

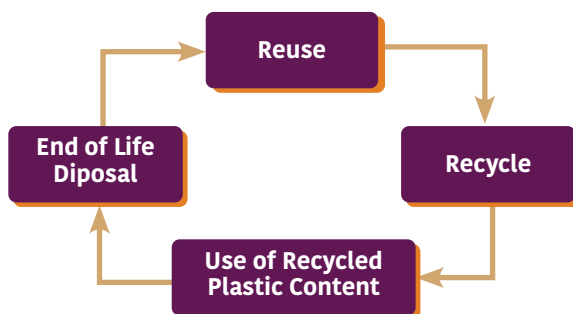
Plastic Packaging Waste Reduction - India's Ambitious Plan

- Implementing 100% collect back targets based on the principle of 'polluter pays'

India is one of the highest plastic waste generators in the world. The Ministry of Environment, Forest and Climate Change (“**MoEF**”) notified the Plastic Waste Management Rules, 2016¹, as amended from time to time (“**Rules**”), to ensure scientific management of plastic waste. MoEF in 2022 introduced the detailed framework for implementation of extended producer responsibility by companies in India. Below is a snapshot of the key points:

1. What is **EPR**?

Extended Producer Responsibility (“**EPR**”) means the responsibility of a producer for the environmentally sound management of the product until the end of its life and which includes:



2. Who does it apply to?

It would be prudent for businesses to analyse if they fall within the ambit of any of the following categories (“**Entities**”):

Producer

Person engaged in *manufacture of inter alia* carry bags; or multi-layered packaging and includes industries or individuals using plastic sheets for *wrapping* commodities.

Importer

Person importing plastic packaging products; or products with plastic packaging or carry bags or multi-layered packaging or plastic sheets, plastic sheets

Brand Owners/ Retailers

Person/ company selling commodities under a registered brand label or trademark. Includes online *platform/ marketplace*; supermarkets.

Plastic Waste Processor

Recyclers and entities engaged in converting waste into energy/ oil; or in industrial compositing.

¹ The Rules have been amended in August, 2021. Vide the second amendment in February, 16 2022, the detailed guidelines were introduced vide the Plastic Waste Management (Amendment) Rules, 2022, which was augmented by subsequent amendments on July 6, 2022, and April 7, 2023.

3. How does this work – Categories and Targets

There are 4 (four) categories (“**Category**”) of plastic waste and ascending grading of targets for recycling each of these categories and the type of Entity you are (Producer, Importer or Brand Owner (including retailers)):

- **Category 1:** Rigid plastic packaging
- **Category 2:** Flexible plastic packaging
- **Category 3:** Multi-layered packaging
- **Category 4:** Plastic sheets

Importantly, from this financial year onwards (2023-24), the EPR target is 100% (one hundred percent) across all Entities. The EPR target is, in effect, the retrieval or collect-back target. Within this, an Entity may have specific reuse, and recycle targets. Entities also have targets for recycled content in the packaging materials used. The waste which is not reused or recycled should be treated as per these guidelines: for e.g. – used for energy recovery, cross-processing, road construction, or waste to oil. There are exceptions or different yardsticks for certain industries (for e.g. – the cement kiln industry).

4. Registration and Nodal Agency:

The Central Pollution Control Board (“**CPCB**”) and the various State Pollution Control Boards (“**SPCB**”) are the nodal agency for registration, inspection and enforcement of these Rules.

Each Entity has to get registered with CPCB and with various SPCBs depending on the site of the manufacturing units and cannot carry on business without the registration. The registration or license is valid only for 1 (one) year, extendable by 3 (three) years.

5. Compliance

- a. The registration and the reporting have to be made for each Category of waste.
- b. The Entities (Producer, Brand Owner, Importer) must provide an ‘action plan’ to the CPCB with targets for each applicable category at the time of application for registration and renewal.
- c. Compliance is achieved by the Entities (Producer, Brand Owner, Importer) securing sufficient EPR certificates through one or more registered waste processors (i.e. Plastic Waste Processors). Thereafter, annual returns has to be made with CPCB or SPCB or PCC (as prescribed) on the plastic packaging waste collected and processed/ recycled, in the prescribed proforma by such government body. Note that the annual return for FY 2022-23 has to be filed by October 31, 2023.
- d. Separately, the Plastic Waste Processors also have to separately file the annual returns with CPCB.
- e. The CPCB and SPCBs are then required to verify and inspect the returns and also cross-verify the claims filed by various entities in the same ecosystem (for e.g. – cross- verify Producer’s numbers with the Plastic Waste Processor’s reporting or market place’s reporting).

