



BEVERAGE CONTAINER MANAGEMENT BOARD

**IN THE MATTER OF A HEARING OF
THE BEVERAGE CONTAINER MANAGEMENT BOARD
REGARDING PERMIT NO. 20-BCD-043
ISSUED TO 2145448 ALBERTA LTD.**

BCMB Hearing Panel:

Brian Moore, Chair
Owen Edmondson
Thomas Marr-Laing

Counsel Appearances:

Ashley Reid for the Complaints Director
Natalie Tymchuk for the Permit Holder
Vivian Stevenson K.C. for the Hearing Panel

Date and Place of Hearing:

May 3-5, 2023
Offices of Environmental Appeal Board

DECISION OF THE BCMB HEARING PANEL

INTRODUCTION

1. This is a decision arising from a hearing before a Hearing Panel of the Beverage Container Management Board (the “BCMB”) regarding Permit #20-BCD-043 issued by the BCMB (the “Permit”).
2. The BCMB Issued the Permit to 2145448 Alberta Ltd. on August 24, 2020. The sole director and shareholder of 2145448 Alberta Ltd. is Mohamed Rafat (“Mr. Mohamed Rafat”). For the purpose of this decision, Mr. Mohamed Rafat and 2145448 Alberta Ltd. may both be referred to as the Permit Holder.
3. The Permit was issued with respect to a depot in Evansburg Alberta (the “Evansburg Depot” or the “Depot”).
4. On May 2, 2022 the BCMB Complaints Director referred the allegations in this matter to a hearing and a Notice of Hearing was sent to the Permit Holder.
5. The hearing was originally set for October 4 and 5, 2022 and was then adjourned at the request of the Permit Holder to May 3, 2023. The hearing took place at the offices of the Environmental Appeals Board from May 3, 2023 to May 5, 2023.

JURISDICTION AND PRELIMINARY ISSUES

6. The Hearing Panel was delegated to conduct the hearing and was validly appointed in accordance with the BCMB Depot By-law. There was no objection to the jurisdiction or composition of the Hearing Panel.
7. The hearing was open to the public.
8. The hearing proceeded in English, except for the testimony of some witnesses which involved translation through an interpreter.

ALLEGATIONS AGAINST THE PERMIT HOLDER

9. The Notice of Hearing contains the following allegations:

IT IS ALLEGED THAT, between November 5, 2020 and May 7, 2021, Mohamed Wael Rafat, the depot owner and operator of the Evansburg Bottle Depot (the "Depot") and a Director of 2145448 Alberta Ltd. (the "Permit Holder"), which held Permit No. 20-BCD-043:

1. accepted containers that could reasonably be identified by the depot operator as having been transported into Alberta (the "Containers"), contrary to section 11(1) of the Beverage Container Recycling Regulation 101/97(the "Regulation");
2. delivered the Containers to ABCRC for deposit refunds and handling commissions to which the Depot was not entitled, contrary to section 2.7 of Permit No. 20-BCD-043; and
3. failed to adhere to the highest standards of honesty, integrity, fair dealings and ethical conduct in all dealings with the Collection System Agent appointed under the Regulation and the BCMB, contrary to section 10.35 of the Depot Bylaw,¹

ALL OF WHICH is contrary to the requirements of Permit No. 20-BCD-043, the Depot By-law, the Regulation, and the Environmental Protection and Enhancement Act, RSA 2000 c.E-12.

EVIDENCE

10. The evidence before the Hearing Panel in relation to this matter consists of both documentary evidence and oral testimony given at the hearing. The documentary evidence is contained in Exhibits 1-29 which were marked at the hearing.
11. The witnesses called by the Complaints Director were Ms. Michelle Winmill, Ms. Jennifer Budd and Mr. Robert Lessard. The witnesses on behalf of the Permit Holder were Mr. Elmer Rosairo, Mr. Navjinder Singh Randhawa, Mr. Ragubeer Singh, Mr. Ahmed Hassan, Mr. Wael Rafat, the father of Mr. Mohamed Rafat, and Mr. Mohamed Rafat.
12. A summary of the oral evidence from the witness will be contained in this section, with a more detailed analysis in the Decision and Reasons section.

¹ This was the section number at the time of the events giving rise to the allegations and will be referred to as such in this Decision document. The current section number is 10.34.

Testimony of Ms. Michelle Winmill

13. At the time of the events giving rise to this hearing, Ms. Winmill was an Investigations Officer on behalf of the BCMB. She became the Manager of Complaints during the week of the Hearing.
14. Ms. Winmill gave a general description of the Alberta Beverage Container Recycling System. She explained the closed loop nature of the system which starts with the registration of beverage containers sold in Alberta by a manufacturer. The manufacturer then charges the deposit fee to the purchaser of the beverage container and provides that deposit to the Alberta Beverage Container Recycling Corporation (“ABCRC”). The purchaser can return the container to a depot and receives the deposit fee back from the depot operator. The container is collected from the depot along with other containers and shipped to ABCRC who reimburses the deposit fee for each container to the depot and also pays the depot a handling commission fee in relation to each container collected.
15. Ms. Winmill explained that if a depot accepts out-of-province or non-registered containers, ships them to ABCRC and receives payment for them, this results in money being paid out of the closed loop system that had never been paid in, which creates a loss to the system.
16. Ms. Winmill testified that depots are given access by the BCMB to a beverage container registration portal so that they can look up beverage containers to confirm whether they are registered. They can also do this by scanning the container information into the portal.
17. Ms. Winmill explained that the BCMB has implemented a container validation process that depots can follow when they are presented with unfamiliar beverage containers or beverage containers that have other characteristics that suggest that they may have come from outside of Alberta. A depot can accept these suspicious containers and quarantine them without paying out the deposits and then provide information to the BCMB who can confirm whether or not the depot can accept and ship the containers. This container validation request (“CVR”) process is explained to new depot owners when they receive training from the Alberta Bottle Depot Association (“ABDA”) and through notices that the BCMB provides periodically to the depot network.
18. The Hearing Panel was shown examples of notifications that have been sent to depots outlining certain characteristics of beverage containers that suggest the containers may have come from out-of-province and explaining the CVR process if such containers are presented by a customer to a depot for return.
19. Ms. Winmill was then asked to explain the general processes followed in a BCMB Investigation. She explained that when the compliance department becomes aware of a potential by-law breach, it begins a compliance evaluation to gather further information and evidence. She said that a permit holder is not notified of the evaluation at this point in time for a number of reasons, one of which is that the BCMB compliance department wants to have clear evidence of a breach before they ask a permit holder to respond so as not to cause unnecessary stress. The BCMB compliance department also do not want to give a permit holder the opportunity to hide or destroy evidence.



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20. The compliance department provides the information gathered in a compliance evaluation to the Complaints Director who then decides whether any further steps should be taken. The Complaints Director can escalate the matter to an investigation. If a matter is referred to investigation, the permit holder is notified of that fact.
21. In this particular case, Ms. Winmill was involved in the compliance evaluation and then directed the investigation until she left on maternity leave at the end of August of 2021.
22. Ms. Winmill testified that in July of 2020 the BCMB was contacted by an individual who claimed to have information about various Alberta depots involved in purchasing out-of-province containers and shipping them to ABCRC. The informant wished to remain anonymous and did not wish to provide more specific information until the necessary protections were put in place. The protections were put in place for the confidential informant (“CI”).
23. In October 2020, the CI met with and then telephoned the BCMB.
24. Based on information from the CI, Ms. Winmill arranged for the inspection of six loads shipped from the Evansburg Depot from November 2020 to May of 2021. She was involved in the inspection of some of these loads. Five of these loads were audited in the sense that some of the Mega Bags in each shipment were quarantined and inspected on large sorting tables at the ABCRC facility.
25. The Hearing Panel was directed to a number of photographs of the audited material that formed part of the appendices to a report relating to the investigation (the “Investigative Report” or the “Report”). In relation to those photographs, Ms. Winmill identified containers that appeared to have been industrially-compacted because they were flattened to an extent that would not be possible by hand. She noted that there was garbage mixed in with some of the audited containers including receipts and other material referring to Ontario and in two cases, Hawkesbury, Ontario. She also identified photographs showing beverage containers that were not listed in the registration portal.
26. Ms. Winmill testified that there were two depot inspections done at the Evansburg Depot after the audits were done. Those inspections, on June 1 and July 9, 2021, did not yield any evidence of suspicious containers.
27. Ms. Winmill reported the results of the findings to that point to the Complaints Director and the matter was escalated to a compliance review. At that point, Ms. Winmill contacted the Permit Holder to attend a meeting with her. Mr. Mohamed Rafat attended the BCMB offices for the meeting. Mr. Wael Rafat was also in attendance for part of the meeting.
28. The transcript of the interview of Mr. Mohamed Rafat and Mr. Wael Rafat was in evidence at the Hearing. Ms. Winmill was of the view that the interview confirmed that Mr. Wael Rafat had been managing the Evansburg Depot even though he had not been identified as the Depot Manager²

² “Depot Manager” is a defined term in the *Depot By-law* as referring to the individual identified by the Permit Holder as the individual primarily responsible for the day-to-day operations of a Depot. Because Mr. Wael Rafat was not identified as such the term “Depot Manager” is only capitalized when the term is being referred to with the meaning defined in the *Depot By-law*.



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on the application for the Permit. She did not feel that the explanations given by Mr. Mohamed Rafat and his father adequately accounted for the presence of the industrially-compacted containers in the shipments from the Depot.

29. Ms. Winmill went on maternity leave and the investigation was transferred to another Investigations Officer, Ms. Jennifer Budd. When Ms. Winmill returned from her leave, she reviewed some additional material that had been obtained in her absence and made further inquiries which she outlined for the Hearing Panel.
30. On cross-examination, Ms. Winmill identified other information that she had obtained during her conduct of the investigation, including an email from someone at ABDA explaining the training that was given to new depot owners. Ms. Winmill acknowledged that Mr. Mohamed Rafat had said that he had felt overwhelmed by the amount of information he had been given at the ABDA training.
31. Ms. Winmill was also cross-examined about how much scrap material and garbage was depicted in the photos to the Investigation Report and how many out-of-province containers. She confirmed that the BCMB had not advised the Permit Holder about the suspicious material in the offloads or about the reason for the inspections done in June or July of 2021.
32. Ms. Winmill agreed that Mr. Wael Rafat had told her during the interview about somebody who was causing him trouble and Ms. Winmill said that she thought he was referring to a former employee. She also confirmed that she had not told Mr. Wael Rafat at the interview about the name of the recycling company in Ontario they had learned about during their inquiries.
33. Ms. Winmill was cross-examined about investigations that were conducted into other depots based on information from the CI. Her recollection was that industrially-compacted material had been found on depot premises during some of these other investigations, but the depots were not referred to hearings because the BCMB did not have evidence that the industrially-compacted material was actually shipped to ABCRC or paid for by ABCRC.

Testimony of Ms. Jennifer Budd

34. The next witness for BCMB was Ms. Budd. Ms. Budd took over the investigation from Ms. Winmill and was responsible for writing the Investigative Report. She had been involved in the matter as a BCMB compliance officer before she took over the investigation and had been involved in some of the audits of the shipments from Evansburg.
35. Ms. Budd advised the Hearing Panel that there were some calculation errors in the Investigative Report and those corrections were summarized in a document that was marked as an exhibit in the proceedings.
36. Ms. Budd testified to efforts she had made to confirm whether certain containers found in the Evansburg Depot audited shipments were registered and sold in Alberta. She looked at the registration portal and if containers did not come up, she reached out to AGLC and also to manufacturers to inquire whether the products were being sold or distributed in Alberta without being registered. She determined that the containers in Appendix 18 of her report were not



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registered with AGLC. She also confirmed with some of the manufacturers that their products were not sold in Alberta.

37. Ms. Budd also testified about a discussion with an individual involved in the blue box recycling program in Ontario to find out about how materials were handled there, including alcoholic and non-alcoholic beverage containers.
38. According to Ms. Budd the audits of the shipments from the Evansburg Depot contained just shy of 13,000 industrially-compacted containers and the industrially-compacted containers were similar to those that had been found in the shipments from depots that had been found by other Hearing Panels to have contravened their permits, the *Depot By-law* and the *Regulation*.
39. Ms. Budd explained to the Hearing Panel that in preparing the Investigative Report she had looked at historical data relating to the volume of containers shipped by the Evansburg Depot as increases in load volumes had been seen in cases where depots had shipped out-of-province material. She testified that after the Permit Holder began operating the Evansburg Depot, the Depot had seen an increase in volume that was greater than other depots within a 55 km radius, and that the volume had decreased slightly after notice of the investigation was given to the Permit Holder.
40. Ms. Budd identified a ticket that had been submitted by Mr. Wael Rafat through the quality monitoring system (“QMS”) regarding payments that had not been received by the Evansburg Depot for some shipments. She also identified documentation regarding a transfer of \$6,000 that Mr. Wael Rafat had made to the Permit Holder.
41. Ms. Budd testified about her contact with Recycle Action, a recycling depot located in Hawkesbury, Ontario. She spoke to two individuals with Recycle Action because the CI had identified it as the source from which an individual named Wael had been purchasing beverage containers. She obtained several documents from Recycle Action, including bills of lading referring to Wael Rafat, Wally, Alexandria Transport and MO&AI.
42. Ms. Budd also explained some calculations she had done to provide a general idea of the potential monetary gain to the Depot from shipping out-of-province material.
43. On cross-examination, Ms. Budd confirmed that, out of shipments comprising about 330,000 beverage containers from Evansburg, the BCMB had identified about 12,728 containers that were suspected to have been previously baled. She later clarified that the audits had only been of a portion of the shipments, about 72,000 containers.
44. She also confirmed that during the inspection at the Evansburg Depot on June 1, 2021 at which she was present, no industrially-compacted material had been found and that she never saw anyone delivering out-of-province containers to the Evansburg Depot.
45. Ms. Budd also confirmed that the audits and depot inspections demonstrated that the last occurrence of acceptance and shipping of industrially-compacted material by the Evansburg Depot was just prior to the BCMB inspection on June 1, 2021 and before the BCMB notified the Evansburg Depot that it was being investigated. She agreed that she had not looked at the UCA information for the Evansburg Depot after February of 2022 and when shown the information for 2022 she

agreed that the volume of containers shipped by Evansburg for that time period had stayed at a high level as compared to the volume under the previous owner.

