

March 30, 2009,

Open Letter To : Honorable Harinder Takhar
Ministry of Small Business and Consumer Services

RE : ESA Manufacturer Fee Protest and Appeal for NO CHANGE to O.R. 438/07

Mr. Takhar,

I have met with Mr. Norm Breton of the ESA at our facility on March 23, 2009. On that day we provided a tour of our facility, allowed Mr. Breton to make a presentation, and followed up with many questions and a presentation of our own data and findings. At the end of the meeting, we reviewed the letter sent to your office on March 11th, and demonstrated how our research and discussions with the ESA have further strengthened our position. I would like to now update you on our findings and appeal that no change be made to O.R. 438/07 making it a requirement for fees to be paid to the ESA before a certified product is considered approved for sale in Ontario. This would effectively be giving the ESA, a private corporation, powers of unlimited taxation on manufacturers in Ontario and rest of the world.

First, some of our concerns....

1. The registration fee is a market access fee or a tax.

We asked Mr. Breton three direct questions about the ESA in respect to Product Manufacturers.

What role will the ESA have in the design of our certified products? Reply: NONE

What role will the ESA have in Manufacturing and Test of our certified products? Reply: NONE

Given that your Business Case compares your proposed scheme to similar schemes in the US, EU and Australia, which are all publicly funded and have NO registration requirements, why do you need one?

Reply: “ *it is part of the funding model* “

You see Mr. Takhar, our products are certified by the CSA to meet international harmonized product safety standards. Part of the certification mandates proper labeling so that any competent person with a computer and internet connection can visit the CSA website and enter our file number form the label and identify us as the manufacturer. You can try this yourself at:

<http://directories.csa-international.org/> (a page from this website is attached to this letter EXHIBIT A)

The ESA does not need a product registration database as one already exists through the CB's online

databases. The Manufacturer Registration is simply a way to TAX manufacturers to pay for their activities. We have been in contact with the US Dept. Of Commerce International Trade Administration and they concur the ESA scheme equates to a market access fee and are now actively petitioning manufactures who received the ESA letter to contact them. We are assisting in their efforts. I expect you will be hearing from them in the not to distant future.

2. No other jurisdiction imposes a fee for market access.

Our certified products can be sold in any jurisdiction in the world without paying any additional market access fees or tax. The ESA Business Case outlines three models they compare their registration scheme to.

The first is the TSSA Stuffed Articles program. You must understand that the stuffed articles industry in an un-regulated industry which is very different from certified electrical/electronic product manufacturers who are essentially over regulated. Our designs are reviewed and tested by CB's to ensure safety in all respects such as creepage and clearance, failure modes, fusing, flamability etc, to ensure the design is safe in all respects. The standards have been developed over many decades by world standards bodies and have resulted in certified products being accepted world wide as safe. Our factory is subject to a minimum of 4 surprise inspections a year by CSA personnel who ensure, instruments are calibrated and proper test records are being kept. Further, on each inspection, products are randomly taken off the line for testing to ensure standards are being maintained in regards to critical components. This is very different from the stuffed articles industry which the TSSA is taxing. I was not suprised to hear the TSSA was a sister company of the ESA.

The second model is the material and equipment program (MEA) in New York State. The MEA obtains fees from licensing crane operators, and other specialized construction workers. They also do force manufacturers of some building materials that are un-regulated to register with them for a yearly fee. For this fee the MEA reviews their on-going production test data to ensure products are made to specifications. This is a fee for service scheme. The MEA is essentially performing same function the CB's perform for the electronic/electrical manufacturers. The ESA has no role in the manufacturing of electrical/electronic products and admits as such.

The third model is the Washington Dept of Ecology who charges a waste recycling fee for manufactured products. This fee helps cover some costs associated with the recycling of electronic waste. The ESA is scrapping the bottom of the barrel with this comparision and no further explanation is required.

Mr. Takhar, there simply is no other jurisdiction charging us a market access fee for our certified products, not even Singapore as the ESA would have you believe.

3. The stakeholder Process was severely flawed in its representation.

20,000 copies of the ESA letter were sent to manufacturers all over the world and their representation is

listed in the business case as being ElectroFed , LG and Eaton. Two national companies and one group representing less than one hundred multinationals does not constitute representation for the 10,000 manufacturers the ESA expects to have registered by year three. Consider that over 97% of these companies are small businesses who had NO representation in the building of this model. Further, in a standard form letter now being sent in response to the hundreds of complaints about the program the ESA states that manufacturers unanimously consented to the program. This is a deception, as we can see the comments submitted by NEMA (National Electrical Manufacturers Association (US)) in the ESA Product Safety Business Case Feedback Summary and Response (Page 56) where NEMA states their strict opposition to the scheme. Page 56 (EXHIBIT B) is attached to this letter. Considering the NEMA members (447) would constitute a large portion of ESA revenue, why were they not considered stakeholders? Also, why was NEMA the only manufacture or manufacturers association to provide feedback to the scheme? How many small businesses were given the opportunity to comment? I think you know the answers to these questions.

