

RULES FOR STEWARDS (2011)

1. Interpretation in these Rules:

Act means *The Waste Reduction and Prevention Act* (Manitoba), S.M. 1989-90 c.60;

Affiliates: a Steward is affiliated with another entity if it controls or is controlled by the other entity or if both entities are controlled by a common entity, and, for greater certainty, in the case of a corporation, “affiliate,” “affiliated” and “control” have the meanings ascribed thereto by subsections 1(2) and (3) of *The Corporations Act* (Manitoba), R.S.M.1987, c. C225, as amended from time to time;

Brand Owner, with respect to any specific trademarked Designated Packaging or Printed Paper (DPPP), and any specific good Supplied with DPPP, where either the DPPP or the good bears a trademark at any time during the Data Year, means a person Resident in Manitoba, who:

- (a) is the holder of the registered trademark of the DPPP or the good,
- (b) is the licensee, in respect of the registered trademark of the DPPP or the good,
- (c) owns the intellectual property rights to the unregistered trademark of the DPPP or the good, or
- (d) the licensee, in respect of the intellectual property rights to the unregistered trademark of the DPPP or the good;

Where “licensee” includes a person who packages goods, the Packaging of which is DPPP and bears a trademark, other than a packer or filler of Private Label Goods, and includes any person whose corporate name or business name registration contains the trademark;

Commencement Date means January 1, 2011;

Commercial Connection: a person has a commercial connection with DPPP when it derives direct economic benefit when it is Supplied for consumption in Manitoba;

Data Year means the calendar year January 1, 2010 to December 31, 2010;

Designated Packaging means any package or container, or any part of a package or container, that is comprised of glass, metal, paper or plastic, or any combination of any of those materials, and it includes but is not limited to Service Packaging, Supplied to consumers in Manitoba, but it does not include containers for which a refundable deposit is payable when the goods are Supplied at retail and the packaging of those containers;

Designated Packaging or Printed Paper (DPPP) means Designated Packaging and Printed Paper Supplied to consumers in Manitoba;

Excluded Waste means:

- (a) DPPP that is retained by a Steward or its commercial customer, Franchisee or licensee, at a location which one of them owns or occupies and is not carried away by retail customers and is not collected by municipal waste management services, and
- (b) any container as defined in the Used Oil, Oil Filters, and Containers Stewardship Regulation, Manitoba Regulation 86/97;

Filed means electronically submitted by a Steward to MMSM, through the interactive website maintained, stipulated by MMSM;

First Importer means a person Resident in Manitoba, who imports into Manitoba:

- (a) a specific Printed Paper which is DPPP, for which a Brand Owner does not exist, or
- (b) a specific good, the packaging of which is DPPP, for which a Brand Owner does not exist; and includes a person Resident in Manitoba who is the first to take title to such Printed Paper or good, upon or after arrival in Manitoba from elsewhere during the Data Year;

First Seller means the person designated as the obligated Steward for any particular DPPP in these Rules;

Franchisor, Franchisee and Franchise System have the meanings ascribed thereto under *The Arthur Wishart Act* (Ontario);

Gender, Number and Persons In these Rules, words importing the singular shall include the plural and vice versa, the number of the verb shall be construed as agreeing with the word so substituted, and words importing gender shall include all genders. In these Rules, words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever;

Gross Revenues, in the business of retailing, shall be deemed to be the total of revenue from all services provided in Manitoba and the cost of merchandise sold in Manitoba;

Interest Rate means the prime rate established by the Royal Bank of Canada as at the close of business on the first day of each month plus three (3) percent;

MMSM means Multi-Material Stewardship Manitoba;

Packaging means any package or container, or any part of a package or container, that is comprised of glass, metal, paper or plastic, or any combination of those materials and includes, but is not limited to Service Packaging;

Private Label Goods means goods that carry the brand or trademark of a Brand Owner and sold or delivered to consumers by such Brand Owner in Manitoba;

Prescribed Activity means:

1. an activity or program of the Government of Manitoba, or of a municipality or local government district, or of a community or incorporated community as defined in *The Northern Affairs Act*;
2. an activity or program of a school, college, university or other educational institution, including, but not limited to an educational, administrative, fundraising, public-relations or alumni-relations activity or program;
3. an activity or program of a church or other religious, administrative, fund-raising or public-relations activity or program;
4. an activity or program of a non-profit organization, including, but not limited to, an educational, administrative, fund-raising or public relations activity or program;

Printed Paper means any material that is not packaging, but is printed with text or graphics as a medium for communicating information, and includes telephone directories but does not include:

