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1. INTRODUCTION

- 1.1. The Beverage Container Management Board (BCMB) requires accurate reporting of return rates to the Minister of Environment, the citizens of Alberta, and all other industry stakeholders. The BCMB's policy is that all Bottle Depots must accurately ship and report quantities of beverage containers to Collection System Agents (CSAs) and the BCMB. This policy is a natural extension of the operating agreements between the Bottle Depots and CSAs. All Bottle Depots and CSAs must be compliant with this policy.
- 1.2. CSAs must assist the depots to sufficiently facilitate the depot's shipping and reporting obligations.
- 1.3. The Progressive Action Policy (PAP) is a defined set of actions to be taken by the BCMB at various stages in the quality control process to encourage compliance and provide a consistent and fair means of enforcement when depots are not compliant.
- 1.4. The Legislative Mandate for the BCMB to implement this policy is attached as Appendix I.

2. INTERPRETATION

2.1. Performance Indicators

The two measures of performance that will be used to determine a depot's success in shipping accurate quantities of beverage containers to CSAs are:

- i) The variance from the expected count of beverage containers.
- ii) Improvement in that variance over rolling 3-month periods.

2.2. Variance

Zones are used to label the relative success of a depot in shipping accurate quantities of beverage containers to CSAs. Each zone corresponds to a specific range of positive and negative variance between the reported number of containers shipped on individual shipments by depots and the actual number of containers shipped as verified through the count process carried out by a CSA under a current Operating Agreement. The zone ranges are identified below:

ZONE	VARIANCE RANGES / LIMITS
Zone 1.....	> 0.0% ≤ 2.5%
Zone 2.....	> 2.5% ≤ 3.5%
Zone 3.....	> 3.5% <u>or</u> when there is not a trend towards zero.

Example:

For a mega-bag purporting to contain 1800 aluminum cans, a zone 2 classification would be issued for any count with a variance between 46 and 63 cans. (1800 x 2.5-3.5% = 46-63 cans)

For a mega-bag purporting to contain 1800 aluminum cans, a zone 3 classification would be issued for any count with a variance greater than or equal to 64 cans. (1800 x 3.5% = 63 cans)

2.3. Improvement in Variance

Depots must show continual improvement over rolling three-month periods in order to remain compliant with the PAP and avoid enforcement actions. Depots must have three-month rolling average variances that trend toward zero, and are expected to ultimately maintain a variance in all categories of containers within 0.5%.

Eg.

<p><u>Depot A</u></p> <p style="font-size: 2em; color: green; font-weight: bold; transform: rotate(-15deg); margin-left: 100px;">SUCCESS</p>	<table border="0"> <thead> <tr> <th style="text-align: left;"><u>Period</u></th> <th style="text-align: left;"><u>Average Variance</u></th> </tr> </thead> <tbody> <tr> <td>Jan-Mar</td> <td>-2.3%</td> </tr> <tr> <td>Feb-Apr</td> <td>-2-1%</td> </tr> <tr> <td>Mar-May</td> <td>-1.1%</td> </tr> <tr> <td>Apr-Jun</td> <td>-0.5%</td> </tr> </tbody> </table>	<u>Period</u>	<u>Average Variance</u>	Jan-Mar	-2.3%	Feb-Apr	-2-1%	Mar-May	-1.1%	Apr-Jun	-0.5%	<p>The graph for Depot A shows a line with four data points marked with asterisks. The y-axis ranges from -5 to 5. The data points are at approximately -2.3, -2.1, -1.1, and -0.5, showing a clear upward trend towards zero.</p>
<u>Period</u>	<u>Average Variance</u>											
Jan-Mar	-2.3%											
Feb-Apr	-2-1%											
Mar-May	-1.1%											
Apr-Jun	-0.5%											
<p><u>Depot B</u></p> <p style="font-size: 2em; color: red; font-weight: bold; transform: rotate(-15deg); margin-left: 100px;">FAILURE</p>	<table border="0"> <thead> <tr> <th style="text-align: left;"><u>Period</u></th> <th style="text-align: left;"><u>Average Variance</u></th> </tr> </thead> <tbody> <tr> <td>Jan-Mar</td> <td>-2.3%</td> </tr> <tr> <td>Feb-Apr</td> <td>-2-1%</td> </tr> <tr> <td>Mar-May</td> <td>-2.8%</td> </tr> <tr> <td>Apr-Jun</td> <td>-2.4%</td> </tr> </tbody> </table>	<u>Period</u>	<u>Average Variance</u>	Jan-Mar	-2.3%	Feb-Apr	-2-1%	Mar-May	-2.8%	Apr-Jun	-2.4%	<p>The graph for Depot B shows a line with four data points marked with asterisks. The y-axis ranges from -5 to 5. The data points are at approximately -2.3, -2.1, -2.8, and -2.4, showing a downward trend away from zero.</p>
<u>Period</u>	<u>Average Variance</u>											
Jan-Mar	-2.3%											
Feb-Apr	-2-1%											
Mar-May	-2.8%											
Apr-Jun	-2.4%											