Testimony of Mr. Robert Lessard

46. The final witness for the BCMB was Robert Lessard who testified by Zoom.
47. Mr. Lessard explained that he was the Director of operations for Recycle Action, a not-for-profit corporation operating in Hawkesbury Ontario. Hawkesbury is a small town of about 10,000 people about 100 km from the city of Montreal. Recycle Action employs people with disabilities to sort blue box materials from municipalities in the area into various categories. They receive cardboard, mixed paper, newspaper, aluminum, metal and grade 1 to 7 plastics. The material is sorted, compacted into bales and sold to the highest bidder.
48. According to Mr. Lessard he has only one customer from Alberta. He knows that client as “Wally”. He identified “Wally” as being Mr. Wael Rafat. He said that Mr. Wael Rafat had various companies that he used in his dealings with Recycle Action and that in the beginning he used MO&AI and then the transactions were under the Wally name and then the name used was Alexandria Transport.
49. Mr. Lessard testified that he met Mr. Wael Rafat at the Recycle Action facility in Ontario when Mr. Wael Rafat “...came to us knocking on the door”.
50. According to Mr. Lessard, Mr. Wael Rafat first purchased material from Recycle Action in approximately mid-2017 and bought material mostly every month depending on when the load was ready.
51. Mr. Lessard communicated with Mr. Wael Rafat mostly by phone but also by email at the email address indicated on the bills of lading.
52. Mr. Lessard said at the beginning he and Mr. Wael Rafat would communicate mostly by phone. They would set a price and Mr. Wael Rafat would send a truck and the driver would arrive with cash and pay Recycle Action in cash and then they would load the truck and the driver would leave. The only material Mr. Wael Rafat purchased was #1 plastic and aluminum cans.
53. Mr. Lessard identified the Recycle Action bills of lading attached to the Investigative Report. The last of these bills of lading was dated the 21st of May, 2021 and Mr. Lessard testified that this was Mr. Wael Rafat’s last purchase of materials from Recycle Action.
54. Mr. Lessard confirmed that there was a Winners store in Hawkesbury and he identified a document found in the Evansburg Depot audited shipments as coming from a popular restaurant on Main Street in Hawkesbury.
55. On cross-examination, Mr. Lessard confirmed that Mr. Wael Rafat only ever bought aluminum cans and #1 plastics (essentially water bottles and pop bottles). He said that there was a possibility of about 5% contamination with other materials because it is baled with a loader and also that there could be paper in it.



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56. Mr. Lessard recalled that at the beginning when he met with Mr. Wael Rafat that he was with another man whose name he could not recall and that once or twice Mr. Wael Rafat came with a younger gentleman who he thought might be a nephew.
57. Mr. Lessard did not recognize the name Mohamed Abdelmetaal, and he did not recognize the picture on Mr. Abdelmetaal's photo identification although he said he probably would not be able to recognize the other people as it had been a couple of years.

Testimony of Mr. Elmer Rosairo

58. The first witness for the Permit Holder was Mr. Elmer Rosairo. Mr. Rosairo has been an employee of the Evansburg Bottle Depot since August of 2021. He testified that customers of the Depot have been extremely complimentary of how the Depot is run and some customers had told him they were glad that one of the former employees had left because that employee always smelled of alcohol.
59. Mr. Rosairo testified that most of the customers of the Depot brought containers from their homes, but sometimes bottle pickers would bring in containers that were crushed and muddy, particularly in the spring. He said that sometimes the customers would have non-beverage containers mixed in with their beverage containers and also household garbage.
60. Mr. Rosairo also testified that the Depot had customers who would bring in crushed containers. He understood that there was a difference between crushed containers and ones that had been industrially-compacted. By way of example, he said that cans that were pressed from top to bottom were likely from a hand presser, but cans that were flattened side to side were more likely industrially-compacted.
61. Mr. Rosairo was also familiar with the BCMB's CVR process and said that in the first few months he was working at the Depot, he had had filled out a CVR form in relation to some crushed containers because he was not sure whether they had been compacted.
62. Mr. Rosairo had not seen customers bringing containers into the Depot before he started working there on August 1, 2021.

Testimony of Mr. Navjinder Singh Randhawa

63. The second witness for the Permit Holder was Mr. Navjinder Singh Randhawa. Mr. Randhawa owns a transportation company called New Majha Transport Inc. ("New Majha"). New Majha was incorporated in 2016. Mr. Randhawa started his company with one truck and in 2018 began working under his own dispatch.
64. Mr. Randhawa testified that he knew Mr. Wael Rafat, although he did not know Mr. Mohamed Rafat. He said that knew Mr. Wael Rafat because when he opened his company, he got a few drivers and the drivers used to work for Mr. Wael Rafat and Mr. Wael Rafat was their reference. Later he met him at a social function.



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65. Mr. Randhawa confirmed that his company had transported material for Mr. Wael Rafat from Recycle Action in Ontario. He said that he had a truck in Ontario with no load, and he found a load on Loadlink so he called Mr. Wael Rafat who asked him whether he would do the load. After that Mr. Wael Rafat called him again.
66. Mr. Randhawa was shown bills of lading relating to shipments billed to 10627755 Canada. He did not recognize the numbered company but remembered the address in Manitoba.
67. Mr. Randhawa said he did not deliver these shipments himself, but that he recalled the address in Manitoba because the driver would be taking a tractor-trailer and he would need to check if the address was on a truck route.
68. Mr. Randhawa had no knowledge of his drivers delivering these shipments other than to the address noted. He said his drivers would deliver where he told them to and that they were not supposed to deliver anywhere beyond that.
69. Mr. Randhawa said it was possible he did deliveries before October of 2020, but he did not recall any deliveries from Recycle Action or Mr. Wael Rafat going anywhere other than to Manitoba.
70. Mr. Randhawa said he did not know where Evansburg Depot was and had no involvement in the beverage container recycling industry.

Testimony of Mr. Raghubeer Singh

71. The third witness for the Permit Holder was Mr. Raghubeer Singh. Mr. Singh owns a transport company named Raj Cargo Transport Inc. Mr. Singh said that the previous witness, Mr. Randhawa, is a friend and neighbour of his and Mr. Randhawa asked him whether he was interested in shipping loads from Ontario to Manitoba. When he said that he was, Mr. Randhawa gave Mr. Wael Rafat Mr. Singh's contact information and Mr. Wael Rafat called him.
72. Mr. Singh said Mr. Wael Rafat would send him a load confirmation. He would also get paperwork from the shipper which the receiver would sign.
73. Mr. Singh recalled that his company delivered loads to a place near Winnipeg. He was shown various carrier confirmations and bills of lading relating to shipments he had made for Mr. Wael Rafat to Manitoba. He did not drive any of the loads himself. He testified that to his knowledge all of the shipments went to the address in Manitoba listed on the bills of lading. He did not know what happened to the deliveries after they were delivered to Manitoba.

Testimony of Ahmed Hassan

74. The fourth witness for the Permit Holder was Mr. Ahmed Hassan. Mr. Hassan was a mechanical engineer in Egypt before moving to Canada in 2008. After he moved to Canada, Mr. Hassan had a cleaning company, worked in construction, transportation and export and import. He has a company in Egypt and imports and exports between there and the U.S. and Canada. At the time of the hearing Mr. Hassan was living in Mundare, Alberta, and had other residences in Ottawa, Calgary and Egypt.



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75. Mr. Hassan operates his export and import business in Canada through 10627755 Canada Ltd. a federally incorporated numbered company, and through a second company named Peramides Export and Import Ltd. The numbered company was incorporated in 2018 and the second company in August of 2020.
76. Mr. Hassan testified that he has known Mr. Wael Rafat since 2013 when Mr. Wael Rafat had a transportation company. Mr. Hassan then moved to Ottawa. In 2018 some people in Egypt were looking for aluminum, iron and plastic and he contacted Mr. Wael Rafat at that time. Mr. Hassan said that he was not able to obtain what he needed and Mr. Wael Rafat said he would find someone to bring Mr. Hassan what he needed and began bringing stuff to Mr. Hassan's land. Mr. Hassan also said that Mr. Wael Rafat took him to the Recycle Action facility in Ottawa.
77. According to Mr. Hassan, his Egyptian partners told him to get some land and store all of the material that he collected there until it could be shipped in one load to Egypt. He said he asked for the money up front, but his partners only sent him \$20,000 and told him to use his own money and they would send more afterwards. Mr. Hassan said that they did not send the money and he did not have enough money to continue.
78. Mr. Hassan was shown carrier confirmations and bills of lading referencing his numbered company and he identified the transport companies that he worked with in collecting his material. At one point he said he could not recall whether he began collecting material before 2020, but later confirmed that he began gathering material on the land in Manitoba in 2018.
79. Mr. Hassan said that the materials were delivered to the land in Manitoba by transport companies that he arranged for. He did not recall using any other companies. He said that Mr. Wael Rafat told him about those companies. He said that Mr. Wael Rafat would talk to the providers and pay them and then he himself would arrange the transport directly and Mr. Wael Rafat had nothing to do with the shipments. Mr. Hassan would pay for the transport with cash and would also pay Mr. Wael Rafat for the materials.
80. Mr. Hassan said he gathered the material from Recycle Action in Manitoba to ship them and when he saw things were going nowhere, he started selling it. He kept it on his land, but said it was not for a long time. Because he was not getting the money from Egypt, Mr. Hassan said he would sell the material and then order more material.
81. At some point Mr. Hassan stopped ordering the material because he did not know what to do with it. He testified that he talked to a lot of people to sell the material, including a person named Mohamed Hassan, who he identified through a driver's license as Mohamed Abdelmetaal. Mr. Hassan said he originally met Mr. Abdelmetaal back in 2013 when they worked for Mr. Wael Rafat.
82. Mr. Hassan said he contacted Mr. Abdelmetaal by Facebook about the material and Mr. Abdelmetaal began bringing Mr. Hassan customers for the material. Mr. Hassan said that he sold the baled materials from the land in Manitoba to these customers.
83. Mr. Hassan said he did not know what these people did with the stuff he sold them. He did not know whether any of the materials were transported into Alberta.

Testimony of Mr. Wael Rafat

84. Mr. Wael Rafat was born in Egypt and moved to Canada in 1991. In 1995 he moved to and worked in Inuvik in a taxi company before moving to Edmonton in 2001 and then to St. Albert in 2003.
85. In 2006 Mr. Wael Rafat decided to get into the trucking business. He incorporated Alexandria Transport for that purpose. Initially he drove a truck and there were two other trucks driven by family members. By 2011 he had about 15 trucks and was not driving anymore but was managing the company. He operated Alexandria Transport until 2016 or 2018. After that he acted as a broker, finding trucks to transport goods for people in exchange for a percentage of what the transportation company was paid.
86. Mr. Wael Rafat said that when he operated Alexandria Transport, he had a driver working for him named Mohamed Abdelmetaal. Mr. Abdelmetaal drove for Alexandria Transport for about a year (2012-2013). Mr. Abdelmetaal came back in 2015.
87. According to Mr. Wael Rafat in 2016 or 2018, Mr. Abdelmetaal took him to a place called Recycle Action. He said that Mr. Abdelmetaal said he could not put money in his bank account because he was on welfare.
88. Mr. Wael Rafat said that when Mr. Abdelmetaal would do the order, he would give Mr. Wael Rafat money and Mr. Wael Rafat would take that to the Bank and get a certified cheque to give back to Mr. Abdelmetaal. He was paid a percentage for doing that. He said that Recycle Action was told that Mr. Wael Rafat was the broker in these transactions. He said that he was involved in the transfer of funds between Mr. Abdelmetaal and Recycle Action and had no further involvement.
89. Mr. Wael Rafat testified that he did this for Mr. Abdelmetaal starting at the end of 2018 and 2019 for about a year and a half and that the transactions involved a company called MO&AI which he had nothing to do with. He did not know what Mr. Abdelmetaal was doing with the material or where it was being shipped. He did not know whether any material went to Alberta. He said he was involved because Mr. Abdelmetaal had concerns using his own name because he had left the US as an illegal immigrant and come to Canada as a refugee, and he was on welfare and also periodically being visited by the FBI.
90. At some point things between Mr. Abdelmetaal and Mr. Wael Rafat went bad. Mr. Wael Rafat said that Mr. Abdelmetaal started sending messages saying that he was going to ruin Mr. Wael Rafat. The Hearing Panel was given a copy of a message dated October 4, 2019 and played a voicemail message that was sent in conjunction with that message. The message and voicemail were in Arabic and were translated.
91. The October 4, 2019 message contained the name and contact information for the Beverage Container Management Board. The voicemail of the same date accused Mr. Wael Rafat of wanting to ruin the speaker's life and suggested that the speaker was waiting for him. Mr. Wael Rafat said he did not know why Mr. Abdelmetaal was so angry with him or why the message referred to the BCMB.
92. Mr. Wael Rafat said that in 2019 or 2020 he met Ahmed Hassan, and that Mr. Hassan told him that he was going to establish a company for export and import and needed material such as aluminum



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and plastic. Mr. Wael Rafat knew about Recycle Action from Mr. Abdelmetaal so called them to source the material. Mr. Wael Rafat also said that he talked to the owners of New Majha and Raj Cargo about helping with the shipments. He brokered the shipments for Mr. Hassan's company from 2020 until 2021 but could not remember exactly when this started.

93. Mr. Wael Rafat said that he knew the shipments for Mr. Hassan were going to Manitoba but that he did not know what happened to them after they were delivered there.
94. Mr. Wael Rafat was shown some of the bills of lading from Recycle Action. He identified some of them as containing Mr. Abdelmetaal's handwriting including the handwriting of "MO&AI" and the name "Wally" next to the customer name. Mr. Wael Rafat said he used Alexandria Transport with these bills of lading because he was getting the stuff and sending it to Manitoba.
95. In terms of the Evansburg Depot, Mr. Wael Rafat said that he had a friend who had a bottle depot and that he asked his friend about the profitability of it. He discussed with his son, Mr. Mohamed Rafat, whether his son wanted to get involved in the bottle depot business. In addition, when Mr. Wael Rafat had his trucking business he used to collect bottles from some bars and take them to a bottle depot.
96. Mr. Wael Rafat said he gave \$6,000 to Mr. Mohamed Rafat to help his son buy the business. He also let his son use a numbered company (2145448 Alberta Ltd.) that he had set up after he closed Alexandria Transport. He said that he had incorporated the company thinking he could use it to work as a broker or work with trucks again, but he did not end up using the company for that. In July of 2020 he ceased being a director and his son became the sole shareholder and director of the company for the purpose of Mr. Mohamed Rafat's depot business.
97. Mr. Wael Rafat testified that his son was in school when he purchased the Evansburg Depot and Mr. Wael Rafat wanted to be able to help with the Depot when his son was busy. Accordingly, he attended the ABDA training with his son. He said that the training was on one day for 7 to 8 hours and that everything was new to him. He recalled going to a depot and seeing crushed cans at the depot and asking the person from ABDA whether depots could take them, and she said sometimes they could.
98. Mr. Wael Rafat said that he understood that the people who were working at the Depot when his son took it on had training. They stopped working at the Depot in June or July 2021.
99. Mr. Wael Rafat said that he did not understand the term "baled" before his interview with the BCMB. He said that prior to the meeting he understood that he could accept crushed cans or plastics "if a car passes on them". He said that he did not know how the crushed containers that were in the Depot's shipments had been crushed, but that if he had seen the milk container that the BCMB showed him at the interview, he would not have taken it.
100. When asked how non-beverage containers and garbage got into the shipments, Mr. Wael Rafat said that sometimes customers would tell the Depot employees that they had a bag with a certain number of containers in it, and the employee would accept the bags without counting the containers.



