

# THE DARK SIDE

OF EXTENDED PRODUCER  
RESPONSIBILITY (EPR) IN  
BRITISH COLUMBIA



# THE DARK SIDE OF EXTENDED PRODUCER RESPONSIBILITY

British Columbia’s (BC) Extended Producer Responsibility (EPR) system was introduced in 2004 and billed as a world-class approach to waste management and the foundation for a zero waste, maximum value, circular economy (*Figure 1*).

EPR promised to make BC producers – businesses that sell products and packaging into BC – legally responsible for managing their materials when customers are done using them.

It also promised British Columbians a new type of green economy, innovative recycling solutions, and more jobs. By implementing EPR, the Government of BC expected to deliver (*Figure 2*):

- Higher recycling rates.
- Higher reuse rates.
- Increased clarity about what can be recycled.
- Increased convenience and, as a result, increased consumer participation in collecting materials for recycling.
- Increased investment in recycling infrastructure.
- More markets for recycled materials.
- Better designed products.

These anticipated achievements were based on the idea that BC producers would be mandated to adhere to aggressive collection and recycling targets set in regulation, and that the cost of adherence would motivate producers to improve their material designs to be easier and less costly to collect and recycle/reuse.<sup>1</sup>

## How BC’s EPR System was Designed to Get Results

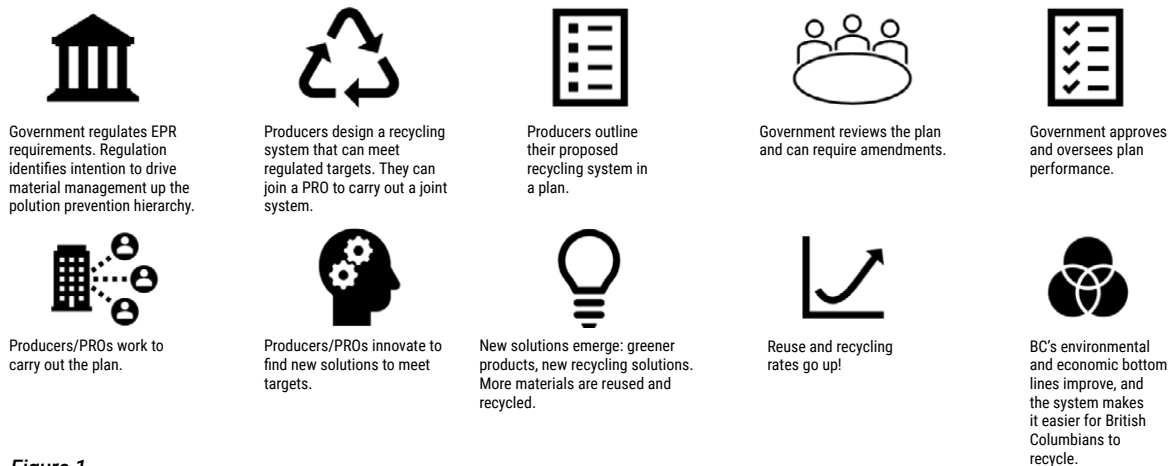


Figure 1

1 Reuse activities include activities such as second-hand reuse, cleaning and refilling, repair, remanufacturing, and refurbishing.

