



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2020 Sunrise Review

Automotive Recyclers



October 15, 2020



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2020

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes, (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions, and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of Automotive Recyclers and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director



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Background

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner; and
- (IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

During the sunrise review process, COPRRR staff performed internet and literature searches; contacted and interviewed the sunrise applicant, trade associations, and other stakeholders; and reviewed federal laws and the laws of other states. To determine the number and types of complaints filed against automotive recyclers in Colorado, COPRRR staff contacted multiple state agencies, multiple state and local law enforcement authorities, as well as state and regional prosecutorial authorities.

¹ § 24-34-104.1(4)(b), C.R.S.

Profile of the Profession

Automotive recyclers, also known as junkyards, salvage yards, and scrapyards, among other names, dismantle automobiles to recover parts for resale and reuse on other vehicles. The recycling process began when cars first commenced being manufactured more than a century ago.

Presently in the United States, nearly all automobiles are recycled. The automotive recycling industry totals \$32 billion in annual sales and employs more than 140,000 people at over 9,000 locations.²

Individual automotive recyclers function differently from one another. However, there are some commonalities among them. When a car comes into a business, the operator generally:³

- Inspects the vehicle for leaks from the engine, radiator, transmission, differential, fuel tank and any damaged areas;
- Collects leaking fluids;
- Drains fluids in a spill containment area prior to crushing or storing on bare ground;
- Removes and captures refrigerants as required by the U.S. Environmental Protection Agency;
- Removes mercury switches from the hood, trunk, and anti-lock braking system sensors;
- Removes any lead wheel weights;
- Removes any fuel; and
- Removes the battery.

Approximately 15 million automobiles come to the end of their practical lives in the United States each year. When maintenance costs are higher than the car's value, it is considered a "constructive total loss." When this occurs, many people recycle the vehicle and purchase another. Three-quarters of the components from end-of-life vehicles (ELVs) are recycled. Some high-level automotive recycling facts are:⁴

- Automobiles are recycled more than most other products;
 - Annually, more than 14 million tons of steel is recycled from ELVs, equivalent to approximately 13 million automobiles.

² The Balance Small Business. *Auto Recycling Recent Trends, Opportunities, and Challenges*. Retrieved December 27, 2019, from <https://www.thebalancesmb.com/auto-recycling-recent-trends-opportunities-and-challenges-4011892>

³ *Vehicle Recycling Manual: A Guide for Vehicle Recyclers*, Washington State Department of Ecology (2017), p. 2.

⁴ Earth 911.com. *Benefits of Recycling Car Bodies*. Retrieved December 27, 2019, from <https://web.archive.org/web/20130217084026/http://earth911.com/recycling/automotive/auto-bodies/benefits-of-recycling-car-bodies/>

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- Automobiles have a recycling rate of nearly 100 percent when compared to the steel used to manufacture a new one;
 - The typical car is approximately 65 percent steel and iron;
 - About 25 percent of the steel used to fabricate car bodies is recycled steel;
 - Recycling steel saves the steel industry enough energy each year to power about 18 million households for a year;
 - Recycling one ton of steel conserves more than one ton of iron ore, about three-quarters of a ton of coal and 120 pounds of limestone;
 - Vehicles that would be abandoned can be legally obtained by recyclers and transformed into usable vehicles or recycled for usable parts;
 - Steel can be recycled repeatedly without loss of quality or strength if care is taken in the recycling process to avoid contamination;
 - Steel is the world's most recycled substance and more is recycled annually than all other materials combined;
 - Recycling metal uses much less energy than making new steel; and
 - Recycling vehicles saves an average of about 85 million barrels of oil, compared to manufacturing new parts, annually.

Recyclers also remove hazardous material. Many automobiles contain mercury. An estimated 40 million mercury switches are still being used in vehicles, though they are no longer installed in new vehicles. Recycling these switches before a vehicle is crushed and shredded prevents mercury from invading the environment. In 2007, over 2,100 pounds of mercury was collected during the recycling process.⁵

Automotive recyclers face many of the challenges that other businesses face. Finding skilled labor to work in an auto recycling facility is difficult. Acquiring worker's compensation insurance is another significant challenge because there are few companies that provide it to the industry. However, the most significant challenge may be finding reasonably priced vehicles.⁶ A recycler must find vehicles at a reasonable price in order to be cost effective, and that has become increasingly difficult because there is increased competition for salvaged cars by foreign buyers and other places.

