

**VIA ELECTRONIC MAIL**  
< [premier@ontario.ca](mailto:premier@ontario.ca) >

February 2, 2015

The Hon. Kathleen Wynne  
Premier of Ontario  
Legislative Building  
Queen's Park  
Toronto, Ontario  
M7A 1A1

Dear Premier Wynne:

**RE: Reducing Coal Use in Energy-Intensive Industries – EBR Registry Number: 012-1559**

The Canadian Environmental Law Association (“CELA”) writes to you concerning the above initiative, which will authorize the burning of waste materials (described as alternative fuels in the proposal) by certain industries. CELA regards this as bad environmental policy that will produce worse environmental law. We have chosen to write to you directly because the initiative originates in the September 25, 2014 mandate letter from your office to the Minister of the Environment and Climate Change, the Hon. Glen Murray.

The crux of our concern with the initiative is that it appears to have a high probability of conflicting with, and undermining the value of, two other directives contained in the same mandate letter (safeguarding people from toxics, and increasing waste diversion). Because we regard this conflict as an unintended by-product of the speed with which this initiative is proceeding within the Environment Ministry as a consequence of its being in the mandate letter, we urge you to request that Minister Murray direct staff of the Environment Ministry to defer proceeding with the alternative fuels initiative at this time until better information is available as to the initiative’s potential for triggering adverse environmental and human health impacts, and undermining provincial 3Rs initiatives.

The remainder of this letter, as well as the attached letter we provided to the Environment Ministry in May 2014, explains in greater detail the basis for our concerns.

### **What the Mandate Letter Mandated**

In the September 25<sup>th</sup> letter to Minister Murray, three directives were set out that were characterized as “specific ministry priorities”. The first of these is the subject of the above registry notice. The specific directive states the need for:

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- Developing new alternative fuels in 2014 to help big, energy-intensive industries reduce their greenhouse gas emissions.

On its face, reducing greenhouse gas emissions by using “alternative fuels” as a substitute for coal seems a necessary and laudable objective worthy of a progressive government agenda.

### **Safeguarding People from Toxics?**

However, when the “alternative fuels” turn out to be wastes like railroad ties, telephone poles, plastic bags, shingles, shredded tire fluff, etc., then different considerations apply. Many of these waste materials can be expected to contain, to be contaminated with, or to create as a by-product of their combustion, highly toxic substances with associated environmental health impacts. In such circumstances, there is a high probability of the initiative conflicting with the first of two other directives set out in the mandate letter, in particular:

- Safeguarding people from toxics.

In our May 2014 letter to the Environment Ministry we noted the following:

“...this proposal is described by MOE in the Registry notice as being of potential overall benefit to the province in terms of reduction of greenhouse gas emissions. However, the proposal has the potential, based on the limited information that has been made available, to increase local emissions of certain toxic substances (e.g. lead, cadmium, dioxins and furans, arsenic, PAHs) and particulate matter. Using the cement industry as an example, there will be six communities in Ontario where these emissions will be concentrated, corresponding with the location of cement plants in the province (St. Mary’s, Bowmanville, Bath, Picton, Mississauga, Woodbridge)” (*references omitted*).

...

“...the proposal would purport to remove the designation of this type of activity (burning ostensibly “alternative fuels” but actually waste materials) from the authority of the *Environmental Assessment Act* (“EAA”). If a proposed activity ever warranted the application of the EAA it is this one given the potential for increased atmospheric releases of certain toxic substances.”

...

“...the MOE is also proposing to remove the requirement that proponents responsible for these materials obtain a waste environmental compliance approval under the *EPA*, even though most of the materials that constitute alternative fuels are, in fact, wastes. The burning of various waste materials in decades-old kilns never designed to burn these types of materials, followed by the disposal of potentially still toxic post-combustion by-products, or residual materials in an on-site landfill, is definitely not state-of-the-art environmental management. Streamlining the regulatory path for a proposal that could increase the environmental release of numerous toxic substances contained in these waste materials seems like the wrong message for MOE to be sending the regulated community and the Ontario public.”

...

“...the proposal would appear to be reliant on using the province’s air pollution regulation, O. Reg. 419/05, as the benchmark for acceptability of the increases in emissions of certain air pollutants expected under the proposal. However, O. Reg. 419/05, based as it is on point of impingement (“POI”) concentrations, has long been criticized by the Environmental Commissioner of Ontario (“ECO”) as inadequate to protect the

province's air resources. As early as 2005-2006, the ECO noted that the regulation: (1) should be based on total annual loadings of contaminants, not short-term concentrations measured over minutes or hours; (2) does not, but should, direct itself to preventing "hot spots" of toxic substance release or contamination from developing due to the concentration of regulated activities that allow such emissions in local areas; and (3) should, but does not, address background concentrations, cumulative or synergistic effects, or persistence and bioaccumulation of concentrations of contaminants. The ERT endorsed this ECO concern in *Dawber* and was not overturned by the courts on this and related points in *Lafarge*. Accordingly, bringing forward a regulatory proposal that is reliant on O. Reg. 419/05 appears counter-intuitive, if not counter-productive, given the unhappy history of similar proposals before administrative and judicial decision-makers in Ontario" (*references omitted*).

