

Greenslate Management Ltd.

August 29, 2017

Regional Public Works Commissioners of Ontario
Attn: Jim McKay, General Manager
City of Toronto
Toronto City Hall
25th Fl. E., 100 Queen St. W
Toronto ON M5H 2N2

Dear Sirs:

Re: Development of Formalized Collection Standards for Municipal Collection Allowance Claims with Ontario Tire Stewardship (OTS)

We understand that municipalities across Ontario who are registered as Collectors with Ontario Tire Stewardship (“OTS”) have been engaged in discussions with OTS regarding their collection of used tires. Ontario's 444 municipalities are an important part of OTS's collection system. They allow OTS to fulfill their stewards' tire collection targets with relative ease by providing collection points in every municipality in the province.

You have asked for our assistance in developing a reasonable and workable approach to supporting municipal collection allowance claims for Ontario's municipalities which balances OTS's concerns with those of municipalities.

We understand that it is imperative that the matter be resolved expeditiously, in light of the Minister's letter of February 17, 2017 directing OTS to wind up its affairs by December 31, 2018. We are aware that some 204 municipal collection allowance claims are currently held in abeyance by OTS pending resolution of this matter.

Context

OTS is an industry funding organization charged, under the terms of the Waste Diversion Transition Act (2016), and its predecessor the Waste Diversion Act (2002), with responsibility for funding the diversion of used tires within the province of Ontario. To this end, OTS collects fees from product stewards with respect to each new tire supplied into the Ontario marketplace, and distributes those fees to service providers, such as municipalities, who receive and collect used tires within Ontario, to haulers who transport such tires, and to processors who process such tires into marketable commodities. Stewardship fees are set by regulation and under the terms of Rules for Stewards published by OTS, while payments to service providers are structured as financial incentives based on the number and type of tires collected, hauled or processed.

Certain Ontario municipalities are registered with OTS as Collectors under the terms of Collector Agreements (the “Agreement”) entered into between OTS and the particular municipality. Under the terms of the Agreement, municipalities act as independent contractors, not as agents of OTS. Responsibilities of approved Collectors are set out in Article 2 of the Agreement. Such responsibilities include, *inter alia*, an obligation to abide by certain Guidelines published by OTS from time to time, retain certain records with regard to used tires, provide certain reports and inventory statements, respond in a timely manner to OTS's request for information, and other matters. These Guidelines are published by OTS in the form of an OTS Collector Guidebook (June 12, 2017).

In return for receiving and collecting used tires on behalf of OTS under the terms of the Agreement, municipalities receive a Collection Allowance ranging from \$0.88 to \$3.05 per collected tire, structured so as to offset, in full or in part, the costs incurred by municipalities in operating tire collection facilities. Municipalities claim this allowance using approved OTS forms submitted periodically to OTS.

We understand that OTS has withheld some 204 Municipal Collection Allowance Claims on the apparent basis that they are not supported by documentation required by the Agreement. The Municipalities have engaged OTS in a discussion regarding certain “Codes of Practice” to govern municipal tire collection sites. On May 23, 2017 OTS issued a Bulletin which appeared to suspend further discussions, hold the claims in abeyance and direct municipalities to apply documentation standards set out in the Collector Guidebook.

The OTS Collector Guidebook provides guidelines for the documentation and reporting of used tires received at approved collection sites. The Guidebook is intended to ensure that the number and type of tires are properly counted and classified so that appropriate collection allowances are paid with respect to the nature and volume of Ontario-sourced tires delivered into the tire diversion program.

There is concern that the documentation standards in the Agreement and the Guidebook are impractical and unenforceable at municipal collection sites. There is a need for more reasonable standards of proof which appropriately balances risks while ensuring that municipalities are fairly compensated for the costs incurred in collecting used tires across Ontario on behalf of OTS.