Many salvaged cars are exported and buyers will pay a high price for those that are not exported. Competition for ELVs comes from Craigslist, eBay, and directly from junk car owners. Recyclers now employ sophisticated marketing and customer service approaches to improve their inflow. These types of approaches make it easy for owners to obtain cash for their vehicles and have them removed quickly.⁷

⁵ *Ibid.*

⁶ The Balance Small Business. *Auto Recycling Recent Trends, Opportunities, and Challenges*. Retrieved December 27, 2019, from <https://www.thebalancesmb.com/auto-recycling-recent-trends-opportunities-and-challenges-4011892>

⁷ *Ibid.*

A national industry organization, the Automotive Recyclers Association (ARA), of which the Colorado Automotive Recycling Association (CARA) is an affiliate, offers a certification. Obtaining Certified Automotive Recycler certification signifies that a facility meets ARA standards for general business, environmental, and safety practices. The certification involves passing a third party audit every other year and conducting a self-audit during the intervening year.⁸ CARA reports that in Colorado there are 17 ARA members and 35 CARA members. There is one Certified Automotive Recycler in the state.

⁸ Automotive Recyclers Association. *Certified Automotive Recycler (CAR) Certification Program: 2019 CAR & Gold Seal Application Form*. Retrieved April 23, 2020, from <https://www.a-r-a.org/certification.html>

Proposal for Regulation

Counsel for LKQ, an international corporation that engages in automotive recycling (Applicant), submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform within the Department of Regulatory Agencies for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies licensure of automotive recycling businesses as the appropriate level of regulation. The sunrise application did not highlight specific minimum requirements for licensure, such as the passage of an examination or minimum level of education.

The Applicant states that it is necessary to license vehicle recyclers, “to prevent the sale of stolen vehicle parts, to prevent fraud, impositions, and other abuses, and to preserve the investments and properties of the citizens of the state.”⁹ Moreover,

Individuals who dismantle vehicles without proper permits typically do not properly dispose of chemicals such as engine oil and transmission and radiator fluids. This hazardous waste ends up in rivers and streams, and contaminates the public's drinking water.¹⁰

The application envisions that licensing would protect consumers from both financial harm and from harm to the environment as indicated.

The Applicant requested that “workers” have the following qualifications:

- Hands-on automotive repair experience;
- Basic understanding of the function of each part of a vehicle;
- Ability to use hand tools, air tools, and torches;
- Ability to work outside in various types of weather;
- Ability to work around hydraulic oils, motor oils, antifreeze, and diesel fuels;
- No lifting restrictions or fear of heights; and
- A high school diploma or General Education Diploma is preferred.

The Applicant provided no reasoning why any of these capabilities are necessary to protect the public from harm or why the worker should have them prior to employment in a facility.

The Applicant also desires that businesses have an established place of business and “License, insurance, bond, permits, etcetera.” It also recommend the following locations and equipment be part of a regulatory scheme:

- Secured building with garage-bay-style door;
- Concrete floor, adequate roof and no drains leading to a sewer, sewage tank or stormwater collection system;

⁹ 2020 Automotive Recyclers Sunrise Review Application, p. 4.

¹⁰ *Ibid.*

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- Forklift or other heavy machinery to move vehicles from receiving area to dismantling area and then from dismantling area to vehicle storage area;
 - Gasoline evacuation pump with filter;
 - Small wheel hoists to lift cars high enough to drain fluids;
 - Small hand pumps for removal of engine oil, transmission fluid, gear oil, coolants and brake fluid;
 - Containers for storage of oils, antifreeze, windshield washer fluid, and the like;
 - Portable refrigerant removal device with separate storage tanks for each type of refrigerant;
 - Dedicated drip pans to catch fluids; and
 - Spill kit to clean up spills.

As with the worker competencies, the Applicant did not explain why business licenses should be limited to those who have these prerequisites in place. However, some appear to be generic to business operations and others appear specific to the fundamentals necessary to operate an automotive recycling business to preempt environmental damage.

The Applicant also identified several training experiences with which each recycler should be familiar to comply with either industry standards or federal law:

- Automotive Recyclers Association (ARA) Certified Automotive Recycling Program.
- ARA/Environmental Protection Agency - Environmental Compliance for Automotive Recyclers Program.
- ARA University - Auto Recycling Online Training Platform.
- United Recycling Group Training.
- EPA - National Pollutant Discharge Elimination System Permit Program.
- EPA 609 - Motor Vehicle Air Conditioning Refrigerant Recovery Training.
- EPA - Spill Prevention, Control and Countermeasure Plans Program.
- Automotive Service Association Auto Repair Training.
- Occupational Safety and Health Administration 10-hour Training.