1. other types of bound reference books;
2. bound literary books; or
3. bound textbooks;

Published Address means an address in Manitoba appearing in a current telephone directory or a recognized current published business directory;

Registered means having electronically submitted the following information to MMSM at the interactive website maintained by MMSM:

1. Company information,
2. Primary contact information,
3. Exemption status based on Gross Revenues in Manitoba, and
4. If exempt under section 6 of these Rules, documentation from accredited legal or accounting professional stating gross Manitoba sales activity;

Regulation means the Packaging and Printed Paper Stewardship Regulation, Manitoba Regulation 195/2008, made under the Act;

Resident in Manitoba, with respect to a corporation, means a corporation that, during any time in the Data Year, is deemed to carry on business in Manitoba in accordance with subsection 187(2) of *The Corporations Act* (Manitoba), R.S.M. 1987, c. C225, as amended from time to time, a copy of which is annexed as Appendix A.;

Rules mean these rules;

Service Packaging means packaging that is filled or applied at the point of sale to enable or facilitate the delivery of goods by a retail seller or food service industry or other service industry outlet;

Steward means a person who is a Steward of DPPP, as defined in section 1 of the Regulation;

Steward's Report means a report prepared by a Steward in the form set out in Appendix A to these Rules, and Filed in accordance with these Rules, which describes the aggregate amount of DPPP, expressed in kilograms or units by category, Supplied by the Steward and its Franchisees or Affiliates during the Data Year;

Supply means Supplied to consumers in Manitoba as defined and described in the Regulation, Section 1, means to transfer a property interest by:

- (a) sale, whether conditional or otherwise;
- (b) exchange;
- (c) barter;
- (d) lease or rental, whether with an option to purchase or otherwise; or
- (e) gift;

but does not include a Supply that is effected solely to create a security interest within the meaning of The Personal Property Security Act or the Bank Act (Canada) and subject to the conditions of Section 3 of the Regulation;

Voluntary Steward means a person who elects to become a Steward in accordance with subsection 2(b) of these Rules.

2) Stewards

(a) **Obligated Stewards:** For the purpose of determining which person shall be the obligated Steward for a particular category of DPPP, the following provisions shall apply, in the order in which they are set out. For greater certainty, if two or more persons are obligated pursuant to the following categories, the provision which is first in this list shall prevail:

- (1) A Brand Owner is the obligated Steward with respect to all DPPP and the Packaging of all goods, for which it has a Commercial Connection in the Data Year;
- (2) A Franchisor is the obligated Steward with respect to all DPPP and the Packaging of all goods, Supplied within the relevant Franchise System in the Data Year;
- (3) In the event that there is no Brand Owner or Franchisor, a First Importer is the obligated Steward with respect to all DPPP and the Packaging of all goods for which it is the First Importer in the Data Year;
- (4) In the event there is more than one Brand Owner for the same DPPP, the Brand Owner or First Importer more directly connected to the production of the DPPP shall be the obligated Steward, provided that in the case of a Franchisor who is Resident in Manitoba, the Franchisor shall be the obligated Steward;
- (5) In the event that consumer products containing two or more independent brands are packaged together for sale in Manitoba, then the Brand Owner more closely associated to the joint packaging shall be the obligated Steward for such joint Packaging;
- (6) In the event there is not an identifiable brand for a particular DPPP and if the manufacturer of the good is Resident in Manitoba, the manufacturer of such good shall be the obligated Steward for such DPPP, otherwise the First Importer shall be the obligated Steward for such DPPP;
- (7) Any person who Supplies Service Packaging to consumers in Manitoba in the Data Year;
and
- (8) Any person who is a Voluntary Steward in the Data Year.

(b) **Voluntary Stewards:** Any person who elects to become the Steward of DPPP which otherwise would be the responsibility of another Steward shall be deemed a Steward upon execution of a contract with MMSM, notice of which is posted on the MMSM website. MMSM, at its sole discretion, shall decide whether to enter into such contract. The Steward who otherwise would be

responsible is exempt from the requirement to file a Steward's Report and pay fees with respect to such DPPP during the currency of such contract.

3) Fees Payable

Stewards shall pay fees to MMSM in accordance with the dates set out Appendix C of these Rules. The amount of fees payable shall be calculated in accordance with the table of fees set out in Appendix D.