Failure to meet this requirement will result in progressive action and compliance fees in accordance with this Policy.

2.4. Valid Audit

For the purposes of this policy, a valid audit shall consist of a container count performed by a CSA in accordance with the approved Quality Assurance provisions of a current Operating Agreement. This is consistent with the current approved Operating Agreements between depots and CSAs. The variance used for zone determination shall be the average variance of all the bags of one depot counted in a valid audit.

2.5. Grace Period

Depots will be granted a ten-calendar-day adjustment period after notification of the results

of any audit done under this Policy to allow for in-stock inventory and operational changes,

before any further audits will be conducted to determine whether improvement in count variance has occurred.

3. PROGRESSIVE ACTION PROCESS

3.1. CSAs will audit shipments from all depots in accordance with the Quality Control procedures outlined in the Operating Agreements. The CSAs shall provide to the BCMB all audit results for the previous calendar month and include an average of the variances for each depot audited for the preceding three-month period, in respect of all depots prior to the twentieth day of each month. The BCMB will assess the information and notify the CSAs prior to the thirtieth day of every month of depots that the BCMB requires further audits.

3.2. Based on this assessment the BCMB will apply progressive action to assist depots in achieving the desired quality control under this Policy.

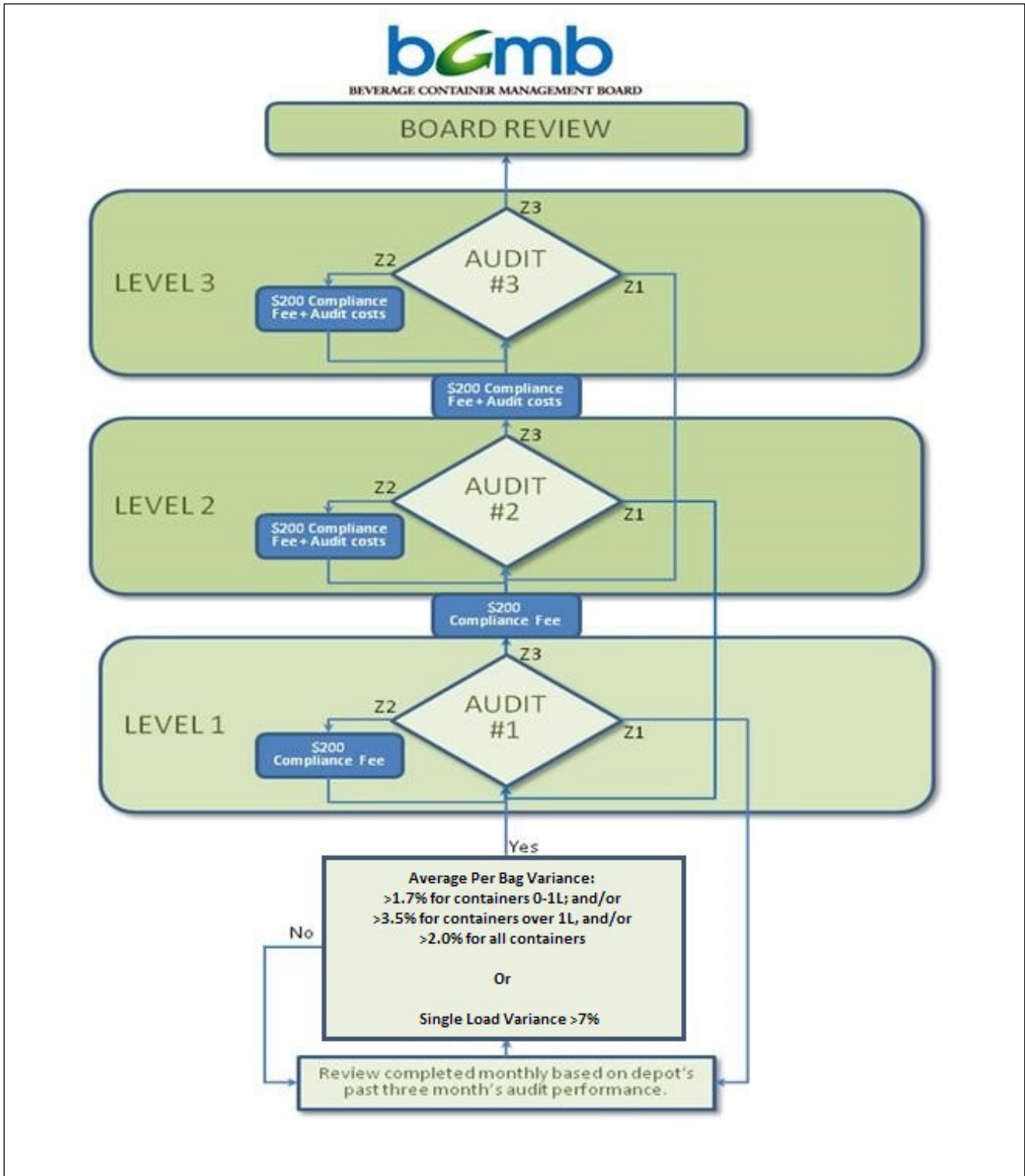
3.3. There shall be three levels of classification warranting remedial steps and the levying of compliance fees as described below:

