



Ministry of
Environment and
Climate Change Strategy

Guidance

Recycling Regulation

Producers Paying the Cost of Managing Obligated Materials and Dispute Resolution

April 24, 2018

**Extended Producer Responsibility Section
Environmental Standards Branch
Environmental Protection Division**

Name of Guidance:	Producers Paying the Cost of Managing Obligated Materials and Dispute Resolution
References and Relationships:	<p>This guidance is prepared in accordance with the Recycling Regulation (Regulation) [B.C. Reg. 449/2004], but in no way supplants, replaces, or amends any of the legal requirements of the Regulation. This guidance augments the provisions of the Recycling Regulation Guide (April 2012).</p>
Application:	<p>Obligated producers and agencies appointed by producers to carry out duties of the producer on behalf of the producer under Part 2 of the Regulation.</p> <p><u>NOTE:</u></p> <p><i>For any Extended Producer Responsibility Plan (Plan) amendment with ongoing or upcoming stakeholder consultation, the guidance applies as of the guidance approval date.</i></p> <p><i>For plan amendments that are currently under review by the Ministry of Environment and Climate Change Strategy (Ministry) staff or have already been approved, no immediate change is required. The Ministry may request obligated parties to submit amendments to approved plans within a set timeframe to address the present guidance.</i></p>
Purpose:	<p>To provide direction on the expectations of the Ministry regarding the need for extended producer responsibility plans under the Regulation to adequately provide for:</p> <ul style="list-style-type: none">• “the producer collecting and paying the costs of collecting and managing products within the product category covered by the plan, whether the products are currently or previously sold, offered for sale or distributed in British Columbia” pursuant to Section 5(1)(c)(i), and• “a dispute resolution procedure for disputes that arise between a producer and person providing services related to the collection and management of the product during implementation of the plan or operation of the extended producer responsibility program” pursuant to Section 5(1)(c)(vi).

Producer Paying the Cost:

Prior to approving a stewardship plan, the Director should be satisfied that the plan adequately provides for the producer collecting and paying the costs of collecting and managing products within the product category covered by the plan. In this regard, two distinct aspects should be reflected in the plan:

1. Consultation: Prior to submitting the plan to Ministry staff for review, the producer has undertaken satisfactory consultation with stakeholders regarding the producer paying the costs of collecting and managing its products.

The material provided during stakeholder consultation should describe the methodology used by the producers to demonstrate the proposed basis of compensation for services rendered e.g. commitments to pay for the collection, transportation and marketing costs involved. The methodology should be transparent and detailed enough to enable stakeholders to clearly determine implications to their interests; it should not contain a range of variables that may be considered, or insufficient justification for compensation offered.

In addition, plan holders should provide stakeholders opportunity for input into any future changes pursuant to Section 5(1)(b) of the Recycling Regulation.

2. Plan Commitments: Details of the above-noted consultation process and how the stakeholder feedback was addressed should be reflected in the consultation summary/appendix submission. The plan itself need only contain the general methodology, basis of compensation, and opportunities for ongoing stakeholder input. Specific collector rate structures need not be provided.

Dispute Resolution:

Prior to approving a stewardship plan, the Director should be satisfied that the plan adequately provides for a dispute resolution procedure for disputes that arise between a producer and person providing services related to the collection and management of the product during implementation or operation of an extended producer responsibility program.

The plan should describe the procedure that will be used, so that the Director can be satisfied that an adequate dispute resolution procedure is in place. Consideration should be given to all of the principles outlined in the Recycling Regulation Guide (April 2012), Section “What dispute resolution procedure should I use”.

Of emphasis is the need to better recognize the principles of Equality and Efficiency. It has come to the attention of the Ministry that some independent service providers are often disadvantaged in dispute resolution procedures that can exploit the financial and human resource constraints of a typical owner/operator (drawn out processes, significant travel and legal costs).

The adequacy of the procedure will be determined by evidence presented as part of stakeholder consultation on the plan. The consultation outcomes should demonstrate to the Director that stakeholders, notably those that are directly affected, are generally accepting of the procedure presented in the plan.

It is recognized that for some disputes that cannot be resolved through an internal and voluntary dispute resolution process, the parties can access binding arbitration as per the [BC Arbitration Act](#) RSBC 1996 Chapter 55. This, however, should not be the sole means of resolution as identified in the plan, and the manner in which it is conducted should also respect the above-noted principles.

Approval:

 Date: April 24 / 2018

Assistant Deputy Minister

Environmental Protection Division

Contact Person:

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Environmental Standards Branch

Effective Date if different than Approval Date:
Original Date of Guidance: April 2012
Date of Guidance Amendment(s): April 24, 2018