4. ESA Data

I have attached EXHIBIT C, which is a copy of an email sent to your office on March 26. This data obtained from the Ontario Fire Marshals Office shows that fire due to Appliances (includes all electrical/electronic products) have been in steady decline over the past 10 years up to 2007 when the ESA began its program. Most notable is the decrease in injuries per year falling form 30 in 2003 to 10 in 2007. Fatalities are constant at 0.5/year. This data demonstrates the effectiveness of the continuously developing worldwide harmonized standards for product safety. Even with the steady per capita increase of electronic/electrical devices in the 4.7 million households in Ontario fires and injuries are in decline. We are further parsing the data as we believe the vast majority of the fires are due to misuse of products by consumers. The ESA does not use any real data in their business case or presentations. They only speak of Product Safety Complaints. They demonstrate how these complaints are rising in graphs and give the impression the product safety problems are an epidemic. The data they present is simply due to the popularity of their website. The real data shows no epidemic problem with electrical/electronic product safety.

These and many other concerns will be detailed on our protest website at www.ontrak.net/esafee.htm when the site goes live in less than week. The site will also be petitioning US manufacturers to contact the US DOC ITA to register their complaints as the US DOC ITA has asked us to do. The site will feature some videos we are preparing to educate the public on product safety in relation to manufacturers. One video is dedicated to the concept of the Ontario Government giving powers of taxation to the ESA, a private corporation.

My single question to you sir, is the Ontario Government going to amend O.R. 438/07 making it a requirement for fees to be paid to the ESA before a certified product is considered approved for sale in Ontario?

This would effectively be giving the ESA, a private corporation, powers of unlimited taxation on manufacturers of the world, and make Ontario, the only jurisdiction in the world to impose such taxes/fees.

It is our position that O.R 438/07 is effective as it stands as by making certification a requirement in the Province of Ontario, product safety will continually improve regardless of any actions taken by the ESA.

Please stop the ESA Manufacturers registration program ASAP as it will eventually be stopped/exposed by other means if you do not. That way I can get back to what I love, manufacturing and educating young entrepreneurs about the rewards of such and you can get back to promoting small businesses as your ministry contends.

Regards,

Tom Fortin

Director

Ontrak Control Systems Inc.

705 671 2652

CSA International - Certified Product Listings - Microsoft Internet Explorer

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Address: <http://directories.csa-international.org/>

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| Name: <input type="text"/> | File Number: <input type="text"/> (do not use alpha characters) |
| Prov/State: <input type="text"/> | Class Number: <input type="text"/> - <input type="text"/> |
| Country: <input type="text"/> | Class Description: <input type="text"/> |
| | Keyword Search: <input type="text"/> |

Got a Question?

[Click here](#) to submit any questions or concerns about our listings, or contact us at 1.866.797.4272 or (416) 747-2661 and ask to speak with a Technical Service Representative

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| Reference # | Organization | Section | Comments by Organization | Rationale | Analysis | Proposed Change/Response |
|-------------|--------------|-------------|--|--|---|--|
| NEMA1 | NEMA | 4 a, b | The ESA Product Safety Program should be funded by the citizens of Ontario, through taxes, as other government social programs are funded. | For all practical purposes, this program is owned and being administered by the Government of Ontario. It serves to provide a service for the citizens of Ontario, and as such should be funded by the citizens of Ontario, through taxes, as other government social programs are funded. The proposal for manufacturers to fund \$3M out of \$3.78M or 79% of the expected costs demonstrates a lack of understanding of general business by the developers of this proposal. Manufacturers will simply charge the citizens of Ontario a higher price for the goods they purchase, and the Canadian populace will pay sales tax on top of that extra cost. The people of Canada will pay for this service in the long run. The old saying holds true. There is no such thing as a free lunch." | <p>Comment expressed that the government should fund the program directly through taxes.</p> <p>Disagree with comment.</p> <p>This matter has been dealt with at length throughout the working group deliberations. The government has created the Delegated Administrative Authority model and has decided that this approach is appropriate for Ontario. Direct government funding is not possible at this time. It would require a statutory amendment by the government.</p> <p>No change to funding option proposed.</p> | <p>Disagree with comment.</p> <p>The comment received expressed that the program should be funded directly through taxes.</p> <p>This approach was discussed throughout the working group process and it was determined that direct government funding could not be implemented at this time.</p> <p>No change to funding paper is proposed.</p> |
| NEMA3 | NEMA | 1, 3, 9, 10 | The only options that should be considered by ESA are option 1, 3, 9, and 10. | Options 1, 3, 9, 10 clearly put the funding for safety of Ontario residents in the hands of those who benefit directly from the regulations. | Disagree with comment. This matter has been dealt with at length throughout the working group deliberations. | <p>Disagree with comment received.</p> <p>Comment already dealt with through the</p> |

Gentlemen,

Yesterday afternoon, one of my staff presented me with data they had obtained from the Ontario Fire Marshalls office on actual fire loss data due to appliances. This category includes all electrical/electronic devices that caused fires in Ontario.