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101. It was Mr. Wael Rafat's testimony that he did not work at the Depot. He said that the BCMB told him he was the manager and he said he was not. He said his only supervisory role was in relation to accounting, for which purpose he had access to the Permit Holder's bank account.
102. Mr. Wael Rafat said that when he went to the Depot it was to drop off cash. He said that in a whole week he would go for a maximum of two or three hours. He admitted that he had made an inquiry through the QMS system about payment for loads on one occasion because his son was busy. He acknowledged when he was there he would use the scanner to check container registration and if he saw something suspicious and not in the scanner he would set it aside and not send it to ABCRC.
103. Mr. Wael Rafat testified he could not provide an explanation for the non-registered containers in the Depot shipments. He said he could tell the difference between an industrially-compacted container and a hand-pressed one but could not tell the difference between one that had been run over by a car and one that had been industrially compacted. He could not explain why there were industrially-compacted containers in the Depot's shipments.
104. Mr. Wael Rafat testified that although he told the BCMB Investigations Officers at the meeting about the fact that there was a person that was threatening him and trying to ruin him, they never asked for a name and did not give him the opportunity to tell them about Mr. Abdelmetaal. He said that when the Investigations Officer said that the BCMB was going to be reaching out to recyclers in Ontario he had no concerns with that and told them to go ahead. He said he told the Investigations Officer that he was not the manager of the Depot but was just trying to help his son.
105. Mr. Wael Rafat also testified that the Investigations Officer had served him with the Notice of Hearing at the end of Ramadan and this was very upsetting and that the whole thing was causing him to have high blood pressure so he told Mr. Mohamed Rafat he would not have anything more to do with the Depot.

Testimony of Mr. Mohamed Rafat

106. Mr. Mohamed Rafat lives with his father in St. Albert. At the time of the hearing, he was enrolled at MacEwan University in a Bachelor of Arts program.
107. Mr. Mohamed Rafat said that prior to obtaining the Permit for the Evansburg Depot he had a lot of money that he wanted to invest and he asked his father about good opportunities and his father mentioned the depot business. Mr. Mohamed Rafat said he looked into it and knew it was a lucrative business. He spoke to the owner of the Evansburg Depot who said he was not hands-on at the Depot and was not there all the time. Mr. Mohamed Rafat thought this was advantageous because he intended to focus on his school and then during the summer to be there full-time and do the operational part and marketing.
108. Mr. Mohamed Rafat said in January and February of 2020 he was looking into some business options and then his schooling was interrupted by Covid and he wanted to look for something serious during the summertime so he went online and then in June of 2020 started looking seriously for a depot opportunity.



109. Mr. Mohamed Rafat confirmed that he completed the application form for the Permit with the help of the previous permit holder for the Depot. He said he had roughly reviewed the *Regulation* and BCMB By-laws before he applied. He listed himself as the Depot Manager. He testified that he did not list his father because his father was not going to be that involved and because he was not going to be paid on a payroll. He confirmed his father had paid some money to the Depot to help him buy it and that he took over the numbered company from his father.
110. Mr. Mohamed Rafat attended a day of training with the ABDA and said the information was overwhelming. He recalled discussions about crushed containers and understood Depots could accept them depending on the quantity and how crushed they were. He recalled learning about the CVR process for suspicious materials. He did not know what training the two employees at the Depot had, but the previous permit holder had said the employees were good.
111. Mr. Mohamed Rafat said his father attended the ABDA training so that if Mr. Mohamed Rafat got busy with other activities, his father would be there to look after him.
112. When Mr. Mohamed Rafat got the Permit, he had purchased a load from the previous owner and so that was shipped a few days later.
113. Mr. Mohamed Rafat agreed that he would have received the various notices from the BCMB relating to crushed and industrially-compacted containers, but he said he did not look into it in depth because he did not think they had anything to do with his Depot and he had all of his emails in one account (work, school and personal) so he had a lot of emails.
114. He also knew that BCMB compliance officers had attended at the Depot twice, the first time being June 1, 2021 and he assumed that was a regular thing. It was only when he received the July 21, 2021 letter from the BCMB that he understood that he was being accused of accepting unregistered containers, and he was shocked by that. Prior to that he did not have any concerns about how the Depot had been operating because he had not received any complaints. He said in June or July of 2021 one of the former Depot employees moved out of the Province and the other was either not showing up or was under the influence when he did, and was let go.
115. When the two employees left, Mr. Mohamed Rafat worked at the Depot and also had a part-time employee who helped out until Mr. Rosairo was hired in August, 2021.
116. Mr. Mohamed Rafat said when he attended the meeting with the BCMB in August, 2021 he thought it was just going to be a discussion, but that it was very harsh. He said he asked for his father to come into the interview because of the Investigator's tone of voice and how aggressive the BCMB personnel were. He said they treated him like he was a bad person even though he had never done anything wrong. He also felt that they did not want to accept what he was telling them.
117. According to Mr. Mohamed Rafat, when he was asked about the crushed containers in the interview, it was his understanding that these had come from bottle pickers or other customers who brought in crushed containers. He said because the Depot is on the highway, they get a lot of crushed cans and dirty cans, so he did not think there was a problem with the containers that had been identified by the investigators. He understood that the Depot could accept a container that was not completely crushed.



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118. Mr. Mohamed Rafat said that he could not explain how the industrially-compacted containers got into the shipments to the ABCRC because during that time he was not physically at the Depot. He said during the relevant time he was carrying a full course load at school, and he was probably at the Depot once or twice a month and then just to drop off the refund money. He said that he was never really at the Depot in the winter because of the icy highway.
119. Mr. Mohamed Rafat said perhaps the two employees had included the compacted material in the shipments, but he did not know that they had done so. He said if he had been at the Depot the material would not have been shipped as he would have made sure it was not.
120. Mr. Mohamed Rafat said he had a scanner on his phone for checking for unregistered containers but that he never used it and he did not think his employees had it. He said when Mr. Wael Rafat was at the Depot, Mr. Wael Rafat was always using it to make sure containers were registered.
121. In terms of his father's involvement with the Depot, Mr. Mohamed Rafat said that he relied on his father to help him with the operational side of things and that he had the two employees as well. His father had some supervisory role when at the Depot.
122. Mr. Mohamed Rafat said he knew nothing about Recycle Action or his father's dealings with them. He said whatever his father did for his side ventures was none of his concern. Mr. Mohamed Rafat had no knowledge of MO&AI's business activities or the business activities of Mr. Abdelmetaal or Mr. Hassan.
123. Mr. Mohamed Rafat said after the meeting with the BCMB in August of 2021 he took steps to register his father as the Depot Manager because he was told he should have a Depot Manager. However, his father did not pass the English requirements. He found a manager who started in October or November of 2021. He said since the BCMB meeting he has made sure that the Depot did not accept anything like the material identified by the BCMB.
124. Mr. Mohamed Rafat also testified about a communication he had with the BCMB after the August meeting with them. He said they contacted him to ask about the volumes at the Depot and why there had been an increase in volume from 2020 to 2021. Mr. Mohamed Rafat provided additional information about the volumes, including the fact that there had already been increases in volume at the Depot before he got his Permit.
125. He also explained that he had improved customer service by making the Depot faster and more organized. He said that there appeared to have been an increase in volume due to Covid and that he accepted bigger loads than his predecessor had. He also advised the BCMB of a big bottle drive in January of 2021 that brought in \$9,200 and another involving a wrestling team from Drayton Valley and said that there were other bottle drives. He said that there was more drop service. He said many people visited his business website and the Depot was attracting more customers and also picking up containers from bars, restaurants and golf courses. He did not think that the fact he had made the business successful should be held against him.
126. Mr. Mohamed Rafat also provided Google reviews and back up documentation regarding visits to his website and ratings the Depot had received. He identified UCA documentation that showed

that the volume of containers dealt with by the Depot had remained higher after August of 2021 than they had been when he obtained the Permit.

127. He said that the BCMB did not follow up on the information provided and did not respond to his inquiry to them about why his father's purchase of materials had anything to do with the Depot.

128. Like his father, Mr. Mohamed Rafat was also upset that the Notice of Hearing arrived after the end of Ramadan and said that the accusations by the BCMB had affected him very badly.

129. Mr. Mohamed Rafat testified that after the meeting with the BCMB he made every effort to ensure compliance with the BCMB By-laws relating to containers and he drew the Panel's attention to the CVR information he had provided in January of 2022. He said had he known earlier that the Depot had accepted out-of-province materials he would have addressed it and he felt that the BCMB should have trained them or given them the opportunity to learn from their mistake.

130. Finally, Mr. Mohamed Rafat confirmed that he had every intention of making sure there were no further issues and complying with the *Regulation*, BCMB By-laws and permit terms.

DECISION AND REASONS FOR DECISION

131. There was a large amount of documentary and oral evidence and some of that evidence was not consistent. Accordingly, the Hearing Panel has made factual findings based on the evidence before it. The relevant findings and reasons for those findings are contained in this part of the reasons for decision.

132. On November 23, 2006 A corporation named MO&AI Ltd. was registered in Alberta. The sole director and shareholder is shown as Abdessatar Ben Hassan.

133. On March 4, 2008 a corporation named Alexandria Transport Ltd. ("Alexandria") was incorporated in Alberta. One of the two named directors and shareholders of Alexandria is identified as Mr. Wael Rafat. The last annual return for Alexandria was filed on May 27, 2016.

134. The last annual return for MO&AI Ltd. was filed in 2015. A corporate search shows the corporation as struck but does not indicate when that occurred.

135. On February 12, 2018 10627755 Canada was incorporated as a federal corporation. The sole Director and shareholder of the company is identified as Ahmed Hassan of Toronto, Ontario.

136. On September 2, 2018 Alexandria was struck for failure to file annual returns. On September 26, 2018 2145448 Alberta Ltd. was incorporated.

137. On October 31, 2018 Recycle Action, a company in Hawkesbury Ontario issued a bill of lading to the customer "MO&AI" relating to "bails" of aluminum cans and plastic. The bill of lading for the bales is signed by Recycle Action. The signature and name of the transport company is not legible.

138. Further bills of lading were issued by Recycle Action to MO&AI on December 14, 2018 and in 2019 on February 28, April 9, May 22, July 5, August 28, October 31 and November 29. On some of these Bills of Lading the name "Wally" appears either with the name "MO&AI" or next to the PO # or on the signature line. On the February 28, 2019 Bill of Lading the customer reference is

simply “Wally”. In 2019 the transport company listed on six of the eight shipments is New Majha Transport.

139. On July 12, 2019, 10627755 Canada purchased some land in Mulvihill, Manitoba.
140. On October 4, 2019 Mr. Wael Rafat received a message on his phone containing the name, address and phone number of the Beverage Container Management Board. The message was in Arabic and indicated among other things “Time zero has approached.” An audio recording was also sent. In part of the message the speaker accused Mr. Wael Rafat of ruining his life and asks him to “come down” as the speaker will be waiting for him. Mr. Wael Rafat identified the speaker as an individual by the name of Mohamed Ahmed also known as Mohamed Abdelmetaal.
141. From December 30, 2019 to June 29, 2020, six further bills of lading were issued by Recycle Action relating to bales of plastic and aluminum. The customer is shown as Wally or Wally Rafat. The transport companies listed in relation to three of these six shipments are New Majha Transport and Raj Cargo Ltd.
142. In July of 2020 the BCMB received a call from someone claiming to have information about an individual who was buying out-of-province material from a recycler in Ontario, bringing it into Alberta and selling it to depots. The informant would not provide details without assurances about protecting their anonymity.
143. On July 8, 2020 a change of director/shareholder was filed in relation to 2145448 Alberta Ltd. Since that time the sole shareholder and director of that corporation has been Mr. Mohamed Rafat.
144. On August 8, 2020 10627755 Canada was registered as an extra-provincial company in Alberta.
145. On August 10, 2020 Recycle Action issued a bill of lading to Wally. The transport company was Raj Cargo.
146. On August 22, 2020 Mr. Mohamed Rafat signed a Permit Acknowledgement Statement indicating that he had received a copy of the Permit, had reviewed its terms and conditions, understood the terms and conditions, and agreed to them. Mr. Mohamed Rafat acknowledged that he had read, understood and would take all reasonable efforts to ensure compliance with the *Regulation*, BCMB By-laws, policies, guidelines and agreement.
147. On August 24, 2020 the Beverage Container Management Board issued a Depot Permit to 2145448 Alberta Ltd. with respect to the Evansburg Depot.
148. In the Depot Permit application form for the Permit, the individual identified as being primarily responsible for Depot management and day-to-day operations (the Depot Manager) was Mr. Mohamed Rafat.
149. In the Depot Permit application, Mr. Mohamed Rafat confirmed that he would abide by the *Beverage Container Recycling Regulation*, all BCMB by-laws, policies, guidelines and approved agreements and that the information in the application was truthful and accurate.