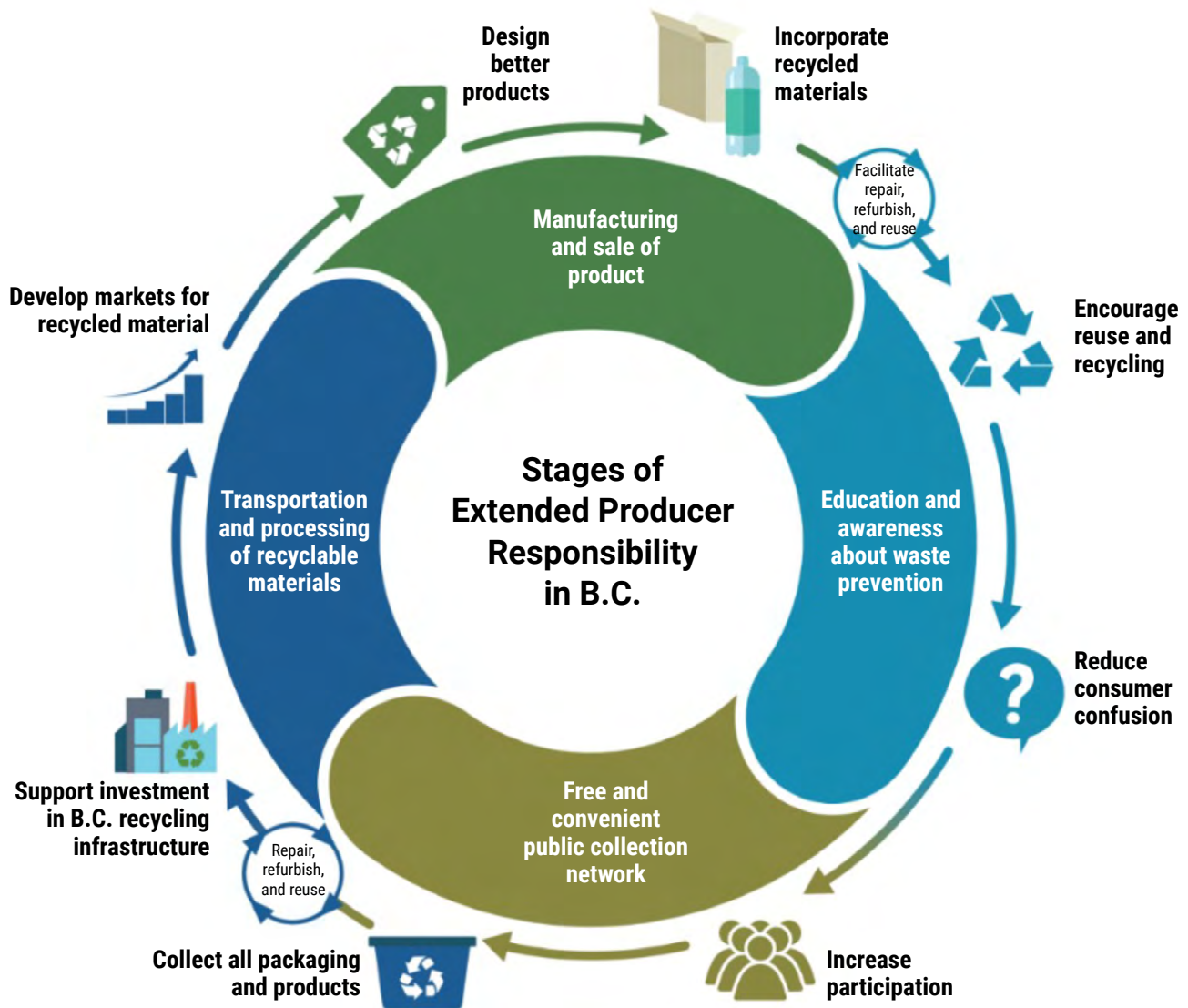


Figure 2<sup>2</sup>

Although BC's EPR system comes with some benefits (*Figure 3*), it has failed to:

- set and uphold aggressive collection and recycling targets,
- create cost incentives for producers to improve their material designs to be easier and less costly to collect and recycle, and
- realize the many benefits it could deliver to British Columbians.

Instead of a world-class approach to waste management and the foundation for a zero waste, maximum value, circular economy, **BC's EPR system has become a money management system.** It is a government-sanctioned method for producers to collect and manage hundreds of millions of dollars of consumer money with little accountability, little environmental progress, and a number of economic casualties – primarily small businesses – along the way (*Figure 4*).

2 Image source: Ministry of Environment and Climate Change Strategy, 2021. Advancing Recycling in BC. Extended Producer Responsibility Five-Year Action Plan. pg. 3. Available online: [Advancing Recycling in B.C. - Extended Producer Responsibility Five-Year Action Plan 2021-2026 \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/soc-environment/advancing-recycling-in-bc-extended-producer-responsibility-five-year-action-plan-2021-2026) (viewed September 14, 2021)

## Benefits delivered by EPR in BC

- ✓ Regulated requirements for more product categories and items than any other province or territory in Canada.
- ✓ Consumers have province-wide collection services for more materials.
- ✓ More waste is safely managed and recycled overall.
- ✓ BC municipalities manage less waste overall.
- ✓ Reduced the tax burden on municipalities and their residents.
- ✓ Created new value in the recycling sector and new jobs.

