

THE DARK SIDE

OF EXTENDED PRODUCER RESPONSIBILITY (EPR) IN BRITISH COLUMBIA

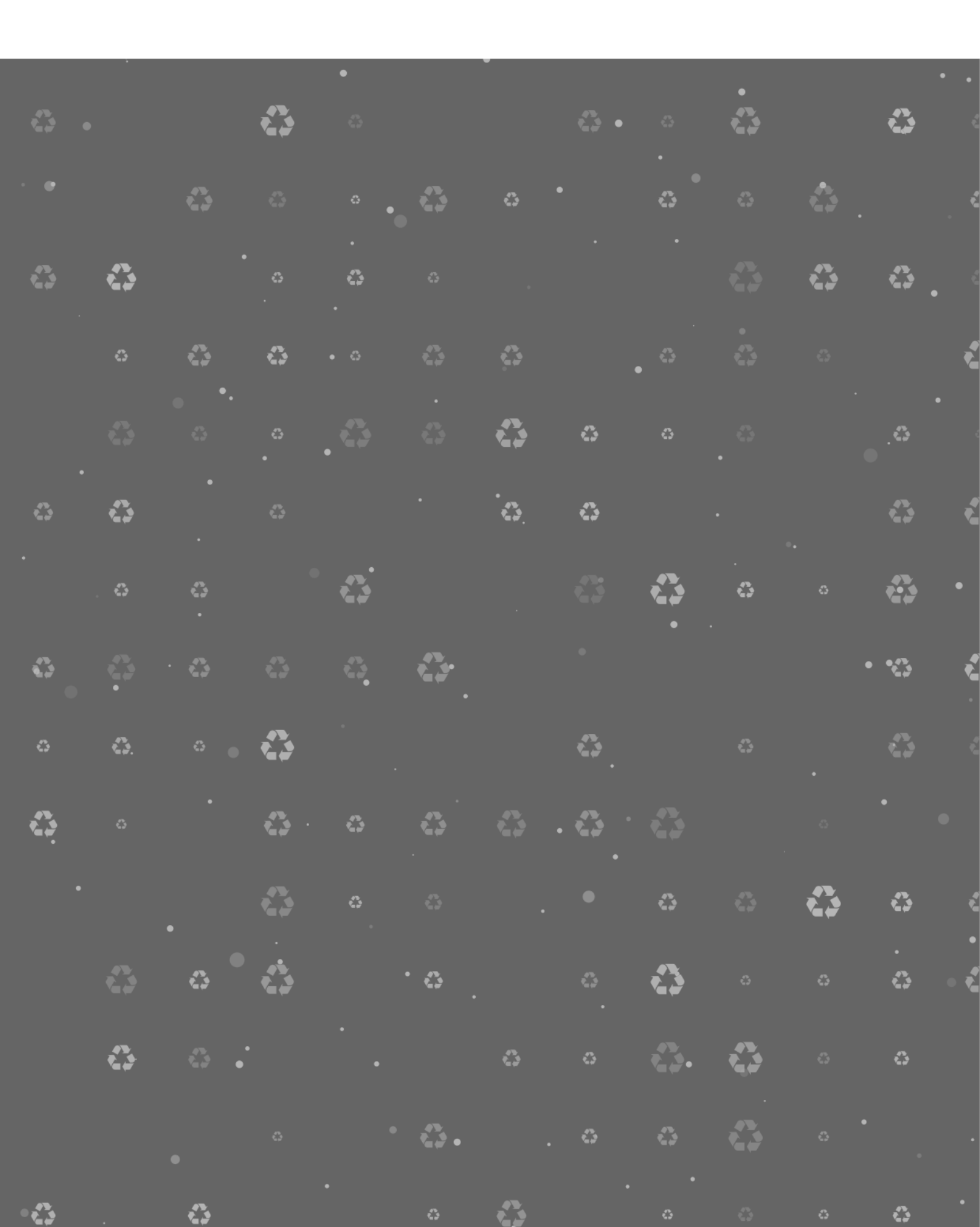


BC BOTTLE & RECYCLING DEPOT ASSOCIATION

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FW: Requirement of the MOECCS to Uphold British Columbia's Laws

From: ENV Extended Producer Responsibility ENV:EX
<ExtendedProducerResponsibility@gov.bc.ca>
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: ENV Extended Producer Responsibility ENV:EX
<ExtendedProducerResponsibility@gov.bc.ca>
Sent: April 4, 2022 12:49:30 PM PDT
Attachments: BCBRDA_The Dark Side of Extended Producer Responsibility in British Columbia.pdf, Minister George Heyman - April 4 2022.pdf

Hi Bob,

Please see below. Please let me know if I should start an eApp for a response.

Thank you,
Alison

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: April 4, 2022 12:45 PM
To: Minister, ENV ENV:EX <ENV.Minister@gov.bc.ca>
Cc: Sather, Kelly ENV:EX <Kelly.Sather@gov.bc.ca>; Chang, Stephanie ENV:EX <Stephanie.Chang@gov.bc.ca>; ENV Extended Producer Responsibility ENV:EX <ExtendedProducerResponsibility@gov.bc.ca>
Subject: Requirement of the MOECCS to Uphold British Columbia's Laws

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Dear Minister Heyman,

Please find attached correspondence outlining unresolved regulatory compliance issues related to the implementation of Extended Producer Responsibility (EPR) in British Columbia (BC). We are calling on the Ministry of Environment and Climate Change Strategy (MOECCS) as the regulator for EPR, to uphold environmental, trade practice, and competition laws.

I am also attaching a copy of the paper that we shared with you in fall 2021. The Dark Side of Extended Producer Responsibility in British Columbia was developed in follow up to your request for bottle and recycling Depots to document our challenges with EPR. Our letter today offers a concrete view of why many of the challenges outlined in the paper continue to negatively impact the environment, British Columbians, and our small businesses.

We look forward to a swift response.

Sincerely,

Jay Aarsen
BCBRDA Chair



33030. 11198 - 84 Avenue. Delta. British Columbia. V4C 8E6

April 4, 2022

Honourable George Heyman
Minister of Environment and Climate Change Strategy
Room 112 Parliament Buildings
Victoria, BC V8V 1X4

Re: Requirement of the MOECSS to Uphold British Columbia's Laws

Dear Minister Heyman,

On behalf of the BC Bottle and Recycling Depot Association (BCBRDA), I am following up on our July 2021 meeting with you to discuss the underperformance of Extended Producer Responsibility (EPR) in British Columbia (BC) and more recent discussions with Kelly Sather, Desmond Pollard, and Stephanie Chang.

Through these touch points, the BCBRDA identified limited progress on environmental targets and the negatives impacts of the monopolistic power of Producer Responsibility Organizations (PROs) on consumers and small businesses as key concerns. At your request, we documented our concerns in the form of a paper, *The Dark Side of Extended Producer Responsibility in British Columbia*, and shared it with you, your staff, and department staff in September 2021.

Although our request for a meeting in October 2021 was never granted, we have continued to communicate every few weeks, if not more frequently, with department staff. Moreover, we have continued to research and document the legal and policy infractions related to implementation of EPR in our province. It has been eye-opening to say the least.

As individual Depots, we have long known the monopolistic powers of PROs have allowed the producers they represent to underpay for our collection services, download the costs of operating their recycling systems on us, and skirt their regulatory responsibility to pay the full cost of managing their materials. As an association, we have been able to do our homework to understand that this is allowed to happen because the MOECSS, as the regulator for EPR, is not upholding environmental, trade practice, nor competition laws.

Department staff at the MOECSS have communicated to us that regulatory oversight is under-resourced because of staffing shortages. They have also confirmed that available staff were asked to focus on expanding the existing list of regulated materials, including adding industrial, commercial, and institutional materials under EPR. This is extremely disconcerting to us, as the deficiencies of the current system will only carry into and be amplified in an expanded system. Not to mention that the law is the law – and producers and their PROs should not be able to operate above it.



In the EPR environment, the onus is fully on the MOECCS, as the regulator, to ensure:

- Producers and PROs' legal obligations are met, including:
 - Meeting environmental targets, whether those are identified in regulation, or the disappointingly lax targets lobbied for by PROs and approved as part of their EPR Plans.
 - Open, fair, transparent consultation that results in a valid financial model to demonstrate producers are paying their full cost.
 - Producers following through on paying the full cost of managing their materials, including a fair return to Depots.
- Fairness and transparency in all regulatory processes, including dispute resolution systems - where, if not for BC's *Recycling Regulation*, disputes resulting from PROs' monopolistic price-setting and unfair contract terms would be disallowed by Canada's *Competition Act*.

Even if you just scratch the surface of what is happening with EPR, you will find the MOECCS, as the regulator, is not holding producers and PROs to account. Let me give you just one of many examples –

Encorp Pacific (Encorp), the PRO that manages beverage containers on behalf of producers in BC, has outright stated it did not pay the full cost for its Express program pilot – a labour-intensive program for Depots that allows British Columbians to return unsorted beverage containers to receive their deposit return. This means Encorp knowingly downloaded producers' costs onto participant Depots and will not correct its underpayment. Despite this admission, the MOECCS has taken no compliance action to correct this to date.

In addition, Encorp is required to submit and receive approval for an EPR Plan every five years. It is required to have an approved plan just to operate its recycling programs. Encorp has been out of compliance for 4.5 years (!!!) on its 2018 – 2022 plan – where portions of the plan were approved in late 2021 and Section 9, which relates to financial compensation for collection service providers, is still unapproved. Every day that Encorp fails to demonstrate it is paying its full cost of managing producers' materials is revenue that Depots miss out on and Encorp keeps in producers' pockets.

In the meantime, Encorp continues to press Depots to sign unfair contracts and, despite Section 9 of the EPR Plan being the only meaningful mechanism available to Depots to contest financial compensation, the MOECCS continues to delay action against Encorp. Instead, the MOECCS has advised that Depots invoke the dispute resolution process around contract terms, including fair compensation.

The problem with this suggestion is that the dispute resolution process (i.e., arbitration) is actually not feasible, fair, or realistic for Depots. We have been advised by our lawyer that Encorp's contracts do not allow Depots to effectively contest the Handling Fees (HFs) set by Encorp; simply put: HFs are not 'arbitrable'. We have also been advised by our lawyer that, despite issuing two separate *Recycling Regulation* guidance documents over the past 10 years (i.e., 2012 and 2018) indicating that more needs to be done to ensure fair, equitable dispute resolution processes are in place, the MOECCS has not met its legal requirement to uphold this in Encorp's – or any PRO's – EPR Plans.



33030. 11198 - 84 Avenue. Delta. British Columbia. V4C 8E6

When we came to you in July 2021, we had already been actively presenting evidence of our challenges and proposing policy solutions to MOECCS department staff for several years – increasingly so in 2019, 2020, and the first half of 2021. At the time, you seemed genuinely surprised that, after 20 years of implementation, BC’s approach to EPR was so fraught with lax environmental performance, unfair costs to consumers, and unfair treatment of small businesses.

Six months later, the reality is BC is aggressively moving to grow and expand its recycling systems when the current system is at serious risk. For more than 50 years, Depots have been the backbone and frontline of material collection services in our province. Today, our businesses are dying. This is not an overstatement. It is our reality. We are experiencing “death by a thousand cuts” as PRO after PRO comes to the realization that the MOECCS is not holding them to account. For close to a year, the MOECCS has told us in meeting after meeting that it is taking action to hold producers to account; nothing has changed. We continue to inch towards losing our businesses and risk everything to the hands of PROs.

While we will continue to do everything possible to learn about environmental, trade practice, and competition laws and share information and recommendations to MOECCS staff, we also recognize that political will is required to address the glaring deficiencies in EPR implementation. As small businesses toed up against large-scale monopolies with deep “consumer-fed” pockets, we are at a point where we are pleading for the Government of BC to uphold its own laws and support the viability of Depots, as environmental, economic, and social engines in our communities. As the Minister accountable for the success of BC’s recycling systems, as well as a former environmental advocate, we are seeking your explicit direction to MOECCS department staff to prioritize the integrity of EPR. We are also beginning outreach to our local MLAs to share The Darkside of Extended Producer Responsibility in British Columbia paper and help them better understand the challenges our environmental, consumers, and our Depot businesses are facing.

Between the evidence-informed information presented in The Darkside of Extended Producer Responsibility in British Columbia paper and in this letter, we hope you will make time for a meeting with us. We truly do believe there is a path forward for EPR that is fair and beneficial to all concerned – from producers and their PROs to British Columbians and our small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Aarsen". The signature is fluid and cursive, with a large, stylized 'J' and 'A'.

