



ELECTRONICS ASSESSMENT OPERATIONS POLICY

I. LEGISLATIVE MANDATE

1. The Designated Material Recycling and Management Regulation (the “Designated Material Regulation”)

Section 3 of the Designated Material Regulation provides that the supplier shall account to ARMA for the advance disposal surcharges (the “ADS”) collected:

3.(1) The Association may, subject to a material designation regulation, by Bylaw prescribe an advance disposal surcharge for any designated material or class of designated material.

(2) If an advance disposal surcharge for a designated material or class of designated material is prescribed, a supplier shall remit to the Association the prescribed advance disposal surcharge in accordance with the Bylaws.

(3) A supplier shall, in accordance with the Bylaws,

(a) remit all advance disposal surcharges to the Association, and

(b) account to the Association for all advance disposal surcharges remitted.

Section 4 of the Designated Material Regulation provides for the ADS to be held in trust:

4. A supplier holds all advance disposal surcharges that the supplier is obliged to remit under section 3 in trust for the Association.

Section 5 of the Designated Material Regulation provides for the recovery of the ADS:

5. Advance disposal surcharges required to be remitted by a supplier and any interest owing in respect of them are recoverable by the Association in an action in debt.

2. The Electronics Designation Regulation

Section 2 of the Electronics Designation Regulation provides that electronics are a designated material under the *Environmental Protection and Enhancement Act* and the Designated Material Regulation:

2. Electronics are a designated material for the purposes of Part 9, Division 1 of the Act and the *Designated Material Recycling and Management Regulation*.

Section 3 of the Electronics Designation Regulation prescribes the maximum ADS for the following electronics:

3. For the purposes of the *Designated Material Recycling and Management Regulation*, the maximum advance disposal surcharge that may be prescribed for the following electronics is as follows:

televisions

18" screen and smaller - \$15

19" to 29" screen - \$25

30" to 45" screen - \$30

46" screen and larger - \$45

desktop computers (including CPU, mouse, keyboard, cables and other components in the computer) - \$10

computer monitor - \$12

laptops and notebooks (including CPU, mouse, keyboard, cables and other components in the laptop or notebook) - \$5

printers (including printers that have scanning or fax capabilities, or both) - \$8

3. The Electronics Recycling Bylaw

Section 3 of the Electronics Recycling Bylaw sets the ADS for each class of electronics and requires the payment of the ADS.

The completing and filing of returns and payment of ADS is governed by Section 5 of the Electronics Recycling Bylaw:

- 5.1 Each supplier required to pay the advance disposal surcharge under this bylaw shall
 - (a) complete and file with the Association at its head office a return in respect of a reporting period not later than 30 days after the end of a reporting period, and
 - (b) remit to the Association at its head office with the return all advance disposal surcharges owing in respect of supply transactions entered into during the reporting period.
- 5.2 A return shall be in a form acceptable to the Association.
- 5.3 Unless the Association directs otherwise, the reporting period for the purposes of this section is a calendar month.
- 5.4 The Association may in writing at any time extend the time for filing a return.

Article 6 of the Electronics Recycling Bylaw provides for the supplier's records as follows:

- 6.1 A supplier shall
 - (a) keep records in respect of his transactions in tires and make them available for inspection by the Association or its agents, and
 - (b) provide to the Association on request information in respect of his transactions in electronics.

Article 7 of the Electronics Recycling Bylaw provides for the assessment of suppliers:

- 7.1 Where
 - (a) a supplier fails to file a return in accordance with section 5, or
 - (b) the Association reasonably believes a return that has been filed is incorrect or misleading,

the Association may assess the amount of advance disposal surcharges to be remitted by the supplier in respect of the reporting period.

- 7.2 Where a supplier fails to remit an advance disposal surcharge with respect to a reporting period, the Association may assess the advance disposal surcharges in an amount assessed by the Association to be equal to the amount of advance disposal surcharges that the supplier failed to remit.
- 7.3 Where the Association makes an assessment under section 7.1 or 7.2, the supplier shall remit
- (a) the amount of the assessment, or
 - (b) where a return has been filed and a remittance made, the amount, if any, by which the amount of the assessment exceeds the amount remitted
- and the remittance is due and payable from the time the supplier receives notice of the assessment.

Article 8 of the Electronics Recycling Bylaw provides for the payment of interest on ADS that the supplier fails to remit as required:

8. Interest is payable by a supplier on advance disposal surcharges that the supplier fails to remit as required by this Bylaw, and is payable at the rate per annum established by the Association from time to time, from the date the unpaid amount is due until it is paid.

