

1. INTERPRETATION

- 1.1 This By-law is made pursuant to section 18(2) of the Regulation.
- 1.2 Unless the context otherwise requires, the *Interpretation Act* (Alberta) and the *Environmental Protection and Enhancement Act* (Alberta), as amended, apply to this By-law.
- 1.3 Words importing persons include individuals, bodies, corporate, partnerships, trusts and unincorporated associations.
- 1.4 The headings used throughout this By-law are inserted for reference purposes only, and are not to be considered or taken into account in construing the terms or provisions of any article of this By-law nor to be deemed in any way to qualify, modify or explain the effect of any such terms or provisions.

2. DEFINITIONS

2.1 In this By-law:

- 2.1.1 “Alberta Bottle Depot Association” or “ABDA” means the organization that has the authority to represent Depots in Alberta.
- 2.1.2 “BCMB” means the Beverage Container Management Board. The BCMB is a management board within the meaning of the Environmental Protection and Enhancement Act (Alberta) whose mandate is to regulate and enhance a leading beverage container system that protects Alberta’s environment;
- 2.1.3 “By-laws” means by-laws made by the Board in accordance with the Regulation;
- 2.1.4 “Collection System Agent” or “CSA” means the collection system agent appointed by manufacturers and approved by the BCMB in accordance with the Regulation and the By-laws;
- 2.1.5 “Common Collection System” means the container collection system in Alberta that does not distinguish between Beverage Containers of similar size and material from each other based on manufacturer;
- 2.1.6 “Container” means a bottle, can, plastic cup or paperboard carton or a package made of metal, plastic, paper, glass or other material, or a combination of them, that contains or has contained a beverage;
- 2.1.7 “CSP” or “Collection Service Provider” means:
 - 2.1.7.1 a manufacturer of refillable containers that collects empty refillable Containers that contained a beverage manufactured by that manufacturer, or empty

Containers that were refillable, but which are no longer refillable that contained a beverage manufactured by that manufacturer; or

2.1.7.2 a person contracted by a manufacturer of refillable containers to collect empty refillable Containers that contained a beverage manufactured by that manufacturer or empty Containers that were refillable, but which are no longer refillable that contained a beverage manufactured by that manufacturer.

2.1.8 “CSP Agreement” means an agreement entered into between the BCMB and a CSP regarding the roles and responsibilities of the CSP with respect to the collection of refillable Containers, the performance standards for the CSP, the method and criteria for evaluating the CSP in relation to those performance standards and any other matter relevant to the operations of the CSP.

2.1.9 “Depot” means a place operated as a business for the collection of empty Containers;

2.1.10 “Material Stream” means each category of container for which a specific handling commission is payable as identified in the By-laws;

2.1.11 “Regulation” means the Beverage Container Recycling Regulation AR 101/97, as amended.

2.1.12 “Service Agreement” means an agreement entered into between the Alberta Bottle Depot Association and a Collection Service Provider in accordance with section 4.1 of this By-law;

2.2 For the purpose of this By-law, the Alberta Gaming, Liquor and Cannabis, or an agent appointed by the Alberta Gaming, Liquor and Cannabis and acceptable to the BCMB, is deemed to be the Manufacturer of liquor.

2.3 Terms that are defined in the Regulation have the same meaning when they are used in this By-law unless otherwise indicated.

3. COLLECTION OF CONTAINERS

3.1 A Manufacturer of a beverage in a refillable Container for sale or distribution in Alberta shall:

3.1.1 collect that Manufacturer’s empty refillable Containers from all Depots and retailers accepting such containers; or

3.1.2 enter into an agreement with a CSP to collect that Manufacturer’s empty refillable Containers from all Depots and retailers accepting such Containers; or

3.1.3 enter into an agreement with the Collection System Agent to collect that Manufacturer’s refillable Containers.

3.2 If a Manufacturer of a beverage in a refillable Container enters into an agreement with the Collection System Agent, the Collection System Agent is considered a CSP for the purpose of this By-law.

3.3 A Manufacturer of a beverage in a refillable Container may be required to provide a deposit or an Irrevocable Letter of Credit to the BCMB as security for the costs involved in collecting that Manufacturer's refillable Containers from Depots in Alberta.

