

# e-Stewards Critical Nonconformity Policy

Management of serious violations of the e-Stewards program

## 1.1 Authority

The Executive Director shall have the authority to implement the following procedures and sanctions when a potential or actual Critical Nonconformity (CNC) with the e-Stewards Standard or certification requirements has been identified for any potential or existing e-Stewards Recycler/Refurbisher, either through the certification body audit process or from any other source.

## 1.2 Responsibility

The Executive Director may assign responsibility to the e-Stewardship Policy Director or another to administer this process or any portion of this process, and may involve the applicable certification body.

## 1.3 Definitions

**1.3.1 Certification requirements:** The certification requirements for an e-Stewards Recycler/Refurbisher to obtain and maintain its e-Stewards certification set forth in the e-Stewards Standard (including relevant appendices), the License Agreement with BAN, and adopted policies and procedures as posted on the e-Stewards.org website.

**1.3.2 Critical Nonconformity:** A category of serious nonconformity established by BAN outside the normal set of identified Management System Nonconformity typically identified by certification bodies. This category involves BAN directly in the identification of and/or responses to serious nonconformity, and may result in BAN withholding or revoking the e-Stewards Recycler/Refurbisher licensing agreement for a period of time (see 1.5 Sanctions).

**1.3.2.1** A nonconformity taking place by a licensed e-Stewards Recycler/Refurbisher/organization or by a prospective e-Stewards organization that is contracted with an e-Stewards certification body is defined as a Critical Nonconformity when one or more of the following takes place:

- a. Willful violation of the import/export provisions of the Standard such that hazardous electronic waste is intended to be exported from a member country of the OECD, EU, or Liechtenstein and imported into any country outside of that group.

b. Willful violation of the prison or child labor provisions of the Standard intending to result in hazardous electronic waste being sent to disallowed prison or child labor operations.

c. Willful violation of the Standard such that there is, or has been, a significant risk of real harm or damage being caused to human health or the environment due to the actions of the licensed or prospective e-Stewards recycler/refurbisher.

d. Willful efforts to deceive the conformity assurance program of the e-Stewards certification program, including activities to:

- 1) Hide locations, such as Ancillary Sites, facilities, related businesses, storage warehouses,
- 2) Prevent auditors from obtaining information or records,
- 3) Keep double books, and/or
- 4) Defeat the object and purpose of unannounced inspections or geolocation trackers employed by the e-Stewards Performance Verification program.

e. Actions other than those above, which, as judged by the Executive Director of BAN to have, or are likely to, seriously endanger the credibility and viability of BAN or the e-Stewards program. This may include a pattern of repeat major nonconformities, such as repeated failure to perform adequate downstream accountability requirements.

**1.3.2.2** The following conduct shall also be considered a CNC should it take place by a licensed or prospective e-Stewards Recycler/Refurbisher, its owner or by individuals on their executive team at any time in the last 5-year period of continuous ownership, or the 5-year period prior to contracting with an e-Stewards certification body:

a. Violation of laws pertaining to any electronics recycling business operations that:

- (1) Exceeded \$100,000 in penalties/fines within a one-year period. If fines are under appeal, this trigger can be deferred until resolution,
- (2) Entailed jail time of owner or executive team member(s), or
- (3) Recurred 3 times within the last 5-year period (same violation), and/or

b. Repeated instances (at least 2 times in the course of the last 5 years) of willful misrepresentation (dishonesty) as determined by the Executive Director, to customers, government officials, auditors, certification bodies, and/or BAN staff.

**1.3.3 e-Stewards Standard/Standard:** The current operational e-Stewards® Standard for Responsible Recycling and Reuse of Electronic Equipment®, which is published at [www.e-Stewards.org](http://www.e-Stewards.org).

**1.3.4 Evidentiary Report (ER):** Document prepared by BAN entailing the results of the investigation, providing all necessary evidence of nonconformity, including which sections of the Standard are thought to be in breach. (See template for ER in Appendix A)

**1.3.5 Executive Director:** The chief executive officer of the Basel Action Network, owner of the e-Stewards certification program.

**1.3.6 Initiator:** Any BAN staff, consultant, CB, or external party who is acting in good faith that has identified a complaint or suspected CNC and decides to initiate a Request for Investigation.

