

1 Section 2 of New Brunswick Regulation 2008-54 under the Clean Environment Act is amended in the definition “brand owner”

(a) in subparagraph (b)(iv) of the English version by striking out “and” at the end of the paragraph;

(b) by adding after paragraph (b) the following:

(b.1) in Part 5.2, a person who

(i) manufactures electronic products and sells, offers for sale or distributes electronic products in the Province,

(ii) is the owner or licensee in the Province of a registered or unregistered trademark under which electronic products are sold, offered for sale or distributed in the Province,

(iii) brings electronic products into the Province for sale or distribution, or

**(iv) brings electronic products into the Province for use in a commercial enterprise;
and**

(c) in paragraph (c) by striking out “(a) or (b)” and substituting “(a), (b) or (b.1)”.

2 Subsection 11(1) of the Regulation is amended by adding after paragraph (b.1) the following:

(b.2) with respect to the electronic products stewardship program, the following information:

- (i) the amount of fees, interest on outstanding fees and penalties remitted to the Board;
- (ii) the results of any inspections conducted under this Regulation;
- (iii) a description of all enforcement activities; and
- (iv) a description of other related activities of the Board;

3 Paragraph 20(2)(b) of the Regulation is amended by striking out “section 48 or section 50.26” and substituting “section 48, 50.26 or 50.45”.

4 Subsection 21(2) of the Regulation is amended

(a) *in paragraph (b) of the English version by striking out “and” at the end of the paragraph;*

(b) *in paragraph (c) by striking out the period at the end of the paragraph and substituting a comma followed by “and”;*

(c) *by adding after paragraph (c) the following:*

(d) the management of electronic products, if the money is recovered from a brand owner under Part 5.2.

5 Subsection 49(1) of the Regulation is amended in the French version by striking out “détaillant” and substituting “propriétaire de marque”.

6 The Regulation is amended by adding after section 50.28 the following:

PART 5.2

DESIGNATED MATERIAL - ELECTRONIC PRODUCTS

Definitions

50.3 The following definitions apply in this Part.

“consumer” means a person who uses an electronic product for his or her own purpose, and not for the purpose of resale. (*consommateur*)

“electronic product” means a product intended for consumer, industrial or commercial use and

(a) includes

- (i) a television,
- (ii) a desktop, laptop and notebook computer and the computer’s central processing unit, keyboard, mouse and cable,
- (iii) a computer monitor,
- (iv) a computer desktop printer and a desktop printer with scanning or fax capabilities,
- (v) a desktop scanner,
- (vi) an audio and video playback and recording system,
- (vii) a telephone,
- (viii) a cellular phone and other wireless communication devices,

(ix) a fax machine,

(x) a personal digital assistant and other similar handheld devices not capable of connecting to the Internet,

(xi) a digital camera, and

(xii) an analog or digital video camera, and

(b) does not include factory-installed audio, video or communication devices developed for embedded use in motor vehicles. (*produit électronique*)

“electronic waste” means an electronic product that, through use, storage or handling, can no longer be used for its original purpose. (*déchet électronique*)

“retailer” means a person who sells or offers for sale an electronic product in the Province to a consumer. (*détaillant*)

“return facility” means a collection facility that accepts electronic waste from persons who wish to return it and that is identified as a collection facility in an approved electronic products stewardship plan. (*point de récupération*)

“reuse”, with respect to electronic products, means to process the material in such a way that it is capable of being used by a consumer in a manner that would be compliant with the Act. (*réutiliser*)

Electronic product as designated material

50.31 An electronic product is a designated material for the purposes of section 22.1 of the Act.

Restriction on supply of electronic products

50.32 No brand owner shall sell, offer for sale or distribute an electronic product to a person in the Province unless the brand owner is registered with the Board.

Submission of electronic products stewardship plan

50.33(1) With its application for registration under this Regulation, a brand owner shall submit an electronic products stewardship plan for approval by the Board.

50.33(2) An electronic products stewardship plan shall apply to the manufacture, storage, collection, transportation, recycling, disposal or other handling of electronic products that are sold, offered for sale or distributed within the Province.

Designation of agent

50.34 A brand owner may designate an agent to act on behalf of the brand owner with respect to the brand owner's obligations under this Regulation.

Transitional provisions respecting registration

50.35(1) A brand owner who is selling, offering for sale or distributing electronic products within the Province immediately before the commencement of this section shall submit an application for registration within 120 days after the commencement of this section.

50.35(2) A brand owner referred to in subsection (1) is not required to submit an electronic products stewardship plan with the application for registration, but shall ensure that a plan is submitted no later than 180 days after the date of commencement of this section.

50.35(3) A brand owner shall implement the electronic products stewardship plan referred to in subsection (2) within 180 days after the plan is approved by the Board.

50.35(4) Despite section 50.32, a brand owner referred to in subsection (1) may continue selling, offering for sale or distributing electronic products within the Province until the Board renders its decision in respect of the brand owner's application for registration.

50.35(5) If the Board refuses to register a brand owner referred to in subsection (1), the brand owner shall cease selling, offering for sale or distributing electronic products immediately on receiving notice of the Board's decision to refuse the application.