Figure 3

## BC's EPR System Performance

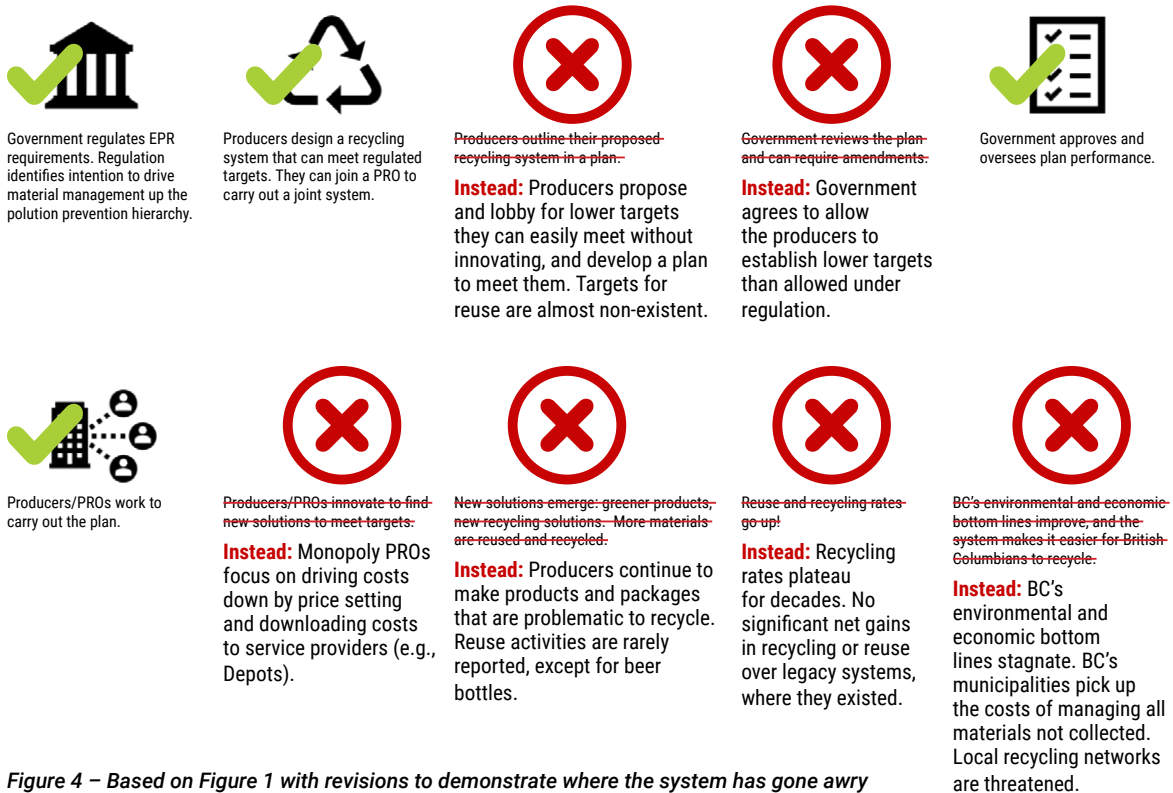


Figure 4 – Based on Figure 1 with revisions to demonstrate where the system has gone awry

Details about the lack of accountability, lagging environmental performance, and origins of the economic casualties aren't difficult to find. On the contrary, the dark side of EPR is presented in producers' annual reports to the Government of BC, widely discussed amongst small businesses and communities, and visible where longstanding recycling service providers are being replaced by unmanned recycling bins in urban parking lots and rural roadsides.

The failings of EPR, including some case studies to better understand them, are shared in the following pages. They are presented as three broken promises to British Columbians and are supplemented by six recommendations to help BC realize its potential as a world-leader in waste management and the transition to a circular economy.



## **BROKEN PROMISE #1:**

# **FINANCIAL INCENTIVE TO IMPROVE MATERIAL DESIGN & RECYCLING**

The core principle of EPR as a policy framework is that:

The **high costs** of making producers financially and operationally responsible for managing their end-of-life packaging and products will incentivize them to do what they do best - innovate market solutions to reduce those costs. This includes innovating new recycling technologies (i.e., to recycle materials that aren't currently recyclable and make recycling less costly over time) and green packaging and product design (i.e., to make items that are more recyclable). These innovations should generate better environmental outcomes for BC overall.

Producers incur the high costs necessary to encourage innovation when they have:

- High collection and recycling targets to meet and must spend funds to meet them.
- A requirement to spend the funds they collect in a specific jurisdiction, without moving funds into other jurisdictions or between jurisdictions to cover costs.
- Limitations to the amount of funds they can hold (i.e., in reserve and invested in financial markets) to increase their revenues and offset the costs of recycling.

**Unfortunately, producers have extraordinary license in BC to not only avoid the high costs that drive successful EPR but also to collect and spend consumer funds with little discretion.**

With BC's approach to EPR, producers are permitted to collect funds from their customers through externalized fees or to pass the costs along in the price of their products. This, unto itself, isn't an issue. Arguably, producers are funded by consumers through purchases.<sup>3</sup> The issues are that producers can:

- Collect funds as they see fit with notable leeway and few specific limitations to how they are spent.<sup>4</sup>
- Pass along fees to consumers that look like taxes or user fees.

3 The Government of BC states that EPR "shifts the responsibility from local and Indigenous governments and taxpayers to the producers and consumers of packaging, paper and products". Ministry of Environment and Climate Change Strategy, 2021. Advancing Recycling in BC. Extended Producer Responsibility Five-Year Action Plan. pg. 3. Available online: [Advancing Recycling in B.C. - Extended Producer Responsibility Five-Year Action Plan 2021-2026 \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/industry/extended-producer-responsibility/five-year-action-plan-2021-2026) (viewed September 14, 2021).

4 BC's *Recycling Regulation* requires that producers or their EPR agencies (PROs) account for the money they collect from consumers as visible deposits and eco-fees and how those funds are spent. However, there is no definition of 'appropriate' program spending. See: Government of British Columbia. *Recycling Regulation*. s.8(2)(f). Last amended June 29, 2020. Available at: [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/449\\_2004](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/449_2004) (viewed August 18, 2021).

- Use funds collected from consumers to invest in financial markets and build other lines of unrelated business that offset the costs of recycling their mandated materials.
- Use funds, including those collected from consumers, to lobby the Government of BC for collection and recycling targets lower than the 75% target set in regulation.
- Spend funds, including those collected from consumers, with little transparency, including on things other than collection and recycling services (e.g., building other lines of business, lobbying government, extravagant board retreats) and on recycling activities in other jurisdictions.

