

Ontario Sewer and Watermain Construction Association



Proposed Regulatory Amendments to the Highway Traffic Act: Reclassification of Certain Road Building Machines – OSWCA Response

July 11, 2016



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Carrier Safety Policy Office
Carrier Safety and Enforcement Branch
3rd Fl-301 St. Paul St
St. Catharines ON L2R 7R4

Re: Proposed Regulatory Amendments to the Highway Traffic Act: Reclassification of Certain Road Building Machines

On behalf of our members, the Ontario Sewer and Watermain Construction Association (OSWCA) would like to provide the following comments in response to the Ministry of Transportation (MTO) proposal to amend certain regulations under the Highway Traffic Act (HTA) in order to reclassify certain Road Building Machines (RBM) as commercial motor vehicles (CMV).

Comment on the Proposed Implementation Timeline

Above all other issues, the proposed timeline for implementation of this regulatory change proposal is extremely problematic for the companies who operate equipment that may be reclassified as a CMV. Given that a definitive list of equipment set for reclassification has yet to be tabled, the proposed implementation timeline of January 1, 2017 is much too aggressive.

As we have previously noted, given the requirements to certify and maintain the reclassified RBMs as CMVs, there will be significant cost increases that owners of these pieces of equipment are going to have to incur in order to continue operating. With the legislative proposal only provided to stakeholders in April and the regulatory change proposals only now being made available for comment, it is reasonable to believe that a finalized list of reclassified equipment and requirements is not going to be made available until the Fall. This is simply not enough time to plate, register, and bring up to CMV code all of the reclassified equipment to be in compliance. Existing contracts (particularly in the private residential development sector) will not have the opportunity to recoup the costs associated with all of the changes, meaning many contractors will be operating at a loss in order to fulfill existing contracts.

By way of example, the table below presents a rough estimate for the costs that an owner will incur on a single, reclassified street sweeper. These costs could easily top \$10,000 per unit if a legal affidavit is required by the owner in order to demonstrate proof of ownership at the time of plating and registering as a CMV.



New Conditions for Operating a Reclassified RBM	Requirements	Estimated Cost
Commercial Vehicle Operator's Registration	Application for an original CVOR Certificate	\$250
	CVOR Written Test	\$32
	Driver's Abstract	\$12
Vehicle Registration	License plate sticker	\$108
	Vehicle Permit	\$20
	License Plate - Commercial Vehicle Validation Fee (Weight estimated at 33,000 lbs)	\$1,100
Special configuration permit	Overweight vehicle	\$440
Safety Inspection		\$50
Safety Standards Certificate		\$90
Drive Clean Testing		\$35
Motor Vehicle Insurance	RBMs only require public liability insurance	\$2,000
Fuel Tax (RBMs presently use colored fuel and are exempted from the tax)	Estimated 170 litre gasoline tank, one tank per day, 200 operating days in a year x \$0.147	\$5000
Total Cost		\$9,097

A much more reasonable timeline for implementation needs to be put in place to allow companies to bring their reclassified equipment up to CMV code, and to allow owners to appropriately price for their new operating costs in their contract prices.

We believe that it is necessary to push back the implementation timeline by one year at the very least, in order to allow contractors to complete contracts that have been tendered and priced according to the current operating environment. This would make the “soft” implementation date of January 1, 2018, followed by a 12-month education



period, with a “hard” implementation date of January 1, 2019, where fines would begin to be imposed for non-compliance.

Commercial Vehicle Operators Registration (CVOR) System

Another issue of concern to the OSWCA coming out of this proposal is the impact of bringing in heavy equipment under the CVOR system in the province. OSWCA has previously made submissions to the MTO on this issue; particularly around the problems with the calculation of risk exposure based on kilometric travel. Bringing in a significant number of RBMs with an even lower annual kilometric travel rate than the current vehicles in our member company fleets that are subject to CVOR will only intensify these problems.

The concept of using kilometric values was introduced in 2007 and was based on the premise that if you travel more kilometers, you must have greater risk exposure. This system works well in the Transportation Industry, but it unfairly penalizes local construction companies that do not travel long distances when compared to a highway tractor. As an example, a highway tractor can presumably travel 800 kilometers or more in a single 10-hour work day on a highway, whereas a dump truck operating in the public right-of-way in a busy urban environment may only travel 150 kilometers in a day, despite working the same number of hours. This allows for a significantly smaller risk threshold for the dump truck operator despite working in an equally challenging environment, simply because the rate of travel is slower.