Contents of electronic products stewardship plan

50.36 An electronic products stewardship plan shall contain the following:

- (a) a plan for the collection, transportation, storage, reuse and recycling of electronic waste in the Province, including the electronic waste of other brand owners;
- (b) information on the expected number of units or weight of electronic waste to be collected, reused, refurbished, recycled or recovered, as well as the expected associated costs;
- (c) information with respect to
 - (i) return facilities to be used by consumers,
 - (ii) adherence to established vendor qualification standards;
- (d) information on the population and geographic area to be served;
- (e) a plan for the provision of services to remote or rural areas, if applicable;
- (f) a plan for the management of electronic waste in adherence to the following order of preference:
 - (i) reuse;

- (ii) recycle;
 - (iii) recovery of energy; and
 - (iv) disposal in compliance with the Act;
- (g) a description of the efforts being made by the brand owner to redesign electronic products to improve reusability and recyclability;
- (h) a communications plan for informing consumers of the brand owner's electronic products stewardship plan, including the consumer's reasonable and free access to return facilities;
- (i) the location of any long-term storage, containment or final treatment and processing facilities for electronic waste;
- (j) a description of how electronic waste will be managed in a manner that employs environmental, human health and safety standards that meet or exceed applicable laws;
- (k) an assessment of the performance of the brand owner's plan by an independent auditor; and
- (l) a plan for the elimination or reduction of the environmental impacts of electronic waste.

Approval or imposition of electronic products stewardship plan

50.37(1) As soon as practicable after an electronic products stewardship plan has been submitted to the Board, the Board shall

- (a) approve the plan for a period of time not to exceed five years, or

(b) reject the plan with written reasons.

50.37(2) If the Board rejects an electronic products stewardship plan, the Board may

(a) require the brand owner to comply with an electronic products stewardship plan prepared and approved by the Board, or

(b) require the brand owner to resubmit an electronic products stewardship plan within the period of time specified by the Board.

50.37(3) The Board may refuse to register or may suspend the registration of a brand owner if the brand owner does not submit an electronic products stewardship plan within the period of time specified by the Board under paragraph (2)(b).

50.37(4) A plan referred to in paragraph (2)(a) expires on the date set by the Board, but the period of time for which the plan is to be effective shall not exceed five years.

50.37(5) If the Board rejects an electronic products stewardship plan submitted by a brand owner and does not act under subsection (2), the Board shall refuse to register the brand owner or shall suspend or cancel the registration of the brand owner.

Compliance with electronic products stewardship plan

50.38 A brand owner shall implement and comply with the electronic products stewardship plan as approved or imposed by the Board under section 50.37.

Renewal of electronic products stewardship plan

50.39(1) At least 90 days before the expiry date of an electronic products stewardship plan approved or imposed by the Board, a brand owner shall submit an electronic products stewardship plan to the Board for review and approval.

50.39(2) Sections 50.36 to 50.38 apply with the necessary modifications to a plan submitted under this section.

Amendment of electronic products stewardship plan

50.4(1) The Board may amend an approved or imposed electronic products stewardship plan

- (a) to correct a clerical error,
- (b) to reflect a change in the name or address of a brand owner, or
- (c) on the request of the brand owner.

50.4(2) A brand owner may at any time apply to have its electronic products stewardship plan amended and sections 50.36 to 50.38 apply with the necessary modifications to the application.

Performance measures

50.41(1) Within three years of the approval or imposition of the initial electronic products stewardship plan by the Board, a brand owner shall submit for approval to the Board one or more performance measures used to assess the goals and objectives of the brand owner's electronic products stewardship plan as well as the targets set by the brand owner for each of the performance measures.

50.41(2) When the information with respect to performance measures has been submitted to the Board under subsection (1), the Board shall, as soon as practicable,

- (a) approve the performance measures and targets, or

(b) reject the performance measures and targets with reasons.

50.41(3) If the Board rejects the performance measures and targets, the Board may

(a) require the brand owner to comply with performance measures and targets prepared and approved by the Board, or

(b) require the brand owner to resubmit performance measures and targets within the period of time specified by the Board.

50.41(4) The Board may suspend the registration of a brand owner if the brand owner does not submit performance measures and targets within the period of time specified under paragraph (3)(b).

50.41(5) If the Board rejects the performance measures and targets submitted by a brand owner and does not act under subsection (3), the Board shall suspend or cancel the registration of the brand owner.

50.41(6) The performance measures and targets approved or imposed by the Board shall be included in all subsequent electronic products stewardship plans submitted to the Board by the brand owner.

