

## 9. Producers Paying the Costs of Obligated Materials & Dispute Resolution

The Ministry of Environment and Climate Change Strategy has developed guidelines regarding their expectations for data gathering, analysis and consultation with licensees, contractors and other members of supply chains to ensure the costs associated with EPR programs are being covered. The following outlines how Encorp addresses these guidelines.

Encorp pays for the collection, transportation and recycling of the beverage containers registered in its program. These services are provided through contracts with various suppliers. Transportation, consolidation and recycling services are typically awarded through a competitive bid process. Encorp either directly negotiates appropriate rates or issues competitive Requests for Proposals, all to maintain market costs.

~~Return-It Depot~~ collection service providers (“Depots”) are compensated through handling fees on a unit-based schedule. The Depot Handling Fee (HF) reviews generally run every five years, concurrent with our contract period, however off-cycle reviews can occur when required.

The setting of ~~handling fees~~ HF’s involves a nearly year-long process, which was utilized in 2010 and in the most recent ~~negotiation~~ review that took place in 2017. The 2017 ~~handling fee~~ HF schedule covers a five-year period with the final year rate adjustment implemented in May 2021. is in effect until 2021. The HF schedule does not have an expiry date meaning that the last set of HF rates will continue to apply until a new HF schedule is executed. Encorp has used ~~will continue to use~~ this established process to determine the next HF handling fee schedule and ~~will began this~~ in that process in the third quarter of 2020. This process, which is outlined below, provides the basis for future fee setting and takes into account varying and evolving, ~~although we expect with varying~~ commercial conditions ~~it will evolve.~~

### Handling Review Process (HF) Summary

The key elements of the HF process includes:

- Extensive Stakeholder Consultation:
- Planning, preparation, analysis, and a series of meetings and consultations over about 12 - 14 months that allow for both in-person attendance and web/conference call attendance by all Return-It Depots in the province.

- Engaging in discussions based on the principles of transparency, trust, and collaboration. All Return-It Depots (164) were invited to participate and input into the process. Eight meetings were scheduled to review the HF process, third party results, capture feedback, address comments and questions. Each meeting provided an opportunity for all Depots to ask questions, make comments either verbally or through a written submission. Material presented in each of these meetings was posted and available to Depots for download, review and input.
- Encorp collecteds and distributeds to Return-It system participants information on factors that influence costs, such as local inflation rates, changes to minimum wage, ~~fees paid in other provinces~~ and occupancy costs to all Depots. These ~~were~~are discussed ~~with~~by participants. Depots who were ~~are~~ invited to put forward any additional metrics that they believe ~~were~~are relevant to the ~~process~~negotiations.
- Additionally, Encorp contracteds an independent third-party professional services firm (KPMG) to study the average costs borne by Depots to meet the program requirements. The study revieweds financial, labour and occupancy space costs for a representative sample of Depots and allocateds the revenues and costs to the Encorp program and other programs operating within the Depots.
- KPMG ~~The independent third-party consultants~~ collected relevant data from ~~participating D~~epots that agreed to participate in the process, held virtual meetings in place of onsite carry-out site visits due to the pandemic and interviewed all participating Depots. All information shared with KPMG by Depots is confidential and Confidentiality Agreements were in place to further protect the privacy of the Depot. Based on the selection criteria developed by KPMG, over 125 Return-It Depots were invited and received invitations and requests to participate in this process and the Depot Financial Study. This allowed the consultant KPMG to develop a portrait of the relative profitability of the Return-It beverage container program in an average Depot. It also allowed them to view the relative profit generated to Depots through the Encorp program compared to other revenue-generating activity in the Depots. KPMG presented and shared the results ~~are~~ with all participants Depots. ~~The independent third-party consultant presents the results, carries out a Q&A with depots and also makes themselves available for individual depot inquiries.~~
- ~~Once the steps above have been completed Encorp will makes an offer to depots for revised handling fees~~

~~Upon completion and by the end of November 2021, Encorp will provide an amendment of their plan to the MOECCS that includes a summary of the handling fee review process, stakeholder~~

~~consultation and fee setting structure offered to its service providers.~~

## Financial Incentive and Payment Methodology

Collection Cost Studies and confidential Depot Financial Study (as noted above) was undertaken by KPMG. The methodology included:

- Statement of revenue and expenses prepared by the consultant as a base line for projecting future revenue and costs for an average depot participated in the study
- Depots were selected by KPMG based on volume and geographic location within the Study. This representation was important as we looked to determine the average Depot revenue and costs associated with used beverage containers managed by the Return-It system

In addition to the study performed by KPMG, Encorp performed additional analysis, including:

- Estimated revenue growth as a result of container volume increase (population, inclusion of milk & milk substitute containers into the deposit refund system on Feb 1, 2022, etc.)
- Estimated increase in costs focusing on two major components – labour and occupancy cost
- Projected change in other costs using Consumer Price Index (CPI) forecast
- Estimated increase in handling fees required to maintain Depot profitability for beverage containers managed by Encorp
- Depot handling fee revenue and container volume trend analysis for the five year period from 2016-2020. This showed that the average Depot had 12.2% container volume growth (CAGR 2.3%) and 14.7% Encorp handling fee growth (CAGR 2.8%) in that five-year period.
- Examining handling fees paid for similar containers managed by different programs in BC

To support Depot operators in managing ongoing labour costs, Encorp also engaged another independent third-party professional services firm to perform a time and motion study to validate efficiencies and cost savings that can be gained at a Depot collection site through a proposed new sorting procedure, known as simplified sorts. A simplified sorts pilot program was implemented at a select number of Depots in the second half of 2021 to quantify the impact of reducing the number of container sorts a Depot is required to perform when collecting customer's UBCs from 21 to only 8. The study validated a number of costs and operational efficiencies, concluding that the new procedures reduced Depot staff handling time for over-the-counter transactions by 22.6%. Pilot Depot staff also expressed positive feedback on the simplicity and efficiencies gained through this change.

With the addition of milk and milk substitute containers in 2022, the simplified sorts will provide even greater efficiencies and cost savings for Depots that choose to move to the new eight container sort system.

[In December 2021, based on the above process, Encorp concluded its 2021 HF process and made an offer to Return-It Depot collection service operators who have a contractual relationship with Encorp Pacific. This offer exceeds the profit margin standards outlined by Statistics Canada.](#)

### Dispute Resolution

All Encorp depot, transport and processing contracts include dispute resolution terms that provide for, on notice of a dispute being filed by either party, a mandatory meeting to negotiate a resolution and, in the absence of resolution, mediation through a mutually appointed mediator or, failing that, arbitration.

Both the negotiation and mediation between the parties will be confidential. If the parties fail to resolve the dispute by mediation either party may request the dispute go to arbitration before a mutually acceptable arbitrator or an arbitrator appointed by the British Columbia International Commercial Arbitration Centre.

While not specified in the Regulation, Encorp has established procedures for managing complaints or concerns on the part of customers, local governments, retailers and non-commercial stakeholders. Of particular note, Encorp employs a team of Regional Operations Managers whose primary role is to support depots and work to address any day-to-day operational or contractual issues.