There is ample evidence that the Government of BC's lenient rules for producer money management – in the face of low and poorly enforced mandated collection and recycling targets and vague public reporting – is the norm for producers in BC. In a number of cases, consumers are blindly paying the fees charged by producers with the expectation of better environmental results when, in fact, there has been little to no improvement in environmental outcomes. To make it worse, there is little to hold producers accountable for how they use those funds or achieve the promised environmental results. When government creates a regulation that allows producers to set fees that are passed along to consumers, consumers must be able to trust that government is overseeing transparent, fair, and effective use of those funds.



## LET'S TAKE A LOOK AT Broken Promise #1: Financial Incentive to Improve Material Design & Recycling in action...

As of 2020, BC producers had the authority to manage nearly \$700 million dollars in program funds (i.e., fees collected from consumers either directly in the form of eco-fees and deposits, or indirectly through the investment of consumer fees or costs included in the price of consumer goods) (Figure 5).

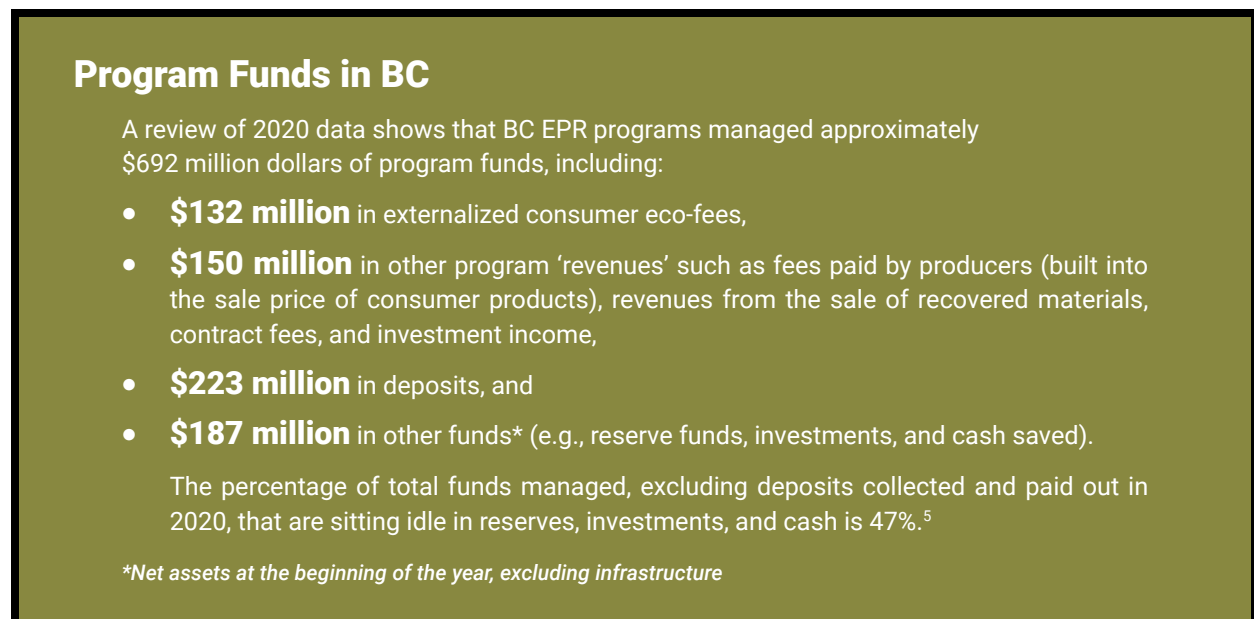


Figure 5

5 To provide an accurate comparator of funds sitting idle across deposit bearing and non-deposit bearing programs, the deposits collected and paid out in a single year were excluded in this calculation. The percentage of funds sitting idle was calculated as "other funds" (\$187,038,837) / total funds managed in the year - i.e., [i.e., \$187,038,837 (other funds) + \$132,098,599 (eco-fees) + \$150,328,790 (program revenue) + \$52,522,089 (unredeemed deposit revenue not paid out)].

**Instead of collecting the “right” amount of funds from consumers** to support programs that achieve or even improve environmental outcomes in BC, many producers over-collect funds and either invest them into financial markets or use them to build other lines of business to earn additional revenue.<sup>6,7</sup> When producers are flush with funds, the link between the cost of compliance with EPR requirements and the recyclability of their products is diluted, and they lack the motivation for green innovation. Some producers are even using their padded bank accounts to fund government lobbying with the goal of lowering their mandated material recovery targets below the regulated target of 75% - and they are succeeding.

**Instead of being mandated to use their BC program funds to improve environmental outcomes in BC,** producers can redirect those funds to other provinces. Some already have been, and report this action in their annual reports to government. For example, funds collected in BC have been allocated to establish a recycling program in Ontario (see *Case Studies in BC’s Leniency – Product Care Recycling*).

**Instead of transparently reporting data to align the use of their BC program funds to tangible environmental progress** (i.e., what the Government of BC calls ‘continual improvement’), producers are reporting results that are underwhelming or reporting no meaningful data on recycling results at all (see *BROKEN PROMISE #2: WORLD-CLASS ENVIRONMENTAL RESULTS*).

