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**DATE:** December 20, 2018

**TO:** Depot Network

**RE:** **Compliance Frameworks**

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On November 7, 2018, the Beverage Container Management Board (BCMB) Board of Directors approved a series of new and updated By-laws. With the introduction of the Depot By-law and the Fee By-law on February 1, 2019, the BCMB will begin implementing new compliance frameworks.

There are five compliance frameworks, all contained within the Depot By-law, that a Depot may move through:

- Refund Compliance Framework
- Quality Control Framework
- Uniform Code of Accounts Compliance Framework
- Operational Compliance Framework
- Non-Beverage Container Framework

These frameworks have been developed to provide Depots with an opportunity for improvement and to ensure that process is transparent, fair and consistently enforceable if a Depot does not meet an industry standard. In the development of these frameworks, the BCMB has adopted the Compliance Assurance Principles as utilized by Environment and Parks: First phase - Education; Second Phase - Prevention; Third Phase - Enforcement.

If a Depot has entered or exited a framework, communication will be sent to the Depot's industry email account. Any correspondence regarding the Non-Beverage Container framework will continue to be sent through the Quality Monitoring System (QMS). It is important that going forward, Permit Holders monitor their industry email and QMS regularly.

To learn more about QMS [click here](#);

To learn more about the Depot or Fee By-law [click here](#) and select "By-laws (Feb 2019)."

Ultimately, compliance frameworks should drive improvement and innovation in the industry and work to ensure that only the most serious and ungovernable situations elevate to the level of suspension or cancellation through the board hearing process.

Dan White, Director, Operations  
BCMB





## **COMPLIANCE FRAMEWORKS**

Compliance frameworks have been developed to respond to evidence of non-compliance of an industry accepted standard. The BCMB or other industry developed programs are in place to monitor performance and assess that performance against those standards. When the standard is not met a progressive action framework (compliance framework) is used to encourage improved performance until the industry standard is achieved.

In terms of developing the compliance frameworks and the processes captured within those frameworks, the BCMB used the following principles:

- **Are the expectations clear:** By-law contains the standards that are required to remain in compliance and to operate in the Alberta beverage container system.
- **Are there processes in place to achieve the expectations:** Process is clearly explained throughout by-law, including within each compliance framework and throughout the hearing process.
- **Are the outcomes of those processes being achieved:** The industry standards included in by-law are those that are already being used and achieved. The compliance frameworks have been built in a manner that provides opportunity for education and improvement and where only the most significant risks would escalate to a board hearing panel.
- **Are there methods in place to evaluate and improve where necessary:** BCMB Management reports on compliance activities to the board at each meeting. Industry standards are discussed with the Industry Leadership Committee. Significant consequences such as permit suspension/cancellation or significant requests are overseen and governed by the Board. Additionally, mechanisms are in place to provide for Compliance Fee appeals to the Board. The Compliance Committee conducts post-hearing and Compliance Fee appeal reviews.

## **COMPLIANCE FRAMEWORK – LEVELS**

The diagram on the last page of this document outlines the progressive steps included in BCMB compliance frameworks. Each framework has four levels, which includes increasing compliance mechanisms, such as application of Compliance Fees and reduced improvement/response times. Repetitive non-compliance, without demonstrated improvement, will be escalated through a compliance framework. Increasing compliance mechanisms will be applied to move non-compliance forward and ultimately meet the standards set in by-law. Each framework follows the same path:

- a) Failure of standard;
- b) Level 1: Education and opportunity to improve;
- c) Level 2: Education and Prevention: application of a Compliance Fee, opportunity to improve;
- d) Level 3: Prevention and Enforcement: application of a Compliance Fee, decreasing timelines to come into compliance, opportunity to improve;
- e) Level 4\*: Complaints Director: assessment by the Complaints Director, possibilities include:
  - i. Issue resolution;
  - ii. Further assessment in terms of repeating levels in the compliance framework;
  - iii. Initiation of an investigation. Investigation may result in the:





- File recommended to the Board Hearing Panel for consideration of suspension or cancellation of permit;
- File closed;
- \*\*10-day suspension of permit if the items below are all satisfied:
  - a) there are reasonable grounds for believing the Depot has contravened or is contravening the Act, the Regulation or any BCMB by-law;
  - b) the contravention of the Act, the Regulation or the by-law has occurred repeatedly, is ongoing and seriously undermines the integrity the beverage container management system or is a threat to public safety; and
  - c) no lesser measure will reasonably suffice to protect the integrity of the beverage container management system.