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150. Mr. Mohamed Rafat also signed a Permit Holder Acknowledgement Statement confirming that he had received a copy of the permit and understood and agreed to abide by the terms and conditions of the Permit.
151. Mohamed Rafat attended training with the ABDA in August of 2020. His father, Mr. Wael Rafat, also attended the orientation.
152. According to the ABDA, during the orientation session attendees look at the CVR form and are given examples of containers that are out of the ordinary and should be validated using the BCMB's CVR (Container Validation Request) form. Attendees are also shown the registrations website so that they can look up containers registered in Alberta.
153. When Mr. Mohamed Rafat began operating the Evansburg Depot there were employees on staff who had been employees of the previous Permit Holder.
154. On September 2, 2020 Recycle Action issued a bill of lading to Alexandria Transport (Wally). The PO reference on the bill of lading is also to Wally.
155. On September 18, 2020, the BCMB sent a notice to the depot network about a customer in Calgary who had attempted to return several bags of crushed aluminum cans from Ontario and advised depot operators to watch out for the containers being brought to their depots. The notice was sent to the Evansburg Depot via the industry email address provided to the BCMB.
156. On September 30, 2020 the BCMB sent a notice to the Depot Network about an individual in a vehicle with Ontario plates attempting to return bags of crushed aluminum cans and PET. Depots were advised to complete a CVR form if the containers were brought to their depot and to quarantine them. The notice was emailed to the Evansburg Depot.
157. The same day, Recycle Action issued a bill of lading to Alexandria Transport for bales of plastic #1 and aluminum cans. The PO reference is to Wally.
158. On October 6, 2020 and pursuant to a confidentiality agreement, the BCMB met with the CI who had called them in July. The CI provided more detail to identify who was purchasing and importing the material and identified a couple of the depots that the CI thought might be buying the material.
159. On October 8, 2020 the CI called to advise that the person importing the material had obtained a depot permit through a family member. They did not know the family member's name or the name of the depot, just that it was a rural depot outside of Edmonton.
160. The BCMB began following up the information received from the CI and identified the Evansburg Bottle Depot as potentially being the depot at issue because the last name of the permit holder was the same as the individual identified as bringing the recycled materials into Alberta.
161. On October 9 and 19, 2020 Recycle Action issued bills of lading to Alexandria Transport relating to bales of plastic #1 and aluminum.



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162. On November 5, 2020, the BCMB inspected some Mega Bags from a shipment from the Evansburg Depot to ABCRC. Industrially-compacted material was found at the bottom and in pockets in the Mega Bags. The Mega Bags were then audited by BCMB compliance officers. Out of the 16 Mega Bags that were audited, the BCMB compliance officers found 1,096 industrially-compacted aluminum cans and other industrially-compacted material. At that point a Compliance Evaluation file was opened in relation to the Evansburg Depot.
163. On November 12, 2020 the BCMB sent a notice to the Depot Network about customers driving a vehicle with Manitoba plates attempting to return out-of-province materials in black garbage bags. Depot operators were told that if these or any other suspected out-of-province containers were brought to their depot to submit a CVR form. The notice was emailed to the Evansburg Depot.
164. Another shipment from Evansburg was inspected on November 27, 2020. This shipment was not audited, but photos and notes were taken. More industrially-compacted material was located. Again, the material was found near the bottom of the Mega Bags or in pockets under other non-compacted materials.
165. On November 13 and December 10, 2020 two further bills of lading were issued by Recycle Action to Alexandria Transport. Wally is noted next to the PO number on one of them.
166. On December 16, 2020 the BCMB sent a notice to the Depot Network regarding an updated CVR form and reference guide. The notice attached a CVR reference guide that outlined certain “red flags” for suspicious containers. Depots were encouraged to print the guide and have it near sorting stations for staff reference. The notice was emailed to the Evansburg Depot.
167. Red flags listed in the CVR reference guide included:
- unregistered beverage containers in large quantities (more than 90 per customer);
 - heavily compacted material or material that appears to have been baled.
168. On December 18, 2020 the BCMB sent a notice to the Depot Network referring depot operators to a decision of a BCMB Hearing Panel regarding the Fort Saskatchewan Depot. The decision indicated that the operator of the Fort Saskatchewan Depot admitted that he had accepted and shipped material that could be reasonably be identified as having been transported into Alberta contrary to section 11(1) of the *Regulation* and had delivered them to ABCRC for refunds contrary to BCMB bylaws and the permit. In that decision the containers at issue were described as being highly compacted so that they were fused together and with other scrap product, shredded and fragmented, found with non-beverage containers and unregistered containers and mixed in with garbage from Ontario.
169. A bill of lading was issued by Recycle Action to Alexandria on December 30, 2020.
170. On January 22, 2021 another shipment from the Evansburg Depot was audited. Again, industrially-compacted material was found in the PET and aluminum material streams. Of the 8 Mega Bags that were audited, the compliance officers identified 1,255 industrially compacted containers.
171. On January 29, 2021 Recycle Action issued another bill of lading to Alexandria Transport.



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172. On February 2, 2021, the BCMB issued a notice regarding baled, out-of-province material advising that a depot had been contacted and asked to buy baled aluminum.
173. On February 9, 2021 the BCMB issued a notification entitled “Baled, Out-of-Province Material - Further Update” advising that another central Alberta depot had been contacted and asked to buy baled aluminum.
174. Mega Bags from a third shipment from the Evansburg Depot were inspected and audited on February 25, 2021. Compacted material similar to the previous material was found. Of the 12 Mega Bags that were identified, BCMB compliance officers identified 3,790 industrially compacted containers.
175. On March 29 2021 Recycle Action issued a bill of lading to Alexandria Transport (PO# Wally).
176. On April 7, 2021 a notice was sent to the depot network advising that a member of the public was attempting to return compacted, previously baled aluminum cans.
177. On April 9, 2021 another shipment from Evansburg was spot-checked. Only six of the 11 Mega Bags containing compacted material were quarantined and audited because of the previously gathered evidence. During auditing, out-of-province brands were also identified. Again, there were a significant number of industrially-compacted containers.
178. On April 26, 2021 Recycle Action issued a bill of lading to Alexandria Transport (PO# Wally).
179. Another shipment from Evansburg was inspected on May 7, 2021. Compacted material was found. Out-of-province brands were identified among the containers and garbage referencing Ontario was also noted.
180. On May 21, 2021 Recycle Action issued another bill of lading to Alexandria Transport (PO # Wally). This is the last bill of lading from Recycle Action in evidence before the Hearing Panel.
181. An inspection of the Evansburg Depot was conducted by Ms. Winmill and Ms. Budd on June 1, 2021. When the compliance officers asked an employee if Mohamed Rafat, the owner was present, the employee identified Mr. Wael Rafat as the owner. No industrially-compacted material was found on the premises.
182. A further inspection took place on July 9, 2021. Mr. Wael Rafat was at the Depot. No industrially-compacted material was found on the premises.
183. Around the end of June or early July of 2021 the two employees at the Evansburg Depot ceased working there. One of them moved to Ontario and the other was let go.
184. On July 16, 2021 the Investigations Officer submitted a report to the BCMB Complaints Director recommending that the matter be escalated to Compliance Review.
185. On July 21, 2021 the Evansburg Depot was notified of the Compliance Review by letter sent by email. Mr. Mohamed Rafat was invited to attend an in-person meeting. In the letter Mr. Mohamed Rafat was advised that the meeting would be recorded, and that he could seek advice before the meeting occurred.

186. On August 20, 2021 Mr. Mohamed Rafat attended at the BCMB offices for an interview. The Hearing Panel had access to the transcript from the meeting which were attached to the Investigative Report.
187. The BCMB conducted some further inquiries in follow up to the August 20, 2021 meeting. The Investigative Report was completed on April 29, 2022.
188. On May 2, 2022 the Complaints Director requested that the matter be referred to a Hearing Panel. The matter was scheduled and then adjourned at the request of the Permit Holder to May 3, 2023.
189. Against this general background, that appears to be relatively uncontroverted, the Hearing Panel considered each of the allegations made against the Permit Holder and made further findings based on the evidence before it.

Allegation #1: the Permit Holder accepted containers that could reasonably have been identified as having been transported into Alberta contrary to the Regulation.

190. The first allegation is that the Permit Holder accepted containers that could reasonably be identified by the depot operator as having been transported into Alberta (the "Containers"), contrary to section 11(1) of the *Regulation*.

Acceptance of Out-of- Province Containers

191. The Hearing Panel first considered whether the Complaints Director had established on a balance of probabilities that the Permit Holder had accepted containers that had been transported into Alberta contrary to the *Regulation*.
192. The Hearing Panel is satisfied that there were containers in Mega Bags shipped by the Evansburg Depot that were not registered or sold in Alberta and that had been transported into Alberta contrary to the *Regulation*. The evidence from Ms. Winmill and Ms. Budd established that there were some containers in the audited Mega Bags that were not registered or sold in Alberta. This was confirmed not only through the BCMB Registration Portal, but also by communication with the manufacturers of those containers.
193. The Hearing Panel is also prepared to accept that the industrially-compacted containers documented in the Investigative Report were not sold in Alberta, and were transported into Alberta and accepted at the Evansburg Depot contrary to the *Regulation*.
194. Ms. Winmill and Ms. Budd testified about their observations of the compacted material viewed during the inspections and audits of the loads shipped to ABCRC from Evansburg from November 2020 to May of 2021. They also identified photographs of that material to corroborate their observations.
195. Some of the characteristics of the photographed industrially-compacted material included:
- a. there were a significant number of compacted containers;
 - b. it was generally found near the bottom of the Mega Bags and in pockets under layers of other materials;



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- c. the PET containers were significantly flattened, folded, turn, twisted and dirty, including the strongest part of the containers, the necks, being crushed;
 - d. the aluminum containers were flattened, torn and fragmented;
 - e. the containers were fused to other compacted beverage containers or to other compacted non-beverage containers of the same composition (e.g. aluminum) or scraps of other such non-beverage containers;
 - f. PET containers were attached to other plastic containers;
 - g. it was accompanied by and fused with garbage, including garbage that had indicia of coming from Ontario;
 - h. it included compacted out-of-province brands of beverages (mainly Ontario brands).
196. These characteristics were consistent with the indicators identified in the written submission on behalf of the Complaints Director as being relied upon by previous BCMB Hearing Panels in those cases to find that depots shipped out-of-province containers.
197. Of particular note to the Hearing Panel was the discovery of a receipt from a Winners store in Hawkesbury Ontario taped to a PET container and also of a menu from a Chinese restaurant in Hawkesbury.
198. The characteristics of the industrially-compacted material found in the Mega Bags are strong evidence that the containers originated from out-of-province.
199. Firstly, the industrial compaction of beverage containers in Alberta is unusual outside of ABCRC. Any industrially-compacted beverage containers brought into a depot should raise concerns that they have not come from a legitimate customer since their most likely origin is out-of-province. Industrial compaction is therefore some evidence that containers have been transported into Alberta and accepted at the Evansburg Depot contrary to the *Regulation*.
200. Secondly, although ABCRC industrially compacts beverage containers in Alberta, they do not accept non-beverage containers. The vast majority of non-beverage containers are removed at the depots and depot loads are audited. The evidence in the hearing was that in some other provinces such as Ontario, recyclers bale beverage and non-beverage containers together. The presence of a significant number of non-beverage containers or pieces of non-beverage containers is therefore some evidence that the industrial compaction of the containers occurred outside of Alberta.
201. Similarly, the beverage containers that are brought to the ABCRC have been sorted into material streams at the depot level. The beverage containers are placed into Mega Bags. Through this process the majority of garbage brought in by the customers is removed. The presence of a large amount of garbage and garbage fused into containers is also some evidence that the industrial-compaction of the containers occurred outside of the province.
202. The presence of containers that have been industrially-compacted that are not registered in Alberta is also some evidence that the rest of the industrially-compacted containers are from outside of the Province of Alberta, as is garbage both fused to the containers and mixed in with the containers which references locations outside of Alberta.

203. The compacted material audited and photographed by the BCMB compliance team exhibited all of these characteristics.
204. Accordingly, the Hearing Panel finds that both the non-registered beverage containers identified as such and the industrially-compacted beverage containers that are the subject of this hearing were transported into Alberta and accepted at the Evansburg Depot contrary to the *Regulation*.
205. Counsel for the Permit Holder argued that the actual number of containers that could be proven as having originated outside of Alberta was small (47) and given that there were some variances allowed in the Depot By-law allowing for mistakes by Depot operators, the allegation was not proven.
206. The Hearing Panel considers the number of out-of-province containers accepted by the Depot to be irrelevant to the initial question of whether the Complaints Director has proven that the Depot actually accepted out-of-province containers. Even if the Hearing Panel was only dealing with the containers that were specifically identified through the registration portal and by their manufacturers as not being sold in Alberta, the Hearing Panel would have been satisfied that out-of-province containers were accepted. However, as noted above, the Hearing Panel accepts that the large number of industrially-compacted containers accepted by the Depot were also transported from out-of-province and therefore does not agree with the submission that the number of containers from out-of-province was small.
207. The number of out-of-province containers is relevant to the Hearing Panel's assessment of whether the containers could reasonably have been identified as having been transported into Alberta contrary to the *Regulation*. The Hearing Panel also considers the number of containers relevant to a defence of due diligence. These matters will be addressed below.

Were the Containers Reasonably Identifiable as Having been Transported into Alberta

208. The next question for the Hearing Panel in considering the first allegation is whether the out-of-province containers could reasonably have been identified as such by the Permit Holder.
209. The Hearing Panel is also satisfied that the Complaints Director has proven this aspect of the allegation on a balance of probabilities.
210. The Hearing Panel is of the view that the non-registered containers could reasonably have been identified by the Permit Holder in two ways. Firstly, the containers could have been searched in the registration portal or scanned. While this may not be conclusive evidence, it would be sufficient for whoever scanned or checked the container to identify those containers that were not registered and then to consider this fact in conjunction with the other information at hand both in terms of the non-registered containers and the other containers that were accepted at the same time.
211. Secondly, the Hearing Panel is satisfied that the presence of a large quantity of industrially-compacted containers brought to a depot, regardless of whether they were beverage containers that could be found in the registration portal, provides sufficient notice to any depot operator in Alberta that those containers may have been transported into Alberta to be brought to a depot for a refund contrary to the *Regulation*. The threat to the Alberta beverage container system posed



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by parties attempting to introduce industrially-compacted containers that have already gone through the recycling processes in other provinces has been well-publicized.

