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## **1. INTERPRETATION**

- 1.1. This By-law is made pursuant to section 18(1) of the Regulation.
- 1.2. Except as otherwise specified in any transitional provisions, this By-law is effective February 1, 2019.
- 1.3. Unless the context otherwise requires, the *Interpretation Act* (Alberta) and the *Environmental Protection and Enhancement Act* (Alberta), as amended, apply to this By-law.
- 1.4. For the purpose of this By-law, reference to a “business day” in relation to a Depot is reference to any day that the Depot is required to be operating in accordance with the Depot’s Permit.
- 1.5. Words importing persons include individuals, bodies corporate, partnerships, trusts and unincorporated associations.
- 1.6. 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, unless the context otherwise requires:
  - 2.1.1. “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.
  - 2.1.2. “Board” means the Board of Directors of the BCMB.
  - 2.1.3. “By-laws” means by-laws made by the Board in accordance with the Regulation.
  - 2.1.4. “Class D Depot” means a Depot that has been issued a Permit to operate a Class “D” Depot in Alberta.
  - 2.1.5. “Collection Service Provider” or “CSP” means a manufacturer that collects empty refillable Registered Containers that contained a beverage manufactured by that manufacturer or a person contracted by a manufacturer to collect empty refillable Registered Containers that contained a beverage manufactured by that manufacturer.

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- 2.1.6. “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.
  - 2.1.7. “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.
  - 2.1.8. “Data Collection Agent” or “DCA” means the person appointed by the BCMB for the purpose of collecting and analyzing information about the beverage container recycling system in Alberta and reporting on that information.
  - 2.1.9. “Deposit Refund” means a refund provided by a Depot to a person returning an empty Registered Container to the Depot in accordance with the Regulation and includes a cash refund or any equivalent method of refund agreed to by the person receiving the refund.
  - 2.1.10. “Depot” means a place operated as a business for the collection of empty Containers.
  - 2.1.11. “Depot Manager” means the individual identified by the Permit Holder as the individual primarily responsible for the day to day operations of a Depot.
  - 2.1.12. “Industry Email Address” means the email address assigned by the BCMB to each Depot in conjunction with its Permit.
  - 2.1.13. “Large Rural Area” means a municipality with a population of more than 4,000 and less than 10,000.
  - 2.1.14. “Metro Area” means the City of Edmonton and the City of Calgary.
  - 2.1.15. “Non-Beverage 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 has never contained a beverage.
  - 2.1.16. “Permit” means a permit to operate a Depot issued by the BCMB in accordance with the Regulation and the By-laws.
  - 2.1.17. “Permit Holder” means an individual or corporate entity named in a Permit.

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- 2.1.18. “Public Road” means a roadway as defined in the *Traffic Safety Act*, RSA 2000, c.T-6 as amended from time to time, which roadway is designed for travel primarily or exclusively by motorized vehicles, but does not include a lane, alley or a dirt road.
  - 2.1.19. “Quality Monitoring System” or “QMS” means the system administered by the BCMB for the purpose of communication and issue management and resolution.
  - 2.1.20. “Registered Container” means a Container that has been registered by the BCMB in accordance with the Regulation and the By-laws.
  - 2.1.21. “Regulation” means the *Beverage Container Recycling Regulation* AR 101/97, as amended.
  - 2.1.22. “RFA” means a Request for Applications issued by the BCMB requesting applications for a Permit.
  - 2.1.23. “Rural Area” means a municipality with an official population of less than 10,000.
  - 2.1.24. “Service Agreement” means an agreement entered into between the Alberta Bottle Depot Association and a Collection System Agent or Collection Service Provider, prescribing the manner and frequency of Container collections, the manner and frequency of payments and other matters related to the efficient operation of the beverage container system.
  - 2.1.25. “Small Rural Area” means a municipality with an official population of 4,000 or less.
  - 2.1.26. “Uniform Code of Accounts” or “UCA” means the series of forms identified as such and provided to Depot Permit Holders by the Data Collection Agent for the purpose of collecting financial and operational data on an annual basis.
  - 2.1.27. “Urban Area” means a municipality with an official population equal to or greater than 10,000.
- 2.2. Unless otherwise indicated, terms that are defined in the Regulation have the same meaning when they are used in this By-law.

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### **3. NUMBER AND LOCATIONS OF DEPOTS**

- 3.1. For the purpose of this By-law, the population of an area shall be determined based on the most recent Government of Alberta Municipal Affairs Population List.
- 3.2. In determining the number and location of Depots to be permitted in Alberta, the BCMB shall have regard to the following criteria:
  - 3.2.1. patterns of population growth;
  - 3.2.2. closure of existing Depots;
  - 3.2.3. the number and nature of complaints received from the public regarding the collection of Containers generally; and
  - 3.2.4. any other criteria the BCMB considers relevant in order to maintain a viable Container recovery system.
- 3.3. Unless otherwise directed by the Board, the number of Depots allowed in a Metro Area shall be calculated by dividing the population of that Metro Area by 40,000.
- 3.4. Unless otherwise directed by the Board, the number of Depots to be allowed in an Urban Area shall be calculated by adding 10,000 to the population of that Urban Area and dividing that number by 30,000.
- 3.5. Unless otherwise directed by the Board, no new Permit may be issued in a Metro or Urban Area for a Depot that will be located within a 3 kilometre radius of an existing and operating Depot.
- 3.6. Unless otherwise directed by the Board, no new Permit may be issued in a Rural Area for a Depot that will be located within a 24 kilometre driving distance by Public Road, of an existing and operating Depot in a Rural Area, or within a 10 kilometre driving distance by Public Road of an existing and operating Depot in an Urban or Metro Area.

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#### **4. PERMIT APPLICATIONS**

Sections 4.1 to 4.18 of this By-law do not apply to a Class D Depot.

##### ***Application Process***

- 4.1. An application for a new Permit must be submitted in response to and in accordance with an RFA unless the application relates to a location which is the subject of an existing Permit.
- 4.2. An applicant for a Permit relating to a location which is the subject of an existing Permit must submit an application in the form specified by the BCMB for that purpose. The BCMB may require either the applicant or the current Permit Holder to provide a deposit to the BCMB pending receipt of the final Uniform Code of Accounts from the current Permit Holder. The deposit will be refunded if the Uniform Code of Accounts is received within six (6) months from the date that the Permit expires or forfeited if the Uniform Code of Accounts is not received within that time period.
- 4.3. The decision whether or not to issue an RFA is in the sole discretion of the BCMB, taking into consideration:
  - 4.3.1. The population of the Metro Area, Urban Area or Rural Area;
  - 4.3.2. Patterns of population growth;
  - 4.3.3. Anticipated population growth;
  - 4.3.4. The closure of existing Depots;
  - 4.3.5. The number and nature of complaints received from the public regarding the collection of Containers generally; and
  - 4.3.6. Any other criteria the BCMB considers relevant in maintaining a viable Container recovery system.