4) Steward's Report

- (1) Every Steward shall Register with MMSM no later than March 31, 2011;
- (2) Subject to Section 6 (1), 6 (3), and 6 (4), every Steward shall file a Steward's Report with MMSM no later than March 31, 2011.
- (2) With the consent of MMSM, Stewards may amend a Steward's Report to correct information in the Steward's Report that is in error or to replace data previously determined by a formula or a calculator provided by MMSM.
- (3) From and after the conclusion of the 2010 Data Year, if a Steward's Report has not been filed within 90 days of the date specified in Subsection 4(2) of these Rules, MMSM may file a Steward's Report on behalf of such Steward, based on the Steward's previous year's Steward's Report.
- (4) A Steward's Report that contains incorrect data, may, upon notice from MMSM to the Steward, be deemed by MMSM not to have been Filed.

5) Penalties, Interest and Back Fees

- (1) Stewards who fail to report by the dates specified in Appendix C will be subject to a penalty calculated at 10% of fees due and payable.
- (2) Stewards who fail to pay fees by the date specified in the timetable set out in Appendix C will be subject to interest charges at the Interest Rate on the unpaid fees.
- (3) MMSM may, at its sole discretion, waive all or part of any penalty or interest charges otherwise payable under these Rules.
- (4) All penalties and interest charges begin accruing on the business day immediately following the date specified in the timetable set out in Appendix C.
- (5) In the event that the amounts reported in a Steward's Report are inaccurate: any deficiency in payment of fees resulting from such inaccuracies shall be immediately due and payable upon the filing of the correcting Steward's Report; and if not paid within 30 days of the invoice date, will be subject to the same payment interest charges outlined in (2) above.

Failure to file a Steward's Report within the time frames mentioned above is a violation of these Rules and may be subject to enforcement under the Waste Reduction and Prevention Act.

6) Steward Exemptions from Reporting

- (1) Stewards are exempt from filing a Steward's Report and paying the fees otherwise due, if during the Data Year, the Steward, its Affiliates, and Franchisees had combined Gross Revenues from the sale of all products and services in Manitoba which was less than \$750,000;
- (2) Stewards shall file a Steward's Report but shall be exempt from payment of fees otherwise due if, during the Data Year, the Steward, its Affiliates and Franchisees Supplied DPPP in an aggregate quantity of kilograms that generated annualized fees of less than \$250.00.
- (3) No Steward, Affiliate or Franchisee shall file a separate Steward's Report which is reporting less than \$250.00 in fees, if it is affiliated with any Steward, Affiliate or Franchisee whose fees are greater than or equal to \$250. In that case, the Steward, Affiliate or Franchisee whose fees equal or exceed \$250.00 shall file one Steward's Report which includes both itself and the Steward, Affiliate or Franchisee whose fees are less than \$250.00
- (4) For greater clarity, where a Steward files a Steward's Report, respecting Affiliates or Franchisees, such Affiliates and Franchisees shall not file a Steward's report.
- (5) Companies that carry on a Prescribed Activity are not exempt by Subsection 6(1).
- (6) Notwithstanding these exemptions, MMSM may, acting reasonably, require a Steward to file a Steward's Report by sending a written request to the Steward.

7) Record Provision and Retention

- (1) Upon written request by MMSM, a Steward shall promptly submit data, including calculation methodology, packaging data, audit reports, list of brands reported and list of brands excluded from report, and allocation percentages used in the preparation of the Steward's Report
- (2) A Steward shall retain records to substantiate and verify the amount set out in its Steward's Report for a period of not less than five years from the date of the Steward's Report to which they relate. Upon written request by MMSM, a Steward shall grant access to MMSM to examine, audit and inspect its books and records respecting a Steward's Report at any time up to five years after the date of receipt of such Steward's Report by MMSM.
- (3) Upon written request by MMSM, any Steward that is exempt under section 6 of these Rules shall promptly submit documentation which proves its Gross Revenues.

8) Enforcement

Failure to pay fees or file a Steward's Report in accordance with the requirements stated in these Rules is a violation of these Rules and may be subject to enforcement under the Act.

9) Dispute Resolution

If any dispute arises between a Steward and MMSM as to the amount of DPPP that is required to be included in a Steward's Report:

- (1) The parties shall attempt to resolve the dispute through designated representatives from each of MMSM and the Steward within thirty (30) days upon which written notice of the dispute was first given, or as otherwise agreed upon;
- (2) If the parties are unable to resolve the dispute within the above period, the Steward and MMSM shall within thirty (30) days thereafter jointly select an arbitrator to arbitrate the dispute and failing agreement as to the arbitrator within such time frame, the Court shall appoint the arbitrator on behalf of the parties;
- (3) The decision made by the arbitrator on the dispute shall be rendered and may be enforced in accordance with *The Arbitration Act* (Manitoba), S.M. 1997, c. 4, as amended from time to time; and
- (4) The decision of the arbitrator shall be final and binding on the parties, shall not be subject to appeal on any grounds whatsoever, and shall be enforceable against MMSM or the Steward, as the case may be, immediately on issuance of the decision to the parties.