212. Since 2014 the BCMB has posted four decisions of Hearing Panels dealing with depots that have improperly accepted industrially-compacted containers. The characteristics of those containers have been described in detail and the containers shipped by the Evansburg Depot have the same characteristics.
213. The Hearing Panel heard evidence about the CVR process which is designed to safeguard the system and assist depot operators when faced with these sorts of “suspicious containers”. The Hearing Panel was provided with copies of numerous notices alerting the depot network to attempts by individuals to return industrially-compacted containers at various depots and with a CVR reference guide circulated to the depot network in December of 2020, listing red flags to identify suspicious materials, including industrially-compacted containers.
214. The Hearing Panel understands that a new permit holder and depot operator/manager are faced with a lot of information to learn when they come into the industry. That does not excuse a new permit holder or operator from learning that information.
215. The evidence before the Hearing Panel was also that Mr. Mohamed Rafat and his father received training from the ABDA about the difference between containers crushed by hand or hand pressers and industrially-compacted containers. The notices put before the Hearing Panel referenced above were all sent to the Evansburg Depot’s industry email address during the time that the compacted material was being shipped.
216. During the August 2021 meeting Mr. Mohamed Rafat told Ms. Winmill that he and his father regularly reviewed their depot email and the notices that were sent to it.
217. At the hearing it was Mr. Mohamed Rafat’s evidence that he did not read notices to the depot network which did not relate directly to him and that he did not go to the BCMB website until after he became aware of the investigation into his Depot. He did not dispute that the Depot received the notices in evidence at the hearing.
218. Even if the Hearing Panel accepted that Mr. Mohamed Rafat did not read the BCMB notices carefully, that does not provide a defence to the allegation that he reasonably could have identified the containers as being transported into Alberta. There is an objective element to the test. A permit holder/ depot operator who received the ABDA training and notices from the BCMB would have had the necessary information to reasonably identify the compacted containers as potentially originating from out-of-province.
219. The Hearing Panel also considered the position taken by counsel for the Permit Holder that the industrially-compacted containers identified by the BCMB as out-of-province containers could not reasonably have been identified by the Permit Holder because there was such a small number of them. Counsel for the Permit Holder argued that the volume of compacted containers shipped by the Evansburg Depot was just under 4% of the audited shipments and should be considered within the acceptable variance for shipments under the BCMB *Depot By-law*.



220. The Hearing Panel did not accept that 4% is an accurate characterization of the percentage of suspicious containers found by the BCMB compliance team in the audited shipments or that the BCMB recognizes a specific reasonable variance when it comes to accepting out-of-province containers.

221. Counsel for the Permit Holder did not dispute that the BCMB had identified a total of 12,728 suspicious containers in the audited Mega Bags. However, she treated these 12,728 containers as the only containers out of 330,000 shipped by the Evansburg Depot that were problematic. The difficulty that the Hearing Panel had with this analysis is that the BCMB compliance officers did not audit all of the Mega Bags in each shipment. The evidence was that they audited about 72,000 of the containers shipped by the Depot in the audited shipments, not all 330,000.

222. The Hearing Panel reviewed the five tables in the Investigative Report containing the standard count for each Mega Bag and compared the number of compacted containers to the standard number of containers in each Mega Bag, ignoring the Mega Bags in the shipment that were not audited. The Hearing Panel calculated the percentage of suspicious containers at closer to 18%:

Investigative Report Pg.	Table #	Date	Standard Count	Compacted Count	Percentage of Compacted Containers
69	1	Nov. 5, 2020	18,420	1,478	8.02%
71-72	2	Jan. 22, 2021	12,000	1,255	10.46%
73	3	Feb 25, 2021	16,260	3,790	23.31%
74	4	April 9, 2021	7,980	3,116	39.05%
75	5	May 7, 2021	16,080	3,039	18.90%
TOTAL			70,740	12,678	17.92%

223. As can be seen from this analysis, the percentage of industrially-compacted containers in the audited Mega Bags ranged from 8% to almost 40%.

224. Furthermore, in relation to some individual Mega Bags, the percentage of suspicious material was much higher than 17.92%. For example, in Table 1 and Table 4 in the Investigative Report, compliance officers identified Mega Bags containing aluminum containers with percentages of industrially-compacted aluminum containers as high as 50%. Some tables in the Investigative Report show Mega Bags of other materials with even higher levels of industrially-compacted containers (one case is as high as 93%). In other Mega Bags there were no industrially-compacted containers. The Hearing Panel considers the number of industrially-compacted containers found together in some of the Mega Bags and the number of industrially-compacted containers in relation to the rest of the containers to be a factor that would lead a person sorting those



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containers to reasonably identify them as having been transported into Alberta from out-of-province.

225. The Hearing Panel also disagrees with the suggestion that the *Depot By-law* expressly or impliedly reflects an acceptable variance in terms of the shipping of out-of-province containers.

226. Counsel for the Permit Holder referred in argument to an allowed variance of 3% in the *Depot By-law*. However, this 3% variance relates to the accuracy of refunds given by Depots to customers and is not relevant to the shipping of unregistered containers.

227. The Hearing Panel recognizes that there are other variances relating to shipped containers that are allowed in the *Depot By-law*, but none of these apply here. The BCMB *Depot By-law* compliance framework requires depots to accurately sort registered containers and to accurately report the registered containers. If an audited shipment contains a number of registered containers that varies less than 2.5% from the number that has been reported as being shipped, then no enforcement steps are taken. This allowed variance recognizes that mistakes can be made in counting registered containers. It does not provide any variance with respect to shipping unregistered or out-of-province containers.

228. At the time of the shipments, the *Depot By-law* provided rules regarding the shipping of non-beverage containers along with registered containers. The rules regarding non-beverage containers were much stricter than variances regarding refunds to customers or counting of registered containers. There was no variance provided for in the *By-law*.

229. The Depot By-law did, and still does, include provisions relating to the shipping of Foreign Material. 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; and any refillable beverage containers. Foreign Material shall not be paid a Deposit Refund or handling commission.

There is no variance allowed in the Depot By-law with respect to the inclusion of Foreign Material in shipping containers of registered containers.

230. The situation here involved the shipping of a significant number of industrially-compacted containers, both beverage and non-beverage. The relevance of the non-beverage containers in the analysis was that the presence of industrially-compacted non-beverage containers both fused with compacted beverage containers and separate from them is evidence that the containers have been involved in an out-of-province recycling program that does not separate beverage containers from non-beverage containers as is the case in Alberta.

231. Based on all of the evidence, the Hearing Panel finds that the two employees of the Evansburg Depot (“Nav” and “Darrell”), Mr. Wael Rafat and Mr. Mohamed Rafat all could reasonably have identified the industrially-compacted containers as having been transported into Alberta. The Hearing Panel notes that both Mr. Mohamed Rafat and Mr. Wael Rafat testified that had they seen the industrially-compacted containers depicted in the photographs, they would not have allowed

them to be accepted and shipped. They suggested instead that they did not see them because they were rarely at the Depot. The two former employees did not testify.

232. Counsel for the Permit Holder argued that there was no evidence that it was the Permit Holder or Mr. Wael Rafat who accepted out-of-province containers. For the purpose of this allegation that does not matter. As Mr. Mohamed Rafat fairly admitted in his testimony, the ultimate responsibility for the Depot rested with him.

233. Under section 11(1) of the *Regulation* no “depot operator” shall accept a container that can reasonably be identified by the depot operator as having been transported into Alberta.

234. The term “depot operator” is defined in the *Regulation* to mean the owner or operator of a depot and includes a person acting or purporting to act on behalf of the owner or operator.

235. The out-of-province containers were either accepted by Mr. Mohamed Rafat, Mr. Wael Rafat or one of the former Depot employees. In any of these cases they were accepted by the owner or the operator or a person acting on behalf of the owner. For the purpose of this allegation, it is not necessary to determine who actually accepted them.

Due Diligence Defence

236. The Hearing Panel then considered whether the Permit Holder had proven a defence of due diligence in that either:

- a. He reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent; or
- b. He took all reasonable steps to avoid accepting out-of-province containers.

237. Counsel for the Permit Holder argued that the Permit Holder exercised due diligence in trying to prevent the introduction of out-of-province beverage containers into Alberta. She specifically referred to:

- a. Mr. Mohamed Rafat’s reliance on the previous operator of the Evansburg Depot saying that the two employees on staff were “good” and also on the fact that there was no evidence of any complaints before Mr. Mohamed Rafat obtained the permit;
- b. the existing staff being let go in June or July of 2021;
- c. The vast majority of the containers shipped by the Evansburg Depot being registered and acceptable containers;
- d. The information that had been provided to Mr. Mohamed Rafat and his father about the acceptance of crushed or compacted containers from the BCMB and the ABDA, which she argued was unclear, and in any event allowed for the exercise of discretion with respect to the acceptance of crushed containers;
- e. There being very few containers identified by the BCMB that were not registered in Alberta (47) and the information in the BCMB CVR Reference Guide saying that red flags for suspicious material may include unregistered beverage containers in large quantities (more than 90 per customer).



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238. With respect to the Permit Holder's reliance on the two employees having been properly trained, the Hearing Panel does not accept that it is due diligence for a permit holder to simply assume that employees who have previously worked in a depot for someone else are adequately trained to identify out-of-province containers and to use the CVR process or reject those containers.
239. There was no evidence before the Hearing Panel that the Permit Holder or Mr. Wael Rafat made any effort to find out what the former employees knew or did not know in that regard. There was also evidence that, although Mr. Mohamed Rafat and Mr. Wael Rafat had the ability to scan containers using an app on their phones, they did not know whether the employees had the app on their phones.
240. A permit holder is expected to take reasonable steps to ensure that the people involved in the day-to-day operations of a depot have adequate training and education particularly in relation to matters like these that are fundamental to the protection of the Alberta beverage container recycling system.
241. The Hearing Panel did not consider evidence that the previous employees had been let go before the Permit Holder was notified of the investigation to be evidence of due diligence in relation to events that had occurred before they were let go, which is the relevant consideration.
242. Furthermore, the evidence was that one of the Evansburg Depot employees left because he was moving to Ontario. The other employee was identified as having had a number of attendance and addiction issues and it was suggested that this was the reason that he left or was fired.
243. Finally, if the employees left before the Permit Holder received notice that the Depot was the subject of a Compliance Review, and to that point the Permit Holder said he was not aware of any potential issues, it is not logical to infer that the employees were let go as a matter of diligence in relation to the matters at issue in the hearing.
244. With respect to the argument that the majority of the containers shipped were registered and sold in Alberta, the Hearing Panel has already commented on the volume of industrially-compacted containers found in the audited Mega Bags. Even if the majority of the containers were registered and uncompacted, the Hearing Panel does not accept that the number of industrially-compacted containers that were accepted demonstrates reasonable diligence. It demonstrates the contrary.
245. The argument that the Permit Holder and Mr. Wael Rafat exercised due diligence because they did not understand the difference between crushed and industrially-compacted material or because they mistakenly believed that they were allowed to accept the types of industrially-compacted material found in the Mega Bags is not accepted by the Hearing Panel.
246. The terms "crushed" and "compacted" were not always used consistently by counsel or by all of the witnesses in the course of the hearing. But the Hearing Panel is satisfied that there is a clear distinction between containers that have been industrially-compacted into bales and containers that have been crushed by hand, cars, hammers, hand pressers or other similar means.
247. According to Ms. Nelson from the ABDA, at the orientation session the ABDA talks with attendees about the difference between crushed and highly compacted containers, as "crushed containers

are very common to receive in orders, but items that have been compacted by a baler or similar equipment will appear different.”

248. During his interview Mr. Wael Rafat was shown an industrially-compacted HDPE container and responded:

MR RAFAT, SR:

I know this one, no. Of course, this one is wrong 100 percent. What I see in this one, this is not by hand or anything. This one, I don't pick up this when I am there. Maybe the other people was working there, and the other guys. Maybe they take this one. As for me, I never— when I am there, if I am there, I never expected those one.

249. Mr. Wael Rafat's answers during his interview suggested or implied that the employees must have accepted industrially-compacted containers when he was not at the Depot because they would not have been shipped had he seen them.

250. At the interview and at the hearing both Mr. Wael Rafat and Mr. Mohamed Rafat relied upon the fact that they were rarely at the Depot when asked to explain the presence of the industrially-compacted material, not on a misunderstanding on their part as to what could be accepted.

251. Counsel for the Permit Holder also argued that the actual number of unregistered containers was insignificant and could have been missed by the Depot employees despite all reasonable efforts. Counsel for the Permit Holder took the position that there were about 47 containers identified that were confirmed as not being registered in Alberta, which corresponds to 2-7 containers per shipment (18 in the May 2020 shipment). Ms. Budd did not take issue with this analysis on cross-examination.

252. The Hearing Panel is prepared to agree that the existence of only two unregistered containers in a Mega Bag in a single shipment from a depot might be some evidence of due diligence in appropriate circumstances.

253. However, once any unregistered containers are accepted at a depot, the onus is on the permit holder to show that reasonable diligence was exercised in trying to identify and prevent the further acceptance of out-of-province containers.

254. In the absence of evidence that the employees at the Evansburg Depot had access to or were using the registration portal and the absence of any evidence that the Permit Holder trained or supervised the Depot employees, the Hearing Panel does not accept that the presence of only a few unregistered containers in a shipment is evidence of due diligence on the part of the employees or Mr. Wael Rafat or Mr. Mohamed Rafat. This is particularly the case in the face of all of the other evidence that those and other containers accepted by the Depot had been transported from out-of-province.

255. The Permit Holder has not proven a defence of due diligence.

Allegation 1: Conclusion

256. The Hearing Panel concludes that the Complaints Director has proven allegation #1 on a balance of probabilities.

Allegation #2: that the Permit Holder delivered containers to ABCRC for deposit refunds and handling commissions to which the Depot was not entitled, contrary to s. 2-7 of the Permit

257. The second allegation against the Permit Holder is that the Permit Holder delivered the Containers (the containers that could reasonably have been identified referenced in allegation #1) to ABCRC for deposit refunds and handling commissions to which the Depot was not entitled, contrary to section 2.7 of Permit No. 20-BCD-043

258. Counsel for the Permit Holder pointed out in her argument that section 2.7 of the Permit reads as follows:

2.7 A Depot shall at no time unlawfully claim payment of a Deposit Refund or a Handling Commission.

259. The Hearing Panel agrees with counsel for the Permit Holder that the allegation is not worded the same as the Permit wording. The Hearing Panel is of the view that the wording should have been the same. Accordingly, the Hearing Panel proceeded on the basis that the Complaints Director must prove that the Permit Holder unlawfully claimed payments for deposit refunds and handling commissions. The Hearing Panel does not consider this to alter the substance of the original allegation.

260. For the purpose of its considerations, the Hearing Panel interpreted the word “unlawfully” in the Permit to encompass contraventions of federal and provincial legislation, as well as breaches of BCMB By-laws, guidelines and BCMB-approved Service Agreements. The *Depot By-law*, the Permit and the Statement of Acknowledgment signed by the Permit Holder are clear that a permit holder is responsible for ensuring compliance with all of these things.

261. As indicated previously, the Hearing Panel is satisfied that there were beverage containers accepted by the Depot that had been transported into Alberta contrary to the *Regulation*. The same evidence establishes that these containers were shipped from the Depot to ABCRC for payment because it was at the ABCRC facility that they were discovered.