II. GENERAL POLICIES

1. Background to Policy

ARMA encourages voluntary compliance by suppliers who have not paid ADS. ARMA also initiates assessment proceedings against suppliers where measures taken to encourage voluntary compliance by suppliers are unsuccessful.

2. Composition of Assessment Committee

- (a) ARMA shall appoint or elect an Assessment Committee consisting of not less than three (3) people.
- (b) Any two or more members of the Assessment Committee may carry out the responsibilities of the Assessment Committee under this policy.
- (c) Only Directors who are not Industry Council Members may be appointed to the Assessment Committee.

3. Responsibilities of Assessment Committee

- (a) The Assessment Committee is responsible for:

- (i) holding assessment hearings for the purpose of assessing the amount if any of ADS to be remitted from suppliers;
 - (ii) determining all matters of procedure at assessment hearings subject to any assessment hearing procedures established by the Board; and
 - (iii) overseeing the ADS collection processes.
- (b) The Assessment Committee shall observe all procedures established by the Board respecting the matters outlined above.

4. Responsibilities of Management

Management is responsible for:

- (a) taking measures to encourage voluntary compliance by suppliers who are late filing a return in respect of ADS;
- (b) initiating assessment proceedings against suppliers when measures taken to encourage voluntary compliance prove unsuccessful;
- (c) reviewing proposed assessments where a supplier requests to have a proposed assessment reviewed;
- (d) scheduling all necessary assessment hearings; and
- (e) advancing reasons in support of proposed assessments at assessment hearings.

Management shall observe all procedures established by the Board relating to the matters outlined above.

5. Procedures to Encourage Voluntary Compliance

ARMA shall observe the following procedure to encourage voluntary compliance by suppliers who are not in compliance with the Electronics Recycling Bylaw:

(a) Issue Notice

ARMA shall identify suppliers who are not in compliance with the Electronics Recycling Bylaw and shall direct correspondence to such suppliers to notify them of the non-compliance, and may advise that ARMA will commence assessment proceedings against them if they do not file a return (the "Notice"). The Notice shall specify that once an assessment is made, the amount is a debt due and owing to ARMA.

(b) Investigate Reasons for Non-Response by Suppliers

ARMA shall hold such discussions as may be necessary with suppliers who are not in compliance to determine the reason for the non-compliance. Management shall exercise discretion in determining whether to initiate contact with non-complying suppliers, having regard to the past reporting history of the supplier, the number of reporting periods for which returns which have not been filed, the extent of the non-compliance, the amount of ADS estimated by ARMA to be outstanding, and whether the reason for the non-compliance relates to an interpretation or misinterpretation of categories of electronics which may apply to a particular electronics product. Management shall exercise discretion in determining whether a return is required to be filed having regard to the requirements of the Electronics Recycling Bylaw and the individual circumstances of the supplier.

6. Procedures to Initiate Assessment Proceedings

ARMA shall observe the following procedure to initiate assessment proceedings against suppliers who are not in compliance with the Electronics Recycling Bylaw:

(a) Issue Notices of Proposed Assessment

ARMA shall ensure suppliers who are not in compliance with the Electronics Recycling Bylaw have received advance notice of the assessment hearing at which the amount of the ADS to be remitted by such suppliers shall be assessed.

The Notice shall include an interest amount for overdue payment, where applicable.

The Notice shall include in all cases, the basis upon which the proposed assessment is calculated, and the category or categories of electronics upon which the assessment is based.

All suppliers shall be afforded reasonable opportunity to object to the proposed assessment, or any portion thereof.

7. Procedures to Review Objections to Proposed Assessments

ARMA shall observe the following procedure to review objections to proposed assessments:

(a) Review Proposed Assessments where Objections Received

ARMA shall review any forms of objection, returns, or other documentation returned by suppliers in response to a Notice. ARMA shall review the material received from suppliers and shall review the estimate of the amount of ADS to be remitted having regard to the objection received from the supplier and any other relevant information available to ARMA. Management shall hold such discussions or investigations as are

necessary to interpret any materials received from the supplier and to estimate the amount of ADS to be remitted.

Management may, in its discretion after reviewing the materials submitted to it or obtained by it, revise its estimate of the amount of ADS required to be remitted and accept as payment from the supplier such revised amounts in satisfaction of the amounts required to be remitted.

Notwithstanding any other provision of this Policy, where the materials submitted by the supplier suggests an issue regarding the interpretation of one or more categories of electronics, management shall refer the issue for determination under the Issue Response Policy,

ARMA shall direct correspondence to the supplier communicating to them the result of the review.