---

**BOTTOM LINE:** It’s primarily consumers – and absolutely not producers – that have financial skin in EPR, and this is because there is too little oversight over how producers collect, spend, and report on their use of program funds. BC will continue to struggle to enable the core principle and purpose of EPR without meaningful collection and recycling targets and more stringent parameters for how producers collect, spend, and report on program funds – with a strong emphasis on their collection and use of consumers’ funds to operate their programs.

6 For example, in 2020, Encorp Pacific received \$11.6 million in contract fees for providing administrative and other services to clients -e.g., the Electronic Products Recycling Association, Major Appliance Recycling Roundtable, textiles and packaging and printed paper. This revenue from non-beverage container lines of business offsets 11% of its annual cost of implementing EPR for beverage containers. (See *Encorp Pacific, 2021. 2020 Annual Report*. Note: “other fees included” p. 42 and p. 53). Available at: [https://ar.return-it.ca/ar2020/pdf/Return-It\\_2020\\_Annual\\_Report.pdf](https://ar.return-it.ca/ar2020/pdf/Return-It_2020_Annual_Report.pdf) (viewed September 10, 2021).

7 It is standard practice for producers to have some program reserves available to provide operational capital and to backstop their programs against emergencies. However, funds sitting idle in reserves should be just adequate to meet this need and not inflated beyond it. When investments begin to generate revenue that offsets the cost of recycling, the purpose of the reserve is arguably to be a revenue stream and not a program backstop.

## CASE STUDIES IN BC'S DETRIMENTAL LENIENCY<sup>8</sup>

### Product Care Recycling

- **Uses a single reserve fund to back 13 programs across Canada**
- **Allocated program funds, which include BC consumers' funds, to operate a light recycling program in Ontario**

Product Care Recycling (Product Care) is a national association that operates EPR programs in BC for household hazardous waste and paint, lighting, and alarms.

Its reporting on the use of BC funds is less than transparent. While Product Care reports on the revenue it receives from BC consumers and the excess funds it transfers annually into its reserve fund, it does not report on a BC reserve fund to the BC government. Instead, it reports separately in a Canada-Wide consolidated Annual Report on a single reserve fund to backstop 13 programs across Canada.<sup>9</sup> It is unclear how much, if any, of the reserve fund will be used to improve or bolster its BC-based recycling programs.

In 2020, \$2.9 million – an incredible 44% - of the \$6.6 million in excess revenues Product Care collected nationally were from BC consumers alone (*Table 1*). By the end of 2020, its national reserve fund was \$56 million. Its 2020 Canada-Wide expenses were \$38 million, which means Product Care retained \$18.3 million in excess reserve above one year's operating expenses.

The Canada Revenue Agency<sup>10</sup> offers the following advice on reserve funds for not-for-profit organizations:

*Where the present balance of accumulated excess is considered excessive or an annual excess is regularly accumulated that is greater than an association's needs to carry on its "non-profit activities", it may indicate that the association's aims are two-fold: to earn profits and to carry out its non-profit purposes.*

8 Annual Reports for all BC EPR programs can be viewed on the Government of BC's website: Extended Producer Responsibility Plans and Annual Reports. Available at: <https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/extended-producer-responsibility-reports-plans> (viewed August 3, 2021).

9 Product Care Recycling, 2021. 2020 Annual Report. Available at: <https://www.productcare.org/app/uploads/2021/05/2020-AR-EN-%C6%92-reduced.pdf> (viewed August 7, 2021).

10 Canada Revenue Agency, 2001. Available at: <https://www.canada.ca/content/dam/cra-arc/formspubs/pub/it496r/it496r-e.pdf> (viewed August 7, 2021).



Product Care	Revenue	Expenses	Excess Revenue Collected
BC All	\$ 15,286,670	\$ 12,367,592	\$ 2,919,078
• BC Lights	\$ 5,135,997	\$ 4,545,784	\$ 590,213
• BC Alarms	\$ 715,801	\$ 417,881	\$ 297,920
• BC HHW & Paint	\$ 9,434,872	\$ 7,403,927	\$ 2,030,945
SK Paint	\$ 1,298,018	\$ 748,512	\$ 549,506
MB HHW and Lights	\$ 1,827,079	\$ 2,205,222	\$ 377,998
ON All	\$ 18,634,775	\$ 15,478,439	\$ 3,156,336
QC Lights	\$ 2,799,720	\$ 3,359,800	\$ 560,080
PE Paint	\$ 525,290	\$ 368,855	\$ 156,434
PE Lights	\$ 82,346	\$ 48,849	\$ 33,497
NB Paint	\$ 1,396,144	\$ 1,089,909	\$ 306,235
NS Paint	\$ 1,593,454	\$ 1,275,597	\$ 317,857
NL Paint	\$ 765,237	\$ 616,356	\$ 148,881
<b>Total</b>	<b>\$ 44,208,733</b>	<b>\$ 37,559,131</b>	<b>\$ 6,649,746</b>
<b>BC portion</b>	<b>35%</b>	<b>33%</b>	<b>44%</b>

Table 1

In addition, Product Care's 2019 audit indicates that it allocated funds from each of its light recycling programs across Canada to operate an interim light recycling program in Ontario in 2015 and 2016. Product Care's BC Lamps and Lighting Equipment Program contributed more than \$530,000 in funds over a five-year period – which means BC consumers contributed to the \$530,000 over five years that funded light recycling in Ontario.