262. It was not disputed by counsel for the Permit Holder that beverage containers transported into Alberta and accepted contrary to the *Regulation* are not registered in Alberta and are not eligible for payment of a deposit or a handling commission.

263. The Hearing Panel concludes that the Evansburg Depot claimed payment for these non-eligible containers by placing them in Mega Bags, completing R-Bills for the Mega Bags and shipping the Mega Bags to the ABCRC. It did so unlawfully because the containers were not eligible for payment of a deposit refund or a handling commission.

264. Not only is this activity contrary to the Permit, but it is also contrary to the Service Agreement between the ABDA and the ABCRC that binds all permit holders and which makes clear that

containers that have not been sold in Alberta are not eligible for any compensation from ABCRC. Accordingly, the payments were unlawfully claimed.

265. The Hearing Panel accepts the submissions of counsel for the Complaints Director that proof of intent on the part of the Permit Holder is not required for a finding of liability in relation to this allegation. However, a defence of due diligence is available to the Permit Holder if it can be established.

Defence of Due Diligence

266. For many of the same reasons identified in relation to the first allegation, the Hearing Panel does not accept that the Permit Holder took reasonable steps to prevent payment being claimed for ineligible containers. Mr. Mohamed Rafat's own testimony was that after he obtained the Permit, he rarely visited the Depot himself because of his educational commitments. He also testified that he did not review materials on the BCMB website until after he was notified of the investigation into the Depot and that he did not carefully review BCMB notices sent to the depot network.

267. Mr. Mohamed Rafat also acknowledged that he made no effort to assess the competency of his employees in terms of guarding against ineligible containers being shipped and paid for. He relied on the fact they had worked at the Depot before. A permit holder cannot avoid the consequences of breaching a permit by distancing him or herself from operations and claiming ignorance.

268. The Hearing Panel also does not accept that the Permit Holder exercised due diligence by hiring a competent and knowledgeable manager to oversee operations. At the hearing Mr. Mohamed Rafat denied that his father was the Depot manager. Furthermore, there was no evidence that Mr. Wael Rafat had any more experience in day-to-day operations than his son.

269. Finally, Mr. Wael Rafat testified that he had limited involvement with Depot operations. He testified that he was at the Depot only two to three hours a week at most, and then only to drop off and pick-up money from the employees related to the collection and payment of deposit refunds. As will be discussed later in these reasons for decision, the Hearing Panel does not accept that this was the limit of Mr. Wael Rafat's involvement in activities at the Depot. However, whether he was actively involved or largely absent, there is no evidence of due diligence on his part in relation to this allegation.

Allegation 2: Conclusion

270. The Hearing Panel concludes that the Complaints Director has proven allegation #2 on a balance of probabilities.

Allegation #3: that the Permit Holder failed to adhere to the highest standards of honesty, integrity, fair dealings and ethical conduct in dealing with the CSA and the BCMB contrary to BCMB by-laws

271. The third allegation against is that the Permit Holder failed to adhere to the highest standards of honesty, integrity, fair dealings and ethical conduct in all dealings with the Collection System Agent appointed under the *Regulation* and the BCMB, contrary to section 10.35 of the Depot By-law.



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272. For the purpose of this allegation, counsel for the Complaints Director directed the Hearing Panel to section 8.6 of the Depot By-law as well. That section provides as follows:

8.6.1 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.

273. In accordance with this section, a permit holder is liable for acts or omissions of the Depot Manager or any other agent or employee. It is therefore necessary for the purpose of this allegation to consider the acts or omissions of Mr. Mohamed Rafat, Mr. Wael Rafat and the two employees of the Depot during the relevant time period.

274. The Hearing Panel is aware that other Hearing Panels have considered a finding that a permit holder has breached s. 11(1) of the *Regulation* to be sufficient for a finding that the permit holder has also failed to adhere to the highest standards of honesty, integrity, fair dealings and ethical conduct as required by the *Depot By-law*.

275. This Hearing Panel agrees with that approach. Accordingly, even if the Hearing Panel was of the view that the industrially-compacted material was accepted by the two Depot employees without the knowledge of Mr. Mohamed Rafat or Mr. Wael Rafat, the Hearing Panel could still find that this allegation is proven on a balance of probabilities as against the Permit Holder.

276. However, in the circumstances of this case, the Hearing Panel considered it necessary to look at the evidence relating to the conduct of Mr. Mohamed Rafat and Mr. Wael Rafat as well.

277. The Hearing Panel starts from two basic findings that it considers established on the evidence and which do not appear to be in dispute between the parties. The first is that Mr. Wael Rafat had some involvement in the purchase of bales of aluminum and #1 plastic from Recycle Action in Hawkesbury, Ontario between October of 2018 and May of 2021. The second is that compacted aluminum and plastic containers mixed with garbage from Hawkesbury, Ontario and elsewhere in Ontario were shipped by the Evansburg Depot to the ABCRC between November of 2020 and May of 2021.

278. Counsel for the Complaints Director argues that the Hearing Panel can conclude from these findings and the other evidence that the explanation for the industrially-compacted material in the Mega Bags shipped from the Evansburg Depot is that Mr. Wael Rafat purchased bales of containers from Recycle Action, transported them into Alberta and placed them in the Mega Bags at the Depot.

279. Counsel for the Permit Holder argues that any such conclusion would be entirely unsubstantiated and purely speculative. She emphasizes that where evidence is purely circumstantial there is a

difference between inference and speculation. If there are no positive proven facts from when an inference may be drawn, there can be no inference.³ Counsel for the Permit Holder argues that there is no evidence that Mr. Wael Rafat had any involvement in transporting recycled material into Alberta or shipping it from Evansburg Depot to ABCRC, and while there may be evidence that Mr. Mohamed Rafat did not adequately supervise his employees, that does not establish a breach of the third allegation.

280. Central to both of these positions is the characterization of Mr. Wael Rafat's involvement in the purchases of material from Recycle Action, transport of materials out of Ontario, and his involvement in the operations of the Depot. Because the evidence on these matters is somewhat inconsistent it is necessary for the Hearing Panel to review it in some detail.

Mr. Wael Rafat's Dealings with Recycle Action

281. Mr. Lessard, the Executive Director of Recycle Action testified that he met Mr. Wael Rafat, who he knew as "Wally" and began selling him recycled material in mid-2017. He said Mr. Wael Rafat was his only Alberta client and that he met him when Mr. Wael Rafat came "knocking on the door".

282. Mr. Lessard identified "Wally" as Mr. Wael Rafat through Mr. Wael Rafat's photo identification. Mr. Lessard said that Mr. Wael Rafat initially used a company called MO&AI when purchasing materials from Recycle Action and then used the name Wally and then used the name Alexandria Transport. He advised that Mr. Wael Rafat only ever bought two materials from Recycle Action, being aluminum and plastic #1.

283. According to Mr. Lessard, he recalled that Mr. Wael Rafat had once been accompanied by a younger gentleman who might have been a family member. Mr. Lessard could not identify Mr. Abdelmetaal by his photo identification and did not testify to any dealings with Mr. Abdelmetaal. Mr. Lessard was not challenged on any of this evidence.

284. Mr. Wael Rafat testified that in 2016 or 2018 Mr. Abdelmetaal took him to Recycle Action and that his only involvement with Recycle Action was to get cash from Mr. Abdelmetaal, obtain a certified cheque and give the cheque back to Mr. Abdelmetaal. Mr. Wael Rafat's testimony was somewhat inconsistent because he initially said that Mr. Abdelmetaal made the deals and gave him the money and he got the cheque and gave it back to Mr. Abdelmetaal, but when asked by counsel for the Permit Holder whether his name was involved, he then said that Recycle Action had been given to understand that he was the broker on these deals.

285. Mr. Wael Rafat said he continued to broker deals for Mr. Abdelmetaal and this had been the case in relation to every transaction between Recycle Action and MO&AI. In terms of MO&AI he said "I have nothing to do with it. It's his company." He reiterated that his only involvement was transferring funds between Mr. Abdelmetaal and Recycle Action. He said this happened for one and a half or two years.

286. Mr. Wael Rafat explained that the reason he was doing this was to help Mr. Abdelmetaal because Mr. Abdelmetaal was on welfare so could not use cheques himself and because Mr. Abdelmetaal

³ R v McMahon, 2006 ABPC 138 at para 2 citing Watt's Manual of Criminal Evidence, 2002



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had come to Canada as an illegal immigrant from the United States and was visited periodically by the FBI.

287. However, Mr. Lessard's evidence was that "In the beginning (Mr. Wael Rafat) would pay cash. So the driver would get here with cash, and he would pay us. And then we -- we load the truck, and he leaves" If Mr. Abdelmetaal was prepared to have the company name on a bill of lading, and to pay in cash, the reason for Mr. Wael Rafat's involvement is unclear.
288. Mr. Wael Rafat also testified that the name "Wally" on a Recycle Action Bill of Lading dated December 14, 2018, was in Mr. Abdelmetaal's handwriting. If Mr. Abdelmetaal was using Mr. Wael Rafat as his intermediary on these transactions, there would be no reason for him to be writing on the bills of lading.
289. The Recycle Action bills of lading from October of 2018 until November 29, 2019 show "Wally" or "MO&AI" or both, as the customer. Seven of those bills of lading are signed by Mr. Lessard on behalf of Recycle Action. Mr. Lessard did not testify to having dealings with respect to MO&AI with anyone other than Mr. Wael Rafat.
290. Five of the bills of lading during this period of time listed the transport company as New Majha or New Majha Transport.
291. The evidence from Mr. Randhawa, the owner of New Majha Transport, was that he became involved with shipping materials from Recycle Action when he saw a load from Ontario on Loadlink. He happened to have a truck in Ontario so he called about the load. He said he spoke to Mr. Wael Rafat to transport the load. He said that these containers were delivered to Manitoba, but there are no records in evidence relating to the destination of loads prior to August of 2020.
292. Based on the documents and the evidence of Mr. Lessard, the Hearing Panel has great difficulty accepting Mr. Wael Rafat's evidence that he was simply transferring funds between Mr. Abdelmetaal and Recycle Action in relation to the loads that had the name "MO&AI" on them. This is particularly the case given that during this period there was at least one bill of lading from Recycle Action that only mentioned "Wally", given Mr. Lessard's evidence that he only dealt with Wally and the deals were cash deals and Mr. Randhawa's evidence that he began driving loads from Ontario for Mr. Wael Rafat.
293. In addition, according to Mr. Wael Rafat, by October of 2019 whatever relationship he had with Mr. Abdelmetaal had deteriorated. He testified that on October 4, 2019 he received an email from Mr. Abdelmetaal threatening to ruin him.
294. Although MO&AI stops appearing on the Recycle Action bills of lading by December of 2019, there were two bills of lading after October 4, 2019 (October 31 and November 29, 2019) that show MO&AI as the customer. It seems odd to the Hearing Panel that Mr. Wael Rafat would continue to broker deals for Mr. Abdelmetaal given Mr. Wael Rafat's testimony about the voicemail message. Furthermore, Mr. Lessard signed both of these bills of lading which confirms that these transactions involved Mr. Wael Rafat since Mr. Lessard did not deal with anyone else.
295. The Hearing Panel is satisfied that Mr. Wael Rafat was purchasing loads of containers from Recycle Action as early as October of 2018. There is no indication that Mr. Wael Rafat was a shareholder



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or director of MO&AI so it may be that initially Mr. Abdelmetaal was somehow involved as well. What happened to those containers is not known.

296. It is also of significance to the Hearing Panel that when Mr. Wael Rafat was asked during the August interview whether there was anything he wanted to advise the BCMB Investigation Officers about any dealings with recyclers in Ontario, Mr. Wael Rafat invited the BCMB to make inquiries, but did not make any mention of Recycle Action:

MS. WINMILL:

We will likely also be reaching out to recyclers in Ontario and asking for copies of receipts and invoices.

MR. MOHAMED RAFAT, SR.:

Okay.

MS. WINMILL:

So depending on what we find in regards to that, is there anything that you want to tell us right now based on what we might find when we do that?

MR. MOHAMED RAFAT, SR.:

No, go ahead. You do whatever you like to do.

MS. WINMILL:

Okay.

MR. MOHAMED RAFAT, SR.:

Yeah.

MS. COON:

So if we access -- just so you're clear, if we access any of the bank records, they're not going to show us that there was any purchases to any recycle companies from out-of-province? That's what we'll be looking for, just so you know.

MR. MOHAMED RAFAT, SR.:

Okay. Yeah, no prob.

MS. COON:

Okay.

MR. MOHAMED RAFAT, SR.:

Yeah.

297. By this point in the interview Ms. Winmill had advised Mr. Wael Rafat that BCMB had received information that Mr. Wael Rafat was involved in purchasing and importing bailed material into Alberta. Mr. Wael Rafat was then told that the BCMB would be reaching out to recyclers in Ontario and looking for banking information relating to purchases by Mr. Wael Rafat from recycling companies outside of the province and Mr. Wael Rafat is asked whether there is anything he wants to tell them about that.

298. If Mr. Wael Rafat had no concerns about his involvement in Recycle Action, it is unclear to the Hearing Panel why he would not have simply said that he had been involved in brokering loads from a recycling company in Ontario for someone else, but that he was not purchasing them himself and the loads were being sent to Manitoba.



