setting collection and accessibility targets for tire producers: first, many tire producers operate through distributors and are unaware of the final destination of their product. Secondly, many tire retailers/dealers carry multiple tire brands or have ready access to other brands as required. With that said, requiring individual producer collection and accessibility targets presumes these targets would be audited by the new Authority. The sheer bureaucratic nightmare of attempting to audit such targets will render the system unmanageable.

Today in Ontario virtually all consumers have access to dispose of their used tires and virtually all used tires across the province get collected; thanks to the success and the efforts of OTS, demand for used tires exceeds supply. TRAC cautions against setting arbitrary collection and accessibility targets for every producer as the channels of distribution have changed markedly in recent years and this is unnecessary and counter-productive. So long as demand exceeds supply, the tires will find their way into the legitimate waste-stream.

TRAC Recommendation:

- 4) Tire Producers should not be required to establish and operate a collection system for the designated material, as the free market and the new successor to OTS will manage this portion of the business***

4.0 Diversion Targets and Administrative Penalties

TRAC believes diversion targets will be set in Regulation after consultation with the Ministry of the Environment and Climate Change. We contemplate tire producers will likely have the same diversion target as currently achieved under OTS. This is perhaps understandable from the Ministry's perspective, as why would they accept anything less than currently achieved? The problem is that the industry is being compelled to adopt an unproven model and there is a bias on behalf of any given Collective to collect only what it needs in order to satisfy its targets. Bill 151 will invoke administrative penalties for producers not achieving its targets, so setting the right target, either individually or by collective is imperative.

It is also important to realize that a diversion target, particularly as it is measured in the tire business today, is a very imperfect performance indicator. Today, the diversion target is expressed as the amount of tire material recycled as a percentage of the new tire supply entering the market. For example, rising new vehicle sales (meaning more new tires enter the market), does not mean tire recycling numbers are affected in any way. Therefore, on a strict calculation basis, the diversion target will fall. Similarly, we are seeing a higher portion of consumers buying winter tires, but that does not mean they discard their summer tires. In both instances tire supply is increasing, but the attainment of the diversion target is decreasing because there is not a direct relationship between tires supplied and tires recycled. Over 3-5 years these anomalies should sort themselves out, but it would not be fair, or warranted, to issue administrative penalties because a diversion number was not attained, particularly if all the scrap tires which were available to be collected and recycled were done so, as is the case today with OTS.

Setting a diversion target for the industry may seem reasonable at first glance, given the experience under OTS. And under IPR the diversion target must be an individual target, which also seems reasonable at first glance. Like many other industries, we have producers who operate in all key markets and others who

specialize in farm tires or industrial tires or off-the-road tires etc and each market segment likely has its own diversion rates. Under OTS, this all gets amalgamated, but under IPR, the diversion target may need to be a function of tire type, which will complicate the setting of diversion targets for individual producers.

TRAC Recommendation:

- 5) Diversion targets must be negotiated with producers and Government should not simply seek to impose the diversion rates experienced by OTS.***

5.0 Green Procurement

TRAC compliments the Government for including Green Procurement responsibility within the new legislation recognizing Government can play an important role to encourage and build sustainable markets for recycled products coming from designated materials. Recycled tire material is uniquely suitable in this endeavour be it landscaping material such as mulch or rubber pavement, or civil engineering applications for light-weight fill in Ministry of Transportation projects or rubber modified asphalt applications, where adding crumb rubber reduces maintenance costs, extends the life of the asphalt and improves traction. OTS has invested several million dollars in developing these markets in Ontario and while we can point to some success, Government leadership to-date has been tepid at best. TRAC calls for a joint Government and Industry Working Group to come together and get serious about delivering on the Green Procurement initiative.

TRAC Recommendation:

- 6) Government and Industry should form a joint working group to expedite the Green Procurement initiative***

TRAC Recommendations for a Path Forward

No responsible, knowledgeable stakeholder wants to completely dismantle all the good things the tire industry has achieved since 2009 with end-of-life tire management in Ontario. The question is, how do we transition from the monopolistic, industry funding organization approach which compels all tire producers into a fixed structure, to a more flexible model that allows producers more choice in how they exercise their obligations under the new legislation.

TRAC has several observations and recommendations for a path forward.

Wind-up and Transition of OTS

The Strategy Paper contemplates the dissolution of all Industry Funding Organizations such as Ontario Tire Stewardship. This would presumably require someone to purchase OTS assets and to assume OTS liabilities. If someone were to do so, to whom would the net proceeds go? In the case of OTS, virtually all Stewards passed the eco fees on, so ultimately the end consumer paid the eco fee. To pay the net proceeds back to Stewards would result in an unjustifiable windfall; to pay the net proceeds to consumers would be impractical. (OTS, by virtue of reducing eco fees from \$5.84 to \$4.25 over the last three years, is returning monies to consumers in the form of lower fees.)