Collector documentation requirements

The Agreement states, at Article 2.1:

the Collector agrees and understands that it is required to maintain records of the Plan eligibility of all Used Tires. If such eligibility cannot be substantiated by other business records maintained by the Collector, the Collector may be required to obtain and record the names and contact information (addresses and telephone numbers) of any and all persons or companies from whom Used Tires are collected;

Further:

2.5 Except where OTS has issued an Exemption Order with respect thereto, no Collection Incentives shall be paid in respect of any Non-Eligible Material,

(u) “Non-Eligible Material” means:

(i) Used Tires, tire parts or processed rubber held in Collector’s inventory prior to September 1st, 2009, unless the subject of an Exemption Order issued by OTS; and/or

(ii) Used Tires or parts thereof originating outside Ontario or obtained by the Collector directly or indirectly from any source outside Ontario; and/or

(iii) any material, article or item that is not a Used Tire or part thereof;

The Guidebook expands on the requirements of the Agreement.

For example, at 1.5, Collectors are responsible for:

Accepting, free of charge, used tire drop-offs for the types of used tires that they agree to collect (and that are part of the Used Tires Program Plan) from farmers and residents. In addition to those tires, registered Collectors are obligated to accept up to 4 used tires per person at no charge without the person having to make a purchase

Further:

1.6 It is the responsibility of a Collector to ensure that the tires it receives are eligible to be claimed as “collected”. Collectors are not to accept tires that may have originated from a business as drop offs. OTS may request that a Collector provide supporting information regarding tires received by the Collector to verify that these are eligible to be claimed as “Collected”.

1.6.3 Scrap Tires from Out of Province

Scrap tires or used tires that are imported into the Province of Ontario (either loose or as part of a vehicle/scrap purchase) are not eligible for any incentives under the program. These tires are to be treated as non-program tires and disposed of at the cost of the importer.

1.6.4 Tires Received from Businesses

Collectors are not to accept tires from businesses that would otherwise be eligible to register with OTS and have their tires picked-up by registered Haulers (unless the business in question is a Sub-Collector as defined in the amendment to the Collectors Agreement and such Agreement has been executed by the Collector; refer to section 3.6 of this Guidebook for further details). Transferring a generated tire to another site or Collector does not make it a collected tire; it remains generated and therefore does not attract a Collection Allowance.

1.7 Accepting a Reasonable Quantity of Tires from Residents

Registered Collectors are required to accept, free of charge, used tire drop-offs for the types of used tires that they agree to collect (and that are part of the Used Tires Program Plan) from farmers and residents. Registered Collectors are obligated to accept up to 4 used tires per person at no charge without the person having to make a purchase (from Ontario residents and farmers). Collectors are not required to accept large quantities of used tires from a resident/farmer. In the event that a Collector chooses to accept large quantities of tires from a resident/farmer it is their responsibility to demonstrate that these quantities may have reasonably originated from a resident/farmer. For example, Collectors may choose to keep a Collection Log documenting drop offs of used tires.

In consideration for accepting used tires for OTS, Collectors are paid a Collection Allowance. Current rates are set out in 4.2 of the Guidebook:

Passenger Light Truck (PL/T) Tires	\$0.88
Medium Truck (MT) Tires	\$3.05
Off the Road (OTR) Tires (< or = 1 PTE)	\$0.88
Off the Road (OTR) Tires (> 1 PTE)	\$3.05

Nature of Risks

The principal risk faced by OTS with regard to Collection Allowances is that amounts might be paid to municipalities in error by reference to the number, type or source of tires delivered to tire haulers. Either tires might be misclassified or the tire count might be misstated. Further, there may be a risk that the used tires might not be “designated waste” in that they may not have been supplied in Ontario.

An organization that is paid to collect certain property clearly has an incentive to maximize the quantity collected. Encouraging others to contribute property to it is simply good practice. Municipalities clearly have a financial incentive to maximize their collection of tires, as they are paid by OTS for each tire collected. The environmental benefit, is that such incentives encourage the proper diversion of designated waste away from landfill, and toward appropriate processing. With regard to tires, OTS, stewards, and municipalities have a collective interest in encouraging municipal collection of used tires from local residents.

Controls

In any well-designed system, a risk of loss can be controlled in a variety of ways. Internal controls, those which are internal to an organization's processes, are a mix of controls over access to assets, authority and approval. External controls are those in place elsewhere or at other organizations which can be helpful in protecting assets or enforcing control.

