



RE: METAL THEFT PREVENTION AND CRITICAL INFRASTRUCTURE CONCEPT PAPER

On behalf of the Canadian Association of Recycling Industries (CARI) and its Alberta members I thank you for the opportunity to provide input into this concept paper. CARI and its members are committed to working with governments and all stakeholders to combat metal theft. The scrap recycling industry takes its role as part of the solution to metal theft seriously. CARI has been addressing this issue at a national level since 2005, and in Alberta we have been active in the Provincial Electricity Physical Security (PEPS) working group for several years.

CARI members appreciate the province’s decision to examine this issue and review the existing legislation before taking action. We strongly believe a harmonized provincial approach involving all stakeholders is the best method to combatting theft from critical infrastructure. Our primary concerns with this paper’s conclusions are that the recommended actions continue to be disproportionately weighted toward the scrap metal recycling sector, that they raise unresolved privacy issues, and that they do not address protection of critical infrastructure.

We would like first to address certain inaccuracies in Stages 4 through 7 of **The Life Cycle of Metal**. One step in the lifecycle that is not addressed is the collection of material. This is often done through municipal programs such as curbside “blue box” collection and drop-off depots. These programs generally contract with scrap metal dealers to manage the collected material. Many scrap metal dealers also supply clients with a bin to collect material on the client’s site, which is collected and transported to the recycling facility for sorting.

Stage 4 – Scrap Metal Dealers/Recycler Purchase Scrap Metal

“Scrap metal dealers or recyclers purchase scrap metal brought to their yards by:

- companies or owners using the metal for its original purpose”

This statement is inaccurate. Business-to-business and commercial transactions are often not “brought to the yard” by the company or owner. They may be collected by a logistics company, or by the dealer/recycler itself. We also find the phrase “using the metal for its original purpose” to be ambiguous, as material may have been sold or repurposed before reaching the end of its life. This category of material ranges from “pre-consumption scrap” (i.e., excess material that is discarded during a manufacturing process) to residential material collected in municipal programs, and to material collected at a construction and demolition site. We therefore recommend correcting this phrase to state:

“Scrap metal dealers or recyclers purchase material by:

- contractual agreements with municipalities, manufacturers, and private businesses”



Stage 5 – Scrap Metal is Bundled

Stage 6 – Scrap Metal is Shipped to an Extra-provincial Broker, Then to a Foundry

A **Scrap Metal Dealer** is an entity that purchases, collects, and/or sorts scrap metals for resale. A **Scrap Metal Processor** is an entity that converts scrap materials by means of shredding, breaking, baling, melting or otherwise preparing metal to industry-recognized specifications into raw material products and/or commodities for use by smelters. A recycling facility may be both a dealer and a processor. Scrap material may move from a smaller (“feeder”) yard to a larger scrap metal processor before it is sold to a foundry.

A **Broker** is an entity that facilitates the collection and transportation of scrap metal, but does not directly handle the material. A broker may act in conjunction with a scrap metal dealer, but the material would not be shipped to the broker. It is also inaccurate to state “Brokers and foundries are located outside Alberta.” There are many brokers and foundries operating within Alberta, and scrap material may not necessarily be shipped outside of the province. Material flow is based on markets.

Stage 7 – Scrap Metal is Processed

As noted above, scrap metal is processed by recyclers before it reaches a foundry. This stage may be better defined as smelting or casting.

3. PROPOSED STRATEGIES

Leverage Existing Industry Associations

It should be noted the metal theft alert system referred to in this section and in **Electronic Metal Theft Reports, Alerts and Communication Strategies** was initiated by CARI in 2005. In 2006 CARI partnered with the Institute of Scrap Recycling Industries (ISRI) to create the current Canada-U.S. multi-platform alert system to which some American jurisdictions now require scrap metal dealers subscribe. This system is open to members of law enforcement and utility companies as well as scrap metal dealers. Alerts are sent by email and/or text message, and are also posted on the website www.scraptheftalert.com.

Registration or Licencing of Scrap Metal Dealers and Recyclers

This proposal is based on the premise that licencing scrap metal dealers will “prevent metal theft and protect critical infrastructure.” We strongly disagree with the implication that scrap metal dealers are responsible for the theft of this material. Scrap metal dealers are lawful businesses that are essential to the environmental and economic health of Alberta, and are not accountable for the actions of metal thieves. In fact, scrap metal dealers are frequently the victims of metal theft. The Canadian recycling industry processes between 16 to 18 million tonnes of material each year. Very little of the



material managed by scrap metal recyclers is suspect, and regulating the sale of scrap material will not eliminate theft.

Restricted Metals

Adopting a blanket restriction of the resale of “burnt wire” and “nonferrous metals” would debilitate the Alberta recycling industry. Any legislation must clearly define the regulated materials related to theft from critical infrastructure. Furthermore this recommendation does not take into consideration business-to-business transactions and other commercial business, and it once again erroneously presumes all scrap metal dealers are bad operators. Unique and distinguishable materials—grave markers, memorial plaques, and monuments—would immediately raise suspicion if they arrived in a scrap yard in their whole state. Whereas wire, piping, cables, batteries, and catalytic converters make up a large amount of material that flows through scrap yards every day. It is next to impossible to distinguish one piece of copper pipe from another, unless the material is clearly marked.