For greater certainty, non-payment of fees or failing to file a Steward's Report by a Steward shall not be matters which are subject to arbitration.

10) Interpretive Memoranda

MMSM may publish on its website interpretive memoranda describing its interpretations of these Rules and how it proposes to administer them.

11) Publishing of Company names

- (1) The names of Stewards who are exempt pursuant to Section 6 will be posted on the MMSM website and identified as such.
- (2) The names of Stewards submitting Steward's Reports to MMSM will be posted on the MMSM website.
- (3) The names of Stewards who have executed a contract with MMSM under section 2(a) shall be posted on the MMSM website.
- (4) MMSM may post the registry of all brands reported in Steward's Reports from time to time.
- (5) MMSM may publish on its website the name of any person that may appear to be a Steward, but which it has determined upon investigation not to be obligated Steward in Manitoba.

MMSM may publish on its website the list of companies who are compliant with these Rules.

12) Confidentiality

- (1) Definition of Confidential Information

MMSM acknowledges and agrees that certain information made available to it from time to time in accordance with the Rules and the Stewardship Program by Stewards is confidential in nature. For the purposes of these Rules, confidential information (“Confidential Information”) means information received by MMSM or its employees that (i) is not generally known in the industry in which a Steward is engaged, (ii) is “personal information” within the meaning of the *Personal Information Protection and Electronic Documents Act* (Canada), as amended from time to time, or such provincial legislation as is applicable, or (iii) would do financial harm to a Steward if divulged, and shall include all reporting documentation provided by a Steward in accordance with the Rules.

(2) Non-disclosure and Non-use of Confidential Information

MMSM agrees to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. MMSM further agrees not to use Confidential Information for its own benefit without the prior written approval of a Steward.

(3) Disclosure

MMSM may disclose Confidential Information if required by any judicial or governmental request, requirement or order; provided that MMSM will take reasonable steps to give the Steward sufficient prior notice in order to contest such request, requirement or order by notifying the Steward of such request.

(5) No Obligations

No other obligations, express or implied, are created or assumed by MMSM, except as stated herein.

Appendix A

Carrying on business in Manitoba

A body corporate is deemed to be carrying on its business or undertaking in Manitoba if

- (a) it has a resident agent or representative, or a warehouse, office or place of business in Manitoba; or
- (b) its name or any name under which it carries on business, together with an address for the body corporate in Manitoba, is listed in a Manitoba telephone directory; or
- (c) its name or any name under which it carries on business, together with an address for the body corporate in Manitoba, is included in any advertisement advertising the business or any product of the body corporate; or
- (d) it is the registered owner of real property situate in Manitoba; or
- (e) it otherwise carries on its business or undertaking in Manitoba.

Appendix B

Form of Steward's Report

Name of Steward

Mailing address

Billing address

Primary Contact Person for Steward's Report, Email address & Date of Report

Kilograms of DPPP and units of carry out bags supplied in the Data Year for the brands owned, or first imported into Manitoba in the 2010 Data Year. Stewards may only use calculator tools which have been approved by MMSM.

Material Category	Material Sub-category
Printed Paper	Newsprint
	Magazines and catalogues
	Directories
	Other Printed Materials
Paper Packaging	Gable top containers – non-beverage
	Gable top containers – beverage
	Aseptic containers – non-beverage
	Aseptic containers – beverage
	Paper laminates
	Corrugated cardboard
	Boxboard and other paper packaging
Plastic Packaging	PET bottles – non-beverage
	PET bottles > 5 Litres – non-beverage
	PET bottles – beverage
	PET bottles > 5 Litres – beverage
	HDPE bottles and jugs – non-beverage
	HDPE bottles and jugs > 5 Litres – non-beverage
	HDPE bottles and jugs – beverage
	HDPE bottles and jugs > 5 Litres – beverage
	Polystyrene
	Other rigid plastic – non-beverage
	Other rigid plastic > 5 Litres – non-beverage
	Other rigid plastic – beverage
	Other rigid plastic > 5 Litres – beverage
	LDPE/HDPE film
	LDPE/HDPE film carry-out bags
	Plastic laminates – non-beverage
	Plastic laminates – beverage
	Biodegradable plastic film
	Biodegradable rigid plastic containers – non-beverage
Biodegradable rigid plastic containers – beverage	
Steel and Other Metal	Aerosol containers

