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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 Words importing persons include individuals, bodies, corporate, partnerships, trusts and unincorporated associations.
- 1.5 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 “Approved Container” means a Container that has been approved by the BCMB in accordance with the *Manufacturer and Retailer By-law*;
  - 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 “Board” means the Board of Directors of the BCMB;
  - 2.1.4 “By-laws” means by-laws made by the Board in accordance with the Regulation;
  - 2.1.5 “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;
  - 2.1.6 “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 “Depot” means a place operated as a business for the collection of empty Containers;

- 2.1.8 “Manufacturer” means a person who manufactures a beverage and includes:
- i. a person who carries on the business of filling containers with a beverage; and
  - ii. a person who imports a beverage in a container into Alberta for the purpose of distribution or sale in Alberta;

2.1.9 “Permit” means a permit to operate a depot issued by the BCMB in accordance with the Regulation and the By-laws;

2.1.10 “Permit Holder” means an individual or corporate entity named in a Permit;

2.1.11 “Registered Container” means a Container that has been registered by the BCMB in accordance with the Regulation and the By-laws;

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

2.2 Unless otherwise indicated, terms that are defined in the Regulation have the same meaning when they are used in this By-law.

### **3. MANUFACTURER REGISTRATION FEES**

3.1 A Manufacturer shall pay to the BCMB a fee of \$60.00 to register itself in accordance with the *Manufacturer and Retailer By-law*.

### **4. INTERIM HANDLING COMMISSION FEES**

4.1 A Manufacturer that requests an Interim Handling Commission be set for a new container stream in accordance with the *Handling Commission Review By-law* shall pay to the BCMB a fee of \$2,500 before the BCMB takes steps to determine the Interim Handling Commission.

### **5. DEPOT FEES**

5.1 An applicant for a Permit to operate a Depot shall pay to the BCMB a Depot application fee of \$600.00 for each application submitted to the BCMB.

5.2 When the BCMB issues a new Permit to an applicant, the applicant shall pay to the BCMB a Depot Permit fee in the amount of \$500.00 prior to the Permit being issued.

5.3 A Permit Holder applying to amend a Permit to change the location of the Depot shall pay to the BCMB a Permit amendment fee in the amount of \$2,500 unless the Permit relates to a Rural or Urban Depot that collects less than six million Containers per year, in which case, upon application from the Permit Holder, the BCMB may waive all or part of the Permit amendment fee. The decision to waive or reduce the Permit amendment fee is in the sole discretion of the BCMB.

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- 5.4 A Permit Holder applying to amend a Permit with respect to anything other than the location of the Depot shall pay to the BCMB a Permit amendment fee in the amount of \$600.

**6. OPERATING FEES**

- 6.1 Effective January 1, 2023, a Manufacturer shall pay to the BCMB a fee of \$.0017 for each of its Containers sold in Alberta.

**7. COMPLIANCE FEES**

- 7.1 A compliance fee may be levied by the BCMB where authorized by any BCMB by-law.
- 7.2 Effective June 1, 2019, a compliance fee shall be in the amount of \$400.00 for each event for which the fee is levied.
- 7.3 The BCMB shall issue a notice of the compliance fee to be levied. The notice of compliance fee must contain the following information:
- 7.3.1 the name of the person required to pay the fee;
  - 7.3.2 particulars of the event which is the basis for the fee being levied;
  - 7.3.3 the name of the by-law or policy under which the fee is being levied;
  - 7.3.4 the amount of the fee, any applicable costs, the manner in which interest will accrue, and the time by which it must be paid;
  - 7.3.5 a statement of the right to appeal the notice of compliance fee.
- 7.4 A notice of compliance fee may not be issued more than two years after the later of:
- 7.4.1 the date on which the event to which the notice relates occurred, or
  - 7.4.2 the date on which evidence of the event first came to the notice of the BCMB.
- 7.5 A notice of compliance fee may be served by sending the notice to the email address provided by the party to the BCMB for that purpose, or by any of the methods referenced in section 7.6.
- 7.6 Service of a notice of compliance fee is affected on the person named in the notice:
- 7.6.1 If the notice is sent electronically, as of the date that the electronic communication is sent;
  - 7.6.2 If the notice is left with an individual, on the date that it is left; and
  - 7.6.3 If the document is sent by recorded mail, on the earlier of the date that acknowledgement of receipt of the recorded mail is signed, or 7 days after the date on which the recorded mail is sent.