Jay Aarsen
Board Chair, BCBDA



Reference: 391277

Jay Aarsen
Board Chair
BC Bottle & Recycling Depot Association (BCBRDA)
Email: jay@interiorrecycling.com

Subject: Compliance with the Recycling Regulation

Dear Jay Aarsen:

Thank you for your emails of May 17, June 1, and July 18, 2022, regarding Producer Responsibility Organization (PRO) compliance with the Recycling Regulation (the regulation) and the plan renewal process. My delay in responding has been due to several developments and issues as noted within.

As previously advised, Encorp's Extended Producer Responsibility (EPR) plan, including the dispute resolution process, was approved on September 1, 2021, and the 30-day period to appeal the approval has passed. While Encorp's five-year plan renewal date was July 19, 2022, please note that Encorp has advised the Director in writing that it is not proposing any amendments to its approved plan and has requested that its current plan carry forward. The ministry is considering this request and will respond in due course. Directly related to this issue, I note you have only directed your April 1 and July 18, 2022 correspondence to the ministry. As previously conveyed, it is essential that if a stakeholder has concerns with how a PRO is operating that they share this information with the PRO responsible to both inform them and afford them an opportunity to respond. The ministry takes enforcement of the regulation seriously. Based on the information available, it does not appear that Encorp is in contravention of the regulation at this time.

I appreciate that you also have concerns regarding specific contract terms with Encorp; however, the ministry does not have any role in contractual disputes between PROs and their service providers. The enforceability of contract terms is a matter for an arbitrator or court to determine.

Minister Heyman has recently asked that we provide you with an update on the status of Encorp's proposed plan amendment, requested by the Director, to address the requirement that

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producers pay the cost of managing and recycling their materials. As previously conveyed, the process to review an amendment before it is submitted to the Statutory Decision-Maker (SDM) does take time but has been made a priority by ministry staff.

Over the past several months staff have been reviewing the proposed amendment and related consultation to ensure it meets various applicable policy and regulatory requirements. To date, there have been ongoing exchanges between ministry staff and Encorp to request further information before completing the initial review. The requested information was subsequently submitted, and the initial review completed, with staff providing guidance to Encorp to address shortcomings in the proposed amendment.

As previously conveyed, the ministry considers whether adequate consultation has been undertaken as part of the standard plan review process and will direct PROs to undertake further engagement if it considers that the consultation undertaken in developing or amending a plan is insufficient. Regarding the Encorp amendment itself, staff have identified a need for further consultation on the proposed amendment and expect Encorp to undertake this consultation in the coming months before a revised amendment is submitted to the ministry for approval. More details on the consultation and range of issues to be addressed will be shared by Encorp shortly. Any concerns or comments raised during this consultation, as well as all prior consultation undertaken in 2021, will be taken into consideration whether to approve, amend or decline the proposed amendment. I do encourage you to participate in this process with Encorp.

Further, staff met with the Stewardship Agencies of British Columbia, representing most PROs in the province, in June and provided proactive feedback on the ministry's evolving expectations for consultation and opportunities for improvement in consultation processes. This engagement was also in response to a range of input from stakeholders, including the BCBRDA.

Given that many of the issues you have raised, e.g., producer paying the cost, adequate consultation, etc., all fall under current or upcoming ministry reviews of plans or plan amendments, I do not consider that I will be in a position to provide you with any more comprehensive information via a meeting than was set out previously and again herein. I must also note that while ministry staff have been extremely responsive to your requests on these issues over the past few years, had multiple meetings and provided written responses to your concerns, the BCBRDA continues to reiterate the same concerns. You will note that the information shared at those meetings and in related correspondence is consistent with this letter. In this vein, please note that while the BCBRDA is always free to reiterate its views as to how the regulation might be applied, the ministry remains the regulator and stands behind the processes in place today that must be allowed to run their course to completion.

On a separate but related note, regarding the ministry's request to use a facilitated process to help support the establishment of a functional working relationship between Encorp and the BCBRDA, I am disappointed to learn that the process with Encorp has been suspended indefinitely due to the facilitator's concerns that the conditions are not in place for a productive

.../3

process at this time. I would strongly encourage the BCBDRDA to consider how it can do its part to work toward improving those conditions noted by the facilitator, as I continue to see this as a key step to improving the relationship.

As this expectation also applies to Encorp, you may also be aware that Encorp has recently appointed a new President and Chief Executive Officer, Ms. Cindy Coutts. I strongly encourage the BCBDRDA to take this opportunity to re-establish an effective working relationship with Encorp and its new President and CEO. The ministry will be actively highlighting its expectations with Ms. Coutts as well as the Board Chair, Dan Wong, as their onboarding process unfolds. As conveyed by Minister Popham on your behalf, this has included discussion with Encorp regarding making the most use of advisory groups to further facilitate stakeholder communications.

I must also share that based on recent correspondence the ministry received from the BCBDRDA, there appears to be a disconnect whereby this correspondence is not reflective of previous exchanges, such as the process regarding producer paying the cost plan amendments. This is challenging to the relationship that you have with ministry staff given that the ministry has repeatedly explained the many steps that are underway to resolve the concerns you have raised. As a result, I am seeking further clarity from the BCBDRDA on who they currently represent, including membership, lobbyists, constitution, and bylaws, and whether any other interested parties are being represented by the BCBDRDA, at your earliest convenience. Clarifying who the ministry is engaged with is fundamental to ensuring how those interests are best addressed.

Lastly, I will be responding to the BCBDRDA's submission of The Dark Side of EPR in BC report in April under separate cover in the coming days.

Thank you again for taking the time to write.

Sincerely,



Laurel Nash
Assistant Deputy Minister
Environmental Protection Division

cc: Sonya Sundberg, Executive Director, Environmental Standards Branch
Bob McDonald, Director, Extended Producer Responsibility
Daisy Lilley, Unit Head, Extended Producer Responsibility

RE: Second request for meeting re: the MOECCS' role in EPR compliance and enforcement

From: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>, Mattu, Jamin ENV:EX <Jamin.Mattu@gov.bc.ca>
To: Jay Aarsen (jay@interiorrecycling.com) <jay@interiorrecycling.com>
Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>, McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>, Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Sent: August 31, 2022 12:03:58 PM PDT
Attachments: 391277 _Aarsen_FINAL.pdf
Reference: 391277

August 31, 2022

Jay Aarsen
Board Chair
BC Bottle & Recycling Depot Association

Sent via email: jay@interiorrecycling.com

Dear Jay Aarsen:

Please see attached a letter from Laurel Nash, Assistant Deputy Minister of Environment and Climate Change Strategy. Please note a hard copy will not follow by mail.

Thank you,

Laurel Nash
ADM, Environmental Protection Division
Ministry of Environment and Climate Change Strategy

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: June 1, 2022 1:42 PM
To: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>
Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>; McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>; ENV Extended Producer Responsibility ENV:EX <ExtendedProducerResponsibility@gov.bc.ca>; Cara Heck <clheck@columbiabottle.com>
Subject: Second request for meeting re: the MOECCS' role in EPR compliance and enforcement

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Laurel,

I am following up on my email request for a meeting to discuss the Ministry's compliance and enforcement role for EPR. As I mentioned in my last email, the BCBRDA was perplexed by the Ministry's response to our April 1 letter.

We aren't seeing a lot of value in the correspondence being traded on our concerns, and would prefer a discussion to get some clarity and additional detail. We can follow up any discussion with correspondence for our mutual records.

In addition to our concerns around compliance and enforcement, it would also be helpful to get an update on the Ministry's efforts to ensure PROs oblige their regulatory requirements, including overcoming the "check the boxes" approach to consultation. While we are trying to be proactive in working with PROs to address our concerns with their approaches to consultation, we are not finding a receptive audience. Attached is a .pdf of correspondence from Product Care, which is just one example that makes this abundantly clear.

For context to the .pdf, we reached out to Product Care with concerns related to its LightRecycle consultation in March and then Paint and Household Hazardous Waste consultation in May. We cc'ed Bob and the EPR email address on this correspondence. Among our concerns are the fact that Product Care:

- is not following the requirements of satisfactory consultation and, instead, is simply sharing its program intentions and asking for any input on those intentions;
- has determined it is appropriate and necessary to decouple the consultation process from its requirement to demonstrate that producers are paying their full cost – apparently in part because it insists it must complete consultation by the Ministry's imposed June 6, 2022 deadline and despite the fact the Ministry has told BCBRDA that the time to comment on cost studies is during the consultation period;
- seems to have conflated hiring a third-party firm to do a cost study with ensuring it has a valid cost analysis methodology (i.e., a methodology that effectively collects and confirms the necessary, accurate information from a representative sample of service providers); and
- is claiming that its cost study, completed in 2019 with no follow up action since, has accurately assessed that no fee increases have been or are necessary since the program inception more than 20 years ago.

The response we received after sharing our concerns with Product Care couldn't provide a more explicit example of a "check the boxes" approach to consultation. Rather than expressing any desire to work with the BCBRDA, Product Care simply states that it will address our comments in its consultation summary. It cannot be government's intention that PROs dismiss stakeholder input and then wait for government's review of its EPR Plan to sort out deficiencies. Surely early intervention, especially where there is a lack of input during the design phase or explicit deficiencies in the early stages of the consultation process, makes more sense. On this note, we also note that Encorp's next EPR Plan is due to the Ministry on July 19, 2022 and no consultation has commenced.

We look forward to an expedient reply and meeting date.

Sincerely,

Jay Aarsen

Board Chair, BCBRDA



Reference: 391750

November 4, 2022

Jay Aarsen
Board Chair
BC Bottle & Recycling Depot Association

Sent via email: jay@interiorrecycling.com

Dear Jay Aarsen:

Thank you for providing the Minister of Environment and Climate Change Strategy, and the ministry, a copy of *The Dark Side of EPR in B.C.* report (the report) as issued in April 2022 on behalf of the BC Bottle and Recycling Depot Association (the association). I have reviewed both the report and responses the ministry has received from producer responsibility organizations (PROs) and the Retail Council of Canada, which also represents numerous producers, to inform this response.

Since 2004, B.C.'s Recycling Regulation (the regulation) Extended Producer Responsibility (EPR) framework has been lauded as a leader in North America and serves as a model for many other jurisdictions. B.C. has 21 EPR programs that achieve some of the highest recovery rates and levels of consumer participation across the continent – both of which continue to improve annually to better serve British Columbians. The ministry does acknowledge that there are aspects of the EPR system that can be strengthened, and much of this is being pursued through work currently underway. Ultimately, success of the system relies on collaboration from the public, depots, producers, and the PROs that represent them.

The report details three “broken promises” that represent the association’s concerns. Although these have been discussed with the ministry previously, as presented in the report they can be misleading to the uninformed reader and do not accurately represent B.C.’s EPR framework. It should be noted that PROs continually demonstrate that programs are run transparently and funds are managed appropriately through the use of independent auditing, board governance, in-depth consultation and publicly available annual reporting. Furthermore, I would like to highlight some of the specific actions the ministry is currently working on, which the association is aware of, to further strengthen B.C.’s EPR framework – demonstrating these are exercises in continuous improvement instead of “broken promises”:

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1. Financial transparency and accountability

All PROs in B.C. are not-for-profit organizations run by boards of directors that have a fiduciary obligation to the PRO on whose board they sit. This obligation includes robust financial oversight.

To support financial transparency, the regulation mandates that all PROs charging a fee at point of sale (eco fees) submit annual reports (section 8(2)(f)) to the ministry. Annual reports must include independently audited financial statements of revenues and expenditures and must be posted online. Further to this requirement, the ministry is developing detailed policy, which the association has already commented on, aimed at ensuring a consistent level of granularity is provided in the required financial statements from all PROs (although the vast majority are already meeting or exceeding this threshold). We will continue to keep you informed as we progress on this front.

The report details significant sums of incoming program funds, but lacks detail on what PROs pay to operate programs (e.g., handling fees, refunded deposits, wages, etc.). This does not present a balanced view; Encorp Pacific Ltd. and the BC Brewers Recycled Container Collection Council return vast sums to consumers via the highly successful deposit-refund system, and many PROs pay handling fees to depots for managed materials, among other costs. Further, the report mischaracterizes PRO reserve funds as simply investment accounts, when in practice these funds provide an important financial backstop (recommended for all not-for-profits) against unforeseen circumstances, such as a downturn in commodity markets or increased labour costs. Using Encorp as an example, such circumstances have effectively exhausted its reserves in years past. To manage reserve levels, Encorp regularly adjusts its container recovery fees (CRFs) to ensure there is not an excess or deficiency in the level of reserves maintained. The ministry keeps itself abreast of the reserve levels of all programs. This financial backstop ensures that services to British Columbians are not disrupted. These reserve funds also provide flexibility for innovation, such as self-compacting liquified natural gas collection vehicles. Other benefits of such funds include being able to make investments to keep consumer eco fees as low as possible, such as Encorp siting Express Service shipping containers for beverage container returns in urban or remote areas where retail space is too expensive to rent or develop, or where land-use planning and zoning constraints prevent the siting of traditional depots.