I thought I should share this with you as over the course of our investigation into the ESA Registration and Fee scheme, I have had four separate people inform me about a specific fire cause by a fridge last year.

Looking at Fireloss8.jpg, we see that the average yearly fires caused in the appliance category declined in the five year period of 1998-2002 to the five year period of 2003-2007 from 467 to 399 fires per year, a decline of 14.6%

Further, looking at the data shown in Appliance and Electrical Goods Fire loss.JPG we see over the five year period from 2003 to 2007 fires in the appliance category declined 12 %. Also, injuries declined from 30 in 2003 to 10 in 2007, while fatalities remained constant at 0.5 per year.

Data provided by the ESA Product Safety Funding Business Case suggests there is an epidemic problem with product safety because of the increasing number of product safety complaints. One possibility for the increase in complaints may be the increased exposure of the the ESA website.

We are still compiling data on deaths due to electrocution and will forward it when complete, however, the numbers at this stage seem to be of less significance than the fire data.

I further suggest the average decrease in fires and injury due to electrical/electronic products while the number of these products in use is increasing on a per capita basis is due to efforts by manufactures. The increased application/development of the harmonized standards used in electrical/electronic product design and the licensing of factories by the CB's which mandates 4 inspections per year, etc, etc, is likely the reason for the favourable fire data.

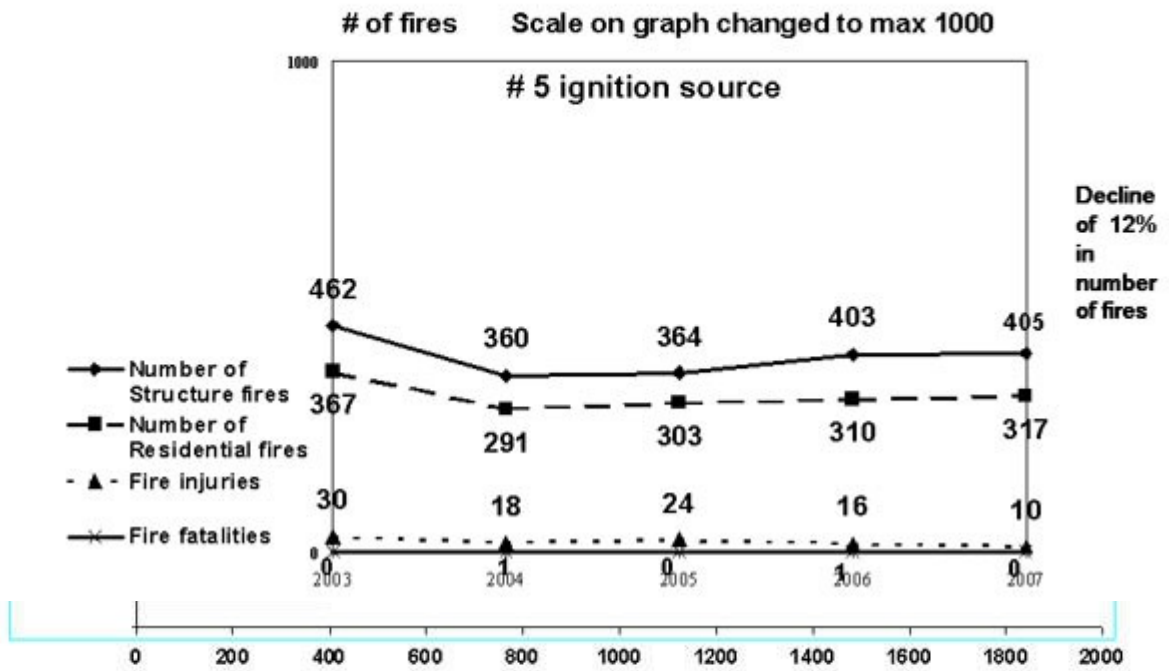
No response is required. We are just sharing some of our findings.

Regards,

Tom Fortin
Engineering Manager
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Structure Fires Ignition source: Appliances

Fire Loss in Ontario 2003 – 2007
Causes, Trends and Issues



Structure Fires: Ignition source

Average number of fires per year

Fire Loss in Ontario 2003 – 2007
Causes, Trends and Issues