Level 1 – least concern.

Level 2 – increased concern.

Level 3 – critical phase – subject to possible Board Review.

The Progressive Action Policy Diagram on the following page illustrates the various steps in the process.



4. ENTRANCE CRITERIA

4.1. Entrance to Level 1 of the PAP will occur when a depot's average variance per bag audited over a three-month period exceeds any of the following thresholds:

- 1.7% for containers 0-1L; and/or
- 3.5% for containers over 1L, and/or
- 2.0% for all containers.

Upon movement to Level 1, a depot's further progress, negative or positive, will be determined wholly by performance.

4.2. In addition to any other levy or enforcement action, any depot that has a material stream variance in any one audit of greater than 7% shall be automatically entered into the process at Level 1.

5. MOVEMENT BETWEEN LEVELS IN PROCESS

5.1. Audits resulting in Zone 1 classifications at any of the levels in the flow chart will result in the depot returning to the previous level.

5.2. Audits resulting in Zone 2 classifications at any of the levels will result in the depot remaining at that level.

5.3. Audits resulting in Zone 3 classification will result in advancement to the next level in the process.

5.4. Audits conducted under BCMB supervision while the depot is at Level 3 and resulting in a Zone 3 classification will result in a review by the Board of Directors. The depot will receive reasonable notice (14 calendar days) of the Board review and will be given an opportunity to appear before and address the Board. The Board will review the results of previous audits, depot performance, the submissions of BCMB staff and the submissions of the depot. A review by the Board of Directors may result in suspension or cancellation of the Operating Permit.

6. COMPLIANCE FEES AND COSTS

6.1. Compliance Fees will be levied by the BCMB in the following circumstances:

Level 1 - an audit resulting in a Zone 2 or 3 classification at this level will result in the BCMB issuing a \$200 compliance levy to the depot.

Level 2an audit resulting in a Zone 2 or 3 classification at this level will result in the BCMB issuing a \$200 compliance levy to the depot.

Level 3an audit resulting in a Zone 2 or 3 classification at this level will result in the BCMB issuing a \$200 compliance levy to the depot.