2. Environmental results

The association positions itself as pressing the ministry for better environmental results for British Columbians (e.g., higher recovery rates for various products). This is also an objective of the ministry as we administer an environmental regulation, and our primary driver is to achieve better environmental results by recovering more material. While this objective is not affected by the revenues desired by depots, we are mindful that depots are paid by PROs for each unit or quantity collected and have endeavoured to ensure that your concerns are addressed by the regulatory requirement for producers to pay the cost of having their material collected and recycled. Our secondary driver is that of furthering EPR as the first pillar of a circular economy in British Columbia. However, there are many ways this can be achieved (e.g., through depots continuing to act as the backbone of B.C.'s recycling collection network or other means of collection), with decisions on our approach directed by environmental outcomes and support for a circular economy to benefit all British Columbians.

The ministry applies the principle of continuous improvement in its review and approval of plans every five years, including through the setting of higher recovery targets. As an example, targets for all beverage containers were increased (some almost doubled) in Encorp's plan amendment approved in 2021 – a decision that is not mentioned in the report despite this change predating its preparation. Recycle BC is required to increase its target recovery rates for packaging and paper products when it meets an existing target for two consecutive years. In 2019, its glass container recovery target was 75% which, after two years of being exceeded, was updated to a target recovery rate of 98%. Continuous improvement is a core expectation that is clearly communicated to PROs, including via the *Recycling Regulation Guide*.

3. System fairness

System fairness is closely related to financial transparency, as it involves PROs demonstrating how they are fully financially responsible for their products within their plans. As you know, this concern raised by the BCBdra has been one that the ministry has been actively addressing per section 5(1)(c)(i) of the regulation that requires that producers pay the costs of collecting and managing their materials. The ministry has published a guidance document, *Producers Paying the Cost of Managing Obligated Materials and Dispute Resolution Guide 2018*, to help producers further understand and apply the intention of this regulatory requirement. This guide is also being reviewed and updated to ensure that it will effectively result in producers paying to manage their materials. Since 2018, a number of plans have been amended to require more robust adherence to the producer paying the cost requirement, and I anticipate this will continue until all plans adequately account for the costs of running recycling programs.

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In conclusion, while I appreciate that the report was intended to be constructive from the point of view of the BCBDRDA, it has not been conducive to a good working relationship between the association, depots and PROs, which I still consider to be of utmost importance to the ongoing and future success of EPR in British Columbia. Further, the ministry has been advised by several organizations referenced in the report that much of the content does not accurately reflect the current state of EPR in British Columbia. While the ministry has actively discussed and communicated over this past year the areas of key focus and advancement, there continues to be an active effort by the BCBDRDA to continue to promote the report to better serve the interests of the association (and possibly the Alberta Bottle Depot Association, which I understand was involved in the preparation of the report). I do hope this approach by the BCBDRDA will be reconsidered.

I trust this information helps to clarify the steps the ministry is taking to ensure the continuous improvement and integrity of the EPR system in B.C. – one that continues to serve as a model for other jurisdictions.

Sincerely,



Laurel Nash
Assistant Deputy Minister Environmental
Protection Division Environment and
Climate Change Strategy

cc: Minister George Heyman
Deputy Minister Kevin Jardine
Sonya Sundberg
Bob McDonald
Daisy Lilley

FW: Follow up to March meetings and correspondence

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Sent: January 25, 2023 11:27:29 AM PST
Attachments: MOECCS - Current State and Next Steps - March 22 2022.pdf

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: March 22, 2022 1:59 PM
To: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>
Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>; McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Subject: Follow up to March meetings and correspondence

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Dear Laurel, Sonya, and Bob,

On behalf of the BCBRDA, we appreciate the recent meetings and correspondence. We have reflected on what we heard and summarized key comments, commitments, and our intentions in the attached letter. As indicated in the letter, we are always willing to answer questions and engage in further discussion.

Thank you,

Jay Aarsen
BCBRDA Chair



33030 . 11198 - 84 Avenue . Delta. British Columbia . V4C 8E6

March 22, 2022

Ms. Laurel Nash, Assistant Deputy Minister, Environmental Protection Division
Sonya Sundberg, Executive Director, Environmental Standards Branch
Bob McDonald, Director, Extended Producer Responsibility
Ministry of Environment and Climate Change Strategy

Laurel.Nash@gov.bc.ca
Sonya.Sundberg@gov.bc.ca
Bob.McDonald@gov.bc.ca

Re: Current State and Next Steps

Dear Laurel, Sonya, and Bob,

Thank you for meeting with Cara Heck and me on behalf of the BC Bottle and Recycling Depot Association (BCBRDA) on March 3, 2022. We also appreciated our follow up meeting with Bob on March 9, 2022 and the email from Sonya on March 15, 2022. We took some time after each of these touch points to discern the current state of EPR against the role of the Ministry of Environment and Climate Change Strategy (MOECCS) and the interests of our sector. Our letter today outlines what we understand to be true and, accordingly, our intentions moving forward.

Our key takeaways from our recent touch points with you are:

1. The MOECCS is underresourced and, perhaps as a result, unable manage the scope of and pace of the challenges with EPR.
2. Despite the challenges with EPR, one of the department's key priorities is to bring new materials under EPR, including from the industrial, commercial, and institutional sector.
3. The MOECCS is hopeful a facilitated conversation focused on soft results (e.g., positive working relationships) will create a foundation for enhanced implementation of EPR.

We also want to note we are receiving mixed messages from you about how to find solutions to the challenges we are experiencing:

On one hand we hear...	On the other hand...
Depots need to build political will to see enhancements to EPR, including producer compliance within the current regulatory environment.	It will be detrimental to our working relationship with the MOECCS and fruitless to engage elected officials.



We don't understand why Depots developed The Dark Side of Extended Producer Responsibility in British Columbia, or your intent with the paper.	<i>You were in the meeting with us in 2021 where Minister Heyman asked us to document the underperformance of EPR and submit it for discussion. We submitted the paper in confidence to government eight months ago and no discussion resulted.</i>
The Dark Side of Extended Producer Responsibility in British Columbia is a great piece of work that reflects the issues within the province very well.	The Dark Side of Extended Producer Responsibility in British Columbia doesn't reflect EPR in the province.
Depots will be very happy with the work the MOECCS is doing to hold producers to their regulatory obligation to pay their full costs.	<i>Nothing tangible has been shared, although Bob committed to provide a copy of the EPR Plan review checklist after our March 9, 2022 meeting. We haven't received it yet but look forward to providing input.</i>

From our perspective, the MOECCS has been and continues to be lightly engaged with us to encourage better working relationships between producers/PROs and Depots. However, we are not seeing any evidence of firm commitments to hold producers accountable for:

1. Paying the full cost of managing their materials, even with admissions they are not (e.g., Encorp stating in its consultation process that it did not and is not paying the full cost of its Express program).
2. Their regulated consultation obligations as outlined in MOECCS guidance documents (e.g., producers are required to demonstrate stakeholder involvement in the design stage of the consultation plan and provide transparent, detailed information, including the methodology used to determine costs, during consultation yet they receive EPR Plan approvals without doing these things).

To be explicit, it is no longer producers/PROs (e.g., Encorp) that are **most** worrying to Depots; it is the passive role of the MOECCS holding producers/PRO to account. It is government's role to uphold regulation, address deficiencies in the regulated system, and ensure the monopolistic price setting environment that it facilitated isn't the source of *death by a thousand cuts* to our livelihoods.

While we appreciate your effort to encourage a facilitated conversation between us and Encorp, we also know the only obligations producers hold are those in regulation. While we appreciate you are under-resourced, we also know the MOECCS can prioritize its legal obligation to address compliance issues at any time. While we appreciate you are working to hire new staff, we also know you are working to bring new materials under EPR and your staffing will need to address these new requirements as well. While we appreciate your comments that you are the most involved you have ever been in encouraging



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producers to act with integrity, we also know that encouragement, and even persuasion, holds no guarantees.

We hope you can appreciate that we have worked diligently over the past many years – increasingly so over the past two years – to identify potential solutions to our challenges with EPR and we have been poorly rewarded. We need no more evidence than Encorp skirting its obligation to operate with an approved EPR Plan for over 4.5 years to know where we sit as a priority for the MOECCS.

While our intent is and always will be to have a positive working relationship with you, please understand it cannot be in lieu of government upholding the laws it established to protect British Columbians (e.g., protection from mega-monopolies price setting compensation to minimize their costs by downloading them on small businesses). We need to see these protections enacted and, with no firm commitments from your team, will be reaching out to our MLAs to make this request.

We are being upfront as a courtesy in support of a continued working relationship. In support of this relationship, we also hope that Bob will follow through on his March 9, 2022 commitments to:

- share and invite our input on the EPR Plan review checklist; and
- provide an answer on requiring backpay from producers demonstrated to have been skirting their full costs.

Lastly, I do want to be clear that despite our concern Encorp has no obligation to invest in a positive, productive working relationship with Depots, we are committed to following the conciliatory path being built. We remain cautiously optimistic that a third-party facilitator will help, at minimum, establish more open, transparent, respectful communication between our organizations.

As always, we are happy to discuss any of our concerns and intentions with you – especially if they help further tangible enhancements to the implementation of EPR in our province.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Aarsen". The signature is stylized with a large, looped "J" and a cursive "Aarsen".

Jay Aarsen
Board Chair, BCBRDA

FW: MOECCS EPR Plan Review - Encorp

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Sent: January 25, 2023 11:32:54 AM PST
Attachments: MOECCS EPR Plan Reviews and Depot Implications - February 22.pdf

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: February 22, 2022 6:50 AM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>; Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>
Subject: MOECCS EPR Plan Review - Encorp

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Bob,

Thank you for meeting with me so quickly on Friday. I appreciate it.

Please find attached a follow up letter to that meeting that outlines our continued concerns about your review of Encorp's EPR Plan and suggests a constructive path forward that we believe is in the best interest of all stakeholders.

Let me know if you have any questions.

Jay Aarsen,
BCBRDA Chair



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February 22, 2022

Mr. Bob McDonald
Director, Extended Producer Responsibility
Environmental Standards Branch, Ministry of Environment and Climate Change Strategy
3rd Floor - 2975 Jutland
Victoria BC V8W 9M1

Re: MOECCS EPR Plan Reviews and Depot Implications

Dear Bob,

Thank you for meeting with me last Friday and taking time to confirm your branch is still in the process of reviewing Encorp's amended EPR Plan. As I noted in our conversation, Encorp recently communicated its section 9 approval is imminent and I wanted to ensure the MOECCS fully understands the implications if its approval is issued. I also wanted to check-in on the status of the detailed checklist to support the MOECCS' EPR Plans reviews, which the BCBRDA believes would bring some much needed clarity and transparency to the MOECCS' expectations.

By way of this letter I want to:

1. Make an offer to help ensure the MOECCS arrives at detailed checklist that is fully informed and has the confidence of all stakeholders.
2. Confirm the BCBRDA's understanding of how EPR Plan amendments can affect contracts between PROs and Depots.
3. Reiterate the implications for Depots if Section 9 of Encorp's EPR Plan is approved.
4. Request you deny Encorp's outstanding approval of Section 9 in its EPR Plan, and recommend a path forward that is in the best interest of all parties.

Offer to review draft checklist

In our discussion today, you mentioned the detailed checklist to help MOECCS undertake reviews of EPR Plans is in the late stages of development. As discussed previously, the BCBRDA sees this checklist as a key and critical tool for both the MOECCS and stakeholders. There is not a lot of detail in the Recycling Regulation, Guidance, or even EPR Plans on what is required for producers and PROs to demonstrate producers are paying the full cost. While we, as a stakeholder, can point to critical deficiencies in the consultation process, there is a definite need for all parties to have a shared understanding of what is required (i.e., the detailed checklist) to meet the spirit and intent of the requirement of 'producers paying the full cost' as outlined in the Recycling Regulation.

While we appreciate the MOECCS is leading the development of the checklist, we believe it is imperative to invite some targeted stakeholder input to ensure the checklist is comprehensive and provides the necessary clarity for all stakeholders. At the end of the day, it shouldn't simply be a tool for MOECCS staff to reference; it should be a tool that helps provide clarity and expectations for all stakeholders.



Rather than sharing a final version of the checklist, we would like to propose that you share an embargoed copy of the draft checklist with a select, targeted list of stakeholders for input pre-release. For example, our Board working group, with its limited membership, would be pleased to provide some feedback in short order. We suggest feedback in the near-term is key given the MOECCS is reviewing Encorp's EPR Plan simulatenously with developing its detailed checklist. Please let us know if you will accept our offer.

