

PCA member update re New PCA Articles, Bylaws and Membership Agreement

Background:

Product Care Association (PCA) is a federally incorporated not for profit association in Canada. Like all similarly incorporated federal non-profit entities, PCA must:

- Be “continued” under new Canada Not for Profit Corporations Act (CNCA) which requires new Articles and Bylaws, which are consistent with the CNCA.
- Update its Membership Agreement and Policies to be consistent with the format and contents of the new Articles and Bylaws.

An English and a French version of each of these documents will be prepared.

Document	Status
Articles of Continuance	Approved by PCA membership at 2013 AGM, subsequently revised, and approved at 2014 AGM. Submitted for filing to Industry Canada. Awaiting approval.
New Bylaws	
Membership Agreement	Consultation with members on new agreement in 2014, followed by modifications made by PCA board to final version approved February 2015. New membership agreement will be posted on PCA member registration/fee reporting portal for individual acceptance by each PCA member after articles and bylaws filing with Industry Canada completed.
Rules and Policies	Existing rules and policies have been updated – also available for viewing on PCA member registration/fee reporting portal

Information about each document

1. Articles of Continuance

This is the formal “incorporation document” that must be filed with industry Canada for every federal nonprofit Association under the new CNCA. The document contains basic information such as

- name of association (note that PCA is in the process of resubmitting the articles with a revised French version of the name of the association as required by Industry Canada: “L’Association pour la gestion responsable des produits”)
- corporation number,
- number of directors
- and (in the case of Product Care) the number of membership classes

2. Bylaws

New bylaws have been prepared which are consistent with the requirements of the new legislation. Provisions in the new bylaws are based on similar provisions in the original bylaws of PCA as well as requirements of the CNCA. The bylaws deal with matters such as:

- details of the membership classes (see below)
- requirements for membership including an membership agreement
- membership fees
- termination of membership
- membership meetings
- voting at member meetings
- composition of the board of directors (the number of directors is specified by class of membership) (see below)
- meetings of directors
- voting on general and class specific questions
- appointment of officers and committees
- other matters relating to the administration of the Association

However note that many provisions contained in the original bylaws of PCA are no longer appropriate for inclusion in bylaws under CNCA, and are now contained in the membership agreement, e.g. member audit requirements.

Membership Classes and Conditions of Membership (schedule "A" to bylaws of PCA)

Membership Class	Product or Division	Conditions of Membership
Class A	Paint Products	Must be a Producer of Paint Products included in one or more of the programs of the Corporation operated pursuant to an EPR Regulation
Class B	Lighting and Alarm Products	Must be a Producer of Lighting or Alarm products included in one or more of the programs of the Corporation operated pursuant to an EPR Regulation
Class C	Retail	Must be a Retailer of one or more products included in one or more of the programs of the Corporation operated pursuant to an EPR Regulation
Class D	Other products	Must be a Producer of flammable, pesticide, waste gasoline, or any other products not specified for another Membership Class, included in one or more of the programs of the Corporation operated pursuant to an EPR Regulation

Number of Directors and Composition of the Board (schedule "A" to bylaws of PCA)

Membership Class	Product or Division	Number of Directors
Class A	Paint Products	4
Class B	Lighting and Alarm Products	2
Class C	Retail	2
Class D	Other products	3
Total:		11

3. **New PCA Membership Agreement**

- a. **Introduction:** The membership agreement is not a document that is filed with industry Canada, however the bylaws require that each member of PCA must sign a membership agreement in order to become or continue as a member.
- b. **Development of new Membership Agreement:** The new PCA membership agreement was developed based on membership agreements for other Canadian product stewardship programs, with modifications for the requirements of PCA. Consultation with members took place in 2014, and the results of the consultation were reported to the PCA board, resulting in changes to the membership agreement, for example removal of the stipulation that a member must participate in all PCA programs if applicable.
- c. **Approval by PCA board:** The new PCA membership Agreement was approved by the PCA board in February 2015 and can be viewed [here](#).
- d. **Process for PCA members to accept new membership Agreement:**
The new membership agreement is designed for use in PCA's online registration and reporting system, and members will be asked to confirm acceptance of the agreement through the online registration system:
 - New members will need to "click to agree" to accept the agreement during the initial member registration process.
 - Existing members will be asked to review and "click to agree" to the new agreement when filing the next fee report.

4. **New Membership Agreement Overview:**

Summary of the major elements of the draft membership agreement.