##### ***Applicant Qualifications***

- 4.4. An applicant for a Permit must be at least 18 years of age.
- 4.5. An applicant for a Permit may be required to prove English proficiency in one of two ways:
  - 4.5.1. proof of birth and/or education in an English-speaking country; or

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- 4.5.2. a Canadian Language Benchmark score of six (6) or better on speaking and listening and a score of four (4) on reading and writing.
  - 4.6. If the proposed Permit Holder is an individual or two or more individuals, the applicant for the Permit must be the proposed Permit Holder or one of the proposed Permit Holders.
  - 4.7. If the proposed Permit Holder is an incorporated entity, the applicant must be able to provide proof of authorization to make the application on behalf of that incorporated entity.
  - 4.8. An applicant for a Permit must be able to demonstrate that the proposed Permit Holder has operating capital or a line of credit in an amount no less than three month's operating expenses as projected in the budget for the Depot submitted with the application, or the following amount, whichever is greater:
    - 4.8.1. for a Depot located in a Small Rural Area: \$10,000;
    - 4.8.2. for a Depot located in a Large Rural Area: \$20,000;
    - 4.8.3. for a Depot located in an Urban Area: \$40,000; and
    - 4.8.4. for a Depot located in a Metro Area: \$60,000.
  - 4.9. An applicant for a Permit in a Rural Area may be required by the BCMB to provide financial information in addition to that listed in section 4.8, particularly where the historical annual Container volume or anticipated annual Container volume for the Depot is below two (2) million Containers.
  - 4.10. An applicant for a Permit must submit to the BCMB a criminal record check relating to the applicant and any other individual proposed Permit Holders, or where the application is on behalf of an incorporated entity, a criminal record check relating to all the Directors and Shareholders of the incorporated entity.
  - 4.11. An application for a Permit must be accompanied by a non-refundable application fee in the amount specified by the BCMB.

***Evaluation Process***

- 4.12. The evaluation process with respect to an application for a Permit shall be as set out in the RFA applicable to the application.

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- 4.13. During the review of any application the BCMB may request oral information or additional written information from:
- 4.13.1. the applicant;
  - 4.13.2. a person who is directly affected by the application;
  - 4.13.3. a local authority, the Government of Alberta, a Government agency or the Government of Canada or an agency or department of that Government; and
  - 4.13.4. any other source the BCMB considers appropriate.
- 4.14. Before making a decision in respect of any application, the BCMB may require the applicant to hold meetings in the area where the proposed Depot will be located in order that the public may obtain information from the applicant respecting the application.
- 4.15. The decision whether or not to accept an application and to issue a Permit is in the sole discretion of the BCMB taking into account any criteria in the RFA or any other criteria adopted by the BCMB for that purpose from time to time.

***Decision***

- 4.16. The BCMB may, before making a final decision to issue a Permit, circulate the proposed decision or particulars of it for comment to the applicant, the persons who have provided concerns in writing to the BCMB concerning the application and any other persons the BCMB considers appropriate.
- 4.17. Where the BCMB issues a Permit the BCMB may provide or cause the Permit Holder to provide notice of the BCMB's decision within 15 days after the date the BCMB makes its decision:
- 4.17.1. by publishing notice of the decision in a newspaper that has daily or weekly circulation in the area in which the Depot that is the subject of the decision is or will be located; or
  - 4.17.2. by any other means provided for by the BCMB.
- 4.18. A notice under the preceding section shall contain:
- 4.18.1. a description of the application made to the BCMB;
  - 4.18.2. the name of the Permit Holder;

- 4.18.3. the location of the Depot; and
- 4.18.4. the decision of the BCMB and the date of the decision.

## **5. GENERAL PERMIT REQUIREMENTS**

- 5.1. A Permit may only be issued to an individual or group of individuals or to an incorporated entity.
- 5.2. The Permit Holder for a Depot must be the owner or lessee of the location where the Depot is operated.
- 5.3. A Permit is not transferable.
- 5.4. A Depot is subject to the conditions of the Permit for that Depot.

## **6. DEPOT RELOCATIONS**

- 6.1. A Permit for the operation of Depot is only valid for the location specified in the Permit.
- 6.2. A Permit Holder wanting to change the location specified in the Permit must provide written notice to the BCMB setting out the reasons for the proposed change in location. Upon receipt of such written notice, the BCMB may request further information regarding the proposed relocation and the Permit Holder must provide the requested information.
- 6.3. The BCMB may, in its sole discretion, allow the Permit Holder to apply for relocation if the BCMB is satisfied:
  - 6.3.1. There are special circumstances warranting such an application;
  - 6.3.2. The proposed Depot location satisfies the proximity requirements contained in Article 3 of this By-law;
  - 6.3.3. The Permit granted for the existing location was not the result of a recent RFA process and the Depot is not within its first five years of operation at that location;
  - 6.3.4. The proposed location is not within an area which is the subject of an RFA or an area that the BCMB has deemed a future growth RFA area; and
  - 6.3.5. The proposed location is not outside of the municipal boundary within which the Permit was granted by the BCMB.



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- 6.4. Should the BCMB allow the Permit Holder to apply for relocation, the BCMB shall provide the Permit Holder with an application for relocation in the form approved by the BCMB.
  - 6.5. If the Permit Holder submits a relocation application in accordance with section 6.4, the decision whether or not to grant the relocation application is in the sole discretion of the BCMB taking into consideration:
    - 6.5.1. Whether the proposed location is within close proximity of the existing location and members of the public currently served at the existing location could reasonably be expected to continue to do business at the proposed location;
    - 6.5.2. Whether the relocation is in the best interests of the industry and public;
    - 6.5.3. Any considerations raised by material received during the notice of application period in Section 6.6 of this By-law.
    - 6.5.4. Any other criteria the BCMB considers relevant in maintaining a viable Container recovery system.

***Notice of Application for Relocation***

- 6.6. Where the BCMB receives an application for relocation from a Permit Holder the BCMB may, or may require the Permit Holder to do one or both of the following:
  - 6.6.1. publish notice of the application for relocation in one or more issues of a physical or online newspaper that has daily or weekly circulation in the area in which the Depot that is the subject of the application for relocation is or will be located; and
  - 6.6.2. provide notice of the application for relocation in the manner determined by the BCMB.
- 6.7. A notice under the preceding paragraph may contain the following:
  - 6.7.1. the name of the Permit Holder;
  - 6.7.2. a description of the Depot;
  - 6.7.3. the location, nature of operation, capacity and size of the Depot to which the notice relates;
  - 6.7.4. the nature of the relocation being sought;

- 6.7.5. a statement that a person who is directly affected by the application for relocation may submit written concerns to the BCMB within 30 days of the last notice made under section 6.6 with respect to the application for relocation, or within any longer period specified by the BCMB in the relevant notice;
  - 6.7.6. the locations where information about the Depot may be obtained or is available for public disclosure; and
  - 6.7.7. any other information required by the BCMB.
- 6.8. Where the BCMB is considering an application for amendment, the BCMB may before making a final decision, circulate the proposed decision or particulars of it for comment among the applicant or Permit Holder, the persons who have provided concerns in writing to the BCMB concerning the application for amendment and any other persons the BCMB considers appropriate.

***Decision***

- 6.9. Where the BCMB grants an application for relocation, the BCMB may provide or cause the Permit Holder to provide notice of the BCMB's decision within 15 days after the date the BCMB makes its decision:
- 6.9.1. by publishing notice of the decision in a physical or online newspaper that has daily or weekly circulation in the area in which the Depot that is the subject of the decision is or will be located; and
  - 6.9.2. by any other means provided for by the BCMB.
- 6.10. Where the BCMB refuses the application for relocation, the BCMB shall provide written notice of such refusal to the applicant, within 15 days after the date it makes its decision.

**7. PERMIT RENEWALS**

- 7.1. If a Permit Holder wishes to renew a Permit, the Permit Holder shall submit an application for renewal in the form approved by the BCMB for that purpose.
- 7.2. An application to renew a Permit must be received by the BCMB no more than 180 days prior to the expiration of the term of that Permit, and no less than 60 days prior to the expiration of the term of that Permit.

