

## **CESA**

*Canadian Electrical Stewardship Association  
180 Attwell Drive, Suite 300  
Toronto, ON M9W 6A9*

## **Product Care Association**

*12337 82A Avenue  
Surrey, BC  
V3W 0L5*

### **BACKGROUND**

#### **Who is CESA?**

CESA is a not-for-profit Product Stewardship Agency incorporated by the manufacturers/brand owners of portable and floor care appliances. While initially convened by the Canadian Association of Appliance Manufacturers (CAMA), the Canadian Hardware and Housewares Manufacturers Association (CHHMA) and the Association of Home Appliance Manufacturers (AHAM), CESA is governed by a Board of Directors represented by eight individuals, five of whom are representatives of manufacturers/brand owners of small appliances and three of whom are representatives of retailers of small appliances.

CESA's purpose is to assist portable and floor care appliance manufacturers, brand owners and other legally obligated parties (e.g. retailers, importers or distributors) in discharging their obligation to establish end-of-life product collection and recycling programs under applicable provincial extended producer responsibility (EPR) legislation. CESA assists obligated companies by providing them the opportunity to become a member in an industry governed and operated recycling program that will fulfill their legal obligations under provincial EPR laws. As British Columbia is the first Canadian province to regulate a legal requirement for an end-of-life recycling program for portable and floor care appliances, CESA's current focus is on implementing and operating a program for that province.

#### **Who is Product Care?**

Product Care is a non-profit industry association created to provide product stewardship programs. Product Care has been selected by CESA to deliver the program services for CESA members. As the program manager, Product Care liaises with members to ensure smooth program registration and reporting. Product Care is also responsible for managing the collection, transportation and processing systems as well as delivering the communications and audit aspects of the program.

#### **The British Columbia Recycling Regulation – Included Products**

In December 2008 the government of British Columbia enacted amendments to its Recycling Regulation under the Environmental Management Act. These amendments expanded the schedule of electronic and electrical products for which "Producers" are legally obligated to establish and operate an end-of-life collection and recycling program. Included in these amendments, among other products, is a comprehensive set of what the regulation defines as "small electronic or electrical equipment appliances". This category of small appliances (both portable and floor care) is defined under the B.C. Recycling Regulation as "including, without limitation," the following:

- Floor and carpet care appliances;
- Garment care appliances, including, without limitation, irons and mangles;
- Appliances for counter top cooking, including, without limitation, toasters, toaster ovens, fryers, hot plates, countertop microwaves, coffee makers, coffee grinders, kettles, blenders, mixers and food processors;
- Knives;

- Devices for opening or sealing containers or packages;
- Devices for measuring time;
- Personal care appliances, including, without limitation, hair cutting and drying appliances, tooth care appliances, shavers and massagers;
- Scales; and,
- Portable air treatment appliances, including, without limitation, fans, air purifiers, humidifiers, but not including air conditioners.

A more specific list of the exact products included in the above category definitions can be found in the CESA Stewardship Plan discussed later in this letter.

### **Requirement to Submit and Operate a Stewardship Plan**

Under the B.C. Recycling Regulation each individual “Producer” (as that term is defined under the Regulation) of a regulated product is required to submit a stewardship plan to the B.C. Ministry of Environment for that product no later than July 1, 2010 detailing how they propose to establish and operate a collection and recycling program for the product. Details on what information must be included in a stewardship plan can be found in Part 2 of the B.C. Recycling Regulation.

The Recycling Regulation further stipulates that a stewardship plan for small appliances must be launched on or before October 1, 2011.

### **What is a “Producer”?**

The “Producer” is the entity that is legally obligated to comply with the Recycling Regulation and file a stewardship plan and launch and operate that plan once approved by the Ministry.

The Recycling Regulation defines a “Producer” as:

- (i) a person who manufactures the product and sells, offers for sale or distributes the product in British Columbia under the manufacturer’s own brand,
- (ii) if subparagraph (i) 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 or distributed in British Columbia, whether or not the trademark is registered, or
- (iii) if subparagraphs (i) and (ii) do not apply, a person who imports the product into British Columbia for sale or distribution

The B.C. Ministry of Environment’s Recycling Regulation Guide provides the following additional interpretative guidance on how the term “Producer” is applied in practice:

*“The product producer is principally the first seller of the product in the province. In practice the producer is typically the product manufacturer, distributor or brand-owner. The producer could also be an importer, broker or retailer who sells the product directly to a consumer, including those whose sales are transacted by catalogue or over the Internet.”*

CESA’s interpretation of this definition of Producer is as follows:

If your company is the manufacturer and registered brand owner of the product, the registered owner of the brand but not its manufacturer, a licensee of the registered brand owner, or your company owns the intellectual property rights to the brand or is a licensee in respect of those rights, and your company is the first to sell the product in B.C. (i.e. your company owns the product in B.C. and sells it to another person in B.C. such that title to the product and the product itself pass from your company as the seller to the other person, the buyer, inside the province of B.C.), then your company is the first seller of the product in BC and is a Producer.

If your company is the manufacturer and registered brand owner of the product, the registered owner of the brand, a licensee of the registered brand owner, or your company owns the intellectual property rights to the brand or is a licensee in respect of those rights, and your company sells the product outside B.C. (i.e. your company sells the product to another person outside B.C. such that title to the product passes from your company the seller to the other person, the buyer, outside the province of B.C. and the buyer takes physical possession of the product outside B.C.) and the person who has purchased the product from your company then imports it into B.C. for subsequent sale inside B.C., then the person who purchased the product from your company and imported it into B.C. is the Producer.

