

PLAN FOR THE BAN – CONSTRUCTION INDUSTRY TARGETED IN CANADA'S FEDERAL PLASTICS REGISTRY

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With the federal government facing mounting pressure to take steps to decrease Canadians' plastic usage and enhance sustainable practices amongst businesses operating in Canada, the construction industry will soon be obligated to collect information and report on their plastic production and waste generation on an annual basis to the Federal Plastics Registry through the Minister of Environment and Climate Change Canada ("**Environment Canada**"). The Federal Plastics Registry was established by the issuance of a [Notice](#) (the "**Notice**") under section 46(1) of the *Canadian Environmental Protection Act, 1999* ("**CEPA**") on April 20, 2024, triggering reporting obligations as early as 2025.

The impending mandate is part of the Government of Canada's plan to obtain data on plastics from production to end of life in Canada, for the purposes of conducting research, creating an inventory of data, formulating objectives and codes of practice, issuing guidelines, and assessing and reporting on the state of the environment. Information collected from reports submitted to the Federal Plastics Registry is intended to be used to inform Canada's extended producer responsibility policy, which aims to improve waste and recycling activities by extending a producer's physical and financial responsibility for a product to the post-consumer stage of its life cycle. This initiative is part of Canada's broader strategy to reduce plastic pollution and promote a circular economy, ensuring that plastic is kept out of the environment.

This is the latest bulletin in our "Plan for the Ban" series regarding prohibitions and increased regulation of single-use and other plastic products across Canada. This bulletin discusses what will be required to be reported under the Federal Plastics Registry in the construction category and who in the construction industry is obligated to report. For a discussion of the broader scope of the Federal Plastics Registry outside of the construction industry, please read our previous bulletin [here](#).

Who Will Need to Report?

Schedule 3 of the Notice will require construction companies involved in any one or more of the following activities to submit annual reports to Environment Canada under the Federal Plastics Registry:

1. **Producers of plastic packaging or other plastic products**, which can include brand owners, intellectual

property holders, manufacturers, first importers, distributors or suppliers of the product with residency in Canada (“**Producers**”). Accordingly, any suppliers of such products to construction projects with residency in Canada may be subject to this reporting requirement. While there is only one Producer per plastic packaging or product, who is considered the “Producer” may depend on the manufacture, import and supply chain of the product/packaging. For example, a contractor may be a Producer of a plastic product that it imports into Canada, but not a plastic product that it purchases from a Canadian manufacturer. The determination of who is the Producer of a plastic product/packaging is determined on a case-by-case basis.

2. **Generators of packaging and plastic product waste** at their industrial, commercial or institutional facility. This includes manufacturers and distributors that generate plastic product or packaging waste at their facilities as well as contractors that generate plastic packaging waste at construction sites.
3. **Service providers for the management of plastic packaging or other plastic products** via the following non-exhaustive list of activities: (a) collecting or hauling; (b) arranging for direct reuse; (c) refurbishing; (d) repairing; (e) remanufacturing; (f) mechanical recycling; (g) chemical recycling; (h) processing into chemicals, including fuels; or (i) composting; (j) incineration with energy recovery; (k) incineration for industrial processes; (l) incineration without energy recovery; and (m) landfilling. This includes waste disposal companies retained to collect and dispose of plastic product and packaging waste at construction sites.

That said, exemptions exist for small businesses and those with minimal involvement in the plastics industry. In particular, companies may be exempt from the reporting requirement if they meet any of the following criteria:

1. Manufacture, import or place on the market in Canada less than 1,000 kg of plastic products or packaging per calendar year;
2. Generate less than 1,000 kg of packaging and plastic product waste at their industrial, commercial or institutional facility per calendar year; or
3. Manage less than 1,000 kg of plastic via the activities listed in (a) to (m) above per calendar year.

While companies required to report may delegate the reporting obligation to a third party, they will be required to provide Environment Canada with additional information on the delegation relationship in addition to the company’s plastic reporting requirements. Moreover, companies must keep records of their annual reports, together with any underlying calculations, measurements and data for a period of at least three years from the required submission date.

What Needs to be Reported?

The scope of the reporting obligations is extensive. As per Schedule 1 of the Notice, all plastics that are

manufactured in Canada, imported into Canada, or placed on the market in Canada need to be reported. Information to be reported includes resin identity, resin source, to which province/territory the material is supplied, the defined category it falls into, and its end-of-life outcome – all measured in kilograms.

Table 1 – Category 4: Construction

There are three main categories under the Notice where businesses operating in the construction industry are most likely required to report: (a) products that fall in the construction plastics category supplied by a Producer; (b) plastic packaging provided with products supplied by a Producer, and (c) plastic product and packaging waste generated by anyone operating in the construction industry.