- 7.3. Upon receipt of the application for renewal, the BCMB may request that the Permit Holder provide additional documentation, and the Permit Holder must provide the additional documentation requested.
- 7.4. Within 30 days after receiving the application for renewal and all information requested from the Permit Holder, the BCMB shall notify the Permit Holder whether or not the renewal is granted.
- 7.5. Whether or not to grant an application for renewal, and the length of time for which the Permit is renewed are both in the sole discretion of the BCMB taking into account the criteria adopted for that purpose from time to time by the BCMB.
- 7.6. Notwithstanding section 7.5, if an application for renewal is granted, the renewal shall not be granted for a period of time exceeding five (5) years from the expiration of the term of the Permit being renewed.

***Failure to Give Notice of Intention to Renew***

- 7.7. If a Permit Holder fails to provide to the BCMB an application for renewal and any additional information that may be requested by the BCMB, or if the renewal of the Permit is not granted, the Permit will expire at the conclusion of the existing term as long as the Permit Holder continues to comply with the terms and conditions of the Permit and with the Regulations and with all BCMB By-laws, policies and guidelines for the balance of that term.
- 7.8. The BCMB may require a Permit Holder who has not applied for renewal within the time specified to provide a deposit to the BCMB pending receipt of the final Uniform Code of Accounts. The deposit will be refunded if the Uniform Code of Accounts is received within six (6) months from the date that the Permit expires or forfeited if the Uniform Code of Accounts is not received within that time period.

**8. COMPLIANCE RESPONSIBILITIES OF PERMIT HOLDERS**

- 8.1. A Permit Holder is responsible for ensuring compliance with:
  - 8.1.1. The Beverage Container Recycling Regulation, Alta Reg 101/97, as amended;
  - 8.1.2. All BCMB By-laws including this By-law;
  - 8.1.3. All BCMB policies and guidelines;
  - 8.1.4. The terms and conditions of the Depot Permit;

- 8.1.5. A Service Agreement; and
- 8.1.6. All applicable Federal, Provincial and Municipal legislation and enactments.
- 8.2. A Permit Holder that knows or ought to have known that a Depot is not in compliance with any Federal, Provincial or Municipal requirements shall immediately notify the BCMB of the non-compliance.
- 8.3. A Permit Holder that is an incorporated entity is required to provide the BCMB with the name of at least one individual who agrees to be jointly and severally responsible with the Permit Holder for ensuring compliance in accordance with section 8.1.
- 8.4. A Permit Holder that is an incorporated entity shall provide the BCMB with the name of the Depot Manager when the Permit is issued and upon request by the BCMB and shall immediately advise the BCMB of any change in the identity or contact information of the Depot Manager.
- 8.5. An individual Permit Holder who is not primarily responsible for operating the Depot for which the Permit has been issued, shall provide the BCMB with the name of the Depot Manager when the Permit is issued and upon request by the BCMB and shall immediately advise the BCMB of any change in the identity or contact information of the Depot Manager.
- 8.6. For the purposes of this By-law, an act or omission of the Depot Manager or any other agent or employee of a Permit Holder is deemed also to be an act or omission of the Permit Holder, if the act or omission occurred:
  - 8.6.1. in the course of the Depot Manager, agent or employee exercising his or her powers or performing his or her duties on behalf of the Permit Holder; or
  - 8.6.2. in the course of the employment of the Depot Manager, agent or employee by the Permit Holder.

## **9. NOTIFICATIONS TO AND COMMUNICATIONS WITH PERMIT HOLDERS**

- 9.1. Any written notice or written communications from the BCMB relating to this By-Law or any other BCMB By-Law, BCMB policy or BCMB guideline or Permit term or condition may be sent to a Permit Holder through the Industry Email Address of the Depot identified in the Permit, or by leaving a copy of that written communication with a Permit Holder, an individual identified in accordance with sections 8.3 or 8.4 or any staff member employed at the Depot location indicated on the Permit for that Depot, or by being sent by recorded mail to the Permit Holder at the last address for the Permit Holder provided by the Permit Holder to the BCMB.

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- 9.2. Service of the written notice or communication referred to in the preceding section is effected on the Permit Holder:
- 9.2.1. If the notice is sent electronically, as of the date that the electronic communication is sent;
  - 9.2.2. If the notice is left with an individual, on the date that it is left; and
  - 9.2.3. If the document is sent by recorded mail, on the earlier of the date that acknowledgment of receipt of the recorded mail is signed, or seven (7) days after the date on which the recorded mail is sent.
- 9.3. Service by recorded mail is not invalid by reason only that the Permit Holder refuses to accept the recorded mail or the Permit Holder is no longer present at the address and has not provided the postal service with a current mailing address.
- 9.4. All written communications to the BCMB from the Permit Holder or anyone else communicating on behalf of a Depot shall be through the Quality Monitoring System or the Industry Email Address or both as appropriate. The Permit Holder shall regularly monitor the Industry Email Address associated with the Depot identified in the Permit or shall designate a specific individual for that purpose.

## **10. DEPOT OPERATIONAL REQUIREMENTS**

### ***General***

- 10.1. Unless otherwise provided in the relevant Permit, every Depot shall comply with the requirements set out in this section on an ongoing basis.

### ***Access Requirements and Preservation of Evidence***

- 10.2. The BCMB may enter onto the premises of a Depot at any reasonable time to conduct an inspection to determine whether there is compliance with the Regulation or BCMB By-laws, policies or guidelines.
- 10.3. The Complaints Director may:
- 10.3.1. direct that the Collection System Agent quarantine a shipment from a Depot pending a review or an investigation;
  - 10.3.2. remove and hold Containers or other products contained in shipments from a Depot to the Collection System Agent pending a review or an investigation

if there are reasonable grounds for believing that Containers in the shipment have been accepted by a Depot after having been transported into Alberta contrary to section 11 of the Regulation or that materials including Non-Beverage Containers and unregistered Containers have been included in a shipment in an effort to unlawfully claim payment of a Deposit Refund or a handling commission.

### ***Information Requirements***

- 10.4. A Permit Holder that is an incorporated entity, must provide written notice to the BCMB of any proposed transfer of shares, voting rights or any interest in that entity no later than 60 days before the proposed transfer. Upon receipt of such written notice, the BCMB may request further information regarding the proposed transfer, including financial and other information, and the Permit Holder must provide the requested information.
- 10.5. If, in the opinion of the BCMB, a proposed transfer will result in a change in the effective control of the Permit Holder, then within 30 days after receiving the written notice under section 10.4 and any other information requested from the Permit Holder in accordance with the preceding paragraph, the BCMB shall notify the Permit Holder that:
  - 10.5.1. the Permit will continue in effect with or without amendments; or
  - 10.5.2. that the operation of the Permit is suspended until the Permit Holder complies with certain requirements specified by the BCMB; or
  - 10.5.3. the Permit is cancelled.
- 10.6. If, in the opinion of the BCMB, a proposed transfer will result in a change in the effective control of the Permit Holder, the BCMB may require the Permit Holder provide a deposit to the BCMB pending receipt of the final Uniform Code of Accounts. The deposit will be refunded if the Uniform Code of Accounts is received within six (6) months from the date that the Permit expires or forfeited if the Uniform Code of Accounts is not received within that time period.
- 10.7. If a Permit Holder that is an incorporated entity transfers shares, voting rights or any interest in that entity and fails to provide the necessary written notice and any other information requested by the BCMB, the BCMB may cancel the Permit, or may suspend the operation of the Permit until the Permit Holder has provided the notice and provided such other information, at which time section 10.5. shall apply.
- 10.8. The BCMB may request from a Permit Holder or a Depot Manager any information it may require in order to properly regulate Depot operations and Depot reporting requirements, and the Permit Holder or, Depot Manager shall provide the requested information.