Recording and Reporting Scrap Metal Transactions

Database of Transactions

The argument that recording and reporting “increases the likelihood that scrap metal dealers or recyclers are able to identify and report suspicious transactions to the police” is illogical. Scrap metal dealers already maintain records of their transactions for tax purposes. Requiring additional recording is redundant and unnecessary, and does not assist in identifying stolen material. What’s more there is no evidence this “ultimately reduces the incidence of metal theft.”

Furthermore, it is our opinion that reporting sales transactions, through an electronic database or otherwise, would leave scrap metal dealers vulnerable to claims from both Alberta’s *Personal Information Protection Act* and the federal *Personal Information Protection and Electronic Documents Act*. Privacy Commissioners in British Columbia¹, Ontario², and New Brunswick³ have all expressed concern with bylaws that required similar recording and reporting, calling them “a form of surveillance, under which the private sector is compelled to act as an agent of the state in collecting personal information and routinely turning it over to the police.”⁴

While our businesses maintain records with bare contact information of sellers, recyclers are not an arm of law enforcement. “Law enforcement is given wide latitude when they have a criminal investigation, or even a belief that there’s some wrongdoing. But absent that: a law-abiding citizen

¹ B.C. Commissioner of Information and Privacy in his report of August 30, 2006

² Cash Converters Canada v the City of Oshawa, Ontario

³ New Brunswick Provincial Court decision between the City of Fredericton and the Re-Purchase Shop

⁴ <http://www.oipcbc.org/publications/SurveillanceBylawDiscussionPaper.pdf>



going to sell used goods? No. That's where you draw the line because you don't need that information."⁵ Scrap metal dealers are willing to assist a specific police investigation into an individual or particular theft, and have done so on many occasions. However, this type of blanket reporting of anyone who sells specific grades of scrap metal to a dealer is unreasonable.

Repeal and Replace Alberta's Legislative Framework

CARI and its members support amendments to or repealing of the *Scrap Metal Dealers and Recyclers Identification Act*. However, all of the recommendations in this paper once again fall on scrap metal dealers. None of the recommendations address the safeguarding and marking of material. Nowhere do the recommendations address creating an offence of interfering with critical infrastructures. Nowhere do they address training and adding resources to law enforcement to focus on this issue. The recommendations as written would create an act to regulate the scrap metal recycling industry, not an act to combat metal theft and protect critical infrastructure. **Scrap metal dealers are not criminals.**

To “facilitate the timely investigation of metal theft reports,” law enforcement resources dedicated to this issue will be essential. At present, police cannot respond in a timely manner to tips from scrap metal dealers about obviously stolen or questionable material. Calgary's model saw some success only when they had a dedicated task force to handle this issue.

To “increase the likelihood that specific instances of stolen metal are identified stolen material,” property owners must mark and monitor their material. Thieves generally alter material before attempting to sell it; large pieces are cut, bent, or flattened to make the material less distinguishable. Without distinct marking, material cannot be attributed to a particular source.

To “increase the likelihood that thieves will be identified, tracked down, charged and convicted,” law enforcement must have the resources and the tools to prosecute the criminals. Even when stolen material is identified and recovered, convictions are rare and punishment is mild. Metal theft is property theft, and is currently most commonly charged as “theft under \$5,000.” We believe thieves who interfere with critical infrastructure should be charged with total replacement costs as well as the material value, and when theft from critical infrastructure causes danger to life, thieves should be charged with common nuisance.

“Harmonizes with BC's legislative scheme”

While we believe harmonization within province is essential, harmonization with British Columbia's

⁵ <http://www.ontariocourts.on.ca/decisions/2007/july/2007ONCA0502.pdf>



scheme is less important. Material in British Columbia tends to flow into the U.S. or overseas rather than east across the Rockies. Alberta's local market for scrap metal is highly competitive and any legislation moving forward should harmonize with or supersede the City of Calgary's model so that Calgary's recyclers are not put at a disadvantage.

Lastly, the recommended amendments do not address an impact and assessment review. In order to assess the efficacy of the Act, annual data should be collected on the total number of transactions subject to the regulation, the total number of reported metal thefts, the total number of arrests, the number of arrests based on information provided as a result of the regulations, the number of convictions, and the sentences or actual outcomes.

CARI supports the Ministry of Justice and Solicitor General's recommendation "to rewrite the Act to address gaps and distribute the responsibility for reducing metal theft more evenly amongst all stakeholders." We agree that "no single strategy can address all facets of the problem," and that a collaborative endeavour involving all stakeholders is the best solution. However, the role of scrap metal recyclers in any legislation targeting theft from critical infrastructure must recognize that scrap metal dealers are not the criminals, and neither are we law enforcement.

We wish to see legislation that clearly and meaningfully addresses theft from critical infrastructure. We wish to see additional resources allocated to law enforcement agencies to support such legislation. And we wish to see legislation aimed at punishing the criminals and not the scrap metal recycling industry. CARI will continue to ensure its members have all the information and tools necessary to comply with applicable legislation. We have been addressing the issue of metal theft for over a decade, and we will continue to do so in partnership with law enforcement and other stakeholders.

Thank you,

Tracy Shaw
President & CEO