The scope of construction plastics is outlined in Part 4 of Schedule 1 under Category 4 of the Notice, containing nine subcategories. While some of the subcategories such as, “windows and doors” or “paints and coatings”, are easily defined, others are less apparent. The table below summarizes the definitions for each subcategory and the type of plastics that require reporting.

Table 1 – Category 4: Construction	
Subcategories	Definitions
1. Windows and doors	<p>An assembled unit consisting of a frame or sash holding one or more pieces of glazing functioning to admit light or air into an enclosure and designed for a vertical, sloped, or horizontal installation in an external wall or roof of a building.</p> <p>An assembled unit consisting of a frame and one or more moving leaves or panels whose primary purpose is to allow ingress or egress and designed for and installed in a vertical wall in a residential building, and includes both interior and exterior doors.</p>
2. Interior finishes (including flooring)	Any material that forms part of the building interior and is directly exposed. This includes but is not limited to interior claddings, flooring, and trim, and does not include carpeting.
3. Construction film and sheeting	A sheet material intended to be used in building construction applications to provide a vapour barrier, air barrier, or moisture barrier function, whether installed on a building site or in a prefabrication facility.

4. Insulation materials	Includes, without limitation, (a) batt or blanket; (b) loose fill; (c) expanded polystyrene; (d) extruded polystyrene; (e) polyurethane and polyisocyanurate boards; (f) spray foam; (g) closed-cell polyurethane foam; (h) open-cell polyurethane foam; and (i) reflective bubble foil insulations and radiant barriers.
5. Paints and coatings	Includes paints, varnishes, lacquers, shellacs and stains.
6. Piping, including pipe fittings	Includes pipes, plumbing fixtures, fittings, unions and trims.
7. Roofing materials	Includes, without limitation, decking, shingles, barriers, and attachment systems.
8. Siding and cladding	Includes without limitation, vinyl siding, insulated vinyl siding and propylene siding, used as cladding. The material of the wall assembly that forms the outer surface of the wall and is the first line of protection from the exterior environment (sun, wind, rain and temperature).
9. Decking and fencing	Exterior deck boards, and stair treads, guards, and handrails for exterior decks or porches. Any freestanding structure, wall or barrier other than a building, erected at grade for the purpose of delineating the boundaries of a property, restricting ingress to or egress from a property, or providing security or protection to property.

Another category under Part 4 of Schedule 1 of the Notice that may trigger reporting obligations for the construction industry is Category 1: Electronic and Electrical Equipment (“**EEE**”), which includes fourteen subcategories of which the following may form part of a construction product: (a) electronic or electrical information technology or telecommunication devices or equipment; (b) electronic or electrical audiovisual and consumer equipment or media; (c) electronic or electrical appliances; (d) electronic or electrical tools, other than large-scale stationary industrial tools; (e) electronic or electrical lighting equipment; (f) electronic or electrical monitoring, and control instruments; (g) accessories for use with any Category 1 EEE products; (h)

photovoltaic panels; and (i) chargers for battery-electric vehicles and plug-in hybrid electric vehicles, whether free-standing or wall-mounted.

Be Proactive: Timeline and Requirements for Reporting

Producers of plastic packaging and Category 1: EEE products will need to submit their first annual report to the Federal Plastics Registry in 2025, reporting on their 2024 calendar year activities.

Producers of any Category 4: Construction plastics and generators of plastic product and packaging waste will need to submit their first annual report to the Federal Plastics Registry in 2026, reporting on their 2025 calendar year activities.

The Federal Plastics Registry is set to launch its online portal for annual report submissions in the coming months. It is also important to note that non-compliance with the Registry's requirements is considered a violation of CEPA and could lead to violation notices, orders to comply, charges and fines.

Planning Ahead for Business

As Canada works towards a more resource-efficient and circular economy for plastics, businesses should remain alert to ongoing developments and take concrete steps towards complying with the federal government's [objective of zero plastic waste by 2030](#). With the Federal Plastics Registry now in effect, construction companies that manufacture, import, sell, supply, generate, service or manage resins or plastic products in Canada should assess their reporting obligations and begin gathering the necessary information in preparation for reporting as early as 2025 for the 2024 calendar year. Companies should be aware that certain provinces also require the reporting of information pertaining to plastics as part of their local EPR programs, which often does not fully align with the information subject to the new federal reporting requirements. Therefore, companies may be subject to multiple reporting obligations for the same products.

Our environmental team at McMillan is ready to assist in understanding your company's specific obligations, including with respect to your obligations under the Notice. We are committed to monitoring these proposed measures and providing regular updates through our "Plan for the Ban" series, a valuable resource for staying informed.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

The logo for mcmillan, featuring the word "mcmillan" in a lowercase, sans-serif font. The "m" and "c" are in a dark red color, while the "m", "i", "l", "l", "a", and "n" are in a light blue color. The logo is positioned in the upper left corner of a banner image.

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