8. Procedures to Schedule Assessment Hearings

ARMA shall observe the following procedures to schedule assessment hearings:

(a) Schedule Assessment Hearings where Requested by Suppliers

ARMA shall select dates upon which to hold assessment hearings and shall advise suppliers who have received a proposed assessment that a hearing will be held at the time, date and location specified. ARMA shall also direct to the supplier copies of any materials intended to be put to the Assessment Committee for its consideration.

(b) Schedule Assessment Hearings where Required by ARMA

If a supplier does not object to a proposed assessment or if a supplier does not remit the amount of ADS required to be remitted in accordance with ARMA's original estimate or review an Assessment Hearing will be held on the basis of the proposed assessments.

9. Procedures to Conduct Assessment Hearings

(a) Procedures to be Observed by the Assessment Committee

(i) Assessment Hearings to Serve the Interests of Fairness

The Assessment Committee shall conduct assessment hearings in a manner which is just and convenient in the particular circumstances of the case before it.

(ii) Notice to Parties

Before the Assessment Committee exercises the powers granted to ARMA to assess the amounts of ADS to be remitted by a supplier, the Assessment Committee shall give adequate notice of the hearing to the supplier.

(iii) Evidence and Representations

Before the Assessment Committee exercises the powers granted to ARMA to assess the amounts of ADS to be remitted by a supplier, the Assessment Committee:

- (A) shall give the supplier a reasonable opportunity to furnish relevant evidence to the Assessment Committee;
 - (B) shall inform the supplier of the facts in its possession or the allegations made to it contrary to the interests of the supplier in sufficient detail;
 - (I) to permit the supplier to understand the facts or allegations, and
 - (II) to afford the supplier a reasonable opportunity to furnish relevant evidence to contradict or explain the facts or allegations;
- and
- (C) shall give the supplier an adequate opportunity of making representations by way of argument to the Assessment Committee.

(iv) Cross-Examination

When the Assessment Committee has informed a supplier of facts or allegations, the supplier

- (A) is entitled to contradict or explain those facts, but
- (B) will not have a fair opportunity of doing so without cross-examination of the person making the statements that constitute the facts or allegations,

thus the Assessment Committee shall afford the supplier an opportunity of cross-examination in the presence of the Assessment Committee.

(v) Representation by Counsel

The Assessment Committee shall permit suppliers to be represented by legal counsel throughout all portions of the assessment hearing.

(vi) Oaths

The Assessment Committee shall not require oaths or affirmations be given by anyone during the course of the assessment hearing.

(vii) Evidence

The Assessment Committee shall not be required to adhere to the rules of evidence applicable to courts of civil or criminal jurisdiction.

(viii) Written Decision

When the Assessment Committee exercises the powers granted to ARMA to assess the amounts of ADS to be remitted by a supplier, the Assessment Committee shall furnish to the supplier a written statement of its decision (the "Notice of Assessment"). The Notice of Assessment may, but shall not be required to set out

(A) the findings of fact on which it based its decision, and

(B) the reasons for the decision.

(ix) Requirements of Natural Justice

The Assessment Committee shall observe the requirements of natural justice in all proceedings before it.

(b) Procedures to be Observed by ARMA

(i) Introduction of Parties

Management shall identify for the Assessment Committee the parties appearing at the assessment hearing.

(ii) Definition of Issues

Management shall specify the issues to be determined by the Assessment Committee at the assessment hearing.

(iii) Confirmation of Assessment Committee's Jurisdiction

Management shall specify the reporting periods for which a report has not been filed by the supplier or for which the reports filed are believed to be incorrect or misleading.

(iv) Confirmation of Notice

Management shall confirm that all notices required to be given to the supplier have been given in accordance with procedures established by ARMA.

10. Procedures Following Assessment Hearings

ARMA shall demand payment from suppliers of the amount of ADS assessed as being outstanding by the Assessment Committee. ARMA shall seek to recover the full amount of the assessment, inclusive of interest assessed as owing in respect of the assessed amounts, and shall not accept as compromise or settlement any part payment without prior authorization of the Board. Nothing in this policy shall, however, prevent the Assessment Committee from reviewing an earlier assessment decision and revising an assessment amount if it appears in the discretion of the Assessment Committee to be warranted in the circumstances, based on evidence of actual sales or other relevant data. Such revisions to the assessed amount by the Assessment Committee shall not be considered a settlement or compromise of the assessed amount provided the revisions are based on a bona fide reassessment of the ADS outstanding from the supplier by the Assessment Committee.