For example, separation of cash receipts from deposits, separation of purchases from payables, controls over vendor master files, access to cheques and dual signatures on disbursement cheques are effective internal controls against misappropriation or misdirection of funds by a single individual. A receiving report and carrier waybills are effective third-party controls against misappropriation of assets by a carrier to whom goods have been entrusted.

External controls over municipal collection sites include oversight by the Ontario Ministry of Environment and Climate Change (“MOECC”). All municipal collection sites operate under an Environmental Certificate of Approval (“ECA”) issued by the MOECC and audited by MOECC staff. Amongst the requirements of such ECAs include the limitation that municipal collection sites be available to local residents only. ECAs also include restrictions on accepting commercial tires.

The choice of, and mix of controls is an organizational decision. Such decisions balance the need for absolute guarantees against the risk of loss with practical operational aspects, and costs. For example, periodic inventory counts, item RFID tags and other internal controls can be effective in controlling against the risk that customers receive more items than they paid for, and are more practical and cost effective than having an independent auditor present to witness each transaction.

Boundary risk

There is a “boundary risk” that some out-of-province tires (“Non-Eligible Material”) may be delivered into the program. This arises because people are mobile: Ontario residents may move to Alberta and vice versa. Tires on which Ontario fees were paid may be disposed of in another province and vice versa.

Migration data reported by Statistics Canada in 2016 [*Internal migration in Canada from 2012/2013 to 2014/2015 Catalogue no. 91-209-X ISSN 1718-7788*] show net migration from Ontario and Quebec to Alberta and British Columbia. This suggests that municipalities in the latter provinces may have incurred costs to dispose of used tires on which Ontario fees were paid. The converse may also be true, but to a lesser extent, based on migration data.

The Agreement includes a prohibition on claiming a Collection Allowance with respect to Non-eligible Material. Nonetheless, despite the best efforts of all parties, boundary risk exists.

Absent a formal process for exchanging stewardship fee revenue between provincial tire programs for processing out-of-province tires, boundary risk has to be accepted as an immaterial risk present in all tire recycling programs.

Fraud risk

The fraud risk that municipalities will systematically collect non-eligible tires in material quantities has to be rated low as it implies a significant degree of collusion with a third party. It is highly unlikely that a third party would incur costs to transport ineligible tires to a municipal collection site in material quantities without any financial compensation. Municipalities are simply not in the business of trafficking in tires and paying out-of-territory haulers to falsely increase municipal collections.

Municipalities also generally have restrictions in place at municipal depots from accepting commercial tires and materials generated outside of their jurisdiction. Some commercial tires may still come in based on small businesses such as landscapers or farmers who change tires themselves. If they bring in commercial tires to the depot in residential vehicles those tires may not be identified as commercial and the vehicle turned away. These instances would however be minor. For other businesses, moving tires to these facilities based on the cost associated with tire limits would not make economic sense.

A municipality paying any amount to a carrier to acquire tires should be a red flag from an internal audit perspective. That would imply a breakdown in internal controls at the municipality of such severity that the employee charged with handling the tires delivered to an OTS-approved hauler also prepares the Collection Allowance Claim, has access to the claim cheque from OTS and controls the deposit, and/or controls the vendor master file and prepares cheques to third party vendors so as to be able to divert a portion of the OTS collection allowance incentive to a third party, all of which remains undetected on audit. Such a scenario is so implausible as to be counted as a negligible risk.

Municipal Collection Site Practices

A January 2017 survey of tire collection practices at 26 Ontario municipalities revealed a range of practices but limited risks. Respondents ranged from municipalities of 780 to almost 1 million residents. 58% had a single waste collection site for all waste types, including tires. All sites were staffed. Almost all sites limit residential tire drop off to 4-6 tires per car. 70% had scales on site. Most did not accept tires from the commercial/industrial sector, with staff instructed to turn away commercial vehicles. Sites are generally gated and locked, a few have video surveillance installed. Municipal staff collect residents' personal information where possible. Such personal information includes names, address, telephone number, vehicle license plate.