8. **A person who is served with a notice of compliance fee shall pay the full amount of the compliance fee, including all interest and other charges levied, within 30 days of the date of service of the notice.**

8.1 If a party, who has received a notice of compliance fee fails to comply with the terms or requirements of the notice of compliance fee within 30 days from the date of service, the BCMB may:

8.1.1 take the necessary steps to remedy the event or to fulfil the terms imposed at that party's cost;

8.1.2 add any costs incurred by the BCMB for enforcement, remedying the event or fulfilling the terms of the notice, to the fee levied against the party hereunder;

8.1.3 levy any additional fee or interest as may be permitted by this By-law or any other by-law or policy of the BCMB;

8.1.4 take steps to collect the outstanding fee;

8.1.5 set off any amount owing by the BCMB to the party against whom a compliance fee has been levied;

8.1.6 direct a third party, including a Collection System Agent, to pay amounts owing by the third party to the party against whom a fee has been levied, to the BCMB;

8.1.7 direct a third party, including a Collection System Agent, to collect the outstanding fee on behalf of the BCMB;

8.1.8 collect all outstanding amounts by any other reasonable and lawful means.

9. **AMENDMENTS TO FEES**

9.1 The fees payable pursuant to this By-law may be changed by resolution of the Board and the amended fee will be effective as of the date specified in the resolution.

10. **PAYMENT OF AND COLLECTION OF FEES**

10.1 Interest is payable on fees that are required to be paid under this By-law at the rate of 2% per month, from the date the unpaid amount is due until it is paid to the BCMB.

10.2 The time and manner for payment of any fees and interest rate per annum payable pursuant to this By-law may be changed by resolution of the Board and will be effective as of the date specified in the resolution.

10.3 Any person subject to a fee holds all fees to be remitted to the BCMB in trust for the BCMB.

10.4 Any reference in this By-law to collection or enforcement of a duly levied fee shall include collection or enforcement of any costs or interest associated with the fee levied.

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**11. COMPLIANCE FEE APPEAL PROCESS**

- 11.1 A person who is served with a notice of compliance fee may appeal the notice of compliance fee to the BCMB Compliance Committee by submitting a Notice of Appeal in the form specified by the BCMB for that purpose by email to the BCMB Hearing Director, and by paying the BCMB the compliance fee that is the subject of the appeal and an Appeal Fee of \$500
- 11.2 The Notice of Appeal, compliance fee and Appeal Fee must be submitted to the BCMB within 30 days of the date the notice of compliance fee is deemed to have been received by the person who is appealing.
- 11.3 The Notice of Appeal shall include the following information:
- 11.3.1 Contact information of the appellant, including an address to which information may be transmitted by fax or by email;
  - 11.3.2 The date of service of the notice of compliance fee;
  - 11.3.3 A copy of the notice of compliance fee appealed from;
  - 11.3.4 Grounds for the appeal;
  - 11.3.5 Evidence supporting the grounds of appeal.
- 11.4 A notice of compliance fee can only be appealed on the following grounds:
- 11.4.1 The BCMB did not have the authority to issue the notice of compliance fee;
  - 11.4.2 The BCMB failed to follow its own procedures, and that this failure had, or may reasonably have had, a material effect on the decision to issue the notice of compliance fee;
  - 11.4.3 The issuance of the notice of compliance fee was influenced by bias;
  - 11.4.4 The BCMB failed to consider relevant information or took into account irrelevant information in issuing the notice of compliance fee.
- 11.5 For the purpose of each appeal under this section, a panel shall be appointed by the Chair of the Compliance Committee. The Compliance Committee hereby delegates its authority to decide an appeal from a notice of compliance fee to the Appeal Panel appointed for each particular appeal.
- 11.6 An Appeal Panel shall consist of at least two members of the Compliance Committee. The Appeal Panel shall select a Chair.
- 11.7 Within 30 days of receipt of a Notice of Appeal, the BCMB shall provide the person appealing with the information upon which the notice of compliance fee was issued and any written submissions which it intends to provide to the Appeal Panel. The person appealing may provide written submissions in response within 14 days of receiving the BCMB material.

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- 11.8 The BCMB shall provide the Notice of Appeal, the information upon which the notice of compliance fee was issued and any written submissions from the BCMB and from the person appealing to the Appeal Panel.
- 11.9 The Appeal Panel shall make its decision based upon the material provided to it in accordance with section 11.8.
- 11.10 The Appeal Panel shall issue a written decision within 30 days of being provided with the appeal material in accordance with section 11.8.
- 11.11 In making its decision, the Appeal Panel shall have no greater authority than the individual who issued the notice of compliance. The Appeal Panel may decide to:
- 11.11.1 Reject the appeal and confirm the notice of compliance fee;
  - 11.11.2 Uphold the appeal and refer the matter back to the BCMB;
  - 11.11.3 Uphold the appeal and disallow the notice of compliance fee;
  - 11.11.4 Determine whether costs of the appeal, excluding legal costs of any party, will be assessed.
- 11.12 If the Appeal Panel upholds the appeal and disallows the notice of compliance fee, the Appeal Panel shall direct the BCMB to return the Appeal Fee and compliance fee to the Appellant.
- 11.13 The decision of the Appeal Panel is final and binding.