Relationship Between EPR Plan Amendments and Contracts

In our meeting last Friday, I spoke directly to how your timing to review Encorp's outstanding Section 9 will affect Depots' ability to negotiate contracts with Encorp and, by way of precedent setting, with other PROs. I will reiterate these impacts in another section below; however, I also want to ensure I clearly understand the relationship between any forthcoming amendments to Encorp's EPR Plan and existing commercial contracts.

According to an email from Roberto Melfi to BCBRDA and Encorp on December 22, 2021, revisions to an EPR Plan that support a change in compensation being offered (i.e., alignment with the producer paying the full cost) could require producers to offer contracts consistent with the change. The piece that I want to confirm is that a change to an EPR Plan can override a commercial contract or, in other words, EPR Plans are legally binding and contracts must be updated, with agreement from both parties, if they do not reflect government law (i.e., requirements as set out in an EPR Plan). We would appreciate your assurance producers can and will be held to account for paying their full costs, including back pay where appropriate.

For some additional context to this query, the BCBRDA and our member Depots have struggled with the notion that we can negotiate fair contracts in a monopoly environment without fair consultation that informs a transparent, valid financial model. As a result of our struggle, we intend to ask Encorp to extend current contracts until after the MOECCS verifies all regulatory requirements related to Section 9 are met. We recognize Encorp is not required to agree to this request and, as such, it is critical we verify any changes to EPR Plans can, with certainty, prompt a requirement for Encorp to open and update new contracts and correct any deficiencies found.

It is critical that we verify this because, to our knowledge, there is no historical evidence of this practice and it is, obviously, to producers benefit if they can hold EPR Plans in limbo without any resultant changes to contracts, including obligations to provide back pay. In Roberto's email, he notes, "it is **possible** the director could, by amendment to a plan, require producers to offer service providers contracts consistent with regulatory critiera, i.e., the producer paying the cost". Even recently, Encorp explicitly identified that it was not paying its full costs – nor did it intend to pay its full costs - through its Express Pilot – yet no action was taken by MOECCS. This concerns us greatly. While we fully understand the need for services to continue while contracts and stewardship plans are being negotiated, we simply cannot enter into new contracts that will threaten the viability and sustainability of our livelihoods.

Implications of Approving Encorp's Amended Section 9

As you continue with your review of Encorp's amended EPR Plan, I want to be clear that my above inquiry in no way suggests that Depots will agree to unfair or "take it or leave it" contract terms while we wait for the outcome of the MOECCS' Section 9 review. We have heard for far too many years that Depots' acceptance of unfair contracts signifies our satisfaction with producers' consultation processes and approach to paying their full costs. We are requesting clarity about the relationship between EPR Plan amendments and contracts because we truly believe Encorp's Section 9 approach is indefensible and want to ensure contracts, of any nature, can be right-setted accordingly.



We have presented our arguments for you to deny approval of Encorp's Section 9 amendments in previous submissions. In addition to those submissions and as I noted today, the BCBRDA also wants to be abundantly clear that if the MOECCS approves Encorp's outstanding Section 9 it will:

1. Endorse Encorp's monopolistic and predatory practice of 'take it or leave it' offers and failing to offer a fair rate of return to Depot operators.
2. Remove any incentive Encorp has to engage with Depots in good faith using the only fair marketplace tools available to us – dispute resolution.
3. Send the message to all PROs that they have government-endorsed approval to dictate contract terms.
4. Effectively endorse Encorp's unfair practices for another five years, given its next plan is due in only a few months.

While MOECCS staff are consistently clear that the department does not get involved in commercial contract negotiations, your legally obligated expectations of PROs through consultation do lay the foundation for how PROs negotiate and conduct business with Depots. PROs are watching the outcome of Encorp's "consultation" closely to determine whether they need to engage with Depots in a fair and transparent manner or whether they can simply communicate to Depots what is going to happen – which, of course, bleeds over to dictating contract terms. The implications of approving Encorp's Section 9 amendments would be far reaching with PROs and, as a result, detrimental to the Depot network and viability of EPR collection systems for many materials.

Recommended Path Forward

We certainly appreciated the MOECCS' recommendation to Encorp and BCBRDA to engage in a facilitated meeting with the purpose of reaching a mutually agreeable path forward, including addressing Encorp's insufficient consultation with Depots to date. Prior to its former President & CEO's departure, Encorp made an offer to arrange a facilitated meeting with BCBRDA and we promptly accepted and presented our availability and desired outcomes. We have followed up with Encorp a number of times – with no response - and recognize that MOECCS intervention, by way of Section 9 in Encorp's EPR Plan, is the only meaningful catalyst Encorp has to engage with us.

Given the above, we see the most reasonable path forward as requesting that you:

1. Recognize Encorp's - and other PROs' - monopolistic behaviour is damaging to the marketplace.
2. Deny Encorp's outstanding Section 9 approval.
3. Inform Encorp that Section 9 approval requires it to approach consultation in a fair and transparent manner, beginning from the design phase of the consultation process.
4. Suggest a facilitated, good faith negotiation between Encorp and the BCBDRDA is a reasonable option for Encorp to effectively 'consult' with Depots and ensure it, Depots, and the MOECCS have the information needed to ensure Encorp is paying its full costs, including a fair return for Depot-related services.

While the BCBRDA understands the MOECCS cannot direct Encorp to engage with us in a facilitated conversation, it can suggest it as a path towards Encorp meeting its requirements. In turn, we would be amenable to a good faith negotiation process, guided by an independent facilitator and with a binding agreement, as an alternative to requiring Encorp to reset its consultation process.



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Please do note that the timing of your Section 9 review decision directly impacts the probability and value of a facilitated conversation. Again, without the MOECCS denying Encorp's Section 9 approval, Encorp has no obligation or catalyst to engage with Depots. We can all encourage them to participate in a facilitated meeting and/or to extend current contracts until after the MOECCS verifies all regulatory requirements related to Section 9 are met – and we recommend we all do - but they have no obligation to agree.

If you deny Encorp's Section 9 approval before the second week in March, then you give the recommendation of a facilitated conversation merit. The second week of March is a critical point in time because Depots' contracts with Encorp require us to initiate dispute resolution at this juncture. Dispute resolution favours Encorp in a number of ways, including:

- their ability to create additional financial burden for Depots, where we absorb the costs of dispute resolution and they can pass the costs to BC consumers; and
- if the MOECCS approves Encorp's Section 9, then the dispute resolution process is essentially null and void as Encorp will have government endorsement that it has fulfilled its obligation to consult, has provided evidence of its intent to pay the full costs, and this in turn will uphold its practice of unfair, "take it or leave it" contracts.

The fact that Depots must depend on the MOECCS to deny Encorp's Section 9 approval in order to be able to engage with Encorp, let alone negotiate fair contracts with it in or outside of the dispute resolution process, is a strong statement about the strength of the monopolies in EPR. We hope you continue to encourage Encorp to engage in a facilitated conversation with us sooner than later, and that you see the merits of expediting your Section 9 decision.

Request for Follow Up

I appreciate the opportunity to document our discussion today and would greatly appreciate written confirmation regarding our offer to review the draft detailed EPR Plan review checklist and understanding of how EPR Plan amendments can affect whether producers have incentive to behave fairly in the marketplace and offer to pay the full costs of the system in resulting contracts.

I would also like to request a 30-minute meeting with Laurel, Sonya, and yourself toward the end of this week to discuss the BCBDRDA's planned actions over the next few months, including MLA engagement and releasing The Dark Side of Extended Producer Responsibility in British Columbia. We recognize these activities have the potential to effect your work and workload and wish to invite any questions or cautions regarding our approach and timing.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Aarsen". The signature is fluid and cursive, with a large initial "J" and "A".

Jay Aarsen
Board Chair, BCBDRDA

cc:

Laurel Nash, Assistant Deputy Minister, Environmental Protection Division
Sonya Sundberg, Executive Director, Environmental Standards Branch

FW: Follow up to meeting request

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Sent: January 25, 2023 11:45:34 AM PST

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: March 1, 2022 2:40 PM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>; Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>; Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Subject: Re: Follow up to meeting request

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Bob,

Yes our discussion about MLA's and the Darkside can be the focus on Thursday. We realize that the checklist and it's relation to Encorps amendment falls upon the SDM, so yes, we can discuss those directly with you. When would you like to do this? I think the facilitator topic falls into both discussions though but that's more just my opinion based off how that unfolded with Encorp.

Thanks,

Jay

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Date: Monday, February 28, 2022 at 4:26 PM
To: Jay Aarsen <jay@interiorrecycling.com>
Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>, Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>, Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Subject: RE: Follow up to meeting request

Hi Jay – thanks for the follow-up note and separating the various items of discussion. I see we have a time booked with Laurel and Sonya this week and wanting to confirm this is more about your planned actions, MLA engagement and report than the plan review checklist, related Encorp amendment and facilitated discussions which we can follow up with you on directly asap.

Please confirm.

Thx, Bob

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

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From: Jay Aarsen <jay@interiorrecycling.com>

Sent: February 28, 2022 7:41 AM

To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>

Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>; Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>

Subject: Follow up to meeting request

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Bob,

I can appreciate you may need a couple more days to respond to my offer to review the EPR Plan review checklist and question about how EPR Plan amendments can affect contracts. That being said, I'd like to get the 30-minute meeting with you, Sonya, and Laurel into my calendar to discuss the BCBRDA's planned actions over the next few months, including MLA engagement and releasing The Dark Side of Extended Producer Responsibility in British Columbia.

It strikes me as courteous to our working relationship and your workload to make this offer; however, it's also time sensitive for Depots based on what we're experiencing as far as monopolistic behaviour from PROs.

Can you please confirm your interest and availability to take me up on this offer? I can make time for a meeting any morning this week – and preferably early in the week.

Thanks,

Jay Aarsen

BCBRDA Chair

FW: Follow up to meeting request

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Sent: January 25, 2023 11:46:10 AM PST

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: February 28, 2022 3:24 PM
To: Mattu, Jamin ENV:EX <Jamin.Mattu@gov.bc.ca>
Cc: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>; Mattu, Jamin ENV:EX <Jamin.Mattu@gov.bc.ca>; Cara Heck <clheck@columbiabottle.com>
Subject: Re: Follow up to meeting request

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Jamin,

Yes, I can do Thursday at 10am. I would also like to include another Board Member, Cara Heck. She is cc'd.

Thanks,
Jay

From: Mattu, Jamin ENV:EX <Jamin.Mattu@gov.bc.ca>
Sent: Monday, February 28, 2022 1:40 PM
To: Jay Aarsen
Cc: McDonald, Bob ENV:EX; Mattu, Jamin ENV:EX
Subject: RE: Follow up to meeting request

Hi Jay,

Are you available Thursday at 10:00 PST ?

Regards,
Jamin Mattu

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: February 28, 2022 7:41 AM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>; Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>
Subject: Follow up to meeting request

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Bob,

I can appreciate you may need a couple more days to respond to my offer to review the EPR Plan review checklist and question about how EPR Plan amendments can affect contracts. That being said, I'd like to get the 30-minute meeting with you, Sonya, and Laurel into my calendar to discuss the BCBRDA's planned actions over the next few months, including MLA engagement and releasing The Dark Side of Extended Producer Responsibility in British Columbia.

It strikes me as courteous to our working relationship and your workload to make this offer; however, it's also time sensitive for Depots based on what we're experiencing as far as monopolistic behaviour from PROs.

Can you please confirm your interest and availability to take me up on this offer? I can make time for a meeting any morning this week – and preferably early in the week.

Thanks,

Jay Aarsen

BCBRDA Chair

FW: BCBRDA concerns

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Sent: January 25, 2023 11:48:56 AM PST
Attachments: Response to Mar 22 BCBRDA ltr.pdf

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: McDonald, Bob ENV:EX
Sent: April 8, 2022 9:05 AM
To: 'Jay Aarsen' <jay@interiorrecycling.com>
Cc: 'Cara Heck' <clheck@columbiabottle.com>; Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>; Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>
Subject: BCBRDA concerns

Hi Jay
Please find attached our response to your March 22nd letter to the ministry. We are also working on responses to your other recent letters submitted to the ministry.
Bob

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.



Reference: 386587

Jay Aarsen
Board Chair, BCBRDA
jay@interiorrecycling.com

Dear Jay Aarsen,

Thank you for your letter of March 22, 2022 re: Current State and Next Steps outlining the views of the BC Bottle and Recycling Depot (BCBRDA) and your intentions as an organization moving forward.