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***Financial Requirements***

- 10.9. A Permit Holder, other than a Class D Depot Permit Holder, shall maintain operating funds or a line of credit in the following amounts:
- 10.9.1. for a Depot located in a Small Rural Area: \$10,000;
  - 10.9.2. for a Depot located in a Large Rural Area: \$20,000;
  - 10.9.3. for a Depot located in an Urban Area: \$40,000; and
  - 10.9.4. for a Depot located in a Metro Area: \$60,000.

***Language Requirements***

- 10.10. All individual Permit Holders and Depot Managers shall prove English proficiency in one of two ways:
- 10.10.1. Proof of birth and/or education in an English-speaking country; or
  - 10.10.2. A Canadian Language Benchmark score of six (6) or better on speaking and listening and a score of four (4) on reading and writing.
- 10.11. Any individuals who are unable to provide the documents referenced in section 10.10 shall take a Canadian Language Benchmark Assessment Test through an institution approved by the BCMB and shall provide evidence to the BCMB of a score of six (6) or better on speaking and listening and a score of four (4) on reading and writing.
- 10.12. During the operating hours of a Depot, there must be one individual in attendance at the Depot who satisfies the requirements of section 10.10.

***Facility Requirements***

- 10.13. A Depot must meet or exceed the following minimum interior size requirements:
- 10.13.1. In Metro Areas, a Depot must have a minimum of 5,000 square feet interior space;
  - 10.13.2. In Urban Areas, a Depot must have a minimum of 3,000 square feet interior space;  
and
  - 10.13.3. In Rural Areas, a Depot must have a minimum of 1,500 square feet interior space.

10.14. Unless otherwise preapproved by the BCMB, a Depot must have at least the number of counting/sorting stations specified below, each counting/sorting station consisting of an outside window for receiving Containers, or 1.5 lineal metres of counter space within a Depot:

10.14.1. In Metro Areas: five (5) counting/sorting stations;

10.14.2. In Urban Areas: four (4) counting/sorting stations; and

10.14.3. In Rural Areas: two (2) counting/sorting stations.

10.15. A Depot must have adequate loading facilities, including:

10.15.1. depressed loading dock; and/or

10.15.2. large double doors or overhead doors.

10.16. A Depot must have a secure, indoor storage area for the storage of Containers and shipping containers supplied by the Collection System Agent appointed under the Regulation or by a manufacturer of non-refillable Containers providing its own collection service.

10.17. A Depot must have adequate heating and lighting to ensure the comfort and safety of customers and staff.

10.18. A Depot must be equipped with a wash sink, or some other BCMB approved method that allows customers to wash their hands after returning Containers.

10.19. A Depot must have the signage as specified by the BCMB from time to time, but which, at a minimum:

10.19.1. identifies the Depot by name and makes clear that the purpose of the location is the collection of empty Registered Containers;

10.19.2. describes the hours of operation of the Depot;

10.19.3. describes the types of Registered Containers that can be returned to the Depot and their applicable Deposit Refund rates;

10.19.4. sets out the offences prescribed by the Regulation and the applicable penalties; and

10.19.5. contains any logos or trademarks specified by the BCMB.



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***Yard and Premises Requirements***

- 10.20. In Metro Areas, a Depot must have designated customer parking for a minimum of twelve (12) vehicles.
- 10.21. In Urban Areas, a Depot must have designated customer parking for a minimum of ten (10) vehicles.
- 10.22. In Rural Areas, a Depot must have designated customer parking for a minimum of five (5) vehicles.
- 10.23. Depot yard facilities must be suitable for good access in all weather conditions.
- 10.24. A Depot must provide separate trash and recycling receptacles for customer use for disposal of trash and recyclable materials associated with the return of used Containers.
- 10.25. The exterior/interior of the Depot must be maintained for safety, and as otherwise required in the Permit.

***Equipment Requirements***

- 10.26. A Depot must have, or have access to:
  - 10.26.1. a forklift; or
  - 10.26.2. where a Depot has a depressed loading dock, a pallet jack for loading Containers.
- 10.27. A Depot must have:
  - 10.27.1. a suitable method of litter control;
  - 10.27.2. a telephone and an active email address;
  - 10.27.3. on site access to the internet; and
  - 10.27.4. a cash register which is capable of generating a customer receipt showing the number of Registered Containers at each refund rate, and the total refund as well as the name, address and telephone number of the Depot.

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***Administrative Requirements***

- 10.28. Depots handling in excess of six (6) million Containers per year must have a Point of Return system which meets the requirements established by the BCMB from time to time, including the ability to display to the customer the number of Registered Containers at each refund rate, and the total refund payable to the customer.
- 10.29. A Depot must provide accurate Deposit Refunds for all Registered Containers submitted by the general public to that Depot.
- 10.30. When requested by the customer, a Depot operator must provide the customer with a receipt from the cash register.

***Cleanliness and Image Requirements***

- 10.31. All individuals working at a Depot must be knowledgeable about products being handled and refunds being paid to customers.
- 10.32. All public areas, including public washrooms, at a Depot must be clean and adequately maintained.
- 10.33. All Depot employees must wear an industry approved and branded uniform.

***Operating Requirements***

- 10.34. A Permit Holder, the individual primarily responsible for operating a Depot, and all individuals working at a Depot shall, in all dealings with customers, the Collection System Agent appointed under the Regulation, any Collection Service Provider, the BCMB and the general public, adhere to the highest standards of honesty, integrity, fair dealings and ethical conduct.
- 10.35. A Permit Holder, the individual primarily responsible for operating a Depot, and all individuals working at a Depot shall comply with any Depot Code of Conduct approved by the BCMB.
- 10.36. Unless otherwise specified in the Permit, or unless otherwise approved by the BCMB, a Depot must be operated as proposed in the original application for the Permit for that Depot.
- 10.37. A Depot in a Metro Area must be open to accept Containers no less than 52 hours per week including a minimum of eight (8) hours on a Saturday or Sunday.
- 10.38. A Depot in an Urban Area with a population greater than 20,000 must be open to accept Containers no less than 40 hours per week including a minimum of eight (8) hours on a Saturday or Sunday.

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- 10.39. A Depot in an Urban Area with a population of less than 20,000 must be open to accept Containers no less than 28 hours per week including a minimum of six (6) hours on a Saturday or Sunday.
- 10.40. A Depot in a Rural Area located in a town, village or hamlet with a population greater than 4,000 must be open to accept Containers no less than 28 hours per week including a minimum of six (6) hours on a Saturday or Sunday.
- 10.41. A Depot in a Rural Area located in a town, village or hamlet with a population less than 4,000 must be open to accept Containers no less than 16 hours per week including a minimum of six (6) hours on a Saturday or Sunday.
- 10.42. A Depot must be capable of staffing all sorting/counting stations during peak volume periods.
- 10.43. The Depot and Depot yard facilities must be suitable for good access by the Collection System Agent and a Collection Service Provider in all weather conditions.
- 10.44. A Depot must provide an accurate Deposit Refund in the amount specified in the Regulation for each empty Registered Container that is reasonably identifiable as having contained a beverage, except for Containers that can reasonably be identified as having been transported into Alberta by anyone other than a manufacturer who has transported the Container for the purpose of selling a beverage in the Container in Alberta.
- 10.45. A Depot shall ensure that shipments of Containers are free from hazardous objects or substances including, but not limited to biohazardous materials, chemicals, drugs, bullets and explosives.
- 10.46. A Depot shall comply with all Service Agreements approved by the BCMB.
- 10.47. 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.