Respondents' comments are instructive:

Reliably collecting this information is a challenge for on-site staff, but we collect license plates, addresses, phone numbers, and last names as best as we can. (Municipality A)

We have heard from residents that OTS has been contacting them months later to confirm a tire drop off had been made at the landfill - most residents are not familiar with the program and therefore get the impression that we have done something wrong or provided their contact info to someone without their permission. (Municipality B)

We used to write down license plates of every vehicle that entered. Residents were not impressed. Bottleneck created at gate during busy season to collect useless information. From 2009 - 2016 we collected license plates as identifying waste for CofA. Not once in those years did we do anything with that information. In order to improve efficiency and effectiveness of the operation we reviewed value vs. non-value tasks. We stopped collecting license plates so that gate attendant would have more time to assist and educate public on all the diversion programs. Show me a use for this information, demonstrate an efficient method of collecting and what effect it has on the OTS program. (Municipality C)

We have major issues with collecting personal information from customers and submitting to a third party. Especially knowing that OTS is calling/following-up with customers from these records. We have asked during conference calls if the supporting documentation requirements abide by privacy acts, etc. and have not received a response. I'm sure this is true for many municipalities. The funding is not worth the sacrifice of our resident's privacy. (Municipality D)

These comments are troubling.

Comments on data requirements

The public reasonably expects that the fees they pay when they purchase new tires will fund a province-wide collection program and offset costs incurred by their local municipalities in receiving and collecting used tires. Other Ontario waste diversion programs, for example, the waste electrical and electronic equipment ("WEEE") program, operate in a similar manner for municipally-operated collection points, allowing Ontario residents to freely dispose of WEEE with a minimum of effort.

For example, the City of Toronto operates "Enviro days", which allow residents to drop off WEEE, hazardous waste, batteries, paint, etc. No personal information is collected from participants, although it is entirely possible that the WEEE and other items originated elsewhere than the City of Toronto. Indeed, consider the likely response of individuals were they required to supply name, address, phone number and vehicle license plate in dropping off a personal computer, television, or cellphone.

Individuals delivering tires to OTS are given no assurances about the safeguarding of their personal information by OTS. OTS's privacy statement makes no reference to information obtained from collectors, such as municipalities, in the course of an audit. It may be an open question whether OTS carries on a "commercial activity" for purposes of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) to the extent that OTS acquires lists of individuals who have delivered tires into the program, so as to exempt OTS from the normal consent requirements. Individuals are right to be concerned about the use and custody of their personal information in light of the very public "hacks" of databases of

large organizations.

Indeed, one might question the utility of collecting a license plate number. If it is an Ontario plate, OTS should be indifferent whether the plate owner delivers tires to Ontario Municipality A vs. Ontario Municipality B if both municipalities fall within OTS's purview.

As the tire recycling program transitions to a new regime, tire stewards should be concerned that they preserve public trust and goodwill and continue to make it as simple as possible to drop off used tires. The public will find the route with the least amount of friction. The Ontario public, and Ontario municipalities are acting in good faith. The comments above highlight the need for a more reasonable approach.

Comments on audit approach

We understand that some 204 Municipal Collection Allowance Claims have currently been withheld by OTS. Our understanding is that 111 relate to the July-September 2016 period, while 93 relate to the April-July 2016 period.

In any well-managed system, ongoing audits are a normal part of the process to ensure payments are legitimate and not made in error. Such audits are normally conducted *ex post facto*, under a contractual understanding that allows for offsets or adjustments from future payments on account of current audit findings.

The Agreement allows for such a process:

4.2 Audit. The Collector agrees that OTS may, from time to time, audit any records of the Collector maintained in support of the Collector's claims, and further, may examine and review, and audit records relating to the Collector's compliance with the terms of this Agreement, the Plan, and all Applicable Laws, and in the course of doing so may review or inspect the Collector's operations to determine the Collector's compliance (hereinafter referred to as the "Audit").