Summary of Current Regulation

In its application for a sunrise review, LKQ, an international corporation that engages in automotive recycling (Applicant), asserts that licensing automotive recyclers will protect consumers from financial harm and from environmental harm. The following lists some of the current laws regarding these issues.

Federal Laws and Regulations

The Federal government has promulgated several laws and regulations to help prevent automobile theft and environmental damage, the types of harm the sunrise application seeks to address.

Automobile Theft

The federal government addresses the notion of automotive recycling-related financial harm through a vehicle title system. The National Motor Vehicle Title Information System (NMVTIS) is a program administered by the U.S. Department of Justice under the authority of the *Anti-Car Theft Act of 1992*.¹¹

NMVTIS was created to:¹²

- Stop stolen vehicles from entering into interstate commerce,
- Guard consumers from fraud,
- Reduce the use of stolen vehicles in crimes, and
- Protect consumers from dangerous vehicles.

Every automotive recycler must convey specific information to NMVTIS. Failure to report the required information may result in a fine of \$1,000 per violation.¹³

The NMVTIS is an online system that provides information about a vehicle's condition, history, title, most recent odometer reading, brand history, and, in some cases, historical theft data. A “brand” describes a vehicle’s current or prior condition, such as junk, salvage, flood, or another designation. The NMVTIS provides protection from title fraud and makes it difficult for criminals to use stolen vehicles.¹⁴

Notwithstanding, every state has its own laws and standards for vehicle branding. For example, a vehicle recovered from a flood or other natural disaster may be branded as “flood” in certain states, but in other states, no such designation exists. When the first

¹¹ 49 U.S.C. 30502(a) and 30502(b), *et seq.*

¹² National Motor Vehicle Title Information System, U.S. Department of Justice. *Frequently Asked Questions*. Retrieved February 27, 2020, from <https://vehiclehistory.bja.ojp.gov/faq/list#faq-what-is-the-purpose-of-nmvtis>

¹³ National Motor Vehicle Title Information System. *Frequently Asked Questions: MVTIS Enforcement Policy*. Retrieved October 13, 2020, from <https://vehiclehistory.bja.ojp.gov/faq/list#faq-as-an-insurance-carrier-or-junksalvage-yard-i>

¹⁴ National Motor Vehicle Title Information System, U.S. Department of Justice. *For Consumers*. Retrieved February 27, 2020, from https://www.vehiclehistory.gov/nmvtis_consumers.html

state brands a vehicle as a flood vehicle it does not mean that other states must also designate the vehicle as a flood vehicle. Still, NMVTIS retains all reported brands so that relocating the vehicle from one state to another will not “wash” the brand. Title washing can be an issue.¹⁵

While title washing is a federal crime, many states do not enforce it. Texas, California, Washington, Tennessee, Mississippi, Illinois, New Jersey, North Carolina, Massachusetts, Virginia and Georgia are among those that do not.¹⁶

As with branding, each state has its own standards for financial loss. Some states consider the costs to repair a damaged vehicle to its working value, while others compare repair costs to scrap value.¹⁷

Environmental Damage

The U.S. Environmental Protection Agency (EPA), under the National Pollutant Discharge Elimination System (NPDES), controls stormwater discharges through a permit system. The NPDES permitting authorities may be either EPA or a state environmental agency. The permits are designed to control runoff from industrial facilities, including automotive salvage yards.¹⁸

A permit necessitates a written stormwater pollution prevention plan (SWPPP) and control measures. The SWPPP is a written assessment of potential sources of pollution and the control measures implemented to minimize ill effects. The SWPPP has site-specific best management practices including maintenance plans, inspections, employee training, and reporting procedures. The SWPPP must be executed by the facility and updated when needed. The permit also requires collection of visual, analytical, and/or compliance monitoring data.¹⁹ There are several pollutants associated with these types of facilities, including fluids such as solvents and petroleum, semi-solids such as oil and grease, and heavy metals.²⁰

The recommended best management practices are:²¹

- Good Housekeeping Practices - maintaining a clean and orderly facility to prevent contamination from coming into contact with stormwater;
 - These include regular pickup and disposal of garbage and waste materials and regularly inspecting containers for leaks and structural issues.
- Minimizing Exposure - keeping precipitation away from potential pollutants;

¹⁵ National Motor Vehicle Title Information System, U.S. Department of Justice. *For Consumers*. Retrieved February 27, 2020, from https://www.vehiclehistory.gov/nmvtis_consumers.html

¹⁶ Autolist. *What is Title Washing on a Car?* Retrieved February 27, 2020, from <https://www.autolist.com/guides/title-washing>

¹⁷ Autolist. *What is Title Washing on a Car?* Retrieved February 27, 2020, from <https://www.autolist.com/guides/title-washing>

¹⁸ *Industrial Stormwater, Sector M: Automobile Salvage Yards*, U.S. Environmental Protection Agency, p. 1.