## **11. REGULATORY COMPLIANCE AND ENFORCEMENT**

### ***Scope of Compliance Standards***

- 11.1. Each Depot shall meet the standards established by the BCMB in this By-law in relation to:
- 11.1.1. The provision of Deposit Refunds to customers presenting empty Registered Containers to the Depot operator (“Refund Compliance”);

- 11.1.2. The accurate sorting of Containers for pick-up by or shipment to the Collection System Agent and Collection Service Provider, and reporting with respect to those Containers (“Quality Control Compliance”);
  - 11.1.3. Completion and reporting of the Uniform Code of Accounts (“UCA Compliance”);
  - 11.1.4. The operational and administrative requirements set out in this By-law and any applicable BCMB policies and guidelines (“Operational Compliance”); and
- 11.2. The failure of a Depot to meet the standards established by the BCMB with respect to these areas of compliance will result in progressive enforcement actions.

***Refund Compliance Standard***

- 11.3. Each Depot shall provide accurate Deposit Refunds to customers.
- 11.4. The BCMB will assess Refund Compliance based on audits completed by the BCMB or by third parties retained by the BCMB for that purpose.
- 11.5. Each audit will compare:
- 11.5.1. the total dollar amount of the Deposit Refunds paid to the auditor; and
  - 11.5.2. the total dollar amount of the Deposit Refunds that should have been paid to the auditor based on the number of Registered Containers presented to the Depot multiplied by the Deposit Refund payable with respect to each of those Registered Containers in accordance with the Regulation.
  - 11.5.3. If the dollar amount paid by the Depot is less than what should have been paid in accordance with the Regulation, the BCMB will subtract the amount that should have been paid (a) from the actual amount paid (b) to calculate the difference (c). The difference will be divided by the amount that should have been paid (a) and multiplied by 100 to ascertain a percentage variance. The following formula will be used:  
  
$$(b) - (a) = (c), (c) \div (a) \times 100 = \%$$
  - 11.5.4. percentage variances shall be rounded to the nearest one decimal place.
- 11.6. The BCMB shall send the Depot the results of each audit in a written audit report.

11.7. A Depot that performs at a percentage variance equal to -3% or better will be considered to be in compliance. A Depot that performs at a percentage variance worse than -3% will be considered to be non-compliant. If the Depot has refunded a greater amount than required by the Regulation, the Depot will be considered to be in compliance.

Zone 1	Variance of equal to -3% or better	Pass
Zone 2	Variance of -3% or worse	Fail

Any over payment will be considered compliant

11.8. A Depot may challenge a Zone 2 audit report in writing by delivering a written response to the BCMB within seven (7) days of the date that the written audit report is sent to the Depot's industry email account.

***Refund Compliance Enforcement***

11.9. There are three enforcement levels. A Depot enters Level 1 if an audit result is classified as Zone 2.

***Level 1 Steps and Outcomes***

11.10. Where a Depot has entered Level 1, the BCMB may conduct a Level 1 audit.

11.11. If the BCMB conducts a Level 1 audit, the audit shall be no sooner than 10 days after the previous audit and no later than 180 days after the previous audit.

11.12. If the result from the Level 1 audit is classified as Zone 1, the Depot will exit Level 1.

11.13. If the result from the Level 1 audit is classified as Zone 2, the Depot shall pay a compliance fee and will enter Level 2.

***Level 2 Steps and Outcomes***

11.14. Where a Depot has entered Level 2, the BCMB may conduct a Level 2 audit.

11.15. If the BCMB conducts a Level 2 audit, the audit shall be no sooner than 10 days after the previous audit and no later than 180 days after the previous audit.

11.16. If the result from the Level 2 audit is classified as Zone 1, the Depot will re-enter Level 1.

11.17. If the result from the Level 2 audit is classified as Zone 2, the Depot shall pay a compliance fee and the BCMB may conduct a further Level 2 audit.

11.18. If the BCMB conducts a further Level 2 audit, the audit shall be no sooner than 10 days after the previous audit and no later than 180 days after the previous audit.

11.19. If the result from the further Level 2 audit is classified as Zone 1, the Depot will re-enter Level 1.

11.20. If the result from the further Level 2 audit is classified as Zone 2, the Depot shall pay a compliance fee and enter level 3.

***Level 3 Steps and Outcomes***

11.21. Where a Depot has entered Level 3:

11.21.1. The Permit Holder may be required to meet with the BCMB Director, Compliance;

11.21.2. the Depot shall complete additional training as specified by the BCMB; and

11.21.3. the BCMB may conduct a Level 3 audit.

11.22. If the BCMB conducts a Level 3 audit, the audit shall be no later than 60 days of the previous audit.

11.23. If the audit result from the Level 3 audit is classified as Zone 1, the Depot will re-enter Level 2.

11.24. If the audit result from the Level 3 audit is classified as Zone 2, the Depot shall pay a compliance fee and the Refund Compliance History shall be forwarded to the Complaints Director to be dealt with in accordance with Part 12 of this By-law.

***Quality Control Compliance Standard***

11.25. Each Depot shall:

11.25.1. accurately sort Registered Containers for pick-up by or shipment to the Collection System Agent; and

11.25.2. accurately report the Registered Containers sorted for pick-up or shipment.

***Quality Control Compliance Audit***

11.26. The BCMB will assess Quality Control Compliance based on Quality Control audits performed by the Collection System Agent.

11.27. The Collection System Agent will conduct Quality Control audits in the manner and frequency set out in the Service Agreement or as otherwise specified by the BCMB.

11.28. Each audit will assess the variance between:

11.28.1. the number of Registered Containers of a material stream reported as being shipped on the tag attached to a shipping container; and

11.28.2. the number of Registered Containers of a material stream actually shipped in the shipping container attached to that tag.

11.29. The Collection System Agent will provide the Depot with the results of a Quality Control audit in accordance with the Service Agreement.

11.30. A Depot may challenge a Quality Control audit in the manner set out in the Service Agreement.

11.31. The Quality Control results will be classified as follows:

Zone 1	Variance of less than or equal to +/- 2.5%
Zone 2	Variance of greater than +/- 2.5%

***Quality Control Compliance Enforcement***

11.32. There are three enforcement Levels. A Depot enters Level 1 if any of the following occurs:

11.32.1. The Collection System Agent records an audit result with single material stream variance of greater than 7%; or

11.32.2. The Collection System Agent records an average material stream variance per bag greater than:

11.32.2.1. 1.7% for Containers up to 1 Litre in capacity;

11.32.2.2. 3.5% for Containers over 1 Litre in capacity; or

11.32.2.3. 2% for all Containers;

based on a three-month rolling average.

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***Quality Control Compliance Level 1 Steps and Outcomes***

- 11.33. Where a Depot has entered Level 1 the BCMB may request the Collection System Agent to conduct an audit of an entire shipment from that Depot. The Depot will not be advised of the audit.
- 11.34. If the BCMB requests the Collection System Agent to conduct a Level 1 audit, the audit will occur no sooner than 10 days after the Depot has entered Level 1. If the Level 1 audit result is classified as Zone 1, the Depot will exit Level 1.
- 11.35. If the Level 1 audit result is classified as Zone 2, the Depot shall pay a compliance fee and the Depot will enter Level 2.

***Quality Control Compliance Level 2 Steps and Outcomes***

- 11.36. Where a Depot has entered Level 2, the BCMB may request the Collection System Agent to conduct an audit of an entire shipment from that Depot. The Depot will not be advised of the audit.
- 11.37. If the BCMB requests the Collection System Agent to conduct a Level 2 audit, the audit will occur no sooner than 10 days after the Depot has entered Level 2.
- 11.38. If the Level 2 audit result is classified as Zone 1, the Depot will re-enter Level 1. If the Level 2 audit result is classified as Zone 2, the Depot shall pay a compliance fee and the Depot will enter Level 3.