We appreciate the opportunity to provide further insight and clarification on the key issues raised. I must note that it is disappointing to learn of the BCBRDA's overall frustration with the ministry as considerable resources continue to be applied to issues raised as noted by ADM Nash in our latest call. However, I can offer the following comments to provide further clarity on steps the ministry continues to take to address such issues:

1. The ministry has provided clear direction to all stewards regarding the need to address the 'Producer Paying the Cost' (PPC) aspect of the Recycling Regulation as plans become due for renewal. While this process is intended to address the vast majority of concerns raised by the BCBRDA, it does take time. Aside from stewards hiring contractors, developing appropriate materials and engaging in consultation, the ministry must also thoroughly review such plan submissions and may require even further work be undertaken by stewards and possibly affected stakeholders to ensure PPC requirements are met. Please note the Encorp PPC submission is still under active review i.e. no decision by the ministry concerning the submission has been made, therefore there is no compliance issue to be addressed.
2. While the required five-year plan renewal submission by Encorp was delayed, please note such plans do not expire or trigger automatic non-compliance should the scheduled renewal date pass. In fact, the ministry requested Encorp to defer its plan renewal and related consultation when milk was being added to the Recycling Regulation, given this would likely bring substantive changes to Encorp's plan.

3. You also requested an update on the status of the draft EPR Plan Review Checklist and the potential for retroactive compensation with regard to the PPC aspect of the regulation. The draft checklist is undergoing further refinements we feel are necessary given the clarity needed for all stakeholders and the scope of financial impacts involved. We will keep you abreast of your opportunity for input. I can also confirm there is no regulatory ability to require retroactive compensation regarding PPC process outcomes, however, this may be an aspect of contract negotiations you may wish to pursue.
4. As much as you have discounted the ministry taking 'soft action' to resolve various concerns, please note that the ministry has taken extraordinary efforts to address several of the key issues the BCBRDA have raised. In fact, the claims of Encorp's bullying, disregard of the BCBRDA's input, unresponsiveness, etc. are all elements that should be able to be addressed through a good working relationship, and that is the foundation upon which the facilitated discussions the ministry has initiated with Encorp and the BCBRDA are meant to establish.

With regard the BCBRDA feeling there has been mixed messaging from the ministry concerning the draft The Dark Side of EPR in B.C. report, while the report is professionally prepared, documents various aspects of a number of important issues from BCBDRDA's point of view and provides constructive recommendations, it provides only select information/context intended to serve the interests of one stakeholder group. The ministry's responsibility is ensuring the EPR system as a whole is functioning properly for all stakeholders - which includes developing and implementing new policy e.g. PPC and financial transparency that addresses related concerns across all programs. This comprehensive approach serves all stakeholders.

In closing, please understand the ministry is intent on continuous improvement of EPR plans, upholding the Recycling Regulation and being responsive to stakeholders. I would be happy to schedule an in-person meeting to further outline steps being taken to address your concerns.

Sincerely,



Bob McDonald
Director, Extended Producer Responsibility
Environmental Standards Branch
BC Ministry of Environment and Climate Change Strategy

FW: MOECCS EPR Plan Review - Encorp

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>
Cc: Armstrong, Meegan ENV:EX <Meegan.Armstrong@gov.bc.ca>
Sent: February 22, 2022 9:21:48 AM PST
Attachments: MOECCS EPR Plan Reviews and Depot Implications - February 22.pdf

I will respond to Jay on questions asked, namely about:

- our revised review checklist Meegan is stickhandling which now covers producer paying the cost (PPC). This is an internal reference piece but will give stakeholders further clarity on what we are looking for so we are allowing them to review a final draft
- reconfirming how the PPC can affect existing contracts
- the facilitated discussion process (there seems to be some confusion still with this being contract negotiations)
- his request for a meeting this week with Laurel, Sonya and myself to discuss the BCBRDA's upcoming actions over the next few months, including release of their report.

We may want to chat on this last point.

Thx, Bob

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: February 22, 2022 6:50 AM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>; Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>
Subject: MOECCS EPR Plan Review - Encorp

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hi Bob,

Thank you for meeting with me so quickly on Friday. I appreciate it.

Please find attached a follow up letter to that meeting that outlines our continued concerns about your review of Encorp's EPR Plan and suggests a constructive path forward that we believe is in the best interest of all stakeholders.

Let me know if you have any questions.

Jay Aarsen,
BCBRDA Chair

FW: Requirement of the MOECCS to Uphold British Columbia's Laws

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Sent: April 4, 2022 3:21:58 PM PDT
Attachments: Minister George Heyman - April 4 2022.pdf, BCBRDA_The Dark Side of Extended Producer Responsibility in British Columbia.pdf
FYI - Latest letter. Waiting on direction for this one.

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>
Sent: April 4, 2022 3:01 PM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Subject: FW: Requirement of the MOECCS to Uphold British Columbia's Laws

FYI

From: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>
Sent: April 4, 2022 2:59 PM
To: Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>
Cc: Charlton, Kara ENV:EX <Kara.Charlton@gov.bc.ca>; Ainsworth, Diana ENV:EX <Diana.Ainsworth@gov.bc.ca>
Subject: FW: Requirement of the MOECCS to Uphold British Columbia's Laws

FYI..I have advised the MO that staff are engaged on this with Encorps and BCBRDA.
Thanks

Laurel Nash (she/her)
Assistant Deputy Minister

Environmental Protection Division
Ministry of Environment &
Climate Change Strategy
☎ (250) 953-4004 or (250) 508-1670
✉ Laurel.Nash@gov.bc.ca

I am grateful to live and work on the beautiful traditional territory of the Lekwungen speaking people and the Songhees, Esquimalt and WSÁNEĆ peoples whose historic relationships with the land and sea continue to this day.

To report an act of pollution, call the RAPP (Report All Poachers and Polluters) line at 1-877-952-7277 or #7277 on the TELUS Mobility Network or report the incident [online](#).

From: Chang, Stephanie ENV:EX <Stephanie.Chang@gov.bc.ca>
Sent: April 4, 2022 1:00 PM
To: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>
Cc: Sather, Kelly ENV:EX <Kelly.Sather@gov.bc.ca>
Subject: FW: Requirement of the MOECCS to Uphold British Columbia's Laws

Hi Laurel –

just FYI MGH received this correspondence from the BCBRDA today.

The Encorp gov relations person reached out to me over the weekend and wanted to know if there's anything they do in advance of the next mediated meeting with BCBRDA to ensure that it goes as well as possible. Could you please pass this request along to the program staff communicating with Encorp?

Thanks,
Stephanie

From: Jay Aarsen <jay@interiorrecycling.com>
Sent: April 4, 2022 12:45 PM
To: Minister, ENV ENV:EX <ENV.Minister@gov.bc.ca>
Cc: Sather, Kelly ENV:EX <Kelly.Sather@gov.bc.ca>; Chang, Stephanie ENV:EX <Stephanie.Chang@gov.bc.ca>; ENV Extended Producer Responsibility ENV:EX <ExtendedProducerResponsibility@gov.bc.ca>
Subject: Requirement of the MOECCS to Uphold British Columbia's Laws

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Dear Minister Heyman,

Please find attached correspondence outlining unresolved regulatory compliance issues related to the implementation of Extended Producer Responsibility (EPR) in British Columbia (BC). We are calling on the Ministry of Environment and Climate Change Strategy (MOECCS) as the regulator for EPR, to uphold environmental, trade practice, and competition laws.

I am also attaching a copy of the paper that we shared with you in fall 2021. The Dark Side of Extended Producer Responsibility in British Columbia was developed in follow up to your request for bottle and recycling Depots to document our challenges with EPR. Our letter today offers a concrete view of why many of the challenges outlined in the paper continue to negatively impact the environment, British Columbians, and our small businesses.

We look forward to a swift response.

Sincerely,

Jay Aarsen
BCBRDA Chair

Workplan overview mtg.

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Katrina Forrest <K.22@bc.ca>, Black, Shauna ENV:EX <Shauna.Black@gov.bc.ca>
Cc: Kittson, Jillian ENV:EX <Jillian.Kittson@gov.bc.ca>, Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>, Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Sent: April 21, 2022 3:42:55 PM PDT

Hi guys, sorry I had to drop off this morning, and thank you Jill for covering the remainder of the overview. I was just thinking tho I should have also provided some context for EPR in BC to start.

In short, despite the seemingly overwhelming amount of issues and tasks to be covered in our workplan, and the doom and gloom Dark Side of EPR Report, BC continually stands and a leader in North America - if not beyond - for EPR. We have a tried and true regulatory model (and programs) many other jurisdictions are now looking to replicate, and it constantly holds up as the preferred approach amongst industry as it is results-based/non-prescriptive with the least amount of administrative burden/cost, and therefore is by far the most supported model – especially compared to Ontario these days... With 21 fully established programs, more coming (with more staff) and a dozen+ staff currently providing all oversight, plus audited annual reports showing significant diversion across so many fronts, it is unheard of and keeps us positioned as the leader.

You can also pull up the Issues Note on the Dark Side Report, but as much as it seems well documented, nicely produced and convincing that the model is broken and it is time for regulatory reform, there is another ‘side’ to the story. It is a rather narrow and becoming quickly outdated report as none of the issues are new and we are fully addressing the majority of the remainder through our PPC work. In fact Roberto alone is solving most of these such as better recovery rates for Encorp products across the board and Encorp’s PPC review as discussed.

We have also always positioned EPR as the first pillar of the Circular Economy, for obvious reasons. CE a sexy catchphrase now, but we’ve been at this for years with tangible, defensible results.

Anyway, as mentioned, lots to do, lots to pick from, which we will start to get into next week with Daisy back. And as much as we apply the continuous improvement mantra to plan reviews, we also apply it to our own policy, regulatory, issues management and compliance work.

Hope this provides a bit more of a balanced context! Welcome aboard.

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul’q’umi’num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

FW: Dark Side Summary

From: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Sent: June 16, 2022 3:40:19 PM PDT
Attachments: BCBRDA_The Dark Side of Extended Producer Responsibility in British Columbia.pdf, image001.jpg



Daisy Lilley (she/her)

Unit Head, Packaging & Paper Products

Extended Producer Responsibility | Environmental Standards Branch

Ministry of Environment and Climate Change Strategy

☎ 236 478-3343 | daisy.lilley@gov.bc.ca

B.C. is proposing a new regulation to prevent single-use and plastic waste. [Tell us what you think!](#)

I respectfully acknowledge the Tsawwassen First Nation, Musqueam and Coast Salish peoples, and all the indigenous peoples of British Columbia, on whose territories I am grateful to work, live and grow.

From: Forrest, Katrina ENV:EX <Katrina.Forrest@gov.bc.ca>
Sent: April 29, 2022 10:06 AM
To: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Subject: Dark Side Summary

Hi Daisy,

Please find attached the Dark Side report.

Of note, BCBRDA points to several key players **using BC consumer deposit funds in questionable ways**. The report notes that the lack of transparency allows PRO's to spend BC deposits developing profitable ventures outside of BC. See below:

Product Care Recycling

- In 2020, 44% - of the \$6.6 million in excess revenues Product Care collected nationally were from BC consumers. However, they use a single reserve fund to service 13 programs across Canada including a recycling program in Ontario. The report notes BC fees should fund BC projects. (Read more p. 8)

Canadian Electrical Stewardship Association (CESA)

- In its 2020 Annual Report, CESA states that its reserve fund is in place: "to meet recovery targets in British Columbia or any other province in which the Association may operate in the future". Again, emphasizing BC deposits being used outside of BC. (Read more p. 9)

Call2Recycle Canada

- Call 2 Recycle uses only a national reserve fund with little transparency and no commitment to spend BC deposits in BC. In 2020 putting \$1.2 million above operating costs in that national fund which the report notes could be instead used to improve programs. (Read more p.10)

Encorp Pacific and Brewers' Recycled Container Collection Council (BRCCC)

- Both of these hold "significant unredeemed deposits", Encorp, almost \$35.7 million and BRCCC holds \$17 million, and neither report on how the funds are used. (Read more p.10)

The report list 3 broken promises which amount to:

1. Successful business model removes incentive for green innovation;

- a. The report notes that without more stringent parameters and increased oversight, PRO's will continue to languish on, or below targets, failing to meet the core principle of EPR. (Read more p. 7)
 - b. "Producers over-collect funds and either invest them into financial markets or use them to build other lines of business to earn additional revenue." (Read more p. 7)
2. The 75% collection aim provides **little incentive to continually improve collections** (Read more p. 7);
- a. System designed such that harder to recycle items don't need to meet targets (Read more p. 11)
 - b. Gov't can reduce or remove targets (Read more p. 11)
 - c. No incentive to increase collections if targets are met (Read more p. 11)
 - d. No real 'stick' if targets aren't met (Read more p. 11)
3. **Unfair to small business:** Producers lobbying power has shifted away from the intended system to "*recycling systems dominated by government-sanctioned mega-monopoly PROs that deliver the minimum required results at the lowest possible cost – often on the backs of small businesses*" (Read more p. 18);

Fairness issues:

- a. "PROs have an obligation under the regulation to pay the full cost of managing their materials – yet they are the ones with the authority to decide which costs should and should not be included in the full cost calculation" (Read more p. 22)
- b. PRO's are required to consult with depots but **not required to implement** findings. (Read more p. 23);
- c. **Leveraging power to stifle whistle blowers.** Depots are unable to file class action disputes against Encorp, thus removing the possibility of contesting unfair practices due to a lack of resources. (Read more p. 24)
- d. **Bullying:** The report points to several examples of large PRO's using bullying tactics to gain unfair advantages over small businesses with fewer resources. PRO's are giving 'take-it-or-leave-it' contracts that don't meet the increasing costs of duties for depots. This results in depot closures. (Read more p. 26)

The reports Recommendations (pp. 29-31):

1. Offer stronger incentives for producers and continually increase target percentages.
2. Remove Gov't approved plans so that service providers can take better legal recourse against "anti-competitive practices."
3. Create requirements for producer accountability and transparent money management.
4. Create third-party organization to oversee PRO's and help inform Gov't with data to improve regulations
5. "Encourage fair business practices by removing the ability for PROs to use their market power to devalue and bully legacy service providers" by protecting legacy bottle depots.
6. "End the ability of PROs to nullify dispute resolution systems and prevent them from using them as a bullying tactic to force unfair contract terms."