- a. **Date and Definitions**
 - For existing members, the new agreement takes effect as of the date of acceptance by the member. The member will be required to accept the new agreement at the time of registering for or filing the next Environmental Handling Fee [EHF] report for any PCA program.
 - The membership agreement applies all current and future PCA programs for which the member is registered with PCA.
- b. **PCA Membership**
 - PCA must accept any registration by a new member, or expansion of registration by existing member (by adding programs) before the registration or change of registration takes effect. Normally notifications are provided by email.
 - A member is also subject to the PCA Articles and Bylaws as well as guidelines, rules and policies all of which will be provided as website links during the registration process, and can also be viewed [here](#).

c. Confidentiality Obligations

- PCA shall not disclose a member's confidential information to other parties, subject to disclosure of information required by the agreement, PCA Rules and Policies, relevant laws etc.
- PCA is permitted to identify members that are in good standing or that are in arrears of EHF remittances
- Member will reasonably cooperate with PCA to help identify their customers and suppliers who may be obligated

d. Covenants of the Member

- Member agrees to provide EHF reports and other relevant reports each reporting period for all program products sold for all programs for which the member has registered.
- Member agree to pay EHF's on all program products sold for each reporting period retroactive to the start date of each relevant program
- Obligation to pay EHF's is waived if another member agrees to remit the required EHF's on that member's behalf ("remitter" arrangements) for some or all program products, provided that PCA has been informed of and acknowledges this arrangement and that the remitting member remains in good standing.
- Overdue EHF's are considered a debt and PCA may pursue all legal remedies to collect payment, including termination of membership

e. Covenants of PCA

- PCA agrees to act as the member's agent for the purpose of complying with the regulatory requirements
- PCA agrees to provide program plan amendments to members within 30 days of approval
- PCA agrees to implement the programs as submitted and approved, ensure the programs are in good standing and submit all required material to the regulator
- PCA agrees to provide annual reports to members by posting on PCA website
- PCA will strive to provide 90 days' notice of changes to the PCA Rules and Policies or changes to EHF rates
- PCA agrees to provide prompt notice if plan approval is suspended or cancelled and of any related meetings

f. Audit of Members by PCA

- PCA may conduct member compliance reviews/audits to verify EHF reporting accuracy, remitter relationships etc.
- Member agrees to cooperate with audits and to supply information relating to suppliers or customers of program products

g. Term and Termination

- Agreement is valid as of date it is signed and remains in effect until terminated
- Sets out basis for termination of membership and references termination of membership provisions in bylaws
- Specifies which provisions which survive termination

h. General Provisions

- Notice provisions
- PCA Board may amend the agreement under certain conditions with at least 90 days' notice to members

5. Rules and Policies

The following is an unofficial summary only of the PCA rules and policies. The full text of the policies is located [here](#). Note that these policies are under review in conjunction with the new membership agreement, and members will be notified of any changes.

a. EHF Remittance Obligations

- Obligation of all member to pay EHF on all program products supplied, to fund program
- EHF vary by program and product
- Member joining after program has started must pay EHF due from start of program
- "voluntary remitter" arrangements for reporting and payment of EHF between members are permitted, PCA must be informed
- Dispute resolution provision to determine responsibility of members within a supply chain where EHF not paid to PCA

b. Managing EHF

- EHF exist between program and member, it is the member's business decision how to manage cost of EHF – include in price to customer, or separate from price
- Some provinces/programs limit/prohibit use of visible fees
- Whether included or separate, EHF are part of product prices and subject to sales taxes

c. EHF Reporting Periods

- Monthly reporting and remitting is the "default" frequency
- Members with annual fees of less than \$10,000 in the prior calendar year, in good standing may request quarterly basis. Prior written approval by PCA is required.
- Gasoline sector – Gasoline sector members in good standing may request quarterly or annual (based on number of gas stations)
- Report and payment of EHF due within month after reporting period

d. Overdue Payments

- PCA reserves the right to apply interest and administrative charges to overdue EHF remittances

e. Member Audits

- In self-reporting system, compliance audits of members needed to ensure correct reporting and a level playing field.
- Members must maintain records
- PCA will design the member audit plan and in general will plan to audit each member at least every 5 years
- Any amount owing after audit is immediately due and subject to interest from due dates
- Repeated findings of underpayment subject to administrative and penalty charges

f. Product Returns

- EHF is not required to be remitted to PCA for returned/refunded products

- Members can offset refunded products from new product sales in given reporting period
- Member may note this information in the “comment” section of the EHF report
- Records must be retained for audits conducted by PCA

g. Product Exchanges

- Product sold on or after the start date of the program and later exchanged, only one EHF should be remitted to PCA.
- Product sold before start date of the program, exchanged for same program product, will not be subject to an EHF

h. Refurbished and Repaired Products

- Explains when EHF applies/does not apply for refurbished and repaired products.

i. Multipacks

- Explains application of EHF for “multipack” products.

*Note it is proposed to publish the following policies in relation to PCA lighting products programs, and not with the above general policies which apply to all PCA programs.

j. LightRecycle – Multipacks Policy

- Explains how to calculate fees correctly where more than one lighting product or category is included in a single product package.

k. LightRecycle – Integrated Ballast and Lamps Policy

- Explains how to calculate EHF when ballast and lamps are integrated into one product or package.