*\*Activities related to fraud, theft, and serious public safety issues will be escalated directly to the Complaints Director and would not follow a Compliance Framework.*

*\*\*Under these circumstances, an order of the Board Chair is required to extend the suspension or impose conditions on a permit.*

## TRANSITION DATES

There are elements in the new draft by-laws that will need to be transitioned. Specifically, areas related to non-compliance that require specific cut-off and start dates. The chart below outlines the rational for effective dates:

Section	Changes from existing by-law	Rational and Application
UCA Compliance	Yes, different compliance framework	Any Depot with a year end as of January 31, 2019 will fall under the new Depot By-law. As Depots have six months to file their UCA, the current UCA Compliance By-law will apply for all filing deadlines up to July 31, 2019
Refund Compliance	No, there is no previous compliance framework written into by-law	Application of the new Depot By-law compliance framework will take effect February 1, 2019
QC Compliance	Yes, Level 2 in the new compliance framework is different than the current version (QC Progressive Action Policy)	As of January 31, 2019, any Permit Holder that is in the QC Progressive Action Policy at Level 2 or higher, will be moved down to Level 1. Any Permit Holder that is in Level 1 will be moved out of the QC Progressive Action Policy completely. As of February 1, 2019, Quality Control will be applied according to the Depot By-law.
Non-Beverage Container Compliance	No, the new framework is identical to current by-law	The new Depot By-law will become effective February 1, 2019 (application of current Non-Beverage Container Compliance by-law will continue as usual and this framework



		will now be contained in the Depot By-law)
Operational Compliance	No, previous compliance framework in place (although standards existed in by-law and inspections are completed annually by BCMB Compliance Officers)	Application of the compliance framework within the Depot By-law will take effect February 1, 2019

## **KEY CHANGES IN BY-LAW TO INTEGRATE FRAMEWORKS**

### **Refund Compliance**

The BCMB has used third-party auditors to audit each Depot for refund compliance standards for the past decade. In past years, Refund Compliance results were used as a factor in determining a Depot's permit length at the time of renewal, where poor results could decrease the length of a permit. With the introduction of a revised permit matrix in 2015, a compliance framework was established to monitor, evaluate, and improve, where necessary, a Depot's Refund Compliance performance. Refund Compliance is considered an important component of system integrity, transparency and public trust and therefore has been incorporated into the Depot By-law. Current standards will be maintained, and the Refund Compliance program will continue to operate on an as usual basis.

### **Quality Control Compliance**

The Quality Control By-law, also known as the Progressive Action Policy (PAP), has been in use by the industry since it was first approved by the Board in 2009. The Quality Control process is outlined in the Service Agreement and serves to monitor a Depot's performance in terms of the accuracy related to counting and sorting requirements. The Collection System Agent conducts audits of shipping containers and reports the results of the audits through the Quality Monitoring System. The PAP has been incorporated into the Depot By-law with one change. A Depot will no longer be able to remain static at any level of the compliance framework. Similar to all other compliance frameworks, based on performance, the Depot will either move up (increasing compliance) or down (decreasing compliance) within the framework.

### **UCA Compliance**

The Uniform Code of Accounts (UCA) Compliance By-law was adopted by the Board in 2013. The By-law provided a framework for non-compliance related to the submission of UCAs by Permit Holders. The By-law has been incorporated into the Depot By-law as the UCA Compliance Framework. However, changes have been made to decrease the length and severity of Compliance Fees for non-compliance.





## Operational Compliance

This section introduces a compliance framework for operational compliance, which will largely occur as result of inspections. Previous compliance mechanisms in this area occurred almost solely at the time of permit renewal. The permitting matrix considered numerous areas (now covered in other compliance frameworks), including inspection scores. Previously, the BCMB provided each Permit Holder with a permit and length of permit based on an overall score. Permits could be assigned for a one, four or five year term. Any issues noted in the inspection would be identified and indicated as a factor in permit renewal length. However, this process did not serve as an incentive to make timely improvements where non-compliance was indicated, as there were no consequences until permit renewal time. The Operational Compliance Framework provides timelines and follow-up mechanisms for managing and improving non-compliance related to operational by-law requirements. In terms of permits, excluding first year operators who may receive a one year permit for evaluative reasons, all permits will now be granted for a five year term.

## Non-Beverage Container Compliance

The Non-Beverage Container Compliance By-law was adopted by the Board in February 2018. The By-law places accountability on Permit Holders to protect system integrity by not shipping non-beverage containers to the Collection System Agent. The By-law includes a compliance framework which has been fully incorporated into the Depot By-law. Section 11 of the new Depot By-law provides an introduction for each compliance framework as indicated in the chart below.