***Level 3 Steps and Outcomes***

- 11.39. Where a Depot has entered Level 3, the BCMB may request the Collection System Agent to conduct an audit of an entire shipment from that Depot. The Depot will not be advised of the audit.
- 11.40. If the Level 3 audit result is classified as Zone 1, the Depot will re-enter Level 2.
- 11.41. If the Level 3 audit result is classified as Zone 2, the Depot shall pay a compliance fee and the Quality Control Compliance History shall be forwarded to the Complaints Director to be dealt with in accordance with Part 12 of this By-law.



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***UCA Compliance Standard***

11.42. Each Depot shall:

- 11.42.1. accurately complete a Uniform Code of Accounts on an annual basis in the form approved by the BCMB for that purpose; and
- 11.42.2. submit the completed Uniform Code of Accounts to the Data Collection Agent retained by the BCMB at least twenty days before the end of the sixth (6<sup>th</sup>) calendar month following the fiscal year end of the Depot.

***UCA Compliance Audit***

11.43. The BCMB shall assess UCA Compliance based on the accuracy, completeness and timeliness of the UCA submitted by each Depot as determined by the Data Collection Agent.

***UCA Compliance Enforcement***

11.44. There are three enforcement levels. A Depot enters Level 1 if the Depot fails to file a UCA by the end of the sixth calendar month following the fiscal year end of the Depot, or if the Depot fails to file an accurate and complete UCA before that date.

***UCA Compliance Level 1 Steps and Outcomes***

11.45. Where a Depot enters Level 1, the Depot will receive a Level 1 warning letter advising that the Depot's Uniform Code of Accounts has not been received by the Data Collection Agent or that the UCA is not accurate and complete.

11.46. If the Depot does not submit an accurate and complete Uniform Code of Accounts seven (7) days following notification from the BCMB, the Depot shall pay a compliance fee and enter Level 2.

***UCA Compliance Level 2 Steps and Outcomes***

11.47. Where a Depot enters Level 2 the BCMB shall send a Level 2 warning letter advising that the Depot's Uniform Code of Accounts has not been received by the Data Collection Agent or that the Uniform Code of Accounts is not accurate and complete. The Level 2 warning letter shall specify a time by which the Depot is required to submit an accurate and complete Uniform Code of Accounts. If the Depot does not submit an accurate and complete Uniform Code of Account within the time specified in the Level 2 warning letter, the Depot shall pay a compliance fee and the Depot will enter Level 3.

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***UCA Compliance Level 3 Steps and Outcomes***

11.48. Where a Depot enters Level 3, the BCMB shall send a Level 3 warning letter advising that the Depot's Uniform Code of Accounts has not been received by the Data Collection Agent or that the Uniform Code of Accounts is not accurate and complete and that an accurate and complete Uniform Code of Accounts must be submitted to the Data Collection Agent immediately. The Depot shall pay a compliance fee every seven (7) days from the date that the Level 3 warning letter is sent and an accurate and complete Uniform Code of Accounts has not been received by the Data Collection Agent.

11.49. If the Depot does not submit an accurate and complete Uniform Code of Accounts to the Data Collection Agent within 60 days that the Level 3 warning letter was sent, the Uniform Code of Accounts Compliance History shall be forwarded to the Complaints Director to be dealt with in accordance with Part 12.

***Operational Compliance Standard***

11.50. Each Depot shall meet the operational and administrative requirements set out in Part 10 of this By-law.

***Operational Compliance Audit***

11.51. The BCMB will assess Operational Compliance based on the results of Depot inspections conducted by the BCMB.

11.52. A Depot inspection will consist of an assessment based upon the inspection document approved by the BCMB for that purpose.

11.53. Following a Depot inspection, the BCMB shall send the Depot a copy of the completed inspection document as signed by the Permit Holder or Depot Manager:

11.53.1. identifying any deficiencies revealed by the inspection; and

11.53.2. specifying a time for correcting any deficiencies and for reporting back to the BCMB, which time shall not be less than 90 days.

11.54. A Depot may seek an extension of the time specified by the BCMB for the correction of deficiencies and for reporting back to the BCMB. The decision whether or not to grant such an extension is at the discretion of the BCMB.

11.55. Upon receiving a report from a Depot in response to an inspection document the BCMB may send a notice requiring additional information or proof from the Depot that the deficiencies

identified on an inspection have been corrected and specifying a time for receiving that additional information or proof within a time specified in the notice.

11.56. The BCMB may require a Depot to agree to a specific plan and timelines for correcting deficiencies, reporting or providing information or proof of correction of deficiencies.

***Operational Compliance Enforcement***

11.57. There are three Levels of enforcement. A Depot enters Level 1 when the Depot:

11.57.1. fails to meet the time specified for correcting deficiencies; or

11.57.2. fails to report to the BCMB within the time specified, that deficiencies have been corrected; or

11.57.3. fails to provide information or proof requested by the BCMB within the time specified.

***Operational Compliance Level 1 Steps and Outcomes***

11.58. Where a Depot has entered Level 1, the BCMB shall send a Level 1 notification to the Depot specifying a deadline for the Depot to correct deficiencies, report to the BCMB or provide the information or proof that has been requested.

11.59. If the Depot complies with the deadline specified in the Level 1 notification, the Depot will exit Level 1.

11.60. If the Depot does not comply with the deadline specified in the Level 1 notification, the Depot shall pay a compliance fee and the Depot will enter Level 2.

***Operational Compliance Level 2 Steps and Outcomes***

11.61. Where a Depot has entered Level 2, the BCMB shall send a Level 2 notification to the Depot specifying a deadline for the Depot to comply with any outstanding matters.

11.62. If the Depot complies with the deadline specified in the Level 2 notification, the Depot will exit the enforcement process.

11.63. If the Depot does not comply with the deadline specified in the notification, the Depot shall pay a compliance fee and the Depot will enter Level 3.

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***Operational Compliance Level 3 Steps and Outcomes***

- 11.64. Where a Depot has entered Level 3 the BCMB shall send a Level 3 notification to the Depot specifying a deadline for the Depot to comply with any outstanding matters.
- 11.65. The Depot shall pay a compliance fee for each day that the outstanding matters remaining outstanding up to and including the date of the deadline.
- 11.66. If the Depot does not comply with the deadline specified in the Level 3 notification, the Operational Compliance History shall be forwarded to the Complaints Director to be dealt with in accordance with Part 12 of this By-law.

***Permitted Shipping of Foreign Material***

- 11.67. According to the ABDA and the ABCRC Service Agreement, Foreign Material is defined as any beverage container not listed in Schedule “A” of the Service Agreement; any beverage container not registered, not sold in Alberta, or not covered by the Regulation; any container that is not a beverage container (*Non-Beverage Containers*); and any refillable beverage container. Foreign Material shall not be paid a Deposit Refund or handling commission.
- 11.68. A Depot may enter into a written agreement with the CSA with respect to the collection by the CSA of recyclable Foreign Material, which may include Non-Beverage Containers. That agreement must require clear identification of the recyclable Foreign Materials and the separation of that material from beverage containers being collected by the CSA under the Beverage Container Recycling Regulation. Any such agreement must be provided to the BCMB, by the CSA, for their information. Foreign Material is defined by the ABDA and ABCRC Service Agreement. A Depot’s entry into Level 2 of this Framework will be cause for the BCMB to review the agreement between the CSA and the Depot and may result in the cancellation of this agreement.

**12. REVIEWS/ INVESTIGATIONS/ IMMEDIATE ACTION/ HEARINGS**

***Review by Complaints Director***

- 12.1. Any conduct of a Depot that comes to the attention of the BCMB, whether by way of a complaint or through the forwarding of a Depot’s compliance history in accordance with Article 11 of this By-law or otherwise, shall be reviewed by the Complaints Director.
- 12.2. Despite section 12.1 conduct of a Depot that is the subject of a compliance enforcement process in accordance with Article 11 of this By-law shall be dealt with in accordance with that compliance enforcement process until the Depot’s compliance history is sent to the

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Complaints Director for review pursuant to Article 11, and thereafter shall be governed by the procedure set out in this Part.