...

"...the proposal seems to implicitly favour the use of alternative fuels because of purported reductions of greenhouse gas emissions notwithstanding apparent increases of emissions of certain toxic substances. Some of the increases in release of toxics are with respect to substances with particularly nasty side effects. For example, the potential for endocrine disruption from increased releases of dioxins and furans is well known. Particulate matter, especially PM10 and fine PM (e.g. PM2.5), are considered toxic under the *Canadian Environmental Protection Act, 1999* and are associated with various respiratory problems. Furthermore, PM2.5 travels deep into the lungs, potentially decreasing lung function and causing chronic respiratory disease. The MOE rush to judgment in favour of the burning of "alternative fuels" seems especially problematic in the circumstances without the benefit of the scrutiny that the environmental assessment process could bring to the issue, as noted above" (*references omitted*).

In our latest meeting with Environment Ministry staff on January 26, 2015, we received little assurance, let alone comfort that any of the above concerns would deter proceeding with the proposal, or that the government has an answer for any of these self-inflicted problems. Indeed, the Environment Ministry seems intent on proceeding as quickly as possible. This is the case even though the results of test burns of alternative fuels at all industrial facilities in Ontario where they have taken place have not been made public, nor subjected to peer-scientific scrutiny and such scrutiny publicly released during the notice and comment period. Indeed, this is the state of affairs despite our request for such information eight months ago. The Environment Ministry's policy appears to be one of "haste to burn waste" fueled, we would submit, by the issue appearing in the mandate letter.

### **Increasing Waste Diversion?**

There is also a high probability of the alternative fuels initiative conflicting with a second directive set out in the mandate letter, namely:

- Increasing waste diversion.

This appears to be the case because there is the potential for the burning of "wastes" to compete for waste streams that may otherwise be recyclable now, or in future. In our May 2014 letter to the Environment Ministry we noted that:

"...just as the burning of tires in cement kilns [the cement industry proposal from the early to mid-2000s] would have discouraged the development of what is now a relatively robust program of tire recycling efforts in the province, the Registry notice proposal has the potential to undermine 3Rs initiatives in Ontario with respect to the feedstocks that would be designated as "alternative fuels" for burning at cement

plants. On that ground alone the proposal lacks merit, contrary to the Registry notice's suggestion that the MOE proposal would help achieve the important objective of 'reducing the flow of residual waste to landfills while confirming the province's commitment to the 3Rs (reduce, reuse, recycle)'".

In this regard, and as was noted at the January 26<sup>th</sup> meeting by the representative from the provincial recycling council, while there is a list in the draft regulation of what may not be burned, there is no list of what can be burned. The items we were advised at the meeting could be burned include railroad ties, telephone poles, plastic bags, shingles, shredded tire fluff. But this did not appear to be a complete list by any means.

In short, neither the policy on burning "alternative fuels", nor the proposed regulation, promotes green conduct in the targeted industrial sectors. At best, the initiative constitutes taking one step forward, but two steps back.

### **What Should Happen Next**

In our May 2014 letter, we raised over a dozen concerns with the alternative fuels initiative and made eight recommendations for correcting the problem. Each of the concerns remains outstanding, and each of the recommendations still warranted. Addressing the concerns and implementing the recommendations would bring the province closer to (1) safeguarding people from toxics, and (2) increasing waste diversion. Implementing the alternative fuels initiative would do the opposite. In the circumstances, therefore, there is an urgent need for your office to request that Minister Murray direct staff of the Environment Ministry to defer proceeding with the initiative at this time until better information is available as to the initiative's potential for (1) triggering adverse environmental and human health impacts, and (2) undermining provincial 3Rs initiatives.

We would be pleased to discuss this matter directly with you at your convenience.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Joseph F. Castrilli  
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Encl. – Letter to MOE, May 30, 2014

cc. The Hon. Glen Murray, Minister of the Environment < [gmurray.mpp@liberal.ola.org](mailto:gmurray.mpp@liberal.ola.org) >

cc. Gord Miller, Environmental Commissioner of Ontario < [commissioner@eco.on.ca](mailto:commissioner@eco.on.ca) >

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