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299. The Hearing Panel also notes that the message of October 4, 2019 identified as coming from Mr. Abdelmetaal contained contact information for the BCMB. When asked about why Mr. Abdelmetaal would be referring to the BCMB, Mr. Wael Rafat had no explanation. Nor could he explain why Mr. Abdelmetaal was so angry with him.
300. The Hearing Panel does not accept it was simply a coincidence that Mr. Abdelmetaal mentioned the BCMB to Mr. Wael Rafat. The logical inference is that Mr. Abdelmetaal's threat to ruin Mr. Wael Rafat had something to do with the BCMB.
301. The message was put into evidence by Mr. Wael Rafat as proof that Mr. Abdelmetaal had threatened to ruin him, implying perhaps that Mr. Abdelmetaal had carried that threat out by approaching the BCMB anonymously 10 months later and lying about Mr. Rafat's involvement in buying and transporting recycled material from Ontario. That threat makes little sense in October of 2019 given Mr. Wael Rafat's evidence that he had little to do with the beverage container system by then, only facilitated the transfer of money between Mr. Abdelmetaal and Recycle Action and had no knowledge of what Mr. Abdelmetaal was doing with the material.
302. From December 30, 2019 to June 29, 2020 all of the bills of lading from Recycle Action show the customer as being Wally or Wally Rafat. New Majha Transport is shown as the transport company on three of these six shipments. Mr. Randhawa was not asked and did not give evidence that there was any change in the nature of his dealings with Mr. Wael Rafat and Recycle Action from May of 2019, the date of his first shipment and April 27, 2021, the date of his last shipment.
303. The evidence relating to Mr. Wael Rafat's involvement with Recycle Action from late 2019 to May of 2021 was also inconsistent. During his direct evidence, Mr. Wael Rafat testified that he started brokering shipments from Recycle Action for Mr. Hassan's company in 2020 and did so until 2021. He could not recall what month in 2020 this began. He said he used the name Alexandria Transport although he did not explain why given that he stopped operating that company in 2016 or 2018.
304. According to Mr. Wael Rafat, Mr. Hassan had a company with partners from Egypt and Mr. Hassan wanted to export aluminum, plastic and iron but he did not know how so Mr. Wael Rafat agreed to put Mr. Hassan in contact with some people and take a percentage. Mr. Hassan says that Mr. Wael Rafat took him to Recycle Action.
305. There was no evidence from Mr. Lessard that he dealt with Mr. Hassan, although he did recall meeting another man at some point. The evidence is that in 2020 Recycle Action continued to deal with Wael Rafat, first using the name Wally Rafat or Wael Rafat (between December 2019 and June of 2020) and then Alexandria Transport.
306. There was no explanation from Mr. Wael Rafat as to why he was using Alexandria Transport on the bills of lading when Mr. Hassan had his own companies for transport and for his import and export activities.
307. Mr. Hassan's evidence was that he contacted Mr. Wael Rafat in 2018 to find aluminum, iron and plastic, because he was unable to obtain the material himself. His evidence is consistent with Mr. Wael Rafat's in terms of confirming that he needed Mr. Wael Rafat to obtain the material for him and his Egyptian partners, but inconsistent in terms of timing because at this time Mr. Wael Rafat



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says he was dealing with Mr. Abdelmetaal. By July 2019 Mr. Hassan had purchased land in Manitoba to store the materials.

308. According to Mr. Hassan he incorporated his company named Peramides in August of 2020 because he was preparing to start sending things to Egypt at that time. He had already procured materials in Manitoba by then and had also gathered scrap iron in Alberta. Yet according to Mr. Wael Rafat, Mr. Hassan started purchasing materials in 2020 and stopped purchasing materials a year later in May of 2021.
309. Mr. Hassan was shown copies of carrier confirmations and bills of lading that referenced his numbered company 10627755 Canada. He said that they were the bills of lading of the company that used to ship his material, being Raj Cargo.
310. Mr. Hassan then testified that the company transporting the materials for him was called New Majha Raj Cargo, that he arranged that transport directly and paid in cash and Mr. Wael Rafat had nothing to do with the shipments.
311. As noted previously, the owner of New Majha made no mention of Mr. Hassan. He did not suggest that there had been any change in his dealings with Mr. Wael Rafat in 2020 or that he had been transporting the loads for anyone other than Mr. Wael Rafat.
312. The owner of Raj Cargo, Mr. Singh, also made no reference to dealing with Mr. Hassan. Mr. Singh's evidence was that Mr. Randhawa had given Mr. Wael Rafat his contact information and that Mr. Wael Rafat had called him. He said Mr. Wael Rafat would call him to ask him if he wanted a load and would send Mr. Singh confirmation of the load.
313. Mr. Singh said that he would get paperwork from the shipper that the receiver would sign, and he had that paperwork. It does not appear that the carrier confirmations and bills of lading put in evidence by the Permit Holder were the documents Mr. Singh got from the receiver since these documents were unsigned. Mr. Singh confirmed that his company had handled the loads shown on those bills of lading but did not say this was the paperwork he received. Since the documents were identical in format to the ones relating to New Majha, presumably they were created by someone else.
314. Mr. Hassan did not identify the bills of ladings as documents that he prepared either. It was his evidence that he had no records of the shipments because all of his records were with his ex-wife in Ottawa.
315. It remains unclear to the Hearing Panel who prepared these documents and when. From the Hearing Panel's perspective the documents are questionable in terms of their authenticity since they were somewhat generic, similar for both shipping companies, and did not contain any signatures. The carrier confirmations and bills of lading were consistent with the shipment information from the Recycle Action bills of ladings. The word "bails" was even misspelled on these documents as was the case on the bills of lading from Recycle Action.
316. The bills of lading in evidence from Recycle Action show loads being purchased at roughly one-to-two-month intervals commencing in October of 2019 and ending on May 21, 2021. This is consistent with Mr. Lessard's evidence regarding his interactions with Mr. Wael Rafat.



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317. Viewing all of the evidence in its entirety, the Hearing Panel does not accept Mr. Wael Rafat's evidence that his only involvement with Recycle Action was as a broker for Mr. Abdelmetaal and then for Mr. Hassan's company.
318. The Hearing Panel was also not prepared to accept Mr. Hassan's evidence that he purchased compacted plastic #1 and aluminum containers and transported them to the middle of Manitoba in order to store the material there and then ship it by sea container to Egypt. The Hearing Panel accepts that land in Manitoba may have been used for some purpose in relation to the material, although the pictorial evidence submitted shows no indication of staging yards or associated structures.
319. The more logical inference from the evidence before the Hearing Panel is that Mr. Abdelmetaal, Mr. Wael Rafat and Mr. Hassan all had some involvement in the purchase and transport of the recycled material from Recycle Action from 2018 to 2021, but that the nature of their relationship changed.
320. It was Mr. Hassan's evidence that at some point he began selling the material that he was collecting in Manitoba. It was unclear when that was because he bought the land in 2019 but said that the containers did not stay on the land "very long".
321. Mr. Hassan testified that he knew Mr. Abdelmetaal through working for Mr. Rafat and that he contacted Mr. Abdelmetaal to help him find customers for the recycled material when the plan to ship it to Egypt fell through. His evidence was that he sold the material from the land in Manitoba to customers that were brought to him by Mr. Abdelmetaal.
322. Counsel for the Permit Holder pointed out that the last shipment ordered from Recycle Action ceased on May 21, 2021 which was before the Permit Holder was advised of any investigation and submits that this evidence is consistent with Mr. Hassan's testimony that the Egypt plan had fallen through so he stopped ordering materials, and inconsistent with Mr. Wael Rafat being involved.
323. The Hearing Panel did not see the evidence that way. The shipments from Recycle Action in 2021 were basically every three to four weeks. There was a shipment on May 21, 2021. The Depot was inspected on June 1, 2021. Mr. Wael Rafat was at the Depot for the inspection. His evidence at the hearing was that one person called Michelle or Rachele (presumably Michelle Winmill) and another person came and that "They came and searched the place as if there were drugs, as if they were searching for drugs. They were using their hands, going in to deep, the things. I went out until they finished their search."
324. Based on the shipping intervals, the next load was not likely to have been purchased until a couple of weeks after this inspection. Accordingly, the fact that the purchase of loads stopped at this point after almost three years of regular purchases is equally consistent with the shipments stopping because Mr. Wael Rafat was concerned about further inspections at the Depot.
325. None of this specifically answers the question of how compacted material from Hawkesbury, Ontario ended up in Mega Bags at the Evansburg Depot, but it partially explains why the Hearing Panel is not prepared to accept the evidence of Mr. Wael Rafat and Mr. Hassan regarding the limited involvement of Mr. Wael Rafat with Recycle Action.



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326. The Hearing Panel understands that the evidence relating to MO&AI and Mr. Abdelmetaal was put forward by the Permit Holder not only to explain Mr. Wael Rafat's involvement with Recycle Action, but also to provide some possible explanations as to how industrially-compacted material from Hawkesbury and elsewhere in Ontario may have ended up in Mega Bags shipped from the Evansburg Depot. Those possible explanations were that the material was brought to the Depot by individuals who purchased material from Mr. Hassan in Manitoba either by coincidence or at the instigation of Mr. Abdelmetaal.
327. Counsel for the Permit Holder also brought to the Hearing Panel's attention the evidence of Mr. Lessard that he only sold Plastic #1 and aluminum. She argued that the presence of non-beverage containers composed of other materials would be inconsistent with the material having originated with Recycle Action. The Hearing Panel considered this evidence but were satisfied that given Mr. Lessard's evidence that there would be about 5% contamination because the material for baling was collected by a loader, the evidence regarding the compacted material was not inconsistent with the material having originated from Recycle Action.
328. Regardless of how the material got from Recycle Action to the Evansburg Depot the material still had to be handled at the Evansburg Depot and shipped from there so the Hearing Panel next considered the evidence regarding Mr. Wael Rafat's involvement in the Depot's day-to-day operations.

Mr. Wael Rafat's role in the Operations of the Depot

329. At the hearing Mr. Wael Rafat testified that he had little involvement in the operations at the Depot. He said he attended at the Depot a maximum of two to three hours a week and that his involvement was only in relation to financial matters. Mr. Mohamed Rafat said that he relied on his father to help him with the operational side of things and that he had two employees who had been employed by the previous permit holder.
330. This evidence was different from what Mr. Mohamed Rafat and Mr. Wael Rafat represented when they met with Ms. Winmill and Ms. Budd in August of 2021.
331. During the initial part of that interview, Ms. Winmill said to Mr. Mohamed Rafat that he had mentioned to them in the lobby that his father had been acting as the Depot Manager and Mr. Mohamed Rafat acknowledged that. He also acknowledged that had been the case from when he obtained the permit and that he intended that to continue to be the case.
332. When Mr. Mohammed Rafat was asked at the interview why his father was not disclosed as the Depot Manager on the permit application, Mr. Mohamed Rafat stated "I think he was. I'm not too sure. Was he not?" This was inconsistent with Mr. Mohamed Rafat's evidence at the hearing that he made a conscious decision to not list his father on the application because his father was not on the payroll.
333. When Mr. Mohamed Rafat was shown pictures of the suspicious material that had been found in loads shipped from the Evansburg Depot and asked where this material was coming from, Mr. Mohamed Rafat he said that he was not there the majority of the time, but his father was, and he asked to bring his father into the interview.



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334. When Mr. Wael Rafat first came into the interview, there was the following exchange:

Ms. Winmill:

So, just for the recording, can you please state your full name and your association with the depot?

Mr. Rafat Sr:

Wael Rafat, the manager of the Evansburg Bottle Depot.

335. Ms. Winmill then stated to Mr. Wael Rafat that it was her understanding that Mr. Wael Rafat had been acting as Depot Manager and was primarily the one there day-to-day overseeing operations since the permit was obtained, and he said “yes”.

336. When Ms. Winmill asked Mr. Wael Rafat why he was not disclosed as the Depot Manager on the Permit application, Mr. Wael Rafat said that he did not have the chance and that after Mr. Mohamed Rafat went to school, then he went to help him, and that was the only reason it was not disclosed.

337. Later in the interview, Mr. Mohamed Rafat commented to his father that “you are there 90 percent of the time” and Mr. Wael Rafat said “yeah”.

338. After the interview, Ms. Winmill wrote to Mr. Mohamed Rafat indicating “...you will remember that we discussed the disclosure of Wael Rafat as a Depot Manager. As it stands now, having failed to disclose this information on your initial permit application or subsequently thereafter, you are now in breach of the terms and conditions of your operating permit...” Ms. Winmill asked Mr. Mohamed Rafat to provide certain information regarding his father.

339. In his email response Mr. Mohamed Rafat stated that “I am the 100% owner of the company. My father just helps me drop off the money when needed at the bottle depot when I get to (sic) busy with university.”

340. Ms. Winmill responded that although Mr. Mohamed Rafat was the owner of the company, it was quite clear during the meeting that it was his father who was physically at the Depot overseeing day-to-day operations on his behalf and that was expected to continue for the foreseeable future. She advised that this role meets the definition of a Depot Manager as defined in the Depot By-law and she required the requested information.

341. Mr. Mohamed Rafat provided the requested information, but his father could not satisfy the language proficiency requirements and another individual was hired as the Depot Manager.

342. There were some other pieces of evidence that were inconsistent with Mr. Wael Rafat having only limited involvement in the Depot. Ms. Winmill testified that when she attended at the Depot on June 1, 2021 for the first inspection with Ms. Budd, they asked an employee whether the owner was there and he pointed to Mr. Wael Rafat.

343. There was evidence that Mr. Wael Rafat had used the QMS system at least once and that he had the scanner app on his phone for checking containers, while it appears that the employees may not have. During the interview Mr. Wael Rafat talked about sorting and using the scanner to scan containers. He also had access to the Permit Holder’s bank account.



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344. Based on all of the evidence, the Hearing Panel is not satisfied that Mr. Wael Rafat's role at the Depot was simply dropping off and picking up money related to deposit refunds as he suggested at the hearing. The Hearing Panel considers the answers given at the interview to the effect that Mr. Wael Rafat was at the Depot the majority of the time to be the accurate situation.
345. The Hearing Panel finds that Mr. Wael Rafat was the individual who was supervising and managing the Depot's day-to-day operations with the agreement of the Permit Holder even though the Permit Holder did not formally acknowledge him to be the Depot Manager as defined in the *Depot By-law* and for the purpose of 8.6 of the Depot By-law. The Hearing Panel is therefore satisfied that Mr. Wael Rafat was the Permit Holder's agent within the meaning of that section.
346. During his interview Mr. Wael Rafat seemed to be suggesting that the previous employees must have accepted the material:
- a. When asked where the compacted material came from during the August 2021 interview, Mr. Wael Rafat said that the majority of the Depot customers are farmers or bottle pickers and they crush their containers.
 - b. He said that when material comes in the employees sort through it before they put it in a Mega Bag.
 - c. He could not explain how the material he saw in the pictures got into the Mega Bags and suggested that he had caught one of the employees drunk two or three times and had gotten rid of him.
 - d. In relation to the folded HDPE container he suggested "maybe the other people was working there, and the other guys, Maybe they take this one."
 - e. When Ms. Coon suggested the BCMB had evidence of Mr. Wael Rafat's involvement he said that "I'll prove it. It's not me. I'll prove it in one reason. Same I tell you I have a people is coming that's why I get rid of two worker with me because I got one guy is drunk, right? And the second one, he doesn't looking for his job."
347. During the hearing when asked how the industrially-compacted material got into the loads Mr. Wael Rafat said:
- I don't work at the bottle depot, but sometimes you get customers that tell---that bring back, for example, and they tell you this is 100 bottles of plastic water bottles. And the employees, they don't open them. They just write on them 100 plastic without opening them, and they put it inside. And the same things with the cans.
348. The two individuals employed at the Evansburg Depot from August 2020 to June or July of 2021 were not called to testify.
349. The Hearing Panel does not accept Mr. Wael Rafat's explanation that the industrially-compacted material got into the shipments because the employees thought it was crushed by hand or they were drunk or because they did not count the containers and simply dumped them into the Mega Bags.
350. The Hearing Panel does not consider the explanation tenable given the quantity of containers in multiple loads over a six-month period. The suggestion that the employees may not have actually



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sorted any of the containers they received is also not consistent with the fact that the industrially-compacted material was generally found by the BCMB compliance officers at the bottom of the Mega Bags or in pockets between layers of legitimate beverage containers. That evidence suggests a deliberate attempt to hide the material from a cursory inspection.