6.2. COSTS – An audit conducted while a depot is at Level 2 or 3 and which results in a Zone 2 or Zone 3 classification will result in the depot being responsible to pay costs to the BCMB equal to the costs of conducting the audit based on the rates set out in Appendix II of the PAP.

7. CSA REQUIREMENTS

7.1. CSAs are required to submit an audit protocol to the BCMB for approval. The audit protocol must be submitted with the CSAs annual operating plan.

7.2. All bags selected for auditing must be selected on a target/random basis, with the selection method used by the CSAs to be approved by the BCMB.

7.3. At Level 2 and higher, depots will be notified in advance of audits at CSA facilities and have the opportunity to attend and view the audit process. While all audits will be conducted by CSA staff, the BCMB will take a very active role in monitoring the audit process to ensure accuracy and fairness. When specifically requested by either the CSA or depot, BCMB will attend and monitor Level 2 or Level 3 audits at CSA facilities

7.4. CSA's will cull all unacceptable bags from the system, and ensure that these bags are not sent to depots for filling. Depots will confirm quantities and usability of shipping containers when they arrive at the depot. If a depot receives a bag from the CSA that is unacceptable for use, the unacceptable bag should be returned empty to the CSA at the depot's earliest opportunity.

7.5. All mega-bags should be completely emptied of beverage containers prior to being returned to depots for re-use.

7.6. All trailers arriving at the CSA must be completely checked for loose beverage containers when the load is received and emptied by the CSA prior to being sent out to the next depot.

8. BCMB AUDITS

8.1. The BCMB shall have access to both depot and CSA facilities at any time during normal operating hours of those facilities to confirm that audit protocol is being adhered to, or to count/re-count material prepared for shipment, shipped or audited.

8.2. The BCMB, on its own initiative will conduct/monitor audits at depots and CSA facilities on a random or targeted basis without advance notice.

8.3. Audit processes as detailed in CSA operating agreements must be observed for all audits conducted under this Policy.

9. ENFORCEMENT PRINCIPLES

9.1. All enforcement action for non-compliance with the requirements of the PAP must be timely, effective and appropriate to the situation.

9.2. Any continuing, repeated or similar non-compliance may result in escalating enforcement consequences.

9.3. The requirement of the PAP will be a change for depot operators, and will require many depot operators to change processes for sorting and counting, or enhance auditing and internal record keeping. Enforcement measures will ensure that depots are informed about and have reasonable time to respond having regard to the nature and timing of the PAP requirements, and may allow for adjustments at the time of initial implementation of this PAP.

10. ENFORCEMENT GOALS

10.1. Intended goals for this PAP in responding with non-compliance by depot permit holders with the requirements of the PAP are as follows:

- i) Create a level playing field that builds trust and confidence in the beverage container return system.
- ii) Achieve quality control compliance.
- iii) Enforcement action is appropriate for the severity of the situation (firm and fair) and ensures the depot system maintains a level playing field.
- iv) Non-compliant depot permit holders recognize the enforcement actions taken by the BCMB and are motivated to prevent similar events of non-compliance from occurring again.
- v) Other depot permit holders, manufacturers and stakeholders are aware of aggregate enforcement actions and accept that effective actions were taken.
- vi) All enforcement actions are consistent with comparable situations of similar severity.
- vii) Depot permit holders are informed of expectations and enforcement actions in advance of enforcement action.

11. ENFORCEMENT PROCESS

11.1. Compliance Fees will be issued in accordance with the Administrative Compliance Bylaw. Compliance Fees are payable to the BCMB, but shall be recovered by payment collected

through CSAs.

12. ENFORCEMENT POLICIES

- 12.1. The BCMB will not normally apply additional enforcement consequences when a depot permit holder is employing the necessary resources and effort to remedy an instance of non-compliance.
- 12.2. The BCMB will not be required to take a next step in any circumstances and will always have regard to what is reasonable in the particular circumstances.
- 12.3. The BCMB will have regard to how its enforcement actions may affect other depots' decisions and efforts regarding compliance and will act accordingly.
- 12.4. The BCMB will have regard to how its enforcement actions may affect service to the public and return rates.
- 12.5. Notwithstanding any other provision of this policy, the BCMB reserves the right to escalate enforcement steps to any level should conditions warrant.
- 12.6. Exemptions to the PAP are to be approved in writing by the President of the BCMB.
- 12.7. The BCMB, through the Board, may set variance limits for each zone annually, set specific dates, or a schedule for compliance in accordance with this policy, and may establish specific compliance requirements in accordance with this policy and shall advise depots and CSAs of such decisions or requirements.