If your company is not the manufacturer and registered brand owner of the product, the registered owner of the brand, a licensee of the registered brand owner, and your company does not own the intellectual property rights to the brand or is not a licensee in respect of those rights, but your company imports the product or causes it to be imported into B.C. and then subsequently sells the product to another person in B.C. such that title to the product and the product itself change hands in B.C., then your company is the Producer.

In practice, it is likely that for any individual company more than one of the above or even different sale scenarios may apply. Your company may in some cases sell products directly to other persons and conclude the sale within B.C. and in other cases (e.g. sales to large retailers) you may sell and deliver the product and conclude the sale outside B.C. and the purchaser then imports the product into B.C. and is the first to sell it in the province. Recognizing this reality it is CESA's intention to follow the practice of other B.C. based stewardship agencies and allow for flexibility in which companies may become members of CESA and assume responsibility for remitting the Environmental Handling Fees (EHFs) that will need to be applied to regulated products to fund CESA's recycling program operations.

Put simply, to facilitate the cost effective collection and remittance of EHFs, CESA will accept as members, companies who meet the technical legal definition of Producer and companies who do not technically meet that definition but are prepared to act as an obligated Producer. For example, companies such as B.C. retailers or wholesalers/importers that may not be legally deemed a "Producer" will be allowed to become CESA members and to assume the obligation to remit EHFs to CESA. If for a given product the retailer has assumed the responsibility to remit the applicable EHF on that product then the actual Producer would not be required to remit the EHF on the products it has sold to that retailer. Likewise, CESA will also permit a manufacturer/registered brand owner whose products are offered for sale in B.C. but who may not themselves sell their product to any person in B.C. and therefore not technically meet the definition of "Producer", to elect to become a CESA member and assume responsibility for remitting the EHFs on their products. In this case, if the manufacturer/brand owner has agreed to remit the EHFs to CESA then CESA will not seek payment of the EHF from the actual first seller in B.C. (i.e. the importer, wholesaler or retailer).

In considering this issue and whether to become a member of CESA it is important that your company examines its B.C. supply chain and begins discussions with the suppliers and/or customers in that supply chain to determine who is best suited to assume responsibility for remitting the EHF's on the regulated products.

***It is important to note that the above interpretation of the term “Producer” is that of the CESA Stewardship Agency and it has not been approved or sanctioned in any way by the B.C. Ministry of Environment. As such, each company is advised to seek its own legal advice on whether the definition of Producer contained in the Recycling Regulation applies to its business structure and sales practices in the province of British Columbia.***

### **What are the compliance options if my company is a Producer?**

Under the B.C. Recycling Regulation you can choose from one of three compliance options:

- 1.) You can develop and submit your own stewardship plan to the B.C. Ministry of Environment and launch and operate that plan yourself once approved. As noted above, the required plan submission date was July 1, 2010 and the required program launch date is October 1, 2011.
- 2.) You can elect to not file a stewardship plan in which case the Recycling Regulation states that your company must implement a collection and recycling program for your products in accordance with the requirements of Part 3 of the Recycling Regulation. Among other things, Part 3 requires that a Producer either arrange for the retailers of its products to collect its end-of-life products from consumers or establish its own collection facilities within a specified distance from every location selling its products.
- 3.) You can elect to appoint a Stewardship Agency to manage the collection and recycling of your products on your behalf. CESA is such a Stewardship Agency in respect of the small electronic and electrical appliances defined on Page 2 of this letter and is currently soliciting membership applications and agency appointments from Producers of small appliances.

A person who is found to contravene the Regulation (i.e. has not adopted one of the above three options) is deemed to have committed an offence under section 16 of the regulation and is liable for a fine of up to \$200,000.

### **How can CESA help my company comply with the B.C. Recycling Regulation?**

CESA has recruited portable and floor care appliance manufacturers/brand owners, retailers and importers to sign up as members of CESA. The first annual meeting of the Association has been held and a member vote chose the first elected Board of Directors. All CESA member companies are entitled to vote in and nominate employees of their companies to stand for election to the CESA Board. CESA's Bylaw allows for up to fifteen (15) directors.

CESA has received approval for its stewardship plan for small appliances from the B.C. Ministry of Environment. CESA has contracted with Product Care to be the program manager to assist in the implementation of the plan including finalization of the program budget and a fee schedule for individual product categories.

Companies who elect to become members of CESA will have elected compliance option #3 noted in the previous section, and will be covered by the approved CESA stewardship plan. If your company elects to join CESA, CESA will advise the B.C. Ministry of Environment that your company is a member of the CESA plan and is therefore compliant with the B.C. Recycling Regulation.

In short, CESA membership provides affected companies with a turnkey solution to achieving compliance under the B.C. Recycling Regulation.

In addition, should other provinces require the creation of EPR programs for small appliances CESA's intention is to respond to those regulations where applicable with the objective of creating a harmonized a national program as possible.

Membership in CESA will enable you to shape the evolution of this national organization as it evolves across Canada.

### **What if my company has additional questions?**

After reviewing the information herein and the CESA Membership Agreement, if you still have questions, please send an email to the following address:

[memberservices@cesarecycling.ca](mailto:memberservices@cesarecycling.ca)

### **I want to become a CESA Member:**

Please visit our online registration system to request membership. The membership agreement can be seen here.

### **Where can I find the pertinent documents?**

A copy of the B.C. Ministry of Environment approved CESA stewardship plan can be obtained at:  
<http://www.env.gov.bc.ca/epd/recycling/electronics/plan.htm>

A copy of the B.C. Recycling Regulation can be obtained at:  
[http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/449\\_2004](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/449_2004)

Updated October 2011