FW: Call2Recycle's Darkside of EPR Response

From: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Sent: July 11, 2022 8:56:25 AM PDT
Attachments: image004.png, image006.png, Call2Recycle Darkside of EPR Response.pdf, image007.jpg, image005.png, image002.png, image003.png, image001.png
FYI – Call2Recycle commentary on Dark Side report.

Cheers,



Daisy Lilley (she/her)

Unit Head, Packaging & Paper Products

Extended Producer Responsibility | Environmental Standards Branch

Ministry of Environment and Climate Change Strategy

☎ 236 478-3343 | daisy.lilley@gov.bc.ca

B.C. is proposing a new regulation to prevent single-use and plastic waste. Tell us what you think!

I respectfully acknowledge the Tsawwassen First Nation, Musqueam and Coast Salish peoples, and all the indigenous peoples of British Columbia, on whose territories I am grateful to work, live and grow.

From: ENV Extended Producer Responsibility ENV:EX <ExtendedProducerResponsibility@gov.bc.ca>
Sent: July 11, 2022 7:54 AM
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Cc: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Subject: FW: Call2Recycle's Darkside of EPR Response

Hi Matthew,

Call2Recycle has provided a response to the EPR Darkside Report.

• Shauna

From: Jason Brown <JBrown@call2recycle.ca>
Sent: July 7, 2022 3:32 PM
To: ENV Extended Producer Responsibility ENV:EX <ExtendedProducerResponsibility@gov.bc.ca>
Cc: Joe Zenobio <jzenobio@call2recycle.ca>; Jon McQuaid <JMcQuaid@call2recycle.ca>
Subject: Call2Recycle's Darkside of EPR Response

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Good afternoon,

Please find attached Call2Recycle's response to the Darkside of EPR document.

Should you find it helpful to discuss any statements contained in the BCBDA publication, we will be available at your convenience.

Thank you,

Jason Brown

Director, Western Canada / Call2Recycle®

Leading the charge for recycling .™

Office: 604-283-6196

Mobile: 236-996-9948

jbrown@call2recycle.ca

call2recycle.ca

2590 Granville Street, Suite 201, Vancouver, BC V6H 3H1



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Call2Recycle Canada, Inc.

Changing habits. Inspiring action.™

July 7, 2022

Bob McDonald
Executive Director, Extended Producer Responsibility
Ministry of Environment and Climate Change Strategy

Dear Bob,

Call2Recycle recently became aware of a document titled “The Dark Side of Extended Producer Responsibility in British Columbia”, published by the BC Bottle & Recycling Depot Association (BCBRDA). We would like to bring to your attention that in this document there is a direct reference to Call2Recycle, with unsupported mischaracterisations.

The document states that Call2Recycle “operates a single, national reserve fund with no transparency about how much of the fund was built from BC and no commitment to use BC funds in BC”; this statement has no factual basis, all British Columbia funds are segregated appropriately.

Call2Recycle has a strict reserve fund policy governed by its Board of Directors. The reserve fund policy reflects best practices for non-profit-organizations and follows a number of governing policies. Additionally, fees are set on a per province basis, not nationally. Our annual financial audits are conducted by BDO LLP and approved by Members and Board of Directors at our annual June AGM meeting. The BDO financial audit includes an audit of revenues and expenses for each regulated province (including the reserves). Appended to this letter are our 2021 audited financial statements, for your reference.

In the spirit of collaboration, Call2Recycle has engaged the BCBDA twice in the last few years on compensation studies with MNP, a professional accounting firm, including a current compensation study for the battery program and eMobility (now referred to as eTransport) full device program.

We are aware that the Stewardship Agencies of British Columbia (SABC) and the Retail Council of Canada (RCC) are also submitting response letters, both of which are endorsed by Call2Recycle.

Should you find it helpful to discuss any statements contained in the BCBDA publication, we will be available at your convenience.

Sincerely,



Jason Brown,
Director, Western Canada
Call2Recycle Canada, Inc.

Call2Recycle Canada, Inc.
Financial Statements
For the Year Ended December 31, 2021

Call2Recycle Canada, Inc.
Financial Statements
For the Year Ended December 31, 2021

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Tel: 204 727 0671
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Toll Free: 800 775 3328
www.bdo.ca

BDO Canada LLP
148 - 10th Street
Brandon MB R7A 4E6 Canada

Independent Auditor's Report

**To the Board of Directors of
Call2Recycle Canada, Inc.**

Opinion

We have audited the financial statements of Call2Recycle Canada, Inc. (the "Entity"), which comprise the statement of financial position as at December 31, 2021, and the statements of operations, changes in net assets and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Entity as at December 31, 2021, and its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for not-for-profit organizations.

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are independent of the Entity in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Other Information

Management is responsible for the other information. The other information comprises the information included in the Annual Report but does not include the financial statements and our auditor's report thereon.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information identified above and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work we have performed on this other information, we conclude that there is a material misstatement of this other information, we are required to report that fact in this auditor's report. We have nothing to report in this regard.



Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for not-for-profit organizations, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Entity's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Entity's financial reporting process.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern.



- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

BDO Canada LLP

Chartered Professional Accountants

Brandon, Manitoba
June 13, 2022

Call2Recycle Canada, Inc. Statement of Financial Position

December 31	2021	2020
Assets		
Cash (Notes 2,3)	\$ 1,100,508	\$ 3,008,708
Accounts receivable (Note 8)	6,716,988	7,233,348
Marketable securities (Note 4)	27,213,746	24,792,412
Other assets	419,848	414,563
	\$ 35,451,090	\$ 35,449,031
Liabilities and Net Assets		
Accounts payable and accrued expenses (Notes 5,8)	\$ 3,748,794	\$ 5,264,492
Unrestricted Net Assets		
Undesignated	10,469,432	9,912,053
Board Designated (Note 6)	21,232,864	20,272,486
	31,702,296	30,184,539
	\$ 35,451,090	\$ 35,449,031

The accompanying notes and schedules are an integral part of these financial statements.

Call2Recycle Canada, Inc.
Statement of Changes in Net Assets

For the year ended December 31	Undesignated	Board Designated	2021 Total	2020 Total
Balance, beginning of the year	\$ 9,912,053	\$20,272,486	\$30,184,539	\$ 26,397,460
Excess of revenues over expenses	557,379	960,378	1,517,757	3,787,079
Balance, end of the year	\$ 10,469,432	\$21,232,864	\$31,702,296	\$ 30,184,539

The accompanying notes and schedules are an integral part of these financial statements.

Call2Recycle Canada, Inc. Statement of Operations

For the year ended December 31	2021	2020
Revenues		
Steward fees	\$ 30,297,523	\$ 24,925,062
Investment income	909,849	1,348,526
Other	26,441	51,202
	<u>31,233,813</u>	<u>26,324,790</u>
Expenses		
Material management and processing	22,333,879	16,085,321
Public education and awareness	2,378,516	2,089,929
Other (salary, professional, administrative)	5,003,661	4,362,461
	<u>29,716,056</u>	<u>22,537,711</u>
Excess of revenues over expenses	<u>\$ 1,517,757</u>	<u>\$ 3,787,079</u>

The accompanying notes and schedules are an integral part of these financial statements.

Call2Recycle Canada, Inc. Statement of Cash Flows

For the year ended December 31	2021	2020
Cash flows from operating activities:		
Excess of revenues over expenses	\$ 1,517,757	\$ 3,787,079
Items not affecting cash:		
Net realized and unrealized gain on investments	(395,918)	(1,010,936)
	<u>1,121,839</u>	2,776,143
Changes in non-cash working capital:		
Accounts receivable	516,360	(1,542,506)
Accounts payable and accrued liabilities	(1,515,698)	3,458,501
Other assets	(5,285)	120,022
	<u>117,216</u>	4,812,160
Cash flows from investing activities:		
Marketable securities	(2,025,416)	(4,097,619)
Net (decrease) increase in cash	(1,908,200)	714,541
Cash, beginning of the year	3,008,708	2,294,167
Cash, end of the year	\$ 1,100,508	\$ 3,008,708

The accompanying notes and schedules are an integral part of these financial statements.

Call2Recycle Canada, Inc. Notes to Financial Statements

December 31, 2021

1. Significant Accounting Policies

Nature and Purpose of Operations

Call2Recycle Canada, Inc. (the "Entity") is a not-for-profit organization formed on January 1, 2017. The Entity's head office is registered in Toronto Ontario, and conducts its operations throughout all of Canada.

The Entity's purpose is to promote social welfare by addressing environmental concerns related to the recycling or proper disposal of consumer batteries. The Entity operates battery collection and recycling programs and educates the public with respect to the proper disposal and recycling of batteries.

The Entity seeks to be the leader in the environmentally sound collection, transportation and recycling of batteries. The Entity is committed to a cleaner, healthier environment through public education on battery recycling. All aspects of the Entity's business are conducted in an environmentally sensitive manner, as the Entity is convinced that sound environmental product stewardship and sound business practices go hand in hand.

The Entity is exempt from income tax under Section 149(1) of the Income Tax Act (Canada).

Basis of Accounting

The financial statements have been prepared using Canadian accounting standards for not-for-profit organizations.

Revenue Recognition

The Entity follows the deferral method of accounting for revenues.

Unrestricted revenues are recognized as revenue when received or receivable if the amount to be received can be reasonably estimated and collection is reasonably assured. Restricted revenues are recognized as revenue in the year in which the related expenses are incurred.

Steward fees are received from legally obligated stewards in 6 regulated provinces (QC, ONT, BC, MB, PEI, and SK), and from non-legally obligated battery manufacturers in all other jurisdictions based on sales into those jurisdictions. The Entity recognizes these fees as revenue in the year that battery units are sold by the stewards to consumers and businesses.

The costs of the corresponding collection and recycling for some of these batteries may occur in future years, and those associated costs are reported as expenses of the Entity in the year that they are incurred. Call2Recycle Canada, Inc. is committed to the collection and recycling of these batteries.

Call2Recycle Canada, Inc. Notes to Financial Statements

December 31, 2021

1. Significant Accounting Policies (continued)

Revenue Recognition - Continued	<p>Unrestricted net investment income is recognized as revenue when earned.</p> <p>Unrestricted revenues from the sales of recycled materials are recognized in income when the recovered materials are sold and the amount to be recovered can be estimated and collection is reasonable assured.</p>
Financial Instruments	<p>Financial instruments are recorded at fair value at initial recognition.</p> <p>In subsequent periods, equities traded in an active market and derivatives are reported at fair value, with any change in fair value reported in income. Transaction costs on the acquisition, sale or issue of financial instruments are expensed for those items measured at fair value.</p> <p>Financial assets are tested for impairment when indicators of impairment exist. When a significant change in the expected timing or amount of the future cash flows of the financial asset is identified, the carrying amount of the financial asset is reduced and the amount of the write-down is recognized in net income. A previously recognized impairment loss may be reversed to the extent of the improvement, provided it is not greater than the amount that would have been reported at the date of the reversal had the impairment not been recognized previously, and the amount of the reversal is recognized in net income.</p>
Use of Estimates	<p>The preparation of the financial statements requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Items subject to such estimates and assumptions include:</p> <ul style="list-style-type: none">- accrued expenses- allocation of expenses- allowance for doubtful accounts
Accounts Receivable	<p>Uncollectable amounts receivable are written off at the time the accounts are determined to be uncollectable. There is no allowance for doubtful accounts at December 31, 2021 as management of the Entity considers any possible bad debts to be negligible.</p>
Expenses	<p>Material management and processing costs are recorded when the collection and processing services (freight, handling, recycling of materials) has been provided. Other expenditures are recognized as incurred.</p>

Call2Recycle Canada, Inc. Notes to Financial Statements

December 31, 2021

2. Cash

The Entity maintains the majority of its cash balance in a Canadian financial institution. The Canada Deposit Insurance Corporation (CDIC) insures this account up to \$100,000 for this financial institution. From time to time the aggregate funds held in this institution may exceed the CDIC insured limits and may not be covered by CDIC insurance. Management does not anticipate any material effect on the financial position of the Entity as a result of this concentration.