For what purpose might someone or some group buy the assets and assume the liabilities? The only logical answer would be with the intention to create a Collective for Producers, as OTS intellectual and proprietary assets are coveted and would be a tremendous asset to Producers in need of a partner to manage their obligations under the new legislation. It's important to remember, Producers paid for these coveted assets in the first place.

TRAC believes most tire producers would agree that the investments they made to build OTS and the success it enjoys today are worth preserving. We believe the most logical approach is to create a successor Not-for-Profit organization to seamlessly transition OTS obligations to this new entity.

Such successor organization should be composed and managed by representatives of the various stakeholders bearing responsibilities under the new program. Proper governance measures and policies would have to be put in place and monitored in order to assure the integrity and efficiency of such organization, in line with its primary mission of delivering an efficient and cost-effective tire recycling program, and in line with any trust principles that may apply. The Strategy Paper refers both to provisions to "facilitate the transition of the existing programs" and also to "enable the wind-up of existing programs". Additionally, it proposes a two-year transition period. TRAC strongly believes that we must preserve what OTS has achieved to-date. In addition, the transition must be seamless i.e. OTS one day, transition to the successor organization the next day. Anything else creates a vacuum for all stakeholders that would not be helpful.

Once the successor NPO is operating, disaffected producers could elect to either go on their own or join another collective. This effectively would be in keeping with the Government's intention to destroy the IFO monopoly and allow competing forces at the collective level. From the industry perspective this allows for a more orderly transition to a new model and minimizes risks in implementation to the new program.

TRAC Recommendation:

7) When the organization called OTS is wound-down, the new successor organization(s) must be ready to start-up to ensure continuity and no disruption in service

Harmonization with Rest of Canada

TRAC contends that while the Ontario tire program works very well, we should not lose sight of the fact the other provincial tire programs work well too. Virtually all other provincial tire programs collect and recycle 100% of the tires within their respective jurisdictions. The primary difference between the Ontario program versus the Rest of Canada is that they are all retail-based funding models and Ontario is a producer-pay model. In addition, the current Ontario program carries with it other regulatory burden and mandated costs that contribute to higher consumer fees.

There is a desire among national tire retailers for a common, national harmonized approach for tire stewardship across the country. TRAC supports this view as well. We have too many instances where, because provincial tire programs are not aligned, we get unintended market consequences that have deleterious effects for consumers and the environment. There are many examples but here are just a few:

Ontario compelled the industry to create a tire recycling program for Farm tires, but Quebec did not, resulting in fees on Farm tires in Ontario of upwards of \$500.00 for some large farm tires. This caused consumers to buy tires across the river in Quebec, not locally in Ontario. Commercial truck tire fees between Ontario and Quebec are similarly mismatched which has the effect of some retailers out-of-province enjoying the tire sales, but Ontario shouldering the responsibility and cost for the scrap tires.

We believe that proper regulations could be adopted under Bill 151 in order to achieve such harmonized approach with other provincial tire programs and we look forward to work with the Ministry in that regard.

TRAC believes the industry should take the opportunity to begin in earnest to harmonize the tire programs across the country. Doing so will ultimately create economies of scale to encourage lower costs in the system and build stronger, more sustainable markets. We sincerely hope that such an initiative is something which the Authority would want to support and encourage.

TRAC Recommendation:

8) The provincial tire programs across the country should be much better harmonized than they are today as it would result in market efficiencies, economies of scale and lower costs to consumers.

Summary and Conclusion

TRAC offers a few recommendations to help the industry to transition to the Waste-Free Ontario Act:

- 1) The Authority and the Industry Collective(s) should agree in principle to share the data gathering systems of the collective(s), subject to suitable confidentiality protections etc.***
- 2) The Authority's compliance and enforcement provisions should only be exercised against producers when outcomes have not been achieved. Otherwise audit and enforcement should be directed against outliers and free-riders.***
- 3) Government should not assign Design for Environment requirements on tire manufacturers***
- 4) Tire Producers should not be required to establish and operate a collection system for the designated material, as the free market and the new successor to OTS will manage this portion of the business***
- 5) Diversion targets must be negotiated with producers and Government should not simply seek to impose the diversion rates experienced by OTS.***
- 6) Government and Industry should form a joint working group to expedite the Green Procurement initiative***
- 7) When the organization called OTS is wound-down, the new successor organization(s) must be ready to start-up to ensure continuity and no disruption in service***
- 8) The provincial tire programs across the country should be much better harmonized than they are today as it would result in market efficiencies, economies of scale and lower costs to consumers.***

In conclusion, TRAC recognizes that the existing Waste Diversion Act will be repealed and OTS will be wound-up. Important issues such as the existence and role of a supervising authority, data-gathering and

enforcement powers, producer obligations and the ability to discharge those obligations, all need to be addressed to streamline and improve the future for the used tire program in Ontario. But we cannot throw the baby out with the bathwater. We must collectively preserve all the successes of the existing program while transitioning to a model which gives producers more flexibility in how they manage their End-of-Life Tire obligations. TRAC believes the tire industry can come together to preserve the many gains made in the current program and deliver a model that respects the Government's strategic direction.