## Canadian Electrical Stewardship Association

- **Gives itself permission to spend BC program funds in other provinces**

The Canadian Electrical Stewardship Association (CESA) is a national association that, at present, only operates an EPR program in BC. It collects and manages select electrical items, such as small appliances, tools, sports, and hobby equipment. In its 2020 Annual Report, it 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".<sup>11</sup>

11 See CESA's 2020 Annual Report: Notes on the Financial Statements, Note 9: Reserve Funds (p. 23).

## Call2Recycle Canada

- **Operates a single, national reserve fund with no transparency about how much of the fund was built from BC consumer funds and no commitment to use BC funds in BC**
- **Put more than 20% of its 2020 BC-generated revenues into the reserve fund**

Call2Recycle Canada (Call2Recycle) is a national association that operates battery recycling programs in BC, Ontario, Quebec, and Prince Edward Island. In 2020, it stopped reporting provincial reserves (i.e., net assets) and, instead, began reporting a single national reserve under two categories – Board Designated Funds and Board Undesignated Funds. It’s unclear how much of its reserve is dedicated to building BC’s program.

In addition, in 2020, Call2Recycle’s BC revenue was \$1.2 million more than its expenses – 20% more revenue than needed to run its program.

## Encorp Pacific and Brewers’ Recycled Container Collection Council (BRCCC)

- **Hold onto significant unredeemed deposits from consumers each year and do not report on how they use them**

Encorp Pacific (Encorp) collects and manages BC’s beverage container collection system for all containers except aluminum alcohol cans (e.g., beer and cider cans) and refillable glass beer bottles. In 2020, Encorp collected \$144.7 million in deposits from BC consumers and kept almost \$35.7 million of those funds as unredeemed deposits (Figure 6). In addition, it collected an additional \$42.8 million in eco-fees. In 2019, it collected \$90.3 million in deposits and kept \$12.7 million in unredeemed deposits. In addition, it collected an additional \$43.9 million in eco-fees. Encorp reports ‘generally’ – with minimal detail - on how it uses these funds to improve the system.

Brewers’ Recycled Container Collection Council (BRCCC) collects and manages BC’s beer container collection system. In 2020, BRCCC collected \$78.3 million in deposits from BC consumers and kept almost \$17 million of those funds as unredeemed deposits (Figure 6). In 2019, it collected \$73 million in deposits and kept \$8.6 million in unredeemed deposits. It does not report to the Government of BC on how it uses its unredeemed deposit revenues.

**Unredeemed deposits in 2020 – \$52 million (Encorp Pacific and BRCCC)**



Figure 6



## BROKEN PROMISE #2:

# WORLD-CLASS ENVIRONMENTAL RESULTS

EPR was put in place to enhance end-of-life material recycling and transition BC to a circular economy. To help achieve this, the Government of BC established what was once widely recognized as the minimum material recovery target – 75% – at the very outset of EPR with its *Recycling Regulation* in 2004.

At the time, this was an aggressive target for many materials, especially those that were not yet managed under legacy province-wide recycling systems. For example, at the time, BC didn't yet have collection and recycling programs for some materials such as electronic and electrical waste, packaging and paper, or household hazardous waste, and setting a minimum 75% recovery target was viewed as a worthy pursuit. For those material streams that were already collected under legacy province-wide systems, the Government of BC gave itself the authority to set 'other targets'; it was expected that more mature collection and recycling programs already achieving the minimum targets, such as BC's 50-year-old deposit return system for beverage container recycling, would continue to innovate to achieve better results over time. **This is not what has happened.**



## LET'S TAKE A LOOK AT

### Broken Promise #2:

## World-Class Environmental Results in action...

It is now 17 years after EPR was introduced in BC, and the 75% minimum material recovery target set in regulation remains aspirational and out of reach for many producers.

Moreover:

- the 75% target has been applied to whole categories of designated materials (e.g., beverage containers) and not to its material sub-categories (e.g., aluminum cans, plastic containers under 1L, pouches, gable top containers) – which lets producers off the hook from improving their recycling systems to collect harder-to-capture materials if the recycling rate for the whole category is high enough;
- in some cases, the Government of BC allows the 75% target to be **removed entirely** from stewardship plans and replaced with other less impactful measures of success (e.g., number of collection locations, customer satisfaction with recycling programs);
- producers already achieving the target have no incentive to continually improve return rates, innovate, or support BC's pollution prevention hierarchy; and
- if producers don't achieve their targets, the worst-case scenario is that their recycling program could be suspended – which has greater implications for British Columbians and the environment than producers themselves.

