

DECISION AND ORDER OF DEPUTY REGISTRAR

Made under section 87(6)(b) of the
Resource Recovery and Circular Economy Act, 2016, c 12, Sched 1

TO: Ken Friesen
Reclay PRO
130 King Street West, Suite 1800
Toronto, Ontario, M5X 4Z4

Served by email to: kfriesen@reclaypro.com

RE: COMPLIANCE ORDER NO.: RPRA-0003

DECISION AND ORDER

After reviewing the request for review, it is my decision to issue this Order amending the Inspector's Order dated April 5, 2023 pursuant to section 87(6)(b) of *Resource Recovery and Circular Economy Act, 2016*. The Inspector's Order is amended as follows (amendments are underlined):

By July 30, 2023, you are required to take the following action:

1. Submit an external audit demonstrating a collection system that is compliant with the provisions outlined in sections 6 through 10 of the Tires Regulation.

By May 1, 2023, you are required to take the following actions:

1. Submit information regarding the auditor retained to complete the above-noted audit, including the company name, primary contact name, and primary contact information.
2. Submit a draft scope of work with detailed information regarding the scope of the above-noted audit.

By May 15, 2023, you are required to take the following action to the satisfaction of the inspector who is issuing the order:

1. Submit a final scope of work with detailed information regarding the scope of the above-noted audit.

REASONS FOR DECISION AND ORDER

Orders were issued on the same day to five registered Producer Responsibility Organizations (PROs) in the Tires program, requiring each PRO to:

“Within 2 months from the date of this order, [the PRO] is required to take the following action:

1. Submit an external audit demonstrating a collection system that is compliant with the provisions outlined in sections 6 through 10 of the Tires Regulation.

Within 10 business days from the date of this order, [the PRO] is required to take the following action to the satisfaction of the inspector who is issuing the order:

1. Submit information regarding the auditor retained to complete the above-noted audit, including the company name, primary contact name, and primary contact information.
2. Submit detailed information regarding the scope of the above-noted audit.”

The orders were issued on April 5, 2023. Two months from the date of the orders would be June 5, 2023. Ten business days from the date of the orders would be April 19, 2023.

All five PROs submitted almost identical requests for review. Because the orders to each PRO were identical and the requests for review were almost identical, and because at least four of the PROs have indicated a desire to jointly engage an auditor to complete the required audit, and there are operational benefits to having each PRO demonstrate a compliant collection system on the same schedule, my decision and my reasons for decision are the same for each PRO.

Each request for review contains a number of questions for additional information or clarification from RPRA about the nature of the non-compliance. Each PRO should work directly with the inspector who issued the orders to address these questions.

Under the heading, “Order Required Action,” each request for review also asks for a review of:

1. “the anticipated scope of the external audit requirement,” and
2. the time to complete the activities required by the order.

Regarding request #1, the order states that the scope of the external audit must be, “to the satisfaction of the inspector who issued the order.” Questions about the anticipated scope should therefore be directed to the inspector who issued the order. I am not ordering any change to this requirement.

Regarding request #2, all of the PROs point to concerns about meeting the timelines because of uncertainty around the audit scope and overlapping RPRA reporting deadlines. Three of the PROs also point to a potential desire to jointly engage an auditor with other PROs, which they say will require additional time. None of the requests for review identified alternative preferred deadlines.

On April 14, 2023 I directed a RPRA inspector to reach out to each PRO to ask what alternative timelines they would prefer, with a deadline to respond by noon on April 17, 2023. The PROs responded with a variety of alternatives: two requested a September 30, 2023 deadline for the completed audit; two requested that the completed audit be due 60 days after the audit scope is

confirmed with RPRA; and one requested to negotiate the timelines with RPRA, after the audit scope is confirmed. Some of the PROs submitted their responses after noon on April 17; however, I have considered all of them in my reasons.

Two of the PROs raised the following additional points in requesting an extension:

- It would be “extremely onerous” to meet the June 5 deadline
- Activities are already underway to meet the requirements of the order
- Meeting the audit requirement means communicating with thousands of collection sites
- Potential auditors are already busy with year-end work
- The timeline will interfere with other work being done to ensure compliance

I recognize that the PROs have questions about the scope of the required audits, and that they are concerned about completing the audits by June 5 given other compliance-related priorities. I also recognize that it is important for the success of the Tires resource recovery program that the PROs demonstrate their collection system compliance within a reasonable period of time. Compliant collection systems are integral to the success of the regulatory framework set out in the Tires regulation. The inspection reports for each order, and the Registrar’s public statement regarding the orders, show that the PROs have known since at least spring of 2022 that they need to address shortfalls and demonstrate full compliance with the collection system requirements.

I have decided to amend the order to extend the timelines while still expecting compliance to be demonstrated this summer, allowing for sufficient time to assess the results of the audits well in advance of the fall tire-changing season. My order also clarifies the process for how the PROs will confirm that their proposed audit scope satisfies the inspector who issued the orders.

The second deadline, to submit a completed audit showing a compliant system, will be extended from June 5 to July 30, 2023. The first deadline, to submit information about the audit scope to the satisfaction of the inspector, will be extended from April 19 to May 15, 2023. I am adding an interim deadline, to submit information about the proposed auditor plus a draft of the proposed audit scope, by May 1. This sets up a process for the PROs to get feedback from the inspector before the final satisfactory scope must be submitted.

These deadlines give additional time for each PRO to confirm the scope of the audit with the inspector and complete required audit activities, while providing assurance that collection systems will be compliant before the fall. I encourage each PRO to reach out to the inspector who issued the orders to address questions about the scope of the required audit and how the audit results will be assessed.

APPEAL OF DEPUTY REGISTRAR’S DECISION AND ORDER

You have the right to appeal this Order to the Ontario Land Tribunal. To appeal, you must serve written notice of your intention to appeal on the Deputy Registrar who made the Order, and on the Tribunal, within **15 days** of being served with this Order, as follows:

Deputy Registrar
RPRA
registry@rpra.ca

and

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5
Phone: 416-212-6349 | 1-866-448-2248
Website: www.olt.gov.on.ca

The notice of appeal must state the portions of the order in respect of which the hearing is required and the grounds on which the applicant intends to rely at the hearing.

FAILURE TO COMPLY

Failure to comply with this Order is an offence under section 98 of the Act.

If an individual is convicted of an offence under the Act, the individual is liable to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues for a first conviction, and in the case of a subsequent conviction, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues. If a corporation is convicted of an offence under the Act, the corporation is liable to a fine of not more than \$250,000 for each day or part of a day on which the offence occurs or continues for a first conviction, and in the case of a subsequent conviction, to a fine of not more than \$500,000 for each day or part of a day on which the offence occurs or continues.

Failure to comply with this Order may also be subject to an administrative penalty under O. Reg. 558/22. The maximum total base penalty for a corporation that fails to comply with an Order is \$75,000 plus economic benefit, which is the value the corporation derived directly or indirectly from the non-compliance.

PUBLICATION OF ORDER

This Order will be posted on the Resource Productivity and Recovery Registry on RPRA's website in accordance with section 51 of the Act.

DECISION AND ORDER DATED APRIL 19, 2023

Noah Gitterman
Deputy Registrar, RPRA