

## New BC Recycling Requirements for Paper Products Coming into Force Soon

As the recent media attention in BC highlights, new obligations arising under the BC *Recycling Regulation*<sup>1</sup> (the “**Regulation**”) may soon significantly impact businesses in the province. Established under the *Environmental Management Act*<sup>2</sup> (the “**Act**”), the Regulation places responsibility for the environmental management of a product across its entire life cycle on the producer of the product. In 2011, the Regulation was amended and the scope of its application was significantly widened to include packaging and printed paper products as designated products, as of May 19, 2014. As a result, all “producers” of packaging and printed paper products must by that date begin implementing an approved stewardship plan for these products. Failure to comply with the Regulation could result in harsh penalties, including fines up to \$200,000.<sup>3</sup>

The stewardship regime established under the Regulation, however, is complex and can be difficult to navigate. Consequently, determining a company’s obligations under the Regulation is challenging. The following discussion sets out some of the preliminary questions that must be considered.

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<sup>1</sup> *Recycling Regulation*, BC Reg 449/2004 (the “**Regulation**”).

<sup>2</sup> *Environmental Management Act*, SBC 2003, c 53 (the “**Act**”).

<sup>3</sup> Section 16 of the Regulation.

**(1) Is the business product a designated product?**

First, a company will need to determine whether its business' products fall under a designated product category under the Regulation. For example, the packaging and printed paper product category encompasses all "printed paper" that is printed with text or graphics as a medium for communicating information.<sup>4</sup> This would include packaging and printed paper used in the food, restaurant and retail industries. However, given that a variety of other designated product categories have also been established under the Regulation, an organization's products may fall under more than one category. As a result, careful evaluation of a business' products and their potential categorization under the Regulation is required.

**(2) Is the company a producer?**

Next, a company will need to determine whether it falls under the definition of "producer" under the Regulation. The Regulation establishes three possible categories of producers and places them within a hierarchy where the "top ranked" steward will be subject to obligations under the Regulation over a lower ranked steward. The three categories of producers and their "rankings" are as follows:

(1) The manufacturer: a person who manufactures the product and sells, offers for sale, distributes or uses it in a commercial enterprise in BC under the manufacturer's own brand;

(2) The brand owner: if subparagraph (1) does not apply, a person who is not the manufacturer of the product but is the owner or licensee of a trademark under which a product is sold, distributed or used in a commercial enterprise in BC, whether or not the trademark is registered;

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<sup>4</sup> Schedule 5 of the Regulation.

(3) The first importer: if subparagraphs (1) and (2) do not apply, a person who imports the product into BC for sale, distribution or use in a commercial enterprise.<sup>5</sup>

Consequently, companies must carefully consider the nature of their business and sales / distribution to determine whether they fall under any one or more the “producer” categories. Then, if the company does fall within one of the “producer” categories, it must determine whether it is the entity responsible for fulfilling the Regulation’s stewardship obligations based on whether it is the preferred or “top ranked” steward.<sup>6</sup> For example, if Company A is the brand owner for a product, but Company B is the manufacturer of the product, Company B will be designated as the “producer” because the Regulation prioritizes the manufacturer over the brand owner and first importer. As a result, Company A would have no obligations under the Regulation. However, if Company B does not satisfy the Regulation’s definition of manufacturer, Company A would be the “producer” and therefore responsible for carrying out the Regulation’s obligations.

Additionally, some guidance material prepared by the Ministry of the Environment (the “**Ministry**”) or stewardship agencies can complicate matters by using terminology that does not completely match the Regulation. For example, some agency publications provide that producers must be residents of BC<sup>7</sup>, implying that non-residents of BC are not subject to obligations under the Regulation. However, no such residency requirement is found under the Regulation itself.

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<sup>5</sup> Section 1 of the Regulation.

<sup>6</sup> Section 1 of the Regulation.

<sup>7</sup> For example at pages 17-18 of the MMBC, “A Guide to Help Businesses Meet Their Recycling Obligations in BC”, (11 September 2013) provides that “If your business or organization is resident in BC and supplies packaging and printed paper into BC, the next step is to determine if your business or organization is responsible for the packaging or printed paper as a brand owner, first importer or franchisor.”

Furthermore, incoming legislative exemptions have been announced by the Ministry which will exempt certain small businesses from compliance with the Regulation. A draft of these new exemptions is anticipated to be released in late March 2014. Upon their release, companies will need to review the proposed new exemptions to determine if they impact their obligations under the Regulation.

### **(3) How will your business implement a stewardship plan?**

In order to comply with the Regulation, a company that is a “producer” of a designated product, such as packaging and printed paper products, must either prepare and implement its own stewardship plan or appoint an approved agency to do so on its behalf. For example, the agency Multi-Materials British Columbia (“**MMBC**”) has created a stewardship plan for packaging and printed paper that has been approved by the Ministry pursuant to the Regulation. Beginning on May 19<sup>th</sup>, 2014, MMBC will begin implementing and administering this approved stewardship plan on behalf of its registered members. Any producers of designated packaging and printed paper not registered with MMBC, and not otherwise exempted, will be required to implement their own stewardship plans approved by the Minister of as May 19<sup>th</sup>, 2014. Other similar agencies have created stewardship plans for designated products under the Regulation and a complete list of plans approved by the Ministry for all designated products may be found on the Ministry’s website<sup>8</sup>.

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<sup>8</sup> See “Product Stewardship” (14 March 2014), online: British Columbia Environment <http://www2.gov.bc.ca/gov/topic.page?id=BEBA70369C274C8FBA4FB42BE828A9EB>

As described above, determining a company's compliance requirements under stewardship regimes such as the Regulation can be difficult and complex. As a result, it is recommended that organizations seek assistance in confirming their obligations to ensure compliance.<sup>9</sup>

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#### [a cautionary note](#)

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<sup>9</sup> ETA, section 221, subsections 238(2) and 245(1). Even if the assignee is registered for the GST/HST, the supplier may be required to charge and collect the GST/HST on the assignment fee because the assignee is an individual acquiring an interest in a "residential complex". Note that a non-resident supplier would generally be relieved from charging and collecting GST/HST pursuant paragraph 221(2)(a) of the ETA, placing the onus on the purchaser (regardless of the purchaser's GST/HST registration status) to self-assess, report and pay the GST/HST directly to CRA.