Operators whose fleets travel low kilometers in busy urban environments are more likely to have more minor infractions/accidents or driver incidents – a reality not reflected by the kilometric model. The prospect of adding certain RBMs, whose kilometric travel threshold is typically very low, to a construction company’s CVOR will only serve to exacerbate this existing system inequity. The increased risk exposure has the potential to leave contractors who own and operate the type of equipment set for reclassification more prone to exceeding the CVOR points threshold, which could result in sanctions against a company and ultimately impact their ability to bid for work.

As a follow-up item to this regulatory change, the MTO needs revise the CVOR system to better account for those companies who operate constantly in the public right-of-way but do not travel long kilometres. The pre-2007 SVOR system which was based on fleet-size was much more complementary to those operating in this sector and some aspects of this system should be revisited in order to create a system that is more fair.

New Road Building Machine regulation

OSWCA agrees with the proposal to clarify the difference between a RBM and a CMV in regulation, as opposed to legislation, as it will allow for greater flexibility in the future



when technology changes or new equipment results in the need to classify or reclassify equipment. To this point, however, there is not enough information provided in this regulatory proposal to clearly understand what equipment is going to be required for classification.

We have received a number of inquiries from member companies asking where their custom-built equipment would fall in this reclassification exercise. To this point we are still unsure given the lack of information and discussion around this change proposal. The absence of clear information, despite a reaffirmation of the implementation timeline, is particularly troubling. As noted above, whereas many public contracts have provisions included that allow for prices to increase as a result of legislative or regulatory change, most private contracts do not have such provisions. As a result, there is significant anxiety in some sectors of the industry around bidding on contract work while this regulatory change looms.

A very clear list of equipment must be published by the MTO well in advance of this regulation coming into effect, so that the ambiguity created by using identifiers such as “truck-type chassis” can be removed from this process. Based on the present consultation proposal, there is too much room left for interpretation in this process.

Hours of Service

We appreciate the deferral proposal for former RBMs under the Hours of Service (HoS) regulation, however, it is our belief that this deferral should be made permanent for all reclassified RBMs (not simply mobile cranes), the nature of operating these pieces of equipment is *much* different than a typical commercial motor vehicle. More often than not, the primary operational purpose for these reclassified RBMs is not for driving, but rather an on site operational task. Given that operators of these reclassified RBMs will not be driving for the entirety of a work-day, an exemption from this requirement should be granted across the board. Given that the operator of the equipment would normally be out of the equipment for a portion of the day rather than constantly driving, the same HoS rules are not reasonable to apply for this equipment.

As an example, a hydrovac may be driven to a job site and then used to daylight utilities around an excavation, which requires the operator to have the equipment parked and be outside of the cab in order to operate. Over the course of a day, the operator may only drive 2-3 hours, while spending the remaining time outside of the equipment on the job site. This is a significantly different work environment than someone operating a highway tractor who may spend an entire day sitting in the cab of a vehicle driving, which has a much different effect from a fatigue, and a health and safety standpoint. These different operating contexts need to be acknowledged and differentiated in the regulatory process.



Oversize-Overweight Vehicles

We appreciate the grandfathering provision included around the oversize/overweight pieces of equipment that are set to be reclassified. This is a particularly important provision for our member companies who operate hydrovacs, as these pieces of equipment typically work to manufactures limits which would place them over the allowable weight for CMVs under the current provincial regulations.

Concluding Notes

The MTO's proposal for regulatory change around RBM reclassification has been significantly improved since the first stakeholder session was hosted in 2015. Nevertheless, the proposed timeline to implement these changes on January 1, 2017 is much too aggressive. It does not provide owners of this equipment with enough time to comply with the new rules and price work appropriately to account for the increased operating costs. Once clear guidelines have been developed for what equipment is to be reclassified, an appropriate amount of time must be provided to allow for this equipment to be brought up to CMV compliance, and to allow owners to appropriately price work using these pieces of equipment, so that they are not left absorbing significant operating cost increases with no ability to recuperate these costs.

OSWCA would like to thank the MTO for the opportunity to provide feedback on this legislative proposal. We look forward to working with the MTO to ensure a fair and equitable registration system is in place in advance of expanding the list of heavy equipment required for registration.

Please do not hesitate to contact me (905-629-8819 or patrick.mcmanus@oswca.org) if you have any questions or need information regarding OSWCA and its membership.