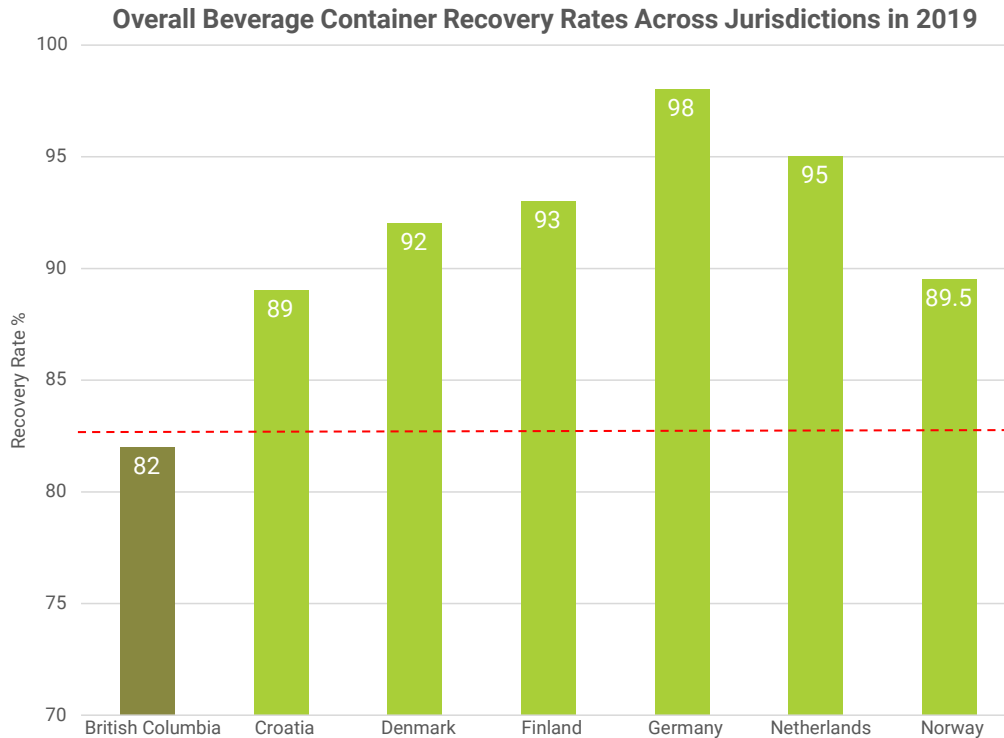
## Why are these things happening?

1. Producers are able to lobby government to achieve lower targets or even alternatives to recovery targets – and are successful. (See *page 14: CASE STUDIES IN UNDERPERFORMANCE*.)
2. The Government of BC conducts minimal enforcement of the regulated recovery target and, when enforcement applies, has lax penalties for non-compliance.
3. There is nothing that requires producers to demonstrate continuous improvement – producers' obligations and their incentives to increase material recovery stop once they meet the minimum target.
4. "Recovery" remains the only target listed in regulation and in most producers', stewardship plans **despite:**
  - o the Government of BC's regulatory requirement for producers to adhere to the "pollution prevention hierarchy"<sup>12</sup>,
  - o the well-known environmental benefits of re-use over recycling, and
  - o the ability for agencies that administer and/or operate material recovery and recycling programs – Producer Responsibility Organizations (PROs) – to focus on less costly and less beneficial methods of material recovery (e.g., crushing wine bottles instead of reusing them).

It doesn't have to be this way. Other jurisdictions around the world – those with world-class results – have long recognized that aggressive, mandated targets coupled with stringent enforcement and meaningful penalties increase material recovery rates. One has to look no further than Norway, Germany, and other European countries and their approach to beverage container recycling to see this is the case with recovery rates ranging from 89.5% to 98%. (*Figure 7*).

---

12 Government of British Columbia. *Recycling Regulation*. Last amended June 29, 2020. Available at: [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/449\\_2004](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/449_2004) (viewed September 13, 2021).



**Figure 7** <sup>13, 14, 15</sup>

**BOTTOM LINE:** Without adherence to the regulatory requirement to follow the “pollution prevention hierarchy”, increasingly higher targets, stringent enforcement, and a compelling reason to meet targets (i.e., meaningful consequences for not meeting those targets), producers simply lack the incentive to deliver world-class environmental results. Without producer incentive, BC consumers will continue to be on the hook for producers’ minimally successful collection and recycling programs – instead of supporting programs that can achieve ever-improving environmental results that result in a more circular economy.

13 Data for all European countries was sourced from: Reloop, 2020. Global Deposit Book 2020. An Overview of Deposit Systems for One-Way Beverage Containers. Available online: <https://www.reloopplatform.org/wp-content/uploads/2020/12/2020-Global-Deposit-Book-WEB-version-1DEC2020.pdf> (viewed July 30, 2021).

14 BC’s overall 2019 return rate is calculated by adding all the containers collected in BC (by Encorp Pacific and the Brewers’ Recycled Container Collection Council) and dividing this by the total number of containers sold. In 2020, BC’s overall return rate fell to 76%; 2020 data for the European countries are not yet available.

