



July 18, 2023

Cindy Coutts  
President and CEO  
Encorp Pacific (Canada)  
100 – 4259 Canada Way  
Burnaby, BC V5G 5Y2

Dear Cindy Coutts,

Thank you for submitting proposed amendments to Encorp Pacific (Canada) (“Encorp”) Beverage Container Stewardship Plan (plan) in fulfillment of the requirements of section 5(1)(c)(i) of the Recycling Regulation (the regulation) made under the *Environmental Management Act*.

I acknowledge the efforts of Encorp towards continuous improvement to better meet requirements of the regulation and for ensuring the program’s success going forward. Transparency and accountability are key guiding principles of B.C.’s extended producer responsibility (EPR) framework. Accordingly, the ministry expects program development processes to be open and provide the opportunity for input to all interested parties, and for industry to be accountable to both government and consumers for environmental outcomes and allocation of revenue from fees. While Encorp’s methodology and process used to determine new handling fees is detailed, transparent and appears satisfactory overall, there remain areas of the plan amendment that require further attention to meet the criteria for approval set out in section 5(1)(c)(i) of the regulation.

As you are aware, the director has the ability to both amend an approved extended producer responsibility (EPR) plan on their own initiative, and to approve amendments to an approved plan that have been proposed by a producer. Prior to the issuance of this decision letter, Encorp was provided with direction, and had the opportunity to propose further amendments or provide additional information for consideration. Encorp addressed most of the identified deficiencies through providing supplementary information; however, certain components remain outstanding. Having taken the information into account, I have completed my review of the amendment proposed by Encorp.

Please be advised that, pursuant to section 5(5) of the regulation, I approve the amendment proposed November 29, 2022, and in addition to the amendment proposed by Encorp, and approved by me in this letter, I am further amending the plan, pursuant to section 5(5) of the regulation to address the following deficiencies.

## 1. Producers paying the costs

Pursuant to section 5(1)(c)(i) of the regulation, the plan must adequately provide for the producer paying the costs of collecting and managing products within the product category covered by the plan.

In considering whether this criterion is met, I accept that the *Environmental Management Act* and the regulation are primarily aimed at environmental matters.

However, section 5 of the regulation indicates that the director will consider matters beyond pure environmental performance when determining whether to approve a plan or an amendment: under section 5(1)(c)(vi), the director is required to consider adequacy of dispute resolution procedures between producers or agencies and service providers such as depot owners; and under section 5(2)(m), the director can consider the structure of financial and operational cooperation with other producers. Such a broader interpretation of section 5(1)(c)(i) is also consistent with the Ministry's 2018 "Producers Paying the Cost of Managing Obligated Materials and Dispute Resolution" guidance document, which calls for consultation on a detailed service provider compensation mechanism, and the addressing of feedback in plans.

My view is that the ultimate purpose of this provision is to ensure that plans have adequate compensation methodologies under which service providers are compensated for the actual costs they incur in providing services to producers and their agencies and reflects inherent differentials in costs of providing services in different circumstances. In absence of such methodologies, there is risk that the costs of collecting and managing a specific product type within a product category might be transferred onto producers of other product types within that product category, or that costs of collecting and managing one product category are transferred onto products in another product category. This could potentially disadvantage certain products, including products that are more readily recycled.

I understand and appreciate that Encorp has taken a conservative approach throughout its process to determine handling fees. However, the amendment did not fully demonstrate:

- that the costs of small volume depots (depots with volume under 1.5 million containers per year) are covered; or
- how the costs of operating the in-depot express program are determined.

### *Small volume depots*

Encorp did not provide in the amendment the methodology to demonstrate how the costs of small volume depots are covered. While the amendment states that small volume depots receive additional financial compensation via a presence grant, and Encorp provided supplemental information to indicate that it is prepared to adjust the amount of the presence grant offered to

small volume depots and will adjust the amount annually, there is insufficient evidence in the amendment or supplementary documents to demonstrate that this additional compensation is sufficient to cover the costs for small volume depots. The amendment should demonstrate the methodology used to determine that small volume depot costs are being covered.

#### *In-depot Express*

Encorp has provided further information detailing there is minimal additional labour needed to operate the in-depot express program, in-depot express program is voluntary so depots can opt-out of the program if costs are too high, and depots have methods to manage any incremental costs. In addition, Encorp pays depots an additional sorting fee for Encorp containers collected through the in-depot express program. However, Encorp has not demonstrated the methodology on how this fee was determined or whether the sorting fee plus the handling fee adequately covers the additional labour needed to operate the in-depot express program.