Further:

7.3 Set-off. Collector agrees that OTS may set off Repayment Amounts owing by Collector to OTS against any future payments of Collection Incentives with respect to Used Tire Pickup from Collector, or any other amount of any kind to Collector under this Agreement or any other agreement between Collector and OTS. If such future payment amounts are insufficient to recoup Repayment Amounts owed by Collector to OTS, Collector agrees that such Repayment Amounts are recoverable from Collector as liquidated damages.

The Agreement also anticipates actions where, in OTS's view, the Collector may have failed to abide by the terms of the Agreement:

7.1 Events of Default. The occurrence of any of the following while this Agreement is in effect shall constitute an "Act of Default" by the Collector under this Agreement:

(d) If Collector fails to submit any document or Report required under this Agreement or any Guideline, or to maintain records as required under this Agreement or any Guideline; [for example]

An "Event of Default", as above, allows OTS to suspend payments:

7.4 Consequences of Default. Immediately following any Act of Default, OTS may, in its sole and absolute discretion, do any, some or all of the following by written notice to the Collector:

(a) suspend payment of all incentives and other amounts hereunder, with immediate effect, until the Act of Default is resolved to OTS's satisfaction;

Suspension of payments to eligible claimants, without clear evidence of fraud or malfeasance, has to be regarded as an extraordinary act. Collectors have incurred costs to operate collection sites for OTS and rely on regular payments to fund

such operations. Unless there is clear prior evidence of fraud or malfeasance, payments should continue while the audits proceed.

OTS's decision to suspend payment was announced in a May 23 Bulletin. If the suspension of payments was intended as a Consequence of Default under 7.4 above, it is highly likely that Notice should have been served to each affected Collector under the terms of 13.4 of the Agreement. To the extent that it was not, the suspension of claims payments appears somewhat capricious and improper.

Proposed Documentation Requirements for Municipal Collection Allowance Claims

The Ontario public requires a seamless, easy and barrier-free means of disposing of used tires. Any barrier or extra effort carries with it the risk that tires will be illegally dumped.

The Agreement allows OTS discretion as to the nature and level of documentation required from a Collector. It contemplates that a Collector “may” be required to collect and record names and contact information (addresses, telephone numbers) from certain persons. The Guidebook further states that Collectors “may choose” to keep a Collection Log documenting drop offs.

It is appropriate to impose different obligations on certain classes of Collectors depending, for example, on the relative level of risk. It is also appropriate to impose different levels of documentation on commercial Collectors versus municipal Collectors. Commercial Collectors will generally be party to a contract with the person contributing used tires to them, for example, where new tires are purchased at the same time. Municipalities generally are not party to a contract with the residents who drop off used tires at collection sites, so have fewer opportunities to require additional information of them. Such a distinction is entirely fair given the different contractual relationship between commercial Collectors and their clients.

Code of Practice

We have attached a draft Code of Practice intended to be applied at municipal tires collection sites. We understand that a standard Code of Practice has been suggested to OTS and has broad acceptance across Ontario municipalities. In our view, the proposed approach represents a reasonable, balanced means of protecting OTS while preserving public goodwill and encouraging the use of municipal tire-collection sites.

The proposed approach acknowledges a graduated level of risk depending on the quantity of tires accepted. It proposes a “*de minimis*” threshold below which specific information is not required. In effect, for *de minimis* amounts, the level of risk is counted as immaterial. This approach is consistent with other waste diversion programs: for example, we understand that Ontario Electronic Stewardship does not require detailed residential information at municipal collection sites, nor does Stewardship Ontario ask campers to furnish personal information when they dispose of propane cylinders, although they may very likely have come from elsewhere.

In our view, the proposed Code of Practice represents an acceptable balance between OTS's desire to minimize the risk of fraudulent claims, and the municipalities' very legitimate concerns regarding the nature and level of personal information they can reasonably obtain from their residents.

It is already established that the audit approach by OTS and other stewardship programs is applied differently based on unique operations. Retail operations sell tires and take tires back so a reasonable proxy is used for these facilities instead of requiring a complete log of all the customers with personal details. “Enviro days” are also dealt with differently. The Code of Practice we submit takes a very similar approach. It provides a practical approach to applying the rules set out in the Collector documentation requirements.