¹⁹ *Ibid.*

²⁰ *Industrial Stormwater, Sector M: Automobile Salvage Yards*, U.S. Environmental Protection Agency, p. 2.

²¹ *Industrial Stormwater, Sector M: Automobile Salvage Yards*, U.S. Environmental Protection Agency, pp. 3-4.

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- Erosion and Sediment Control - limiting erosion in areas of the site that because of topography, activities, soils, cover, materials, or other factors are more likely to experience erosion; and
 - Management of Runoff - This is highly site-specific but it is diverting, infiltrating, reusing, or otherwise managing stormwater runoff to reduce the discharge of pollutants.

The Resource Conservation and Recovery Act (RCRA) is the main federal law that governs solid waste. RCRA establishes the framework for handling both non-hazardous solid waste and hazardous solid waste. Solid waste includes discarded solids, liquids and gases.²²

RCRA Subtitle D regulates nonhazardous waste. It bans the open dumping of waste and sets minimum standards for the operation of municipal waste and industrial waste landfills, among others. Hazardous waste is regulated under Subtitle C of RCRA. It sets standards for hazardous waste generators and transporters, as well as treatment, storage and disposal facilities. The EPA can empower states to implement the hazardous waste provisions of RCRA rather than the federal government.²³

The Colorado Regulatory Environment

Varied regulation exists among Colorado jurisdictions that encompass automobile theft and environmental protection. These are the two areas of consumer harm the Applicant claims will be rectified by licensing. Colorado state government permits some junkyards, is involved in multiple initiatives concerning automobile theft, and enforces federal environmental standards. County and local governments also implement automobile theft regulations.

Junkyards

Colorado statutes regulate junkyards adjacent to highways in section 43-1-501, *et seq.*, C.R.S. A junkyard includes in its definition an automobile graveyard²⁴ which is,

[A]ny establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.²⁵

²² U.S. Environmental Protection Agency. *Resource Conservation and Recovery Act (RCRA) Overview*. Retrieved April 9, 2020, from <https://www.epa.gov/rcra/resource-conservation-and-recovery-act-rcra-overview>

²³ *Ibid.*

²⁴ § 43-1-502(5), C.R.S.

²⁵ § 43-1-502(1), C.R.S.

The laws empower the Colorado Department of Transportation to require permits for junkyards that are located within 1,000 yards of federal-aid primary and interstate highways.²⁶

Automobile Theft

There are several entities in Colorado that address automobile theft.

The Colorado Auto Theft Prevention Authority (CATPA) is a state-level program created by the General Assembly to empower law enforcement agencies and proactively address automobile theft statewide. Generally, automobile theft crimes are investigated and prosecuted within the jurisdiction in which the crimes occur. CATPA issues grants to entities to aid automobile theft prevention programs and the enforcement and prosecution of automobile theft. CATPA also provides statewide planning and coordination. Among the multiple enterprises to which it has awarded grant funds are the Colorado Attorney General's Office of Auto Theft Prosecution (OATP) and the Metropolitan Auto Theft Task Force (MATT), a multi-jurisdictional task force focused on the urban corridor in Colorado. The OATP is a criminal prosecution initiative that helps prosecute automobile theft offenders in jurisdictions around the state. The MATT is a cooperative law enforcement effort that targets organized automobile theft along the Front Range to reduce vehicle theft.

Environmental Damage

The Colorado Department of Public Health and Environment (CDPHE) is fully authorized by the EPA to enforce federal environmental law pertaining to waste within Colorado. According to CDPHE, there are basically two types of harmful waste associated with automotive recycling facilities: solid waste and hazardous waste.

The solid waste problem associated with automobiles is mainly used tires. The General Assembly addressed those problems by encouraging the recovery, recycling, reuse, and management of waste tires.²⁷ CDPHE manages the waste tire program in section 10 of its Regulations Pertaining to Solid Waste Sites and Facilities.²⁸ A facility must obtain a registration if it stores more than 500 waste tires at any one time.²⁹ According to CDPHE, automotive recyclers generally do not store tires at that level.