Section #	Section in By-law
11.1	Each Depot shall meet the standards established by the BCMB in this By-law in relation to:
11.1.1	<ul style="list-style-type: none"> <li>The provision of Deposit Refunds to customers presenting empty registered containers to the Depot Operator (“Refund Compliance”);</li> </ul>
11.1.2	<ul style="list-style-type: none"> <li>The accurate sorting of Containers for pick-up by or shipment to the Collection System Agent and Collection Service Provider, and reporting with respect to those Containers (“Quality Control Compliance”);</li> </ul>
11.1.3	<ul style="list-style-type: none"> <li>Completion and reporting of the Uniform Code of Accounts (“UCA Compliance”);</li> </ul>
11.1.4	<ul style="list-style-type: none"> <li>The operational and administrative requirements set out in this By-law and any applicable BCMB Policies and Guidelines (“Operational Compliance”);</li> </ul>
11.1.5	<ul style="list-style-type: none"> <li>The shipment of Non-Beverage Containers to the Collection System Agent or any Collection Service Provider (“Non-Beverage Container Compliance”)</li> </ul>
11.2	The failure of a Depot to meet the standards established by the BCMB with respect to these areas of compliance will result in progressive enforcement actions.





## COMPLIANCE FEES

The new compliance frameworks clearly indicate where and when a Compliance Fee can be issued by the BCMB. A Compliance Fee increase was approved by the Board in April 2018. The increase is reflective of the cost recovery necessary to administer Compliance Fees.

Section #	Section in By-law
7.2.	Effective June 1, 2018, a compliance fee shall be in the amount of \$300.00 for each event for which the fee is levied. Effective June 1, 2019, the amount of the compliance fee shall increase to \$400 for each even for which the fee is levied.

Policy regarding interest on Compliance Fees remains the same.

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

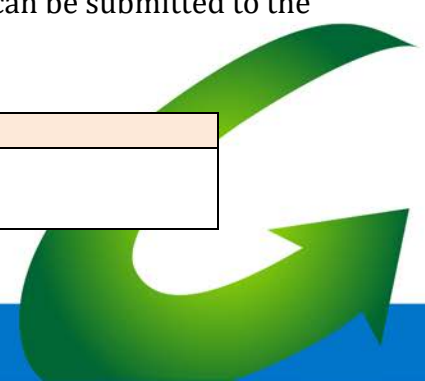
## Compliance Fee Appeals

Appealing a Compliance Fee is a process carried over from the Administrative Compliance By-law. A \$500 Appeal Fee has been added to the By-law and the process descriptions have been expanded. The Fee will be returned to the individual appealing a Compliance Fee if the appeal is successful.

Section #	Section in By-law
11.1.	A person who is served with a notice of compliance fee may appeal the notice of compliance fee to the BCMB Compliance Committee by submitting a Notice of Appeal in the form specified by the BCMB for that purpose by email to the BCMB Hearing Director, and by paying the BCMB the compliance fee that is the subject of the appeal and an Appeal Fee of \$500
11.2.	The Notice of Appeal, compliance fee and Appeal Fee must be submitted to the BCMB within 30 days of the date the notice of compliance fee is deemed to have been received by the person who is appealing.

The chart below outlines the grounds for a which a Compliance Fee appeal can be submitted to the BCMB.

Section #	Section in By-law
11.3.	The Notice of Appeal shall include the following information:
11.3.1	





11.3.2	<ul style="list-style-type: none"> <li>• Contact information of the appellant, including an address to which information may be transmitted by fax or by email;</li> </ul>
11.3.3	<ul style="list-style-type: none"> <li>• Contact information of the appellant, including an address to which information may be transmitted by fax or by email;</li> </ul>
11.3.4	<ul style="list-style-type: none"> <li>• The date of service of the notice of compliance fee;</li> </ul>
11.3.5	<ul style="list-style-type: none"> <li>• A copy of the notice of compliance fee appealed from;</li> </ul>
11.3.6	<ul style="list-style-type: none"> <li>• Grounds for the appeal;</li> </ul>
11.4	<ul style="list-style-type: none"> <li>• Evidence supporting the grounds of appeal.</li> </ul> <p>A notice of compliance fee can only be appealed on the following grounds:</p>
11.4.1	<ul style="list-style-type: none"> <li>• The BCMB did not have the authority to issue the notice of compliance fee;</li> </ul>
11.4.2	<ul style="list-style-type: none"> <li>• The BCMB failed to follow its own procedures, and that this failure had, or may reasonably have had, a material effect on the decision to issue the notice of compliance fee;</li> </ul>
11.4.3	<ul style="list-style-type: none"> <li>• The issuance of the notice of compliance fee was influenced by bias;</li> </ul>
11.4.4	<ul style="list-style-type: none"> <li>• The BCMB failed to consider relevant information or took into account irrelevant information in issuing the notice of compliance fee.</li> </ul>