#### *Encorp's commitment to review handling fees*

The amendment commits Encorp to reviewing handling fees, including the presence grant provided to small volume depots, at least once every five years, with the next review to be completed by 2026. The amendment as written is unclear if the review would include all steps of Encorp's handling fee methodology as outlined in the amendment. The amendment should include a commitment that is clear and include sufficient detail outlining what the review process would entail to allow interested parties to be assured of how, and how often, a compensation rate will be determined.

To address these deficiencies, I am requiring the following amendments, which will be part of Encorp's review of handling fees going forward:

- a) Encorp will review the presence grant at least once every five years (in alignment with its review of handling fees) commencing in 2023 to demonstrate the presence grant adequately addresses the gap in costs not otherwise covered by handling fees for small volume depots (depots that collect under 1.5 million containers per year). The analysis will include, but not limit, the following costs incurred by depots: wages and benefits, rents and occupancy costs, equipment costs, and office, administration, and any other significant costs.
- b) Encorp will provide justification to demonstrate that the additional sorting fee for in-depot express is an appropriate amount to compensate depots for any additional labour to handle and sort Encorp containers through the in-depot express program. Encorp will no later than four months after the date of this letter, submit confirmation to the Ministry that it has completed item (b).

- c) Encorp will amend Section 3.5 to state that Encorp's review process of handling fees will include steps one to four as identified on page 3 of the amendment and incorporate changes referred to in (a) above.
- d) Encorp will no later than nine months after the date of this letter, submit confirmation to the Ministry that it has completed the above outcomes (except for item (b)) including copies of the study referred to in (a) above. Encorp will share the results of the study referred to in (a) above with participants. However, Encorp is not required to consult with participants on the study itself.
- e) Encorp will share the outcomes of the third-party review of Encorp's Section 9 Producer Paying the Cost of Obligated Materials and Dispute Resolution Process with the Ministry.
- f) Regarding Encorp's commitment to review handling fees within 12 months after the addition or deletion of a new obligated beverage container category or other material change to depot operations, 'other material change' is interpreted to mean a change in average depot profitability, measurable by the financial model of at least 10% that all depots would be expected to reasonably experience. Encorp will adjust the financial model to reflect the material change and present the results to the depots. After doing so, Encorp will implement the revised handling fees.
- g) Encorp will submit confirmation to the Ministry in 2026 that it has completed the handling fee review process, referred to in (c) above.

## 2. Methods of product collection and financial co-operation with other producers

As outlined in section 5(2)(k) of the regulation, in deciding whether to approve the plan, the director may consider the methods of product collection, storage, transportation and management. Furthermore, based on section 5(2)(m) of the regulation, in deciding whether to approve a plan, the director may consider the structure of financial and operational co-operation with other producers.

The implementation of Encorp's in-depot express program as a method of product collection has resulted in Encorp and non-Encorp containers being returned together into a collection system initiated by Encorp. As a result, depots that offer in-depot express have expressed concerns that there are additional costs for handling and sorting non-Encorp containers and they are not being compensated for this additional labour. While the amendment does not demonstrate how Encorp is working with other producers to address this issue, Encorp did provide supplemental information that they are working to improve the situation. The Ministry is not requiring Encorp to pay service providers to collect and handle non-Encorp containers. However, the Ministry requires Encorp to demonstrate how it is working with other EPR agencies to ensure depots are compensated for managing products collected through an Encorp initiated system.

I am requiring the following amendment to address this deficiency.

- a) Encorp will no later than nine months after the date of this letter, submit a supplementary report to the Ministry on solutions that address the issue of non-Encorp containers being deposited into a collection system initiated by Encorp. Solutions may include working with other producers for products in the same product category (other EPR agencies) to cover the costs of services to collect products.

**Right to appeal**

If you disagree with this decision, Division 2 of Part 8 of the *Environmental Management Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the *Act* and with the Environmental Appeal Board Procedures regulation, the EAB must receive notice of the appeal no later than 30 days after the date you receive this decision.

Thank you for your efforts on this plan amendment and I appreciate Encorp's continued commitment to achieving compliance in this regard.

Sincerely,



Laurel Nash  
Assistant Deputy Minister  
Environmental Protection Division

cc: Sonya Sundberg, Executive Director, Environmental Standards Branch  
Gwendolyn Lohbrunner, Acting Director, Extended Producer Responsibility