- 12.3. Nothing in section 12.2 prevents the BCMB referring a matter that arises of a compliance enforcement process to the Complaints Director for an investigation under this part, if in the opinion of the BCMB the matter seriously undermines the integrity of the beverage container management system.
- 12.4. A review under section 12.1 shall be completed within 90 days unless the Complaints Director, in his or her sole discretion, determines that further time is required. Circumstances that the Complaints Director may consider in determining whether further time is required include:
  - 12.4.1. the failure of the Permit Holder or others to respond to requests for information in a timely fashion or at all;
  - 12.4.2. insufficient investigative, administrative or other resources, whether external or internal;
  - 12.4.3. the receipt of additional information after the commencement of the review; and
  - 12.4.4. the complexity of the matter.
- 12.5. During the course of a review, the Complaints Director may do any or all of the following:
  - 12.5.1. Require the Permit Holder to answer any inquiries or furnish any information that the Complaints Director considers relevant to the review;
  - 12.5.2. Direct that the Depot re-enter the Compliance Framework at the level specified by the Complaints Director; or
  - 12.5.3. Direct that the conduct be investigated pursuant to sections 12.9 and 12.14, inclusive.
- 12.6. During the course of a review, the Complaints Director may take into consideration the totality of any conduct of the Depot that has previously been the subject of a compliance enforcement process, notwithstanding that the conduct in question did not result in a complaint being forwarded to the Complaints Director.
- 12.7. Upon the completion of a review the Complaints Director may:
  - 12.7.1. Determine that no further action is required;

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- 12.7.2. Direct the investigator, or appoint another investigator to undertake further investigation and submit a further report to the Complaints Director;
  - 12.7.3. Refer the matter to the Hearing Director for a hearing by a Hearing Panel if, in the opinion of the Complaints Director, there is a reasonable prospect of establishing that the Permit should be suspended or cancelled, and it is in the public interest to proceed with such a hearing; or
  - 12.7.4. Direct that the Depot re-enter the Compliance Framework at the level specified by the Complaints Director.
- 12.8. The Complaints Director shall notify the following parties in writing of the action he or she has determined should be taken under 12.7 within seven (7) days of that determination:
- 12.8.1. the Permit Holder;
  - 12.8.2. the person who brought the conduct to the attention of the BCMB, if external to the BCMB;
  - 12.8.3. the President of the BCMB; and
  - 12.8.4. any other party that the Complaints Director identifies as being directly affected by such determination.

***Investigation***

- 12.9. An investigation directed under section 12.7 or 12.5 may be conducted by an employee of the BCMB other than the Complaints Director, or by a person engaged by or on behalf of the BCMB for that purpose.
- 12.10. Unless it would significantly harm the investigation, or adversely affect a regulatory or criminal investigation of the same matters, the existence of which investigation is known to the investigator, the investigator or the Complaints Director must give the Permit Holder of the Depot under investigation reasonable particulars of the conduct to be investigated, and an opportunity to respond.
- 12.11. An investigator or the Complaints Director may direct the Permit Holder of the Depot under investigation:
- 12.11.1. To answer any questions the investigator may have relating to the conduct under investigation; and

12.11.2. To produce any records or information in the Depot's possession or control relating to the conduct under investigation.

12.12. During an investigation of a Depot, if an investigator identifies any other conduct that could be a breach of the Depot's Permit, the Regulation or any BCMB By-law or that is contrary to the public interest, the investigator shall report such additional conduct to the Complaints Director and may at the direction of the Complaints Director conduct additional investigations.

12.13. During an investigation of a Depot, the investigator may investigate any conduct of the Depot that has previously been the subject of a compliance enforcement process, notwithstanding that the conduct in question did not result in a complaint being forwarded to the Complaints Director.

12.14. An investigator shall complete a report respecting the investigation for the use of the Complaints Director in making a determination under section 12.7.

***Immediate Action***

12.15. During the course of a review or an investigation, the Complaints Director may suspend the Permit of a Depot if:

12.15.1. a suspension is reasonably warranted in the circumstances;

12.15.2. there are reasonable grounds for believing the Depot has contravened or is contravening the Act, the Regulation or any BCMB By-law;

12.15.3. the contravention of the Act, the Regulation or the By-law has occurred; repeatedly or is ongoing, and seriously undermines the integrity the beverage container management system or is a threat to public safety; and

12.15.4. no lesser measure will reasonably suffice to protect the integrity of the beverage container management system.

12.16. A suspension imposed under section 12.15 must be communicated to the Permit Holder in a written notice that includes the reason for the suspension and shall not exceed 10 days, unless extended by order of the Board Chair or his or her delegate, on application by the Complaints Director and on written notice to the Permit Holder.

12.17. On hearing an application under section 12.16, the Board Chair may:

12.17.1. refuse to extend the suspension;

12.17.2. extend the suspension until a hearing under section 12.7.3, a review or an investigation is completed, or specified conditions are met; or

12.17.3. instead of extending the suspension, impose conditions on a Permit until a hearing under section 12.7.3, a review or an investigation is completed.

12.18. The Board Chair shall not extend a suspension or impose conditions pursuant to section 12.17 unless the Board Chair is satisfied that all of the requirements listed in section 12.15 have been met.

12.19. The Board Chair may provide any directions required to facilitate the effective scheduling and conduct of an application under section 12.16.

12.20. The Board Chair shall immediately provide the Permit Holder with written notice of any determination made under section 12.17.

12.21. A suspension under section 12.15 or 12.17 may be terminated by the Board Chair at any time on its own motion.

#### ***Hearing Process***

12.22. Upon receipt of a referral from the Complaints Director in accordance with section 12.7.3. the Hearing Director shall set a date for a hearing.

12.23. The Hearing Panel Rules of Practice and Procedure that shall apply to hearings in accordance with this By-law are attached to this By-law as Schedule "A."

#### ***Appointment of Hearing Panels***

12.24. For the purpose of each hearing under this section, a panel shall be appointed by the Board Chair and the President of the BCMB in consultation with the Hearing Director.

12.25. A Hearing Panel shall consist of either three (3) voting Directors representing each of the three (3) membership sectors referenced in the BCMB Societies Act Bylaw or three (3) voting Directors, a majority of who represent the General Membership Sector as referenced in that Bylaw.

#### ***Powers of a Hearing Panel***

12.26. The Board hereby delegates its authority to suspend and cancel Permits to the Hearing Panel appointed for each particular hearing in accordance with this section.



12.27. The Hearing Panel may:

12.27.1. Cancel a Permit;

12.27.2. suspend the cancellation of a Permit on conditions;

12.27.3. suspend a Permit; or

12.27.4. instead of or in conjunction with the cancellation or suspension of a Permit, impose terms and conditions on a Permit without limitation.

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SCHEDULE "A"

Hearing Panel Rules of Practice and Procedure

***PRE-HEARING PROCEDURES***

**1. Notice of Hearing**

- 1.1. The Hearing Director must give notice of the hearing to the Complaints Director, the Permit Holder of the Depot whose conduct is at issue in the hearing, and any other person directly affected by the outcome of the hearing that the Hearing Director determines should be notified of the hearing.
- 1.2. Notices must be in writing and state the date, time, place and purpose of the hearing.
- 1.3. Notices must state that the parties who are being notified of the hearing under this section are entitled to be represented by legal counsel.
- 1.4. Notices of the hearing may be served in person or by registered mail, fax or email.
- 1.5. Service of the Notices may be effected on the counsel of any person being notified.