This section outlines the Compliance Fee appeal panel process, judgement possibilities and timelines for receipt of a written decision (30-days). It is also noteworthy that the decision of the appeal panel is final and binding. This section has been added to provide transparency and parameters to the appeal process

Section #	Section in By-law
11.6.	An Appeal Panel shall consist of at least two members of the Compliance Committee. The Appeal Panel shall select a Chair.
11.7.	Within 30 days of receipt of a Notice of Appeal, the BCMB shall provide the person appealing with the information upon which the notice of compliance fee was issued and any written submissions which it intends to provide to the Appeal Panel. The person appealing may provide written submissions in response within 14 days of receiving the BCMB material.
11.8.	The BCMB shall provide the Notice of Appeal, the information upon which the notice of compliance fee was issued and any written submissions from the BCMB and from the person appealing to the Appeal Panel.
11.9.	The Appeal Panel shall make its decision based upon the material provided to it in accordance with section 11.8.

11.10.	The Appeal Panel shall issue a written decision within 30 days of being provided with the appeal material in accordance with section 11.8.
11.11	In making its decision, the Appeal Panel shall have no greater authority than the individual who issued the notice of compliance. The Appeal Panel may decide to:
11.11.1	<ul style="list-style-type: none"> <li>• Reject the appeal and confirm the notice of compliance fee;</li> </ul>
11.11.2	<ul style="list-style-type: none"> <li>• Uphold the appeal and refer the matter back to the BCMB;</li> </ul>
11.11.3	<ul style="list-style-type: none"> <li>• Uphold the appeal and disallow the notice of compliance fee;</li> </ul>
11.11.4	<ul style="list-style-type: none"> <li>• Determine whether costs of the appeal, excluding legal costs of any party, will be assessed.</li> </ul>
11.12	If the Appeal Panel upholds the appeal and disallows the notice of compliance fee, the Appeal Panel shall direct the BCMB to return the Appeal Fee and compliance fee to the Appellant.
11.13	The decision of the Appeal Panel is final and binding.

## PERMIT SUSPENSION

Where there is reasonable grounds for believing a Depot has contravened or is contravening the Act, the Regulation or any BCMB by-law and the contravention of the Act, the Regulation or the by-law has occurred repeatedly, is ongoing and seriously undermines the integrity the beverage container management system or is a threat to public safety and no lesser measure will reasonably suffice to protect the integrity of the beverage container management system, the Complaints Director may suspend a permit for a maximum of 10 days. BCMB Management expect that these situations are likely to culminate in a board hearing review of the permit. This section also builds in a mechanism for the Board Chair to receive applications for the purposes of extending the suspension or placing conditions on the operating permit

Section #	Section in By-law
12.15	During the course of a review or an investigation, the Complaints Director may suspend the Permit of a Depot if:
12.15.1	<ul style="list-style-type: none"> <li>• a suspension is reasonably warranted in the circumstances;</li> </ul>
12.15.2	<ul style="list-style-type: none"> <li>• there are reasonable grounds for believing the Depot has contravened or is contravening the Act, the Regulation or any BCMB by-law;</li> </ul>
12.15.3	<ul style="list-style-type: none"> <li>• the contravention of the Act, the Regulation or the by-law has occurred repeatedly, is ongoing and seriously undermines the integrity the beverage container management system or is a threat to public safety; and</li> </ul>
12.15.4	<ul style="list-style-type: none"> <li>• no lesser measure will reasonably suffice to protect the integrity of the beverage container management system</li> </ul>



12.16	<p>A suspension imposed under section 12.15 must be communicated to the Permit Holder in a written notice that includes the reason for the suspension and shall not exceed 10 days, unless extended by order of the Board Chair or his or her delegate, on application by the Complaints Director and on written notice to the Permit Holder.</p>
12.17 12.17.1 12.17.2	<p>On hearing an application under section 12.16, the Board Chair may:</p> <ul style="list-style-type: none"> <li>• refuse to extend the suspension;</li> <li>• extend the suspension until a review, investigation or hearing is completed;</li> <li>or</li> <li>• instead of extending the suspension, impose conditions on a Permit until a review, investigation or hearing is completed.</li> </ul>
12.17.3	<p>The Board Chair shall not extend a suspension or impose conditions pursuant to section 12.17 unless the Board Chair is satisfied that all of the requirements listed in section 12.15 have been met.</p>
12.18	<p>The Chair may provide any directions required to facilitate the effective scheduling and conduct of the application under section 12.16.</p>