The hazardous waste issues produced in automotive recycling facilities relate to the fluids that are drained from the cars when they enter facilities. CDPHE issues permits

²⁶ § 43-1-503, C.R.S.

²⁷ § 30-20-1401(1), C.R.S.

²⁸ 6 CCR 1007-2 Part 1 § 10, CDPHE, Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division Rules.

²⁹ 6 CCR 1007-2 Part 1 § 10.1.3(A)(5), CDPHE, Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division Rules.

to facilities for the treatment, storage, or disposal of hazardous waste.³⁰ Permits are issued based on the amount of hazardous waste generated by a facility.³¹

Very small quantity generators generate less than 100 kilograms (kg) of hazardous waste per calendar month (about 220 pounds or 27 gallons) and less than 1 kg of acutely hazardous waste per calendar month (about 2.2 pounds).

Small quantity generators generate 100 kg but less than 1,000 kg of hazardous waste per calendar month (between 220 and 2,200 pounds or 27 and 270 gallons) and less than 1 kg of acutely hazardous waste per calendar month (about 2.2 pounds).

Large quantity generators generate 1,000 kg or more of hazardous waste per calendar month (over 2,200 pounds or 270 gallons) and/or 1 kg or more of acutely hazardous waste per calendar month (over 2.2 pounds).

CDPHE has not issued any permits to automotive recyclers because none reach even the very small generator threshold. Nonetheless, every facility must follow EPA and CDPHE guidelines for storage and disposal. Because automotive recyclers generate such a small quantity of hazardous waste, CDPHE only performs facility inspections when it receives a complaint. CDPHE does not keep track of the number of complaints specific to these facilities.

While automotive recycling facilities are not a high priority based on the type and amount of waste generated, they still produce waste that is of concern. In June 2006, the CDPHE Hazardous Materials and Waste Management Division published, *Automotive Salvage Yard Waste Management Practices in Colorado*. The booklet, for operators, addresses several issues, including:

- General Waste Management Guidelines,
- The Keys to Environmental Compliance,
- Vehicle Fluids,
- Vehicle Parts,
- Heavy Metals Contaminated Soils,
- Petroleum Contaminated Soils, and
- Approval Process.

³⁰ § 25-15-303(1), C.R.S.

³¹ Colorado Department of Public Health and Environment. *Hazardous Waste Management Guidance and Policy*. Retrieved April 13, 2020, from <https://www.colorado.gov/pacific/cdphe/hwguidance>

Regulation in Other States

The following information was submitted by the Applicant regarding state-level regulation of automotive recycling operations in the United States. The Applicant did not specify the level or reason each state regulates.

**Table 1
Automotive Recycler
State Regulation**

State	Regulation	
	Yes	No
Alabama	X	
Alaska		X
Arizona	X	
Arkansas	X	
California	X	
Colorado		X
Connecticut	X	
Delaware	X	
Florida	X	
Georgia	X	
Hawaii	X	
Idaho	X	
Illinois	X	
Indiana	X	
Iowa	X	
Kansas	X	
Kentucky	X	
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts		X
Michigan	X	
Minnesota	X	
Mississippi	X	
Missouri	X	
Montana	X	
Nebraska	X	
Nevada	X	
New Hampshire		X
New Jersey		X
New Mexico	X	
New York	X	
North Carolina		X
North Dakota		X
Ohio	X	

State	Regulation	
	Yes	No
Oklahoma	X	
Oregon	X	
Pennsylvania		X
Rhode Island	X	
South Carolina		X
South Dakota		X
Tennessee	X	
Texas	X	
Utah	X	
Vermont	X	
Virginia	X	
Washington	X	
West Virginia	X	
Wisconsin	X	
Wyoming		X

The data indicate that 11 states, including Colorado, do not regulate automotive recycling facilities. However, as noted in the “Colorado Regulatory Environment” section above, while Colorado does not license automotive recyclers, there are many functions performed in recycling facilities that are covered in Colorado law.

Colorado’s neighboring states vary in demeanor toward regulation of automotive recyclers. All states have a law substantially similar to the Colorado law that regulates junkyards adjacent to an interstate or federal highway.