Annual report and other information

50.42(1) A brand owner shall, on or before April 30 in each year, provide the Board with an annual report detailing the effectiveness of the electronic products stewardship plan during the previous calendar year including, but not limited to, the following:

(a) the total amount, by weight, of electronic waste collected in New Brunswick by the brand owner;

- (b) the total amount of electronic waste processed or in storage;
- (c) the percentage of electronic waste collected that was reused, recycled, recovered for energy, contained, or otherwise treated or disposed of;
- (d) a description of the types of processes utilized to reuse, recycle, recover energy from, contain, or otherwise treat or dispose of, electronic waste;
- (e) a description of efforts to redesign electronic products to improve reusability and recyclability;
- (f) the location of return facilities;
- (g) the location of any processing or containment facilities for electronic waste;
- (h) the types of consumer information, educational materials and strategies adopted by the brand owner;
- (i) the annual financial statements, as prepared by an independent auditor, of the revenues received and the expenditures incurred by the electronic products stewardship plan;
- (j) an assessment of the performance of the brand owner's electronic products stewardship plan that is prepared by an independent auditor; and
- (k) any other information requested by the Board that relates to the electronic products stewardship plan.

50.42(2) Subject to subsection (3), at the same time a brand owner submits its annual report, it shall provide the Board a statement in writing as to the total amount of electronic products sold by it during the previous calendar year.

50.42(3) If a report referred to in subsection (1) or a statement referred to in subsection (2) is submitted by an agent referred to in section 50.34, the report or statement and sales information shall include only the aggregate information of all of the brand owners represented by the agent.

50.42(4) The information provided under subsection (2) to the Board by a brand owner who is not represented by an agent referred to in section 50.34 shall be treated as confidential.

Consumer information

50.43(1) A brand owner shall provide to each retailer of its electronic products, educational and consumer material, including printed handouts, that informs consumers about

- (a) the brand owner's electronic products stewardship plan,
- (b) access to return facilities, and
- (c) the environmental and economic benefits of participating in the brand owner's electronic products stewardship program.

50.43(2) A brand owner shall not release any educational and consumer material referred to in subsection (1) unless the material has been submitted to the Board at least one month before its intended release.

50.43(3) A retailer shall post or distribute the educational and consumer material it receives from brand owners at the area inside the retailer's premises where electronic products are displayed, and

- (a) at the main entrance of the retailer's premises, or

(b) at the area inside a retailer's premises where the transaction to purchase electronic products takes place.

50.43(4) Subsection (2) applies with the necessary modifications to any changes proposed to be made to the information supplied in the material referred to in subsection (1).

Passing on of costs

50.44(1) Subject to subsection (2), a brand owner or a retailer, on behalf of a brand owner, may recover from the consumer costs associated with implementing or operating an electronic products stewardship plan, or costs associated with supplying material under section 50.43.

50.44(2) A brand owner or a retailer who recovers costs under subsection (1) shall integrate those costs

- (a) into a total advertised sales price of the electronic product, and
- (b) into the sales price of the electronic product on the receipt of sale.

50.44(3) A brand owner or a retailer is not prohibited from informing the public that the price of an electronic product includes costs recovered under subsection (1) and communicating those costs to the public.

Fees

50.45(1) The Board may charge a brand owner a fee established by the Board to cover the Board's annual administrative costs in carrying out its duties under the Act and this Regulation in relation to electronic products.

50.45(2) The annual administrative costs include office, operational and inspection expenses and the cost of salaries, benefits and expenses of members and employees of the Board that are attributable to the Board's duties referred to in subsection (1).

50.45(3) The annual administrative costs of the Board incurred or to be incurred by it, together with any sum needed to make up any deficiency in the assessment for the preceding year, shall be borne equally by each brand owner.

50.45(4) The Board shall assess up to one-half of the amount determined under subsection (1) on or before April 1 of the fiscal year in respect of which the costs are incurred, and assess the remaining amount after December 1 of that fiscal year.

Remittance of fees, imposition of interest and penalties

50.46(1) A brand owner shall remit fees referred to in section 50.45 at the times and in the manner directed by the Board.

50.46(2) If the Board is satisfied that a brand owner has not remitted fees fully in accordance with subsection (1), the Board may serve written notice on the brand owner requiring payment of the following amounts:

- (a) the full amount of the fees that are outstanding;
- (b) interest on the amount of the outstanding fees calculated monthly at a rate not exceeding 2% per month; and
- (c) a penalty in an amount established by the Board, which shall not exceed the amount of the outstanding fees.

50.46(3) A written notice under subsection (2) shall include the time and manner in which the payments required under that subsection are to be made.

50.46(4) A brand owner served with a written notice under subsection (2) shall pay the amounts set out in the notice in accordance with the notice.

50.46(5) All fees, interest and penalties that are not paid to the Board in accordance with a written notice constitute a debt due to the Board.

50.46(6) The Board may, under the signature of the proper officer, issue a certificate setting out the name of a brand owner who has not paid fees, interest or penalties in accordance with a written notice and certifying the total amounts of the fees, interest or penalties remaining unpaid, and the certificate, without proof of the appointment, authority or signature of the person purporting to have signed it, is admissible in evidence and is, in the absence of evidence to the contrary, proof of the amount of the fees, interest and penalties remaining unpaid.

Use of fees, interest and penalties

50.47 The Board shall use the fees, interest and penalties remitted to it or paid to it under this Part solely to meet its purposes in relation to electronic products as established under the Act and this Regulation and for no other purpose.