**2. Directions regarding preliminary and interim matters**

- 2.1. The Chair of a Hearing Panel may:
  - 2.1.1. hear any preliminary or interim applications that deal with procedural or administrative matters.
  - 2.1.2. provide any preliminary or interim directions and make preliminary or interim rulings that are, in the opinion of the Chair of the Hearing Panel, required to facilitate the effective scheduling and conduct of the hearing;
  - 2.1.3. direct that the hearing or any preliminary or interim application be recorded by a court reporter or other means;
  - 2.1.4. obtain clerical or administrative services necessary to support the work of the Chair of the Hearing Panel and the Hearing Panel; and
  - 2.1.5. instruct independent legal counsel for the Hearing Panel.
- 2.2. The Chair of a Hearing Panel may refer any matter under section 2.1 to the Hearing Panel for hearing and determination.
- 2.3. The Chair of the Hearing Panel or the Hearing Panel, as the case may be, may determine whether any submissions are to be made:

2.3.1. in an in-person hearing;

2.3.2. in a teleconference, videoconference or other form of electronic meeting; or

in writing.

### **3. Pre-Hearing Conference**

3.1 After issuing a Notice of Hearing under section 1 of this Schedule “A” of the Depot By-law, and subject to section 3.2, the Hearings Director will schedule a pre-hearing conference. The Hearing Director shall provide the Complaints Director and the Permit Holder or their representatives with notice of pre-hearing conference stating the date, time, and place of the pre-hearing conference.

3.2 The Hearing Director may waive the pre-hearing conference if both the Complaints Director and the Permit Holder agree and advise the Hearing Director that a pre-hearing conference is not required.

3.3 The Chair of the Hearing Panel or another member appointed to the Hearing Panel under sections 12.24 and 12.25 of the Depot By-law will chair the pre-hearing conference.

3.4 The Chair of the pre-hearing conference may make any direction that a Chair of a Hearing Panel may make under Section 2 of this Schedule “A” Hearing Panel Rules of Practice and Procedure.

3.5 The Permit Holder and the Complaints Director, or their representatives must attend any scheduled pre-hearing conference. The Chair of the pre-hearing conference, upon confirmation that the parties received the notice of the pre-hearing conference, may proceed in the absence of either party.

3.6 After the pre-hearing conference, the Chair of the pre-hearing conference will prepare a written summary providing any deadlines set or directions issued at the pre-hearing conference (the “Summary”). The Hearing Director will provide the Complaints Director and the Permit Holder with a copy of the Summary.

### **4. Pre-Hearing Disclosure**

4.1. Unless the Chair of a Hearing Panel directs otherwise, each party participating in the hearing must disclose the following to any other party participating in the hearing at least 30 days before the date of the hearing:

4.1.1. any documents on which the party intends to rely;

4.1.2. the names of all witnesses, if any, whom the party intends to call at the hearing; and

4.1.3. a brief summary of what each witness is expected to say.

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## **5. Written Submissions**

- 5.1. Unless the Chair directs otherwise, each party participating in the hearing must file a written submission with the Hearing Panel and serve a copy on any other party participating in the hearing, in accordance with the following timeline:
  - 5.1.1. the Complaints Director's submission must be filed and served at least 21 days before the hearing date;
  - 5.1.2. the Permit Holder's written submission and any written submission of any other party must be filed and served at least 14 days before the hearing date.

## ***HEARING PROCEDURES***

### **6. Public Hearing**

- 6.1. Subject to section 5.2, a hearing is public.
- 6.2. The Chair of a Hearing Panel may, on a preliminary or interim application by a party or on the Chair of the Hearing Panel's own motion, or the Hearing Panel may, at the request of a party or on its own motion at any time, direct that a hearing be held in private, in whole or in part.
- 6.3. In exercising the authority under section 5.2, the Chair of a Hearing Panel or a Hearing Panel, as the case may be, will consider whether a private hearing is necessary for any of the following reasons:
  - 6.3.1. the need to protect the safety of a person or the public;
  - 6.3.2. probable prejudice to a civil action or the prosecution of an offence;
  - 6.3.3. the presence of the public could compromise the ability of a witness to testify;
  - 6.3.4. the need to preserve a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public; or
  - 6.3.5. a party demonstrates to the satisfaction of the Hearing Panel there is another reason that a private hearing outweighs the desirability of having a public hearing.

### **7. Right to counsel**

- 7.1. A party participating in a hearing may be represented by legal counsel before the Hearing Panel.
- 7.2. The Hearing Panel may have independent legal counsel to advise it.

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## **8. Opening Statements**

- 8.1. Unless the Chair of the Hearing Panel directs otherwise, at the beginning of a hearing a party may give a brief opening statement describing the issues that the party will address at the hearing and evidence that the party anticipates calling.

## **9. Order of the Presentation of Evidence and Arguments**

- 9.1. Unless the Chair of the Hearing Panel directs otherwise, the presentation of evidence and agreements will occur in the following order:
  - 9.1.1. evidence of the Complaints Director;
  - 9.1.2. evidence of the Permit Holder;
  - 9.1.3. rebuttal evidence, if any;
  - 9.1.4. argument of the Complaints Director;
  - 9.1.5. argument of the Permit Holder; and
  - 9.1.6. rebuttal argument, if any.

## **10. Attendance of Witnesses**

- 10.1. If a party requests that a Notice to Attend be issued and provides the Chair with the name and address of the person, the Chair may issue a Notice to Attend.
- 10.2. The requesting party will be responsible for serving any Notice to Attend that the party requested.
- 10.3. Each party will pay the costs associated with calling its own witnesses.

## **11. Failure to Attend Hearing**

- 11.1. If a person is served with a written Notice of Hearing or is summoned to attend by a Notice to Attend, and does not arrive at the scheduled time, the Hearing Panel may adjourn the hearing or proceed in that person's absence.

## **12. Evidence**

- 12.1. At the discretion of the Chair of the Hearing Panel, any person appearing before the Hearing Panel may be required to give sworn evidence.
- 12.2. A witness called at a hearing by a party is subject to cross examination by the other parties.
- 12.3. The rules of evidence which apply to judicial hearings do not apply to hearings before the Hearing Panel

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- 12.4. The Rules of Court do not apply to hearings before the Hearing Panel.
  - 12.5. Unless otherwise directed by the Chair of the Hearing Panel, witnesses other than the Complaints Director and the Permit Holder's representative, may, at the Hearing Panel's direction, be excluded from the hearing room until the Hearing Panel hears their evidence.
  - 12.6. The Chair of the Hearing Panel may permit the testimony of a witness to be made by a sworn written statement.
  - 12.7. A witness whose testimony is in the form of a sworn written statement must be available for cross-examination if the Chair of the Hearing Panel considers it is necessary for the fairness of the proceedings.

### **13. Consideration of a Matter without Oral Hearing**

- 13.1. With the consent of the parties, the Hearing Panel may consider a case without holding an oral hearing. In that case, all information concerning the matter being considered must be submitted in writing

### **14. Adjournment of Matters before the Hearing Panel**

- 14.1. The Hearing Panel may adjourn a hearing on its own initiative or if requested to do so by a Party and on any conditions the Hearing Panel considers appropriate.

### **15. Hearing Panel Decision**

- 15.1. A decision of the Hearing Panel shall be given within a reasonable time after the conclusion of the hearing.
- 15.2. The Hearing Panel shall give notice of its decision and reasons to the Hearing Director, who will then provide copies of the decision to the parties to the hearing and to the President of the BCMB

### **16. Residual Authority of the Hearing Panel**

- 16.1. Except as provided for by these Rules, the Hearing Panel governs its own process and has control over its proceedings.