Table 1, supplied in conjunction with the sunrise review application, notes that Wyoming does not require regulation. Colorado Office of Policy, Research, and Regulatory Reform staff found that the Wyoming Department of Transportation conducts educational compliance reviews, responds to complaints filed against salvage yards, and conducts investigations of law violations. The applicable regulations include that a salvage yard operator must obtain a Vehicle Storage & Disposal Facility License.³²

Utah requires a Motor Vehicle Dismantler License. The license requires a business name, principle place of business, a permanent sign, bond, photographs of the owners, and fees.³³

Arizona requires a license for any automotive recycler, “who acquires motor vehicles for dismantling, selling, or disposing of their parts, and who dismantles six or more vehicles in a calendar year.”³⁴ Obtaining a license requires that any person with 20

³² Wyoming Department of Transportation. *Salvage Yard Compliance*. Retrieved August 26, 2020, from http://www.dot.state.wy.us/home/vehicle_bus_regulation/salvage_storage/Salvage_compliance.html

³³ Utah Motor Vehicle Division. *Dismantler License*. Retrieved August 26, 2020, from <https://mved.utah.gov/licenses/dismantler>

³⁴ §§ 28-4301(2) and 4334(A), ARS

percent or more of the business to undergo a fingerprint criminal record check, have a permanent business location, obtain a \$20,000 Arizona auto dealer bond, and pay fees.³⁵

New Mexico requires a license of any person who wrecks or dismantles vehicles to resell parts or scrap material. A license requires the name of the applicant and any partners, a place of business, and a bond.³⁶

Kansas requires a vehicle dealer license for vehicle recyclers who acquire, dismantle, remove parts from, or destroy irreparable vehicles primarily to resell parts.³⁷ Licenses require an approved location and a bond.³⁸

³⁵ JW Surety Bonds. *Arizona Auto Dealer License Guide*. Retrieved August 26, 2020, from <https://www.jwsuretybonds.com/licensing/auto-dealers/arizona-dealer-license>

³⁶ New Mexico Statutes § 66-4-1.1

³⁷ *2017 Dealer Licensing and Salesperson Handbook*, Kansas Department of Revenue (2017), pp. 53-54.

³⁸ *2017 Dealer Licensing and Salesperson Handbook*, Kansas Department of Revenue (2017), pp. 8-10.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

Question 14 of the sunrise review application asks,

Within the usual practice of this occupation, document the physical, emotional or financial harm to clients resulting from failure to provide appropriate service, or erroneous or incompetent service. Give specific, verifiable examples.

In a typical sunrise review, to satisfy the *specific, verifiable examples* provision of Question 14, an applicant submits instances or anecdotes of perceived harm with the application. When the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) receives these examples, it analyzes them to determine if a regulatory regime could prevent the harm from occurring. In this case, LKQ, an international corporation that engages in automotive recycling (Applicant), did not supply such specific instances and anecdotes. Rather it supplied a statement that reads:³⁹

Potential human health and environmental risks associated with automotive salvage operations are diverse and variable - arising from a broad array of physical, chemical, and biological hazards. Such hazards include:

- Fire or explosion at improperly managed sites.
- Transmission of diseases where yard areas serve as vector-breeding habitats, for instance, for mosquitoes.
- Soil, surface water, and groundwater contamination resulting from the improper management of solid and hazardous waste, including mercury switches.
- Air releases of asbestos fibers, fugitive dust, and/or volatile organic compounds.

This statement implies that environmental hazards pose a potential for public harm. To help determine if unlicensed activities pose harm, COPRRR contacted the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE). The EPA cedes all enforcement activities regarding

³⁹ Automotive Recycler Sunrise Application, p. 6.

hazardous waste to CDPHE. CDPHE informed COPRRR that some of the activities that occur in automobile salvage yards present some risk of harm. However, representatives of CDPHE also stated that those activities are regulated under current law and that the harmful activities occur at levels so small that they do not warrant permits. Enforcement of environmental laws in salvage yards is complaint-based rather than proactive. That is, CDPHE does not perform routine inspections of the facilities. It inspects facilities when it receives a complaint. During those inspections, the inspector will verify that all protocols for containment and storage of hazardous material are followed. If a facility is out of compliance, mitigation is ordered. The complaints and actions are so few that CDPHE does not track the number it receives specific to automotive recyclers. The automotive recycler complaints are just a small portion of an aggregated total that includes all types of industries and facilities.

Though the Applicant did not directly address harm from automobile theft in its answer to Question 14, there are multiple places in the application that it refers to theft and criminal activities. In explaining why it seeks licensure, the application states that Colorado should follow other states' examples,

[I]t is necessary to regulate and license vehicle recyclers, wreckers and dismantlers, the buyers-for-resale, and the sellers of secondhand vehicle components doing business in the state, in order to prevent the sale of stolen vehicle parts, to prevent fraud, impositions, and other abuses, and to preserve the investments and properties of the citizens of the state.⁴⁰

During an interview with a representative of the Applicant, the representative claimed that stolen vehicles are brought into unlicensed facilities, disassembled and rebuilt using parts from multiple vehicles. The Applicant sees licensing as the solution to the problem of automobile and automobile parts theft.