It would indeed be surprising if a program which appears likely to wind-up in eighteen (18) months would enforce more stringent requirements in its last days than it has in its preceding eight years. Product stewards should be concerned that they continue to fulfill their responsibilities through OTS while they transition to a new regime.

In sum, we believe there must be a reasonable, risk-based approach which recognizes that all parties have a part to play in preserving the goodwill of the stewards, of OTS and of the municipalities to ensure the continued success of the program.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Jonathan Spencer". The signature is written in a cursive, flowing style.

Jonathan Spencer, CPA, CA
CEO

Proposed Code of Practice for Municipal Collection Allowances

1. A limit of 10 tires per car per drop-off at municipal collection sites without documentation or information requirements;

As discussed in the document, municipal collection sites already have a number of controls in place to protect against some of the potential risks associated with tire collection sites. Environmental Compliance Approval requirements of municipal depots ensure that materials are not received from out-of-province (see Collector Agreement section 1.6.3), tires from businesses excluding smaller generation and agricultural (see Collector Agreement section 1.6.4 and 1.7) the facility is properly gated when the facility is closed (see Collector Agreement 1.6.5). The limitation of 10 tires provides a major disincentive for a business as it would not be commercially viable to transport in such small quantities.

2. For drop offs in excess of 10 tires, residents must provide the municipality with their name, address, telephone number;

Where tires are received at a municipal site in greater quantities, the individual would be required to provide greater detail. This is in keeping with section 1.7 which states “In the event that a Collector chooses to accept large quantities of tires from a resident/farmer it is their responsibility to demonstrate that these quantities may have reasonably originated from a resident/farmer. For example, Collectors may choose to keep a Collection Log documenting drop-offs of used tires (see Appendix G for a sample of such a log).”

3. De minimis threshold of 50 tires per week, to a maximum of 2,600 tires per year, under which OTS will pay municipal collection allowance claims upon receipt;

This threshold would still require the site to have the appropriate approvals in place but would align more with Registered Collector Special Tire Collection Events which provides similar allowances (see Collector Agreement section 3.1 and 3.5).

4. Municipalities to engage in information outreach with area residents with information and materials supported by Ontario Tire Stewardship to inform residents of used tire collection practices;

This additional outreach would seek to provide additional protections and is utilized for other EPR programs like the programs for waste electrical and electronic equipment, municipal household hazardous waste and automotive products.

5. Municipalities to employ staff oversight of used tire drop offs (over *de minimis*) and ensure collection site staff have training in used tire collection procedures supported by training programs supplied by Ontario Tire Stewardship;

This additional outreach would seek to provide additional protections and is utilized for other EPR programs like the programs for waste electrical and electronic equipment, municipal household hazardous waste and automotive products.

6. Provide for alternative auditable measurements, such as vehicle counts, where major variances are highlighted. OTS already accepts this type of approach for retailers;

This requirement ensures that OTS has the ability to audit collectors in a similar manner to what they already allow for with respect to retail operations, which are based on sales of tires.

7. Requirement that all used tire Collection sites operate under an approved Environmental Certificate of Approval (“ECA”) which clearly states the residential requirements of those using the collection site and restrictions on accepting commercial tires, where applicable;

This is in keeping with sections 1.64 and 1.7 of the Collector Agreement that are meant to ensure tires from businesses excluding smaller generation and agricultural.

8. In the event of disputes regarding tire weight, approved haulers shall provide validated weight scale tickets from the onsite facility or where scales are not present from a third-party weight scale.

This step would ensure an additional control to allow for tire claims to be properly verified.

This Code of Practice allows for the fulfillment of the requirements of the Collector Agreement through a practical application of the rules which is no different than the allowances provided through other stewardship programs and through allowances OTS already provides for retailers and special event days.

Through the above provisions, OTS municipal collections depots have controls in place to prevent fraudulent activities, the ability to audit activities of concern and ensures appropriate record keeping.