**1.3.7 Management System Nonconformity:** A major or minor nonconformity with the e-Stewards Standard, as typically defined and determined by the contracted certification body.

**1.3.8 Request for Investigation:** Document entailing the preliminary complaint, cause for investigation, and preliminary evidence.

**1.3.9 Suspension:** The temporary invalidation of an e-Stewards license agreement or certificate pending either:

- Resolution of the issue causing suspension, in the time allowed, or
- Withdrawal of licensing agreement and/or certificate due to failure to resolve the issues in the time allowed.

During the suspension period, the company must cease use of the e-Stewards Marks and name in any reference to e-Stewards certification status until the certificate is restored.

**1.3.10 Withdrawal (cancellation):** A termination of an e-Stewards license agreement and/or certificate. The Recycler/Refurbisher must cease use of the e-Stewards Marks and name in any form and in any reference to e-Stewards certification status. Certification can only be reinstated by completing a new certification process.

**1.3.11 Letter of Outcome:** Final letter stipulating the results of a CNC determination, whether a suspension or withdrawal has incurred, and the terms of such. This letter will be sent to the CEO of the company concerned and copied to the relevant certification body

## **1.4 Investigatory Process**

**1.4.1** The initiator provides a written Request for Investigation of a potential serious

nonconformity containing all available pertinent information to the e-Stewardship Policy Director or Executive Director.

**1.4.2** The e-Stewards Policy Director or Executive Director shall determine whether there are sufficient grounds for concern to conduct an investigation into a possible serious nonconformity. After initial review, if the alleged nonconformity is not a CNC, the investigation is passed to the appropriate CB. If concerns remain that a CNC may have occurred, BAN will initiate a more thorough CNC investigation.

**1.4.3** If an investigation of a possible CNC is deemed warranted, all efforts will be made to obtain objective evidence of possible nonconformity. This process may include requesting additional information from the Initiator or any other source. After this CNC investigation, the Policy Director or Executive Director may deem that there is insufficient evidence to warrant further action. However, records of the Request for Investigation, evidence, and the decision shall be retained at the BAN office. The e-Stewards Policy Director will notify the Initiator of same.

**1.4.4** When sufficient objective evidence exists that a CNC might have taken place, the Policy Director will create a DRAFT Evidentiary Report providing the evidence (e.g. who, when, what, how, and where) a CNC seems to be likely.

**1.4.5** This DRAFT Evidentiary Report will then be forwarded to the principal officers of the alleged nonconforming organization and a formal interview regarding the suspected CNC will be subsequently undertaken with them to correct and augment the DRAFT Evidentiary Report, and to better understand and test the veracity of the allegations.

**1.4.6** If the interview reveals the preponderance of the evidence to be true, possible extenuating circumstances are explored as to why the nonconformity might have occurred.

**1.4.7** The DRAFT Evidentiary Report (ER) is then adjusted as necessary based on information received from the interview or other sources, in order to create a Final ER. The Policy Director and Executive Director, with the possible involvement of the certification body, shall determine whether any nonconformity exists and whether the CNC definition has been triggered to warrant a CNC determination. If there is a nonconformity that does not rise to the level of CNC (e.g. a major or minor nonconformity with the Standard), the ER will be passed to the CB for their appropriate action. If a CNC determination is made, then BAN will make a determination of appropriate sanctions (see 1.5) and a Letter of Outcome will be sent to the CEO of the company concerned and copied to the relevant CB.

## 1.5 Sanctions in response to Critical Nonconformity

**1.5.1** When the Executive Director believes that a Critical Nonconformity exists, he/she at their reasonably objective discretion shall make a formal decision to take one of the following actions as deemed appropriate:

**a. Withdrawal from program:** In the absence of any mitigating circumstances, notification will be made to the appropriate CB that the e-Stewards license to operate within the e-Stewards certification program has been withdrawn (for an existing organization) or withheld (for those in process of becoming certified). In such cases, the certification body must immediately (within 24 hours) withdraw the organization's e-Stewards certificate. If the organization wishes to seek new e-Stewards certification in the future, it is only allowed after:

- A minimum of two years out of the program, from the date of BAN's final decision, unless BAN determines a shorter period of time is justified due to extenuating circumstances;
- Access to a new e-Stewards license has been reinstated after BAN completes a review of the corrective actions made by the organization; and
- A written approval from the Executive Director is issued allowing the organization to begin a new process of becoming certified.