To determine the extent and nature of theft-based harm due to the lack of licensing of automotive recycling facilities, COPRRR contacted several law enforcement entities. The list includes, but is not limited to the:

- Colorado State Patrol - Colorado Auto Theft Prevention Authority,
- Office of the Colorado Attorney General,
- Colorado District Attorney's Council,
- Denver District Attorney,
- Metro Auto Theft Task Force,
- Colorado Department of Revenue, Auto Industry Division, and
- Colorado Department of Revenue, Division of Motor Vehicles.

Among the organizations contacted, the opinions toward state-level licensing were inconsistent. Most contend that a license alone would not stop criminal activity.

⁴⁰ Automotive Recycler Sunrise Application, p. 4.

Others maintain licensing could be a part of a solution to the problem and indicated that the state could expend resources necessary to consistently inspect facilities to ensure they are following protocols that are currently in place. Failure to comply would risk the loss of the license.

Still others considered that there are better places to expend resources, such as updating the state's Vehicle Identification Number (VIN) database.

One organization's representative recounted an incident where employees of a facility were taking in cars stolen off the street by tow truck drivers. They sent the stolen vehicles to the crusher without verifying the VIN in the state or national databases for the money. The representative suspected that a license would not have stopped the practice because the person who would have procured the license did not perform the criminal activities. In this case, the owner of the facility did not face criminal charges, only the employees involved. Similarly, another organization spoke to the prevalence of predatory towing as a means of car theft.

Another organization related the problem of cloned or stolen VINs. This occurs when a vehicle is brought to a crusher without reporting the VIN to the state or national database. The VIN is then used to title a stolen vehicle as a salvage vehicle and sold. The organization was unable to quantify how often this occurs but related that VIN cloning happens somewhat regularly.

Automobile theft does appear to be a problem in Colorado and COPRRR contacted several organizations that concentrate on stopping or reducing automobile theft. Licensing, however, is not a logical solution to preventing criminal activity.

Professional licensing is designed to determine if a practitioner is competent to practice or if a business has requisite location, indemnity, permits and procedures, and such to operate and not harm the public.

Criminal actions cannot be prevented by the issuance of a license. Regulators could determine that someone with a criminal history may be too much of a public risk to operate a business but that is an after the fact determination.

The Applicant posits that environmental damage and automotive theft are the two types of harm consumers face from automotive recyclers. However, this review does not have any specific examples of either. Notwithstanding, there are currently programs in Colorado state government, enumerated above, established to mitigate these kinds of harm.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

Regulation of a profession or occupation is meant to ensure that a practitioner has the minimum knowledge and skill necessary to practice a profession or occupation and not harm the health, safety, or welfare of consumers. In this case, the Applicant did not raise knowledge and skill as issues to be remedied. Because competency is not at issue, mandating licensing and the associated assurance of initial competency does not seem appropriate for individuals. The regulation of businesses generally enhance public safety by scrutinizing financial solvency and reliability of consumer services. Because neither financial solvency nor customer service appears to be an issue, business licensing does not seem appropriate.

In this case, the Applicant does not provide the examples of harm needed to illustrate the need for regulation. Rather, it points to automobile theft and environmental degradation as harm that needs to be remedied, without evidence. Moreover, there are several programs in place that currently address those issues. Pages 7-11 of this sunrise review, as well as the discussion in the preceding section, catalog the varied programs established in the EPA, CDPHE, and law enforcement that concentrate on mitigating such harm.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The Applicant proposes that licensing is appropriate for automotive recyclers. The licensing of a business within an industry is very different from the licensing of an individual professional within an industry. Professional licensing typically requires individuals to meet certain educational or training requirements and pass an examination to assure professional competency. Because individual competency is not the basis for the harm identified in this review, licensing does not appear appropriate.

The Applicant wrote that each facility should have an established place of business, indemnity, and specific paraphernalia and equipment to operate.

Registration is a less stringent form of regulation that generally requires a business address, contact information, and proof of insurance or a bond. The harm that occurs

in automotive recycling facilities is not mitigated by education or training and requires a site specific investigation when reported. Registration could be an alternative to licensing because regulators would be aware of the facility location and could demand surety for any damages caused by the facility. Still, it is doubtful that a salvage yard's location could go undetected because of its significant size and if surety was necessary to mitigate harm, CDPHE would require a permit.