13. APPEAL PROCESS

- 13.1. Depot permit holders and CSAs that become subject to a compliance fee can appeal that decision in accordance with the Administrative Compliance Bylaw, Article 3.

APPENDIX I -- LEGISLATIVE MANDATE

1.0 *The Environmental Protection and Enhancement Act (the “Act”)*

Section 175(jj) of the Act enables the Lieutenant Governor in Council to make regulations establishing management boards:

175. The Lieutenant Governor in Council may make regulations
- (jj) providing for the establishment of a management board or other body, whether as a corporation or otherwise, for any purpose in connection with a regulation under this section;

2.0 *The Beverage Container Recycling Regulation (the “BCMB Regulation”)*

Section 4 of the BCMB Regulation establishes the BCMB as a management board within the meaning of section 175(jj) of the Act:

4. The Beverage Container Management Board, being an incorporated body under the laws of Alberta, is hereby established as a management board within the meaning of section 175(jj) of the Act for the purpose of exercising the powers and carrying out the duties conferred or imposed on it pursuant to the Act, this Regulation and the by-laws in respect of regulated containers.

Section 8(2) of the BCMB Regulation requires Board approval of CSAs:

- 8(2) The Manufacturers shall appoint a collection system agent satisfactory to the Board to act on behalf of the manufacturers with respect to the operation of the common collection system.

Section 12 of the BCMB Regulation requires CSAs and Manufacturers to collect containers:

- 12(1) The collection system agent shall, in accordance with the bylaws, collect non-refillable registered containers from depots.
- 12(2) A manufacturer shall, in accordance with the bylaws, collect or cause to be collected from a depot or retailer, refillable registered containers that contained a beverage manufactured by that manufacturer.

Section 14 of the BCMB Regulation prohibits the operation of beverage container depots without a permit issued by the BCMB:

- 14.(1) No person shall operate a depot unless that person holds a permit for that purpose issued by the Board in accordance with the by-laws and the permit is not under suspension.
- (2) A permit holder shall comply with the terms and condition to which the permit is subject.

Section 18 of the BCMB Regulation requires the BCMB to make bylaws respecting all aspects related to permits for the operation of depots, namely 18(1) (a) and (f):

- 18.(1) The Board shall make by-laws
 - (a) prescribing the manner and frequency of container collections from depots and retailers by the collection system agent and manufacturers.
 - (f) respecting all aspects related to permits for the operation of depots, including, without limitation,
 - (i) the form and manner of application for a permit or a renewal of a permit,
 - (ii) the fee, if any, that is payable with an application,
 - (iii) the imposition of terms and conditions on a permit; and
 - (iv) the suspension and cancellation of permits.

3.1 The Administrative Bylaw (the “Administrative Bylaw”)

Section 7 of the Administrative Bylaw sets out the BCMB’s authority regarding permits, and its ability to amend, add or delete a term or condition and to cancel or suspend a permit:

- 7.(3) The Association may, on its own initiative or on the request of the depot operator, amend a term or condition of, add a term or condition to or delete a term or condition from a permit.
- 7.(4) The Association may cancel or suspend a permit if the permit holder contravenes the Regulation or this Bylaw.

Section 8 of the Administrative Bylaw sets out the BCMB’s authority regarding the collection of containers:

8.(1) Manufacturers on their own behalf or through the collection system agent and bottle depots on their own behalf or through the

Association shall provide to the Association a plan acceptable to the Association providing for the following:

- (a) the times at which and the manner in which containers will be collected from depot operators;
- (b) storage and sorting of containers pending their collection;
- (c) the times at which and the manner in which the collection system agent or manufacturer will pay to the depot operators any amounts they are required to pay under this Bylaw or the Regulation;
- (d) any other matters considered necessary.

(2) A Plan under subsection (1) is not valid until it has been approved by the Association.