6. Consequences of failure or false reporting:

- a. **Suspension/ revocation of license:** If the reporting to CPCB or SPCB is false, the licenses can be revoked and the Entity cannot run its business.
- b. **Environmental compensation:** The Rules explicitly state that, based on the principle of ‘polluter pays’, environmental compensation will be levied for non-fulfilment of EPR targets by the relevant Entities. Payment of environmental compensation, however, would not absolve the said Entities of their EPR obligations. The unfulfilled EPR obligations for a

particular year shall be carried forward for a period of 3 (three) years. The compensation levied will be returned in the event shortfall is addressed within 3 (three) years².

c. Penalty under the Environment (Protection) Act, 1986: Any person found responsible for breaching the EPR guidelines shall be penalized under the Environment (Protection) Act, 1986, which stipulates a fine of a minimum amount of INR 10,000 up to INR 15,00,000. Any company found responsible for breaching the EPR guidelines shall be penalized with a fine of a minimum amount of INR 1,00,000 up to INR 15,00,000.

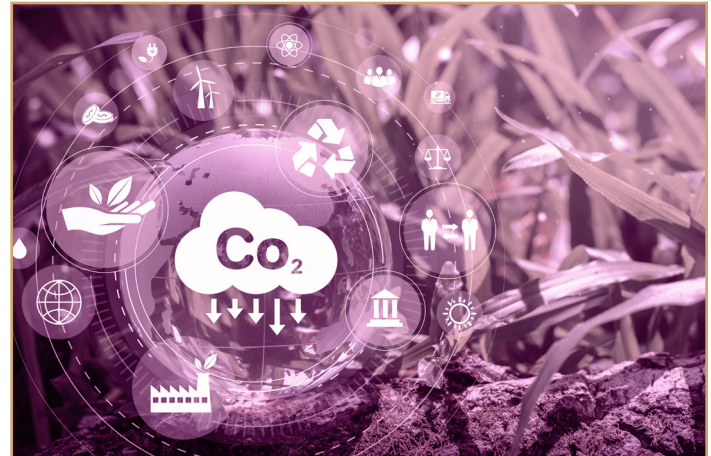
d. Penalties under the Municipal Laws: Specific penalties, if any, as provided under the municipal laws/ local state laws on plastic waste shall be applicable.

7. Surplus:

If any Entity has exceeded its EPR targets, it can be used for off-setting for previous year's shortfall, carry forwarded or sold to other Entities. The actual rules of the set-off and sale is granular and would depend on the Category and the type of Entity. This is expected to encourage compliance and improve the financial strength of ESG compliant companies.

Conclusion:

This is a step in the right direction for the country and it is clear that the government is emphasising on plastic waste reduction and has placed strict requirements on registration and compliance to avoid penal and monetary consequences or affecting the running of the business of the companies.



The Rules are wide reaching and apply to all companies who:

- directly deal with packaging materials;
- whose product line may be different but use plastic for packaging; or
- importers of plastic materials.

The Rules are also granular and each company/ entity will have to evaluate, based on its industry, categories of plastic waste and size of companies. Note that the Entities should also be in compliance with the Solid Waste Management Rules, 2016. This year may be the litmus test on the implementation.

This should not only be complied for the running of the business of an Entity, but may be an important factor to consider while evaluating any inorganic expansion of acquisition of any other company.

The implementation of these Rules is expected to result in a paradigm shift in compliance and adoption of policies and practices that are sustainable; and hence will contribute to India's climate action goals.

² The EPR Guidelines provides for the return of a certain percentage of the compensation levied based on the time elapsed from the date of levying such compensation.

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