3. Line of Credit

The Entity has a line of credit agreement with a bank which provides borrowings up to \$1,500,000. Borrowings under the agreement bear interest at Canadian Dollar Offer Rate plus 2%. At December 31, 2021, there were no borrowings against the line of credit. Borrowings under the line of credit are secured by substantially all of the investments held by the Entity.

4. Marketable Securities

The carrying amounts of investments are comprised of the following:

	<u>2021</u>	<u>2020</u>
At fair value:		
Cash held for long-term investment	\$ 4,499,275	\$ 4,081,830
Equity investments	7,342,047	6,530,139
Bonds	13,291,165	12,172,475
Real estate	1,267,473	1,100,569
Hedge fund investments	813,786	724,086
Precious metals and commodities	-	183,313
	<u>\$27,213,746</u>	<u>\$ 24,792,412</u>

Call2Recycle Canada, Inc. Notes to Financial Statements

December 31, 2021

5. Government Remittances

Included in accounts payable and accrued liabilities are government remittances payable of \$601,395 (2020 - \$809,531).

6. Board Designated Net Assets

The Entity's governing board has designated \$21,232,864 (2020 - \$20,272,486) as of December 31, 2021 for future use in the regulated provinces of Quebec, Ontario, British Columbia, Manitoba, Prince Edward Island, and Saskatchewan. The designated balances by regulated province are as follows:

Quebec	\$14,115,940
Ontario	(3,275,460)
British Columbia	7,372,356
Manitoba	2,658,858
Prince Edward Island	(35,451)
Saskatchewan	396,621
Total	<u>\$21,232,864</u>

7. Allocation of Expenses

Expenses are charged directly to their respective jurisdiction based on actual costs as incurred. When expenses are not identified to a specific jurisdiction, but benefit all jurisdictions, they are allocated among the jurisdictions based on the Entity's allocation methodology. Collections and processing costs are allocated based on battery collections for each jurisdiction. Salary and benefits are allocated based on employee time allocation by jurisdiction. Other expenses, including professional fees, general marketing, communication and promotion, shared service costs, office supplies, and occupancy, which cannot be identified with a specific jurisdiction are allocated based on the total population at the end of the year in the jurisdiction.

8. Significant Contractual Arrangements

The Entity is governed by a Board of Directors that is separate and independent of its former parent entity, but continues to contract accounting and managerial services from Call2Recycle, Inc. US. Fees paid for contracted services to Call2Recycle, Inc. US for 2021 were CDN \$1,700,281 (2020 - \$1,593,781). This fee is assessed to the Entity net of a US \$150,000 (2020 - \$370,000) fee recovery collected by Call2Recycle, Inc. US for battery seal license fees collected from US battery companies who are selling into certain Canadian markets. Included in accounts receivable is an amount of \$138,674 (2020 - included in accounts payable and accrued expenses is an amount of \$755,949) in respect of these contracted services.

Call2Recycle Canada, Inc. Notes to Financial Statements

December 31, 2021

9. Financial Instruments

Credit risk

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. The Entity is exposed to credit risk resulting from the possibility that the registrants of the Entity defaults on their financial obligations; if there is a concentration of transactions carried out with the same counterparty; or of financial obligations which have similar economic characteristics such that they could be similarly affected by changes in economic conditions. The Entity's financial instruments that are exposed to concentrations of credit risk relate primarily to its accounts receivable. The Entity's registrants are numerous and diverse, which reduces the concentration of risk. Management closely evaluates the collectibility to mitigate this risk.

Market Risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices.

The Entity is exposed to financial risk that arises from fluctuations in the sale of recyclable batteries and consumer electronic products. This risk is minimized by an expected corresponding decrease in program delivery and recycling process expenses and by the regulations established by the respective Department of the Environment in each jurisdiction in which the Entity operates.

The Entity is exposed to market risk through its investment in marketable securities, the value of which changes through fluctuations in market values. The investment policies of the Entity are designed to mitigate this risk through diversification of the portfolio.

Currency Risk

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates. The Entity is exposed to currency risk as a result of its significant contractual arrangement for accounting and managerial services with a US organization.

10. Financial Uncertainty due to COVID-19

Throughout the year, the impact of COVID-19 in Canada and on the global economy was ongoing with resulting worldwide emergency measures to combat the spread of the virus. As the impacts of COVID-19 continue there could be further impacts on the Entity, as well as the market value of investments and the magnitude of battery collection services and access to end of cycle material handlers. At this time, the full potential impact of COVID-19 on the Entity is not known.

Call2Recycle Canada, Inc. Notes to Financial Statements

December 31, 2021

11. Commitments

The Entity has entered into various lease commitments for building rentals. Expected payments over the next four years are as follows:

	2022		2023		2024		2025
Quebec	\$ 500	\$	-	\$	-	\$	-
British Columbia	18,120		-		-		-
Ontario	78,310		80,501		82,691		20,810
	<u>\$ 96,930</u>	\$	<u>80,501</u>	\$	<u>82,691</u>	\$	<u>20,810</u>

12. Comparative Figures

Certain comparative figures have been reclassified to conform to current year presentation.

13. Subsequent Events

During the year, the Entity conducted reviews of various service providers in the Province of Ontario who collected recyclable materials on behalf of the Entity. As a result of the reviews, certain service providers had their contracts terminated for non-compliance with program requirements. Subsequent to year end, the Entity terminated its agreement with a significant service provider for non-compliance.

At the time of the termination of the agreement with the significant service provider, that organization had submitted invoices to the Entity for materials collected in the amount of \$1,423,299. The balance included in Accounts Payable as at December 31, 2021 was \$1,299,714. Subsequent to the date of termination of the agreement, no further materials have been accepted from the significant supplier and no further payments have been made against the outstanding Accounts Payable balance. Upon termination of the agreement the Entity has demanded a refund of prior amounts paid to the significant service provider based upon the observations made in its compliance reviews. Management is not able to estimate the likelihood of recovery on the amount to be refunded or offset to the liability and as such no provision has been made in these financial statements.

Call2Recycle Canada, Inc. Schedule of Operations by Province

For the year ended December 31, 2021

Revenue	QC	ONT	Regulated Provinces		PEI	SK	Total	General and Other Jurisdictions	Grand Total	2020
			BC	MB						
Steward fees	\$ 7,994,955	\$ 11,705,078	\$ 5,714,254	\$ 1,439,828	\$ 206,603	\$ 1,233,364	\$ 28,294,082	\$ 2,003,441	\$ 30,297,523	\$ 24,925,062
Investment income	390,116	28,670	194,152	73,582	3,245	5,747	695,512	214,337	909,849	1,348,526
Other	-	-	-	-	-	-	-	26,441	26,441	51,202
Total revenue	8,385,071	11,733,748	5,908,406	1,513,410	209,848	1,239,111	28,989,594	2,244,219	31,233,813	26,324,790
Expenses										
Material management and processing	4,926,587	11,993,263	3,171,837	784,780	139,415	341,968	21,357,850	976,029	22,333,879	16,085,321
Public education and awareness	1,039,852	196,325	644,288	282,978	25,066	190,007	2,378,516	-	2,378,516	2,089,929
Other (salary, professional, administrative)	1,112,113	1,885,155	747,729	206,510	30,828	310,515	4,292,850	710,811	5,003,661	4,362,461
Total expense	7,078,552	14,074,743	4,563,854	1,274,268	195,309	842,490	28,029,216	1,686,840	29,716,056	22,537,711
Excess (deficiency) of revenues over expenses	1,306,519	(2,340,995)	1,344,552	239,142	14,539	396,621	960,378	557,379	1,517,757	3,787,079
Beginning of year net assets	12,809,421	(934,465)	6,027,804	2,419,716	(49,990)	-	20,272,486	9,912,053	30,184,539	26,397,460
Excess (deficiency) of revenues over expenses	1,306,519	(2,340,995)	1,344,552	239,142	14,539	396,621	960,378	557,379	1,517,757	3,787,079
End of year net assets (deficiency)	\$ 14,115,940	\$ (3,275,460)	\$ 7,372,356	\$ 2,658,858	\$ (35,451)	\$ 396,621	\$ 21,232,864	\$ 10,469,432	\$ 31,702,296	\$ 30,184,539

Call2Recycle Canada, Inc.
Schedule of Operations - British Columbia

For the year ended December 31	2021	2020
Revenues		
Steward fees	\$ 5,714,254	\$ 5,648,109
Investment income	194,152	221,477
	5,908,406	5,869,586
Expenses		
Material management and processing	3,171,837	3,154,079
Public education and awareness	644,288	645,082
Other (salary, professional, administrative)	747,729	913,532
	4,563,854	4,712,693
Excess of revenues over expenses	1,344,552	1,156,893
Net assets, beginning of year	6,027,804	4,870,911
Net assets, end of year	\$ 7,372,356	\$ 6,027,804

RE: Posting EPR Annual Reports

From: Stovel, Laura GCPE:EX <Laura.Stovel@gov.bc.ca>
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>, Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Sent: July 20, 2022 4:06:40 PM PDT
Attachments: image001.jpg
Thanks I will approve the original email to post.

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Sent: July 20, 2022 4:03 PM
To: Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Cc: Stovel, Laura GCPE:EX <Laura.Stovel@gov.bc.ca>
Subject: RE: Posting EPR Annual Reports

Quite the opposite – I think posting of these will provide some assurance regarding transparency and oversight. In reality there are only a few aspects of a few plans/reports we want to beef up but overall should demonstrate all is in order. Good question tho.
Thx.

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Sent: July 20, 2022 1:27 PM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Subject: FW: Posting EPR Annual Reports

Hi Bob,

After sending the Annual Report folder to GCPE for approval they came back asking this and I just wanted to bring this to your attention and see if you have any concerns about this after the Dark Side report was released? Please let me know if you have any concerns, or if you would like me to say anything specific to GCPE re. the report and annual reports.

Thanks,
Taylor

Taylor Daniel (she/her)
Policy Analyst
Clean Communities and Extended Producer Responsibility
Environmental Standards Branch
Ministry of Environment and Climate Change Strategy
☎ 236-478-3226 | Taylor.Daniel@gov.bc.ca

From: Stovel, Laura GCPE:EX <Laura.Stovel@gov.bc.ca>
Sent: July 19, 2022 9:12 AM
To: Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Subject: RE: Posting EPR Annual Reports

Hi Taylor,

Will any of these reports highlight the BC Bottle and Recycling Depot Association's claims of a lack of financial and operational transparency as outlined in their report, *The Dark Side of Extended Producer Responsibility in B.C.*?

Thanks,
Laura

From: Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Sent: July 18, 2022 4:06 PM
To: Stovel, Laura GCPE:EX <Laura.Stovel@gov.bc.ca>
Subject: RE: Posting EPR Annual Reports

Great, thanks so much for the quick response!

I am looking to get all the documents posted that are in the folder I have attached (if you have any issues opening it please let me know!). They are the 2021 Annual Reports and accompanying Assurance documents from EPR Agencies. The Ministry is required to post these documents as part of government due process, and these documents are all already publicly available on each EPR Agencies respective website as of July 1, 2022 (as required by the Recycling Regulation). Most of the Agencies have the assurance document within the annual report but there are three where it is a separate document (CBA- Batteries, BRCCC and NMV) and one that does not require it (CBA- Beverage). Other than that the only other thing of note is that Telus has two to post, as last year the 2020 report was late and was never posted as this process had already taken place so Telus has the 2020 and 2021 annual reports to post.

This is a routine posting that occurs annually, and has been done so for the last ~20 years, without any controversy or public concerns.

Please let me know if you have any questions or concerns, or would like to schedule a meeting at all to discuss.

Thanks,
Taylor

Taylor Daniel (she/her)
Policy Analyst
Clean Communities and Extended Producer Responsibility
Environmental Standards Branch
Ministry of Environment and Climate Change Strategy
☎ 236-478-3226 | Taylor.Daniel@gov.bc.ca

From: Stovel, Laura GCPE:EX <Laura.Stovel@gov.bc.ca>
Sent: July 18, 2022 3:52 PM
To: Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Subject: RE: Posting EPR Annual Reports

That would be me

From: Daniel, Taylor ENV:EX <Taylor.Daniel@gov.bc.ca>
Sent: July 18, 2022 3:51 PM
To: Stovel, Laura GCPE:EX <Laura.Stovel@gov.bc.ca>
Subject: Posting EPR Annual Reports

Hi Laura,

I am new to EPR and will be taking over this task for Roberto/Michael this year and getting the annual reports ready to be posted on our [EPR homepage](#). Michael was unsure who to direct me to, other than to ask you which GCPE staff member it is best to send the material to review over to.