If the organization wishes to seek recertification, a new audit process must be completed by an e-Stewards CB and a new license issued by BAN, before a new certificate can be issued by the CB.

**b. Suspension from program:** Should there be special mitigating circumstances in the reasonable opinion of the Executive Director that would indicate that a lesser penalty than letter a) is justified, the Letter of Outcome will notify the organization of corrective action(s) required to be completed within a defined period of time. At the same time, the Executive Director will notify the CB that the organization's license to operate within the e-Stewards certification program has been suspended or withheld (if not yet certified), pending corrective action, and therefore the CB must suspend or withhold (as applicable) the certificate immediately.

The resulting suspension of the e-Stewards certificate caused by the CNC shall be for a

term of not less than 30 days and, in any case, all corrective actions must be cleared, as determined by BAN, prior to ending the suspension. If later discoveries of nonconformity are found, the Executive Director may conclude that additional corrective action(s) must be taken, additional suspension time must be added, and/or a new CNC process must begin.

**1.5.2** For multi-sited companies, if a Critical Nonconformity is found at any one site, the consequences will apply to all their electronics recycling/refurbishing site certifications. If the company is multi-national, such consequences may, pending possible further investigation, also apply to the entire company globally.

## **1.6 Appeals Process**

**1.6.1** An alleged nonconforming organization has the right of appeal following determination of Critical Nonconformity, as well as appealing the corrective action(s) required by the Executive Director prior to the actions taken in 1.5 above, if applicable. During the appeal process, no status report will be made public until the appeal is over.

**1.6.2** The alleged nonconforming organization will submit a letter in writing providing the basis for the appeal to the Executive Director. A basis for appeal may include information that counters or refutes allegations, or provides extenuating or mitigating circumstances. Ignorance of the Certification Requirements cannot be deemed a mitigating circumstance. Should no basis be initially provided, the Executive Director will make a minimum of two appeals to the alleged nonconforming organization to provide such a basis. After such time, if no basis for appeal is provided, the appeal will be considered null and void. If evidence is provided, then the Executive Director will proceed towards appeal by calling for a voluntary ad hoc committee formed from Members of the Leadership Council to review the appeal. If no such committee can be formed, the entire Leadership Council will be tasked with reviewing the appeal. The appeal letter, including the basis for the appeal, will then be forwarded without amendment to the ad hoc committee or Leadership Council as appropriate.

**1.6.3** The Leadership Council (LC) ad hoc committee will review the appeal and bring its recommendations to the LC. The LC review will involve at a minimum studying the ER and the appeals letter, and may involve conducting an interview where BAN and the appellant organization are present at the same time. The LC then will make a written recommendation to the BAN Board of Directors, which will be the final arbiter of the appeal. The Executive Director, if a member of the Board of Directors, will recuse him/herself from deciding the final outcome. The final recommendation will come in the form of an adjusted Evidentiary Report and Letter of Outcome.

**1.6.4** All efforts will be made to conclude the appeal within 10 weeks of its filing with the Executive Director. The final decision made by the BAN Board of Directors shall be provided to the Initiator/appellant and to the Leadership Council in writing and shall be binding.

**1.7 Public reporting:** BAN reserves the right to publicly report an organization's Critical Nonconformity and resulting sanctions.

### **1.8 Records**

**1.8.1** The Policy Director shall retain the Request for Investigation and Evidentiary Reports and all other relevant records including information on actions taken to correct the Critical Nonconformity, in a suitable electronic or hard copy file in the BAN office.



**APPENDIX A**  
**Evidentiary Report Form (template)**

**Case Number:** [consisting of date, hyphen number as in (10-8-18-01)]

**Observation Location/s:**

**Date of Observation/s:**

**Attachment Descriptions:** [Description of evidentiary attachments such as photos, web screen shots, bills of lading, etc.]

**Section/s of Standard or Other Agreements Potentially Violated:** [provided in matrix format with rows indicating different violations and columns indicating text of relevant requirements violated, and likelihood of nonconformity being critical, major, or minor]

**Case Description:** [full account of evidence and concern in narrative form]

**Attachments:**

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