



Guidance for the Recycling Regulation

Paying the Costs under Recycling Regulation Section 5(1)(c)(i) and Dispute Resolution

May 2024

**Environmental Policy and Initiatives Branch
Environmental Protection Division**

As of May 2024, this guidance, previously titled “Producers Paying the Cost of Managing Obligated Materials and Dispute Resolution” (April 2018), is known as “Paying the Costs under Recycling Regulation Section 5(1)(c)(i) and Dispute Resolution”. The title and content have been updated.

Name of Guidance: **Paying the Costs under Recycling Regulation Section 5(1)(c)(i) and Dispute Resolution**

References and Relationships: 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 or the *Environmental Management Act*. This guidance augments the provisions of the Recycling Regulation Guide and does not constitute legal advice.

Application: This guidance applies to all obligated producers and their appointed agencies under Part 2 of the regulation.

Purpose: The purpose of this guidance is to clarify how extended producer responsibility (EPR) plans can adequately provide for the requirements set out in sections 5(1)(c)(i) and 5(1)(c)(vi) to support the director in their decision to approve, amend or not approve EPR plans.

Paying the costs under Recycling Regulation section 5(1)(c)(i):

The Ministry of Environment and Climate Change Strategy considers that an EPR plan should adequately provide for the full costs associated with collecting and managing products within the product category covered by the EPR plan. EPR plans that contain the following information are more likely to be approved by the director.

It is an expectation that costs of collecting and managing products are not at the expense of governments in British Columbia. The EPR plan should explain how costs are addressed for all operational components including the producer’s, or EPR agency’s, defined collection system and other means of management for the products (e.g., transportation, handling, processing).

To demonstrate that the costs of collecting and managing products within the product category covered by the EPR plan are adequately provided for, the EPR plan should:

- 1) Include a commitment that demonstrates accountability from the producer or their appointed EPR agency to pay the costs, similar to the below:

Following the process described in [EPR plan section heading], [name of organization] will collect and will pay the costs of collecting and managing products within each product category covered by the EPR plan, whether the products are currently or previously used in a commercial enterprise, sold, offered for sale or distributed in British Columbia.

- 2) Explain the process for how the costs are determined for the collection and management of products within each product category covered by the EPR plan (e.g., administers open competitive bidding with no predetermined cost for all services required; carries out individual negotiations with a predetermined cost for selected services).

For occurrences where the producer, or their appointed EPR agency, establishes a predetermined cost prior to acquiring services for collection and management of products, the EPR plan should explain:

- a) The method used to calculate the costs for collection and management for each product category (i.e., how baseline costs were determined).
- b) How the method was determined to be most appropriate (e.g., best reflects the nature of the product, geographic location, estimated population served).
- c) How the method was determined to be representative of the services required (e.g., representation from all types of services involved, use of sample data is representative of entire collection system).
- d) How the results of the method were verified for accurate representation of the costs to collect and manage the products (e.g., verified by interested parties or a qualified professional).
- e) Any limitations that exist in the process described above and how they were mitigated (e.g., involvement of interested parties, alternative methods used for different services).
- f) How the costs for each product category are represented in the funds paid for the services required.
- g) How the EPR plan will continue to verify the costs for collection and management of products, and how those costs will be representative in the funds paid for the duration of the plan's approval (e.g., a review process to ensure the producer continues to pay the full costs).
- h) Explain how interested parties were involved in the process described above and summarize feedback and any changes in the EPR plan that occurred as a result.

- 3) Explain how interested parties will be able to provide input into the implementation and operation of the EPR program (e.g., the process will be reviewed with interested parties prior to the EPR plan 5-year review date).

Dispute resolution (section 5(1)(c)(vi)):

Prior to approving an EPR plan, the director should be satisfied that the EPR 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 EPR 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, section "What dispute resolution procedure should I use".

Of emphasis is the need to better recognize the principles of Equality and Efficiency as described in the Recycling Regulation Guide. In particular, some independent service providers are often disadvantaged in dispute resolution procedures that can place undue financial and human resource strain on a typical owner/operator (e.g., drawn out processes, significant travel and legal costs).

The adequacy of the procedure will be determined by evidence presented as part of consultation with interested parties on the EPR plan. The consultation outcomes should demonstrate to the director that interested parties, 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 B.C. *Arbitration Act* SBC 2020 Chapter 2. This, however, should not be the sole means of resolution as identified in the plan, and the manner in which arbitration is conducted should also respect the above-noted principles.

Consultation with interested parties (section 5(1)(b)):

During consultation with interested parties, the producer or their appointed EPR agency should summarize how the costs are determined for the collection and management of products within each product category covered by the EPR plan. Information provided should clearly describe the process undertaken in the above sections to increase transparency and support interested parties with determining implications to their interests to ensure effective consultation. The consultation should not contain indeterminate variables that may be considered or insufficient justification for the funds paid for the services required.