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Dear Sir or Madam,

In July 2024, the Government of New Brunswick amended the *Designated Materials Regulation – Clean Environment Act* 2008-54. Among other changes, amended Regulation 2024-37 mandates responsibilities for managing designated materials to producers instead of brand owners as previously defined by Regulation 2008-54.

The definition of producer in Section 4 of Regulation 2024-37 establishes a hierarchy that must be followed to determine who is responsible for managing each designated material:

4(2) A producer of a designated material referred to in subsection 14(2) shall be one of the following persons:

- (a) the brand holder of the designated material if the brand holder has a permanent establishment in Canada;
- (b) in the absence of a person referred to in paragraph (a), the importer of the designated material into New Brunswick if the importer has a permanent establishment in New Brunswick; or
- (c) in the absence of a person referred to in paragraph (a) or (b), the retailer of the designated material that supplies the designated material to the consumer.

4(3) For the purposes of paragraph (2)(c), when a retailer sells designated materials by means of a physical or electronic marketplace that is owned, controlled or operated by a marketplace facilitator, the marketplace facilitator shall be deemed to be the retailer.

4(4) When a producer referred to in subsection (2) is an enterprise operated in whole or in part under a franchise agreement, the producer shall be deemed to be the franchisor referred to in the agreement, if the franchisee has a permanent establishment in the Province

Please see Regulation 2024-37 for definitions and additional information as it relates to key terms used in the producer definition, including, but not limited to, “brand”, “brand holder”, “retailer”, and “permanent establishment”.

In New Brunswick, Regulation 2024-37 allows producers to designate a Producer Responsibility Organization (PRO) to fulfill their regulatory obligations. In New Brunswick, PROs are non-profit membership based industry association, who work on behalf of their members to discharge their regulatory obligations. Since supply chains can be very complex, it was the intent under the unamended Regulation 2008-54 to allow the PRO to use their industry knowledge to decide who in the supply chain would be the obligated brand owner. Feedback from industry on this subject later suggested that harmonization with other provinces was preferred.

Therefore the intent of the amendment was to harmonize the obligations for management of designated materials both with other provinces and across designated material programs in New Brunswick. Additionally, the new producer definition aligns with recommendations of the Canadian Council of Ministers of the Environment and the intent of extended producer responsibility to shift responsibility for end-of-life management of designated material upstream to those with influence over product design and the product life cycle.

Under the amended Regulation 2024-37, industry, through the PRO, can no longer use its own criteria to determine obligation and must follow the hierarchy established in the Regulation. Producers must fulfill the mandates established in the Regulation, including, but not limited to, registering with Recycle NB and submitting a stewardship plan or designating a PRO to perform their regulatory obligations. When a producer designates a PRO to perform their regulatory obligations, the producer must establish an agreement with the PRO for the PRO to provide this service.

Producers may have voluntary arrangements with retailers to support them in meeting their regulatory and contractual obligations. Recycle NB cannot compel a retailer to volunteer to act on behalf of a producer. A producer who enters such an arrangement still maintains obligations under the Regulation and is responsible for ensuring the producer requirements of the Regulation are met.

If your organization sells, offers for sale, or distributes designated material to a person in New Brunswick, you must ensure that your organization operates within the Regulation which can be accessed online at <https://laws.gnb.ca/en/document/cr/2024-37>. If you have questions regarding your obligations, please contact the PRO that has an approved or submitted stewardship plan for the designated material, listed below:

Paint – Product Care Association of Canada – nbpaintrecycle@productcare.org

Oil & Glycol – Atlantic Used Oil Management Association – info@uoma-atlantic.com

Electronics – Electronics Products Recycling Association – rep@epra.ca

Packaging & Paper Products – Circular Materials – info@circularmaterials.ca

Pharmaceutical Products & Medical Sharps – Health Products Stewardship Association – member@healthsteward.ca

Beverage Containers – Encorp Atlantic – info@encorpatl.ca

Batteries – Call2Recycle – customerservice@call2recycle.ca

Lamps (Lightbulbs) – Product Care Association of Canada – nblightrecycle@productcare.org

Sincerely,

Recycle NB