351. The Hearing Panel also took into account that unless the employees were actively part of a plan to ship out-of-province containers through the Depot, there would be no incentive for them to accept and ship such containers.

352. Counsel for the Permit Holder argued that the fact no industrially-compacted material was found in the July 29, 2021 shipment was proof that either the culprits had been the two employees or that Mr. Mohamed Rafat had introduced better precautions. The Hearing Panel did not find that position persuasive given that in July 2021 the Permit Holder had been notified about the compacted material. As noted above, the other equally reasonable inference was that the shipments stopped because they had been discovered.

353. Counsel for the Permit Holder noted that the bills of lading showed that there were millions of containers shipped from Recycle Action and only a tiny fraction of those containers were alleged to have been accepted and shipped by the Evansburg Depot. She argued that this was inconsistent with Mr. Wael Rafat being involved or there would have been more containers identified. The Hearing Panel accepts that the evidence does not establish that all containers from Recycle Action went to the Depot. It does not, however, disprove the fact that some containers did.

354. The Hearing Panel considers the evidence of Mr. Wael Rafat's involvement in purchasing compacted material from Recycle Action from 2018 to 2021 and the evidence relating to his involvement in the Evansburg Depot coupled with his inconsistent and contradicted evidence on those matters to be proof on a balance of probabilities that he was involved in shipping recycled material from Recycle Action into Alberta and then to ABCRC through the Evansburg Depot.

Volume Evidence

355. In considering the potential involvement of Mr. Wael Rafat in deliberately accepting and shipping out-of-province containers, the Hearing Panel also looked at the volume of containers shipped by the Evansburg Depot before and after the Permit was issued to the Permit Holder. This information was included in the Investigative Report to allow for a comparison between the typical volumes before and after August of 2020 as well as to provide an estimate as to the potential monetary gain to the Permit Holder from claiming deposits and handling commissions related to out-of-province beverage containers.

356. The BCMB Investigations Officer who compiled the Investigative Report reviewed load volumes for the Evansburg Depot for the period from September 2020 to June 2021 against the same time period for the previous five years of operations. Those volume loads were compared by material stream as well as by total volume.

357. The data provided in the Investigative Report included the annual load volumes from the Evansburg Depot for the period from September 1 to August 30 from 2015 through to 2021. The number of containers shipped by Evansburg from September 2020 to August 2021 was just under



1,000,000 more than the previous year, an increase of 55.2%. In the period from 2014 to the end of August of 2020, the volumes had increased 63.3% or about 10.5% a year.

358. In terms of individual container streams, the Evansburg Depot saw an increase in the number of aluminum containers from about 500,000 a year (based on a five-year average) to about 1.3 million in 2020/2021. Using the same analysis, the number of PET containers under 1L increased in 2020/2021 by about 265,000 containers. There was a smaller increase in containers in relation to other plastic material streams that were analyzed.

359. The Permit Holder was specifically asked about the increase in container volumes by way of correspondence from Ms. Budd dated December 23, 2021. He responded on January 2, 2022 and Ms. Budd requested further information to which the Permit Holder responded on January 7. Reasons for the increase in volume provided by the Permit Holder included:

- a. the Depot being closed for 6 weeks due to Covid in 2020;
- b. improved customer service and changes in organization and speed;
- c. an increase due to Covid which had been experienced by other depots in the area as well;
- d. the fact that the previous owner did not accept bigger loads, but he does;
- e. a trailer load of containers received from Drayton Valley;
- f. pick up service provided to bars/restaurants and golf courses (two of these entities were specifically identified, the golf course was closed);
- g. advertising to promote bottle drives;
- h. A big bottle drive in January of 2021 that raised \$9,200 (cheque provided). The names of phone numbers of individuals involved in two other bottle drivers were also provided;
- i. A load brought in from the previous owner of another depot who sold;
- j. Increased traffic on the Depot website;
- k. Flyer advertising in August of 2020.

360. Mr. Mohamed Rafat put into evidence screen shots from Google which indicated that on Google Maps the Depot had been viewed 1,464 times in December 2020 and 2,468 times in March, 2021 and that 8 photographs associated with the Depot were viewed 1,217 times in March of 2021. The screenshots also showed that the Depot's business profile had been viewed 252 times in December of 2021 (up 50.9% from December of 2020). He also showed the 4.8 star rating for the Depot (based on 27 reviews) as opposed to a 3.6 rating for another depot in the area.

361. Ms. Budd conceded that she said that she had no reason to doubt that better service, bottle pick-ups, bottle drives and online visibility might have increased the volume of containers at Evansburg somewhat and said that she did not follow up on these things with the Permit Holder.

362. Ms. Budd looked into volume increases at other depots in the area both to see whether they experienced similar volume increases and also whether they showed volume decreases that would confirm that customers at those depots might have switched to the Evansburg Depot as a result of better customer service.

363. The information in the Investigative Report (amended by Exhibit 70) dealing with six neighbouring depots within a 55 kilometre radius of Evansburg showed no significant increase in load volume from August to November of 2021 as compared to the previous year at five of the depots. The



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sixth depot showed a large increase in October of 2021, but also showed reductions in the previous months that may have accounted for part of the increase.

364. The Investigative Report also contained load volumes for the same six depots and two other depots from September 2020 to July 2021 compared to their volumes for the same period in 2019/2020. The data tended to confirm the Permit Holder's position that other depots in the area had experienced a significant increase during this time as well. For example, the volume increases for the month of March 2021 compared to March 2020 ranged from 38.6% to 83.6% compared to the 99.6% increase at Evansburg. This appears to coincide with the initial Covid shutdown of Depots and then reopening.
365. However, when the total load volume was compared over this period of time, the increase at the other depots ranged between 9.7% and 28.1 % compared to the 63.3% increase at Evansburg.
366. Counsel for the Permit Holder pointed out that the volume of containers at the Evansburg Depot had been increasing steadily in the three years leading up to 2020/2021. She also put into evidence the Depot's Uniform Code of Accounts information for 2021/2022 which shows that there has only been a slight decrease in volume for that year.
367. The Hearing Panel accepts that the volume load was increasing at the Evansburg Depot in the three years leading to August of 2020 and there is no reason to conclude from that evidence that the volume would not have continued to grow at least at a similar rate. The Hearing Panel also accepts that the evidence shows an increased growth rate between 2020 to 2021 at a number of other depots which would help to explain a higher growth rate at Evansburg from July of 2021 to September of 2021 than in previous years.
368. In terms of the other explanations given by Mr. Mohamed Rafat for a volume increase after he obtained the Permit, the Hearing Panel does not accept that changes in the day-to-day operations at the Depot would have had a significant impact on volumes given Mr. Mohamed Rafat's evidence that he only attended at the Depot at once or twice a month and perhaps less over the winter months. Mr. Mohamed Rafat testified that part of the reason he was interested in the business was because he would not have to be hands-on while he was at school. He said it was during the summertime that he intended to do the operational part and marketing. However, the volume increase at Evansburg happened almost immediately after he obtained the Permit.
369. Furthermore, in terms of customer service, the Depot continued to employ the same two employees as before and the evidence from Mr. Rosairo was that customers had expressed to him some relief at the departure of one of them. That departure was not until June or July of 2021.
370. Mr. Mohamed Rafat testified that he accepted bigger loads than the previous Permit Holder and picked up loads and had at least one very large bottle drive. There was no other evidence before the Hearing Panel regarding what the previous permit Holder did in relation to any of these things.
371. The Hearing Panel considered the observed increase in 2020/2021 to be higher than what would have been expected even assuming growth commensurate with other depots together with better organization and increased efforts on social media.



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372. The Hearing Panel is of the view that the volume evidence including the slight decrease in volume in 2021/22 following consistent increases, is consistent with a deliberate effort to accept and ship of out-of-province material from September of 2020 to May of 2021 and therefore has some evidentiary value when considered in the context of the totality of the evidence at the hearing, although it is not in any way definitive on its own and was given limited weight in the Hearing Panel's considerations.

Conclusion on Involvement of Mr. Wael Rafat

373. Based on all of the evidence before it, the Hearing Panel finds it proven on a balance of probabilities that Mr. Wael Rafat was involved in knowingly accepting and shipping out-of-province containers to ABCRC. This conduct is clearly a breach of s. 10.35 of the Depot By-law.

Involvement of Mr. Mohamed Rafat

374. As noted above, the Hearing Panel did not accept the evidence of Mr. Mohamed Rafat at the hearing regarding Mr. Wael Rafat's limited involvement at the Depot and that his father's role was mainly to handle cash. This evidence was markedly different from what Mr. Mohamed Rafat said at the August 2021 interview.

375. The Hearing Panel does accept that Mr. Mohamed Rafat had much less involvement in the Depot's day-to-day operations than his father. It was Mr. Mohamed Rafat's evidence that he rarely was there until his attendance was necessitated when the two employees were let go. There was no evidence to suggest otherwise.

376. The Hearing Panel finds that Mr. Mohamed Rafat left most of the supervision and management of operations to Mr. Wael Rafat. He did so despite not identifying his father as the Depot Manager on the application form submitted to the BCMB. Given Mr. Mohamed Rafat's contradictory explanations at the August interview and at the hearing, and given his evidence at the hearing, the Hearing Panel does not accept that Mr. Mohamed Rafat consciously made a decision not to disclose Mr. Wael Rafat on the application because Mr. Wael Rafat was not officially going to be on the payroll.

377. Based on the evidence given by Mr. Mohamed Rafat and Mr. Wael Rafat, Mr. Mohamed Rafat either left the supervision and management of the Depot to someone who had no experience in the industry and did not meet the BCMB requirements for a Depot Manager, or left the day-to-day operations of the Depot in the hands of two individuals simply on the basis that they had worked there before and there had been no complaints received.

378. In addition, by his own admission, Mr. Mohammed Rafat took a very cavalier approach to notices from the BCMB to the depot network on the basis that unless the notices referred specifically to the Evansburg Depot he would not read them carefully.

379. The Hearing Panel finds that all of the above is conduct on the part of the Permit Holder that breaches s. 10.35 of the Depot By-law.

380. In terms of the Permit Holder's involvement with Mr. Wael Rafat's activities, Mr. Mohamed Rafat denied having any involvement with Recycle Action. Mr. Lessard did not identify Mr. Mohamed



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Rafat as being the young man that accompanied Mr. Wael Rafat to Recycle Action and there were no records from Recycle Action that referred to Mr. Mohamed Rafat or the Depot. Accordingly, the Hearing Panel finds that Mr. Mohamed Rafat was not directly involved in Mr. Wael Rafat's dealings with Recycle Action.

381. Mr. Mohamed Rafat also denied having any knowledge of his father's involvement with Recycle Action. The Hearing Panel found that evidence more difficult to accept. The Hearing Panel was troubled by the inconsistencies between Mr. Mohamed Rafat's interview and his subsequent communications with the BCMB and his evidence at the Hearing. The Hearing Panel was not satisfied that Mr. Mohamed Rafat could reasonably believe the explanations that he provided with respect to the increased volumes at the Depot after he obtained the Permit or that he could reasonably believe that the industrially-compacted containers in the photographs shown to him by the Investigations Officers were containers that had been retrieved from ditches and brought in by bottle-pickers.

382. Notwithstanding its concerns, the Hearing Panel does not consider the evidence sufficient for a finding on a balance of probabilities that Mr. Mohamed Rafat knew of Mr. Wael Rafat's activities.

383. However, because Mr. Wael Rafat breached s. 10.35 of the Depot By-law and because the Hearing Panel has concluded that Mr. Wael Rafat was the agent of the Permit Holder in relation to that breach under s. 8.6, the Hearing Panel finds that the Permit Holder is equally responsible for that breach. A permit holder cannot avoid responsibility for what takes place at the depot for which it holds the permit by taking no supervisory responsibility or purporting to delegate that responsibility entirely to somebody else without any diligence in hiring that person or monitoring or oversight.

Allegation 3: Conclusion

384. The Hearing Panel concludes that the Complaints Director has proven allegation #3 against the Permit Holder on a balance of probabilities.

Other Matters: The Conduct of the Investigation

385. In her oral and written submissions, counsel for the Permit Holder submitted that the BCMB investigation staff drew prejudicial inferences about the honesty of Mr. Mohamed Rafat and Mr. Wael Rafat and did not give them the opportunity to know and respond to information that had been gathered. She submitted that the investigation staff then referred the matter to a hearing without verifying their assumptions or the vague information they had received and that they failed to follow up with respect to the individual that Mr. Wael Rafat had suggested was trying to make trouble for him, being Mr. Abdelmetaal. She suggested that the Rafats had been scrutinized and accused unfairly.

386. Counsel for the Permit Holder advised that she made her comments about the investigation simply to reinforce to the Hearing Panel that it is important that they consider all of the evidence fairly and objectively including all of the information that the Permit Holder and Mr. Wael Rafat feel that they did not have the opportunity to provide earlier. She accepts the position of counsel



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for the Complaints Director that even had there been any breach of duty of fairness at the investigation phase, it would be cured through the hearing process.

387. The Hearing Panel does not accept that the BCMB Investigators breached any procedural fairness obligations to the Permit Holder during the investigation. However, the Hearing Panel is satisfied that the Permit Holder has been given every opportunity to provide any and all information relevant to its defence such that if the Permit Holder was in any way prevented from doing so during the investigation, that situation has been rectified.

SANCTIONS

388. The Hearing Panel will receive submissions from the Complaints Director and on behalf of the Permit Holder concerning sanctions and costs orders. The parties may provide submissions in writing, or if either party wishes to request an oral hearing concerning sanctions and costs, they may write to the Hearing Director and an oral hearing will be scheduled.

Dated this 6th day of July , 2023

A handwritten signature in black ink, appearing to read 'Brian Moore', is written above a solid horizontal line.

Brian Moore - Hearing Panel Chair