Another alternative to licensing is offered through a national organization, such as the Automotive Recyclers Association (ARA), of which the Colorado Automotive Recycling Association is an affiliate. The ARA offers a certification with multiple levels. The Certified Automotive Recycler Certification Program (CAR) provides standards for general business practices, environmental, and safety issues.⁴¹

Obtaining and maintaining a CAR certification verifies that facilities meet standards established by ARA. CAR certificate holders are audited to ensure compliance. During an audit, an inspector reviews the standards, inspects facilities, discusses the audit findings, and prepares a report. CAR requires professional third party audits every odd numbered year and self audits in even numbered years. To remain a CAR certificate holder in good standing, any identified issues must be corrected within 90 calendar days of the audit. If documentation verifying correction is not provided to ARA within 90 days, ARA may withdraw the facility's CAR certification.⁴²

ARA assigns a bronze, silver, or gold level to the CAR certification. The level is determined by the services offered and the scores that a facility attains during the audits.⁴³

Obtaining the CAR certification means that there would be additional monitoring of the certified facilities beyond the complaint driven processes currently in place. This is clearly a viable alternative to licensing considering that the possibility of harm from environmental pollution or theft is remote.

Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

⁴¹ Automotive Recyclers Association. *Certified Automotive Recycler (CAR) Program*. Retrieved April 23, 2020, from <https://www.a-r-a.org/certification.html>

⁴² *Certified Automotive Recyclers Guide*, Automotive Recyclers Association (2015), pp. 2-3. Retrieved April 23, 2020, from https://www.a-r-a.org/uploads/1/2/0/8/120899140/car_guide-2015-final.pdf

⁴³ *Certified Automotive Recycler (CAR) Application*, Automotive Recyclers Association. (2019).

The Applicant identifies criminal activity as a reason to license automotive recyclers. It therefore maintains that,

[I]ndividuals with a criminal history should be precluded from obtaining an auto recycling/dismantling license. Criminals find the retail value of motor vehicles, their parts and scrap metal to be attractive.⁴⁴

The applicant’s position is unscrupulous individuals may disassemble stolen vehicles for parts and scrap metal. Licensing combined with any associated penalties, “would swiftly deter criminals from auto theft and illegal dismantling activity.”⁴⁵

Licensing would likely not deter criminal activity but criminal history background checks could prevent those that have committed crimes from being in a position to harm consumers again. Still, given the lack of identified harm, precluding individuals from being employed due to their criminal history is a drastic unnecessary step.

Conclusion

COPRRR staff contacted the EPA and CDPHE concerning the risk associated with automotive recyclers. CDPHE has not issued any Resource Conservation and Recovery Act hazardous waste permits to automotive recyclers because they do not generate enough hazardous waste to reach the “very small generator” threshold. Regardless, every facility must have a wastewater plan in place that details how it handles any hazardous substances. CDPHE executes facility inspections only when it receives a complaint about an operator. Complaints and inspections regarding automotive recyclers are rare and a low priority for the agency but it does enforce all applicable laws.

COPRRR found no unanimity among the Colorado law enforcement community concerning the utility of licensure in reducing unlawful activity. While some stated that a state-issued license could be part of a much broader solution, others contend that if a facility is currently operating without necessary permits and performing illegal acts, chances are that they are not going to apply for state licensure. Moreover, one member of the law enforcement community pointed out that “chop shops” generally exist inside body shops, which are not State-regulated and that would not be covered by the regulation of automotive recyclers.

The standard for regulation established under Colorado law is that harm must endanger, “the health, safety, or welfare of the public” and any “potential for harm is easily recognizable and not remote or dependent on tenuous argument.”⁴⁶

Based on the investigation and analysis conducted as part of this sunrise review, it is reasonable to infer that a claim that licensing would protect Colorado consumers from

⁴⁴ 2020 Automotive Recyclers Sunrise Review Application, p. 5.

⁴⁵ 2020 Automotive Recyclers Sunrise Review Application, p. 5.

⁴⁶ § 24-34-104.1(4)(b)(I), C.R.S.

financial harm due to automobile theft and environmental harm due to the release of hazardous waste is tenuous. The application to license automotive recyclers does not reach that standard and the General Assembly should not impose any new regulatory requirements on automotive recyclers.

Recommendation - Do not regulate automotive recyclers.