4. SERVICE AGREEMENTS

4.1 A CSP is responsible, along with the ABDA to submit to the BCMB an agreement between the CSP and the ABDA that complies with this By-law and that includes agreement between the CSP and the ABDA with respect to the following matters:

4.1.1 the manner and frequency of refillable container collections from Depot Operators by the CSP;

4.1.2 the manner and frequency of payments to Depot Operators by the CSP;

4.1.3 the manner by which refillable Containers collected by the CSP will be audited and how and when the audit results will be reported to Depot Operators;

4.1.4 the mandatory use of the BCMB's Quality Management System by the CSP and all Depot Operators; and

4.1.5 a dispute resolution process for disagreements between the CSP and a Depot Operator.

4.2 A CSP and the ABDA shall amend a Service Agreement entered into in accordance with this By-law to incorporate new Material Streams or changes to existing Material Streams as necessary.

4.3 A Service Agreement entered into in accordance with this By-law must be approved by the BCMB and is not in force or effect until that approval is granted.

4.4 If the Collection Service Provider and the ABDA do not submit a Service Agreement, the BCMB may impose a deadline on the Collection Service Provider and the ABDA for the submission of a Service Agreement.

4.5 If the Collection Service Provider and the ABDA do not submit a Service Agreement satisfactory to the BCMB, or if after a Service Agreement is approved, but during the term of the Service Agreement, the BCMB determines that the wording of the Service Agreement is contrary to the By-laws or the Regulation or is being interpreted in a manner which is contrary to the By-laws or the Regulation, or the Service Agreement fails to recognize a material change in the operation of the collection system, the BCMB may specify the amendments to the Service Agreement that it requires in order to approve the Service Agreement or in order to maintain its approval, and may impose a deadline for the submission of an amended Service Agreement containing the required amendments.

4.6 If the Collection Service Provider and the ABDA do not comply with a deadline imposed by the BCMB under this Article, the BCMB may pass a By-law prescribing any or all matters related to the efficient operation of the collection system by the Collection Service Provider and the Depots.

4.7 If there is a conflict between a provision of the Service Agreement and the By-laws, the By-laws shall prevail over the Service Agreement.

5. GENERAL REQUIREMENTS

5.1 A CSP shall enter into a CSP Agreement with the BCMB.

5.2 A CSP shall at all times, act in good faith.

5.3 A CSP shall comply with the provisions of the Regulation, By-laws, and its CSP Agreement and Service Agreement.

5.4 A CSP shall collect only Collection Containers from Depots and shall only do so in accordance with the By-Laws and the Service Agreement.

5.5 A CSP shall pay or cause Depot Operators to be paid for refillable containers in accordance with this By-law and the applicable Service Agreement, if any.

5.6 A CSP shall cause refillable Containers that are not considered to be suitable for re-use as a container to be recycled by a method approved by the BCMB in accordance with the Regulation.

5.7 A CSP shall conduct its operations so as to ensure adequate cash flow in order to fulfill its obligations with respect to the collection of refillable Containers for which it is responsible.

5.8 A CSP shall cooperate in the performance of any audits performed or directed by the BCMB or shall include in any agreement with its Collection Agent a requirement that the Collection Agent cooperate in the performance of any such audits

5.9 A CSP shall allow the BCMB access to its processing facilities during normal operating hours or shall include in any agreement with its Collection Agent a requirement that the Collection Agent allow the BCMB access to its processing facilities during normal operating hours.

5.10 If requested to do so by the BCMB, a CSP shall provide financial or other security related to the cost of collection of the CSP's refillable Containers.

6. INFORMATION AND RECORD KEEPING

6.1 A CSP shall keep or cause to be kept books, documents, records and accounts for the purpose of this By-law and the Regulation.

6.2 A CSP shall provide the BCMB with such information relating to the collection of its refillable Containers as specified in this By-law or any other BCMB by-laws at such times specified in those by-laws or as may be requested by the BCMB from time to time.