Material Category	Material Sub-category
Packaging	Paint cans
	Other steel and metal containers and packaging – non-beverage
	Other steel and metal containers and packaging – beverage
Aluminum Packaging	Aluminum – food cans
	Aluminum cans – beverage
	Foil and other aluminum packaging
Glass Packaging	Clear (flint) glass – non-beverage
	Clear (flint) glass – beverage
	Coloured glass – non-beverage
	Coloured glass – beverage

Required information to be included in the Steward’s Report:

1. Description of methodology and data used to prepare this Steward’s Report, including a detailed explanation of the steps taken to calculate the amounts reported and the use of any calculator tools;
2. Description of Excluded Waste deductions from Report, including kilograms or percentage used by material type;
3. List of brands, trade marks or publication titles covered in this Steward’s Report;
4. List of Affiliates and /or Franchisees included in this Steward’s Report; and
5. Declaration of accuracy of contents of this Steward’s Report

Appendix C

Payment and Reporting Schedule

The payment deadlines shall be as follows:

Description of Steward Responsibility	2011 Due Date
Registration and Steward's Report filing deadline	March 31, 2011
First payment due (25% of 2011 Obligation)	April 28, 2011
Second payment due (25% of 2011 Obligation)	June 30, 2011
Third payment due (25% of 2011 Obligation)	September 30, 2011
Fourth payment due (25% of 2011 Obligation)	December 1, 2011

Appendix D

Current Annualized Table of Fees: January 1 to December 31, 2011

Material Category	Material Sub-category	Base Fee Rate	Enhanced Fee Rate
Printed Paper	Newsprint	2.88 ¢/kg	
	Magazines and catalogues	5.20 ¢/kg	
	Directories	5.20 ¢/kg	
	Other Printed Materials	5.20 ¢/kg	
Paper Packaging	Gable top containers – non-beverage	25.20 ¢/kg	
	Gable top containers – beverage	25.20 ¢/kg	
	Aseptic containers – non-beverage	25.20 ¢/kg	
	Aseptic containers – beverage	25.20 ¢/kg	
	Paper laminates	25.20 ¢/kg	
	Corrugated cardboard	11.78 ¢/kg	
	Boxboard and other paper packaging	11.78 ¢/kg	
Plastic Packaging	PET bottles – non-beverage	24.76 ¢/kg	
	PET bottles > 5 Litres – non-beverage	24.76 ¢/kg	
	PET bottles – beverage	24.76 ¢/kg	
	PET bottles > 5 Litres – beverage	24.76 ¢/kg	
	HDPE bottles and jugs – non-beverage	26.69 ¢/kg	
	HDPE bottles and jugs > 5 Litres – non-beverage	26.69 ¢/kg	
	HDPE bottles and jugs – beverage	26.69 ¢/kg	
	HDPE bottles and jugs > 5 Litres – beverage	26.69 ¢/kg	
	Polystyrene	31.03 ¢/kg	
	Other rigid plastic – non-beverage	31.03 ¢/kg	
	Other rigid plastic > 5 Litres – non-beverage	31.03 ¢/kg	
	Other rigid plastic – beverage	31.03 ¢/kg	
	Other rigid plastic > 5 Litres – beverage	31.03 ¢/kg	
	LDPE/HDPE film	31.03 ¢/kg	
	LDPE/HDPE film carry-out bags	31.03 ¢/kg	0.09 ¢/unit
	Plastic laminates – non-beverage	31.03 ¢/kg	
	Plastic laminates – beverage	31.03 ¢/kg	
	Biodegradable plastic film	31.03 ¢/kg	
	Biodegradable rigid plastic containers – non-beverage	31.03 ¢/kg	
	Biodegradable rigid plastic containers – beverage	31.03 ¢/kg	
Steel and Other Metal Packaging	Aerosol containers	9.92 ¢/kg	
	Paint cans	9.92 ¢/kg	
	Other steel and metal containers and packaging – non-beverage	9.92 ¢/kg	
	Other steel and metal containers and packaging – beverage	9.92 ¢/kg	
Aluminum	Aluminum – food cans	1.26 ¢/kg	

Material Category	Material Sub-category	Base Fee Rate	Enhanced Fee Rate
Packaging	Aluminum cans – beverage	1.26 ¢/kg	
	Foil and other aluminum packaging	24.18 ¢/kg	
Glass Packaging	Clear (flint) glass – non-beverage	6.09 ¢/kg	
	Clear (flint) glass – beverage	6.09 ¢/kg	
	Coloured glass – non-beverage	6.09 ¢/kg	
	Coloured glass – beverage	6.09 ¢/kg	