

# Used-oil cartel

**An oil industry scheme to create a used-oil monopoly hit a roadblock in Ontario. But the model, which operates in Western Canada, isn't dead yet**

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For some time now, a cartel of companies, composed of members of the Canadian Petroleum Products Institute (CPPI) and retailers such as WalMart and Canadian Tire, has been proposing that Ontario adopt a new used-oil "stewardship" program. Led by the CPPI, this cartel of lubricating oil "brand-owners" has been lobbying the province to duplicate a program virtually identical to ones they managed to entrench in all four Western provinces. On July 9, Waste Diversion Ontario -- the Ontario agency charged with development of "stewardship" programs -- rejected the plan.

Environmental issues are motherhood, and voluntary industry-led environmental programs are the stuff of politicians' dreams. So it's rather rare for governments and their agencies to reject such programs, irrespective of whether they work -- typically, they are accepted lock stock and barrel, with few questions asked. July 9 stands as a landmark date on which an economically and politically powerful cartel was blocked in what must be one of the most overt, aggressive and unabashed pursuits of rent-seeking in the annals of Canadian environmental regulation.

Rent-seeking is a political program to establish laws that confer the rent-seeker with a monopoly (or at the very least a reduction in competition) or a wealth transfer from other interests or segments of the economy. In economic terms, these policies produce "rents" or "political profits" which have tremendous value to the recipient but incur costs to society such as higher consumer prices, reduced investment and growth, reduced innovation, increased natural resource consumption, pollution and impacts on human health.

CPPI's used-oil proposal is a classic example of environmental rent-seeking: a scheme that seemed like it would improve the environment but which would in actual fact achieve nothing of the sort -- and as it turns out, quite the opposite.

Not only are oil companies and retailers such as WalMart and Canadian Tire lubricating oil "brand-owners," they also operate garages that generate used oil -- a waste material laden with toxic substances such as arsenic, lead, cadmium, chromium and poly-aromatic hydrocarbons (PAHs). Currently, these brand-owner/generators pay used-oil collectors to collect and manage used oil on their behalf.

The Ontario regulatory system of assigning and closely tracking the liability associated with hazardous waste has spawned a sophisticated industry to manage that liability.

Hence, about 80 per cent of the used oil available for collection is collected today -- a recovery rate better than that of any OECD country, or any other Canadian jurisdiction.

For CPPI and its retailer cohorts, the best aspects of Ontario's current approach to used-oil management -- payment of costs by the used-oil generators and free-market pricing of the collection services -- are its least desirable features. Rather, they prefer an approach that gives government sanction to a monopoly cartel called the Ontario Used Oil Management Association (OUOMA), populated and controlled by them.

Under their plan, the Ontario government would authorize the cartel to charge automotive consumers "environmental handling charges" at the point of sale on motor oil, oil filters and motor oil containers. The fees would be held by the cartel and paid to used-oil collectors in the form of fixed-price "return incentives." In turn, collectors would "kick back" the return incentives to generators in order to "purchase" the used oil from them.

In cases where a generator simply drained used oil out of cars and burned it in a space heater (to heat its garage), the OUOMA cartel would pay it a return incentive for "recycling" the oil. In many cases, this payment would come on top of a "disposal fee" or "environmental charge" that many automotive facilities currently charge consumers.

So what are the CPPI and retailer brand-owners really proposing? They want to externalize the legal liability of used-oil management to a government-approved program, gouge consumers about \$30-million (levied on sales of motor oil, oil filters and oil containers) and have those collected monies loop back into their pockets through their garages. Also, by paying financial incentives to have the used oil burned, their program is designed to reduce the supply of used oil to Safety-Kleen Canada, an Ontario re-refiner which produces top-quality lubricating oil that competes directly with lubricating oil produced by CPPI's members from crude oil.

Had this program been approved for Ontario, you can bet automotive consumers would have been kept blissfully unaware of the environmental perversion being perpetrated on them. They would never have been told the very same garages charging them to make their vehicles meet Ontario "Drive Clean" emissions standards were also being paid to burn the used oil drained from their cars -- or that the "environmental handling charges" they paid on their motor oil were subsidizing that activity.

In effect, the program would have ensured that brand owners and their garages would have received a triple return for polluting: payment to burn used oil, the avoided costs of buying natural gas to heat their facilities and the depletion of raw material supply from their re-refiner competitors.

In Western Canada, where its members succeeded in establishing their scheme, CPPI's proposal has bound politicians to the program in a regulatory compact that is impenetrable and virtually impervious to review or repeal. For their part, Western environmental groups (who typically view themselves as proxies for the public interest) have been unwitting supporters of the scheme. Now they find themselves defending the environmentally indefensible in the fear that any criticism undermines the overall legitimacy of environmental regulation.

While Ontario has avoided the fate of its Western counterparts for now, CPPI's proposal isn't really dead. It and its retailer cohorts now have the opportunity to appeal the WDO's decision to the Ontario minister of the environment.

As the minister deliberates over the program, she might consider that irrespective of how green a picture CPPI paints, citizens, consumers and individuals concerned about the environment desire more than green-wash. We want true environmental protection that is free of monopoly cartels, price-fixing, anti-competitive ploys, consumer gouging, kickbacks, liability transfers and any other rent-seeking chicanery.

She might look back to just before the 1995 provincial election, when CPPI and Ontario's major retailers agreed to a one-and-a-half-page used-oil regulation (contrast this to CPPI's current 223-page tome) developed jointly with the Ontario Ministry of the Environment. The regulation involved the simple assignment of property rights: If you sell lubricating oil, you must either be prepared to receive the used oil back from consumers at the point of sale or make commercial arrangements with a third party (a municipal depot or another retailer) to receive it on your behalf.

For used-oil filters and used-oil containers, she might consider the simple, unregulated, purely market-driven and 99 per cent effective deposit-and-refund recovery system retailers use to recover automotive batteries across North America.

Specific policy solutions aside, Ontarians and their province's environment will be well served only if the Ontario government understands and applies the exceedingly simple principle that the polluter -- and absolutely no one else -- pays. Will it? Sadly, only politics will tell.

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