Do you know who is the best contact to send this request to?

Thanks,
Taylor



Taylor Daniel (she/her)

Policy Analyst

Clean Communities and Extended Producer Responsibility

Environmental Standards Branch

Ministry of Environment and Climate Change Strategy

☎ 236-478-3226 | Taylor.Daniel@gov.bc.ca

FW: SABC - DS Letter

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: ENV ESB Extended Producer Responsibility <ESBWSTPR@Victoria1.gov.bc.ca>
Sent: July 25, 2022 8:27:48 AM PDT
Attachments: SABC DS Response FINAL JULY 22.pdf
FYI

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

From: Laura Selanders <lselanders@cesarecycling.ca>
Sent: July 22, 2022 2:36 PM
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: Nash, Laurel ENV:EX <Laurel.Nash@gov.bc.ca>; Sundberg, Sonya E ENV:EX <Sonya.Sundberg@gov.bc.ca>; Executive Director - CBA <executivedirector@canadianbatteryassociation.ca>
Subject: SABC - DS Letter

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Good afternoon Bob. Attached please find a letter from Colin and I on behalf of the members of SABC, in response to *The Dark Side of EPR* Report. We hope this helps balance the conversation and serves to help the Ministry should you need to call upon statistics in support of the very good outcomes that the EPR model in BC produces. Colin and I are happy to discuss further if required.

Best regards,
Laura



July 15th, 2022

Bob McDonald
Executive Director, Extended Producer Responsibility
Ministry of Environment and Climate Change Strategy

Dear Bob,

The Stewardship Agencies of British Columbia (SABC) is a coalition of all 15 of British Columbia's not-for-profit stewardship agencies. Our membership recently became aware of a document titled "The Dark Side of Extended Producer Responsibility in British Columbia", published by the BC Bottle & Recycling Depot Association (BCBRDA).

While independent reports conclude that the EPR model in British Columbia is viewed as the best in Canada, and one of the best in North America, the document has presented a viewpoint which isn't supported by fact and the longstanding business-to-business relationships that have existed between stewardship agencies and their service providers.

The members of SABC annually collect and recycle over 425,000 tonnes of a wide range of hazardous and non-hazardous products, including over 1 billion beverage containers, 2.9 million litres of paint, 15.9 million kg. of electronics, over 24 million kg of batteries, and 5 million kg of small appliances. Collectively, our 15 members generate more than \$500 million in economic activity in the province.

Each stewardship agency must work within a comprehensive regulatory and accountability framework. The audited financial and non-financial reporting required by regulation assures the government, service providers and consumers that the programs are operating efficiently and transparently. Programs also undergo extensive public consultations with stakeholders, service providers and government officials before their EPR plans are approved by the Ministry's Statutory Decision Maker. Moreover, your staff are in regular touch with the stewardship organizations on ongoing matters.

Should you, your staff or your colleagues find it helpful to discuss any assertions or recommendations contained in the BCBRDA publication, members of SABC are available at your convenience.

Yours truly,

A handwritten signature in black ink, reading "Laura Selanders".

Laura Selanders
Co-Chair, SABC

A handwritten signature in black ink, reading "Colin McKean".

Colin McKean
Co-Chair, SABC

cc:

Laurel Nash, Assistant Deputy Ministry, Environmental Protection
Sonya Sundberg, Executive Director, Environmental Standards
SABC Members

IN on Dark Side responses

From: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
To: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Sent: July 28, 2022 11:56:08 AM PDT

To help balance the claims made, Laurel would like to have an IN done for MGH that summarizes the responses provided so far (I believe by the RCC, SABC and Encorp, and any others we have).

Not a rush but let's start an eapp and get it to SS by next Friday?

Thx

Bob McDonald | Director, Extended Producer Responsibility
Environmental Standards Branch | BC Ministry of Environment and Climate Change Strategy
525 Superior Street | Victoria BC | V8W 1T7
T: 778.698.4860

I am grateful to live and work on the beautiful traditional territory of the Hul'q'umi'num speaking people who are part of a larger first nations group referred to as the Coast Salish People whose historic relationships with the land and sea continue to this day.

For Review: Slide Deck for MGH on Dark Side report/situation with depots

From: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
To: McDonald, Bob ENV:EX <Bob.McDonald@gov.bc.ca>
Cc: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>, Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Sent: September 7, 2022 12:52:24 PM PDT
Attachments: image001.jpg, 2022-09-02 - MGH - Dark Side of EPR - DL Comments.pptx
Hi Bob,

For your review – slide deck for MGH briefing on Dark Side report. Briefing has been scheduled for next Thursday (15th).

The deck aligns with the framing and approach in the ADM response letter; let me know if you think we need to set it out differently though to take a step back and tell the broader story (e.g. breakdown in facilitation process etc, general complaints about consultation etc).

Thanks to Roberto and Matthew for pulling this together so quickly!

Cheers,



Daisy Lilley (she/her)
Unit Head, Policy Development & Program Delivery
Extended Producer Responsibility | Environmental Standards Branch
Ministry of Environment and Climate Change Strategy
☎ 236 478-3343 | daisy.lilley@gov.bc.ca

I respectfully acknowledge the Tsawwassen First Nation, Musqueam and Coast Salish peoples, and all the indigenous peoples of British Columbia, on whose territories I am grateful to work, live and grow.

From: Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Sent: September 6, 2022 3:55 PM
To: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Cc: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>
Subject: RE: Slide Deck for MGH on Dark Side report/situation with depots

Hi Daisy,

Here is the slide deck regarding the Dark Side Report.

[Q:\EPD\ESB\ SECTION EPR NEW!\Presentations and Speeches \(324-40\)\2022\2022-09-02 - MGH - Dark Side of EPR.pptx](#)

Let us know if you have any suggested changes.

Thanks,

Roberto

Roberto Melfi, M.A.
Environmental Management Analyst
Ministry of Environment and Climate Change Strategy
☎ 236 478-1879 | Roberto.Melfi@gov.bc.ca

From: Lilley, Daisy ENV:EX <Daisy.Lilley@gov.bc.ca>
Sent: Friday, September 2, 2022 8:54 AM
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>; Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Subject: RE: Slide Deck for MGH on Dark Side report/situation with depots

Follow up – Bob thinks that there might be a deck already prepared that we can just update a little bit. That would make life a lot easier! Can you have a dig about in the LAN to see what you can find?



Daisy Lilley (she/her)
Unit Head, Policy Development & Program Delivery
Extended Producer Responsibility | Environmental Standards Branch
Ministry of Environment and Climate Change Strategy
☎ 236 478-3343 | daisy.lilley@gov.bc.ca

I respectfully acknowledge the Tsawwassen First Nation, Musqueam and Coast Salish peoples, and all the indigenous peoples of British Columbia, on whose territories I am grateful to work, live and grow.

From: Lilley, Daisy ENV:EX
Sent: September 2, 2022 8:12 AM
To: Maloney, Matthew ENV:EX <Matthew.Maloney@gov.bc.ca>; Melfi, Roberto ENV:EX <Roberto.Melfi@gov.bc.ca>
Subject: Slide Deck for MGH on Dark Side report/situation with depots

Hi Roberto & Matthew,

We have been asked to prepare a short slide deck for the Minister to step him through the full story of the situation surrounding the Dark Side report, clarifying the issues and putting the depot's concerns into context. The overall goal is to help the Minister frame in his mind how this all hangs together.

Can you please put together a high-level deck that sets out the main 5-6 issues the report raises, steps through which are legitimate and why, which aren't legitimate and why, what we're already doing to address some of the issues, and a timeline of what we're expecting to come back to us when. The letter from Laurel and the response to the Dark Side report that I sent around yesterday should help you figure out what the depot's main issues are and what we're already doing. Points to include/reference, I think:

- They get paid by the unit. We are concerned with environmental outcomes but not with propping up the depot industry to achieve it (i.e. if express & go gets good recovery rates, is convenient for consumers and generally works well, that's fine by us, we are not concerned with the fact that this model reduces income for depots because it is not our role to guarantee their income)
- The report was co-authored by the Alberta Bottle Depot Alliance (can you check the name?) so there is a vested interest
- We found shortcomings with Encorp's PPC amendment so have directed them to undertake further consultation

I don't have any direction on timing yet but we're hoping for before UBCM, which means this will be a pretty tight turnaround – so Roberto could you get cracking today, and Matthew you pick it up when you're back on Tuesday, and get a draft to me by EOD Tuesday?

Let me know if you want to workshop anything or if you need any direction on specifics.

Cheers,



Daisy Lilley (she/her)
Unit Head, Policy Development & Program Delivery
Extended Producer Responsibility | Environmental Standards Branch
Ministry of Environment and Climate Change Strategy
☎ 236 478-3343 | daisy.lilley@gov.bc.ca

I respectfully acknowledge the Tsawwassen First Nation, Musqueam and Coast Salish peoples, and all the indigenous peoples of British Columbia, on whose territories I am grateful to work, live and grow.

Dark Side of EPR Report

Summary of Issues/Ministry Response
September 2, 2022

Background

- BCBRDA is a non-profit association that represents over 110 bottle/recycling depots across the province
- ENV have been unable to confirm who members are or what interested parties are represented
- The Dark Side of EPR in BC report released in April 2022 that presents the association's view of failings of B.C.'s EPR system
- Report co-authored by the Alberta Bottle Depot Association; EPR model in Alberta provides Depots with a decision-making role in how the system is operated

Slide 2

LDE0

I've re-jigged this a bit to add the context that we do don't know who BCBRDA represent and to specify when the report was released. Adjusted the Alberta bit to provide more info about why that's relevant

Lilley, Daisy ENV:EX, 2022-09-07T19:37:50.480

The Dark Side of EPR Report

- Provides a one-sided view of EPR in B.C.
- Details 3 “broken promises”:
 1. Financial transparency and accountability
 2. Environmental results
 3. System fairness
- Underlying issue is that depots do not think they are being adequately compensated for handling beverage containers

Slide 3

LDE0

Adjusted 'biased' to 'one-sided' to soften a little bit; added the underlying issue to help frame for Minister that this all comes back to how much they are paid

Lilley, Daisy ENV:EX, 2022-09-07T19:38:07.845

Broken Promise #1

Financial Transparency & Accountability

BCBRDA Claims

- Too little oversight over how producers collect, spend, and report on their use of program funds
- PROs over-collect funds and use reserve funds as investment accounts

ENV Response

- PROs are directed to publicly disclose audited financial statements annually
- ENV developing policy aimed at ensuring sufficient granularity in financial statements
 - Draft shared with BCBRDA for comment, comments being reviewed
- All funds are directed back into the offsetting of program costs, provide financial backstop, and keep eco fees for consumers low

Broken Promise #2

Environmental Results

BCBRDA Claims

- Some producers:
 - operate without a specific material recovery target (as plans renewals are overdue)
 - have approved targets well below the regulated 75%
 - barely meet their overall 75% program target while failing year after year to achieve material-specific targets

ENV Response

- ENV drives environmental outcomes through continuous improvement, including via recovery targets
- All targets in Encorp's most recently approved plan were increased
- ENV is concerned with achieving high material recovery rates, not with guaranteeing depot income through a particular recovery mechanism
 - Depots are paid for each unit or overall quantity collected
 - Other return options (e.g. Express & Go) are more convenient for consumers

Slide 5

LDE0

Adjusted to streamline

Lilley, Daisy ENV:EX, 2022-09-07T19:45:37.536

Broken Promise #3

System Fairness

BCBRDA Claims

- Government-sanctioned mega-monopolies are avoiding their obligation to pay the full costs of managing their materials – the very incentive for them to improve their recycling systems under EPR

ENV Response

- Producer Paying the Cost (PPC) policy issued in 2018 set clear direction
 - Guide is undergoing a review to ensure it is fit for purpose
- Number of EPR plans have been amended to require more robust adherence to the PPC requirement
- ENV staff have found shortcomings with Encorp's PPC amendment so have directed it to undertake further consultation

Slide 6

LDE0

Adjusted to streamline

Lilley, Daisy ENV:EX, 2022-09-07T19:45:20.600

Next Steps

- Encorp directed to update ENV with outcomes of additional consultation and updated PPC amendment by winter 2022
s.13
- Producer Paying the Cost and Financial Transparency policy guidance reviewed,
s.13
- Review of PRO governance arrangements planned
s.13 to assess financial accountability s.13

Slide 7

LDE0

s.13

Lilley, Daisy ENV:EX, 2022-09-07T19:45:08.246