Section 10 of the Administrative Bylaw requires records to be kept:

- 10. A manufacturer, a depot operator and the collection system agent shall, in a manner satisfactory to the Association, keep or cause to be kept books, documents, records and accounts for the purpose of this Bylaw and the Regulation.

Section 11 of the Administrative Bylaw requires information to be provided to the BCMB:

- 11. A manufacturer, a depot operator and the collection system agent shall compile and submit, or cause to be submitted, to the Association in a form acceptable to the Association and at the times required by the Association, information concerning
 - (a) in the case of a manufacturer, the number of containers sold by the manufacturer in each category identified by the Association,
 - (b) the number of containers collected from depots and retailers in each category identified by the Association,
 - (c) in the case of a manufacturer and the collection system agent, the volume of containers recycled under section 16 of the Regulation,
 - (d) in the case of a depot operator, the Uniform Code of Accounts established by the Directors of the Association and such other financial information that

the Directors of the Association determine is necessary for the administration of section 4 of this Bylaw; and

- (e) any other information the Association considers necessary for the administration of this Bylaw.

4.0 Administrative Compliance Bylaw (the “Compliance Bylaw”)

Section 2.1 of the Compliance Bylaw authorizes the BCMB to issue compliance fees, in the event of certain acts of non-compliance as set out in the schedule to the Compliance Bylaw.

- 2.1 The events listed in the Schedule to this Bylaw are the events in respect of which a compliance fee may be levied by the BCMB.

Paragraph 2 of the Schedule lists the events for which compliance fees may be levied including:

- (m) failure to accurately sort and count Registered Containers placed in designated receptacles for pick up by common collection agents.

Section 2.5 of the Compliance Bylaw sets out the amount of the compliance fee, in conjunction with paragraph 1 of the Schedule:

- 2.5 The amount of a compliance fee shall be the amount stipulated in the Schedule to this Bylaw...

Paragraph 1 of the Schedule provides that:

- 1. The fees payable under this Bylaw shall be in the amount up to \$200.00 per event or per day for each event or each day the event continues.

Section 2.3 of the Compliance Bylaw sets out the requirements for notice of the compliance fee:

- 2.3 The BCMB shall issue a notice of the fee to be levied. The notice of fee must contain the following information:
 - (a) the name of the person required to pay the fee;
 - (b) particulars of the event which is the basis for the fee being levied;
 - (c) the name of the Bylaw or policy under which the fee is being levied;
 - (d) the amount of the fee, any applicable costs, the manner in which interest will accrue, and the time by which it must be paid;
 - (e) a statement of the right to appeal the levying of the fee to a sub-committee established by the BCMB.

Sections 2.6 and 2.7 of the Compliance Bylaw set out the rules for enforcing compliance fees:

- 2.6 A person who is served with a notice of compliance fee shall pay the amount of the compliance fee within 30 days of the date of service of the notice.
- 2.7 If a party who has received notice as set out in section 2.3, above, fails to comply with the terms or requirements of the notice within 30 days from the date of service of the notice, the BCMB may:
- (a) take the necessary steps to remedy the event or to fulfil the terms imposed at that party's cost;
 - (b) 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;
 - (c) levy any additional fee or interest as may be permitted by the Bylaw or any other bylaw or policy of the BCMB;
 - (d) take steps to collect the outstanding fee;
 - (e) withhold or suspend any permit, renewal, or approval until all amounts owing to the BCMB have been paid;
 - (f) set off any amount owing by the BCMB to the party against whom a fee has been levied;
 - (g) 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;
 - (h) direct a third party, including a collection system agent, to collect the outstanding fee on behalf of the BCMB;
 - (i) collect all outstanding amounts by any other reasonable and lawful means.

APPENDIX II – STANDARD RATES FOR AUDITING COSTS

CSA Per Bag Audit Costs

Labour	\$40.93
Overhead	\$9.19
Equipment	\$2.07
Total Cost	<u>\$52.19</u>

The BCMB approved audit cost billable to depots for the purposes of this policy is set at

\$50/bag

The per bag audit cost will be applied to all audited bags from a shipment when the depot is at Level 2 or 3 and the audit results in an average variance greater than $\pm 2.5\%$.