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- 6.3 A CSP shall provide the following information to the BCMB on a monthly basis:
- 6.3.1 Aggregate number of Containers sold in each Material Stream, as reported to the CSP by manufacturers;
 - 6.3.2 Aggregate number of Containers recovered from Depots and retailers in each Material Stream;
 - 6.3.3 Number of Containers collected from each Depot and retailer in each Material Stream;
- 6.4 A CSP shall provide the following information to the BCMB on annual basis:
- 6.4.1 Number of Containers recycled or not recycled under the Regulation;
 - 6.4.2 Information regarding the end of life disposition of Containers recycled under the Regulation organized by Material Stream or the method of recycling of those Containers as managed by the CSP;
 - 6.4.3 Confirmation that all contracts between manufacturers and third-party recycling agents include the obligation to disclose recycling methodology and other particulars in respect of the disposition of materials;
- 6.5 A CSP shall provide the BCMB with its business continuity plan or emergency response plan and a summary of the process taken to ensure the effectiveness of the plan;
- 6.6 A CSP shall comply with the *Freedom of Information and Privacy Act* (Alberta), as amended, and the *Personal Information Protection Act* (Alberta), as amended, in response to any information requests from the BCMB related to a request received by the BCMB in accordance with those Acts, which requires the BCMB to disclose records which are in the possession of a CSP unless it can be shown that:
- 6.6.1 a CSP had a reasonable expectation of confidentiality in respect of such information and that disclosing such information would be harmful to a CSP's business interests, all in accordance with section 16 of the *Freedom of Information and Privacy Act* (Alberta);
 - 6.6.2 a CSP can demonstrate that any such records or an applicable portion thereof are exempt from disclosure under Part 1, Division 2 of the *Freedom of Information and Privacy Act* (Alberta); or
 - 6.6.3 a CSP is prohibited from disclosing any such records or an applicable portion in compliance with the *Personal Information Protection Act* (Alberta).
- 6.7 All financial information and information concerning the volume of refillable Containers collected by individual Depots shall be kept confidential by a CSP and shall not be disclosed by a CSP to a party other than the BCMB unless a CSP is required to do so by law or the CSP has the consent of the Depot Operator to do so. However, a CSP may aggregate otherwise confidential information and make public such aggregated information.

6.8 A CSP shall keep confidential all trade secrets, process or techniques that it learns as a result of its position as a CSP.

7. EVALUATION OF THE CSP

7.1 The BCMB may evaluate the CSP from time to time. This evaluation will be based upon:

7.1.1 a CSP's compliance with the provisions of the Regulation and applicable BCMB By-laws;

7.1.2 a CSP's compliance with the terms of its CSP Agreement;

7.1.3 a CSP's compliance with the terms of the Service Agreement between the CSP and the ABDA in force during the period relevant to the evaluation;

7.1.4 the proper recycling of all recovered and recyclable refillable Containers and reconciliation of all material flows; and

7.1.5 the provision by a CSP of information requested by the BCMB in a complete and timely fashion.

7.2 To assist with the BCMB's ongoing evaluation of the CSP, the CSP shall provide a written self-evaluation on an annual basis, no later than 90 days after the end of each operating year.

7.3 The BCMB shall provide to a CSP a written evaluation of the CSP's performance on a biennial basis no later than 90 days after the receipt of the CSP's self-evaluation provided pursuant to section 7.2 above. If, during the BCMB's ongoing evaluation of the CSP, the BCMB identifies any material deficiency in the CSP's performance, the BCMB shall provide to the CSP a written notification of such deficiency.

7.4 A CSP shall respond in writing to any matter raised in the BCMB's ongoing or biennial evaluation of a CSP in a timely fashion, and shall:

7.4.1 provide an action plan to rectify any deficiency or deficiencies noted in the BCMB's evaluation and/or notification pursuant to this By-law; and

7.4.2 where the BCMB identifies any breach of a CSP's obligations under this By-law and notifies and advises a CSP that such breach must be corrected, correct such breach within 30 days or, if it is not reasonably practical to expect a CSP to fully correct such breach within 30 days and diligently continue to take steps to correct such breach thereafter until it is fully corrected.

8. CONTRAVENTION OF THE REGULATION

8.1 In accordance with the Regulation, a Manufacturer of a beverage in a refillable Container for sale or distribution in Alberta who does not provide a collection service capable of recovering the manufacturer's empty refillable Containers from all Depots and retailers accepting such containers, or who does not use the Common Collection System is guilty of an offence and liable:

- 8.1.1 In the case of an individual, to a fine of not more than \$50,000, or
- 8.1.2 In the case of a corporation, to a fine of not more than \$500,000.