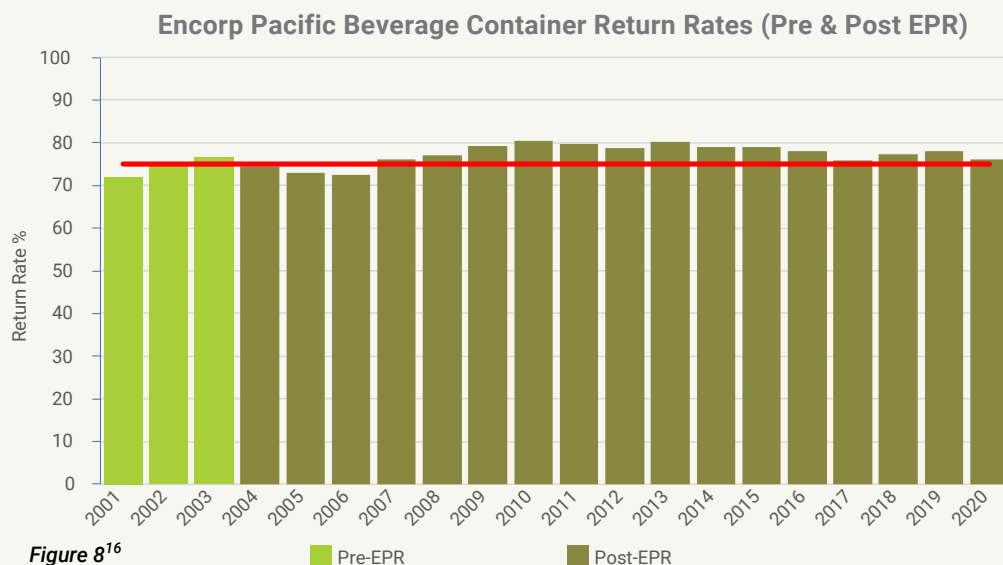
15 The European countries included in this table collect various ranges of beverage container types. Croatia collects containers made of plastic, metal (aluminum and tinplate), and glass. Denmark, Finland, and Germany collect containers made of plastic, aluminum, and glass. The Netherlands collects only plastic containers. Norway collects plastic and metal (aluminum and tinplate) containers.

## CASE STUDIES IN UNDERPERFORMANCE

### Encorp Pacific

- **Stagnant return rates for almost 20 years with active lobbying to decrease the mandated return targets for sub-streams of beverage containers**

Encorp Pacific's (Encorp) beverage container return rate has not increased since BC introduced EPR in 2004. In fact, its return rate has been stagnant for almost 20 years (3 years pre-EPR and 17 years post-EPR), with no statistically notable changes (*Figure 8*).



In its latest stewardship plan, which was just approved August 31, 2021, the Government of BC agreed to new 2020 -2024 targets for Encorp, including:

- approving 2020 targets that are less than what Encorp reported that it achieved in 2020; and
- providing Encorp with more time again - an additional three years (2020 - 2022) - to reach the minimum 75% recovery target for <1 litre plastic containers, bag-in-box containers, drink boxes, gable top containers, and pouches (*Table 2*).<sup>17</sup>

Material Category	Encorp Recovery Rate Achieved in 2020 (%)	New Targets Approved in 2021 for 2020	New Targets Approved for 2022
Plastic containers <1 litre	69.4	73.6	75.6
Drink boxes	53	60.9	75
Gable top containers	56.3	71	75
Bag-in-box containers	45.3	54.1	75
Pouches	25.5	50	75

**Table 2**

16 Data retrieved from Annual Reports submitted by Encorp Pacific to the Government of British Columbia. Available online: <https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/extended-producer-responsibility-reports-plans> (viewed July 22, 2021).

17 Encorp Pacific, 2021. Beverage Container Stewardship Plan. August 31, 2021. See Overall recovery rate achieved by 2024. p.29. Available online: <https://www.return-it.ca/beverageplan2020> (viewed September 13, 2021).

Rather than activating its millions of dollars in reserve funds to effectively target underperforming sub-materials or embrace innovations from proven systems that are getting better results in other jurisdictions (e.g., fairly compensating service providers, raising deposits, investing in solutions), Encorp is instead using its program funds to:

- lobby the Government of BC to significantly reduce recycling targets for material sub-streams achieving low return rates, including successfully reducing the 2018 - 2020 targets from 75% to 60% for pouches and bag-in-box containers, and 65% for polycoat containers<sup>18</sup>, and
- introduce extremely low tech and low cost 'innovations' (e.g., unstaffed sea cans) to compete with or replace the high-touch, locally trusted and supported Bottle and Recycling Depots (Depots) located all across the province.

Even when Encorp has received government approval to lower its sub-category targets (i.e., 2004 – 2020) it failed to achieve them. For plastics and other problematic containers, Encorp's return rate was (and continues to be) far below both the regulated and the lowered sub-category targets and it has trended downwards (Figure 9). For plastic bottles (<1 litre) a return rate of 73.1% (2019) and 69.4% (2020) means that in the last two years alone Encorp has lost 256 million <1 litre plastic bottles to BC's environment and landfills. For the previously mentioned pouches, bag-in-box and polycoat containers (i.e., gable top containers and drink boxes)<sup>19</sup>, the situation is even more dire. In 2019, the return rates for these materials were 26%, 52%, and 59% respectively; they were even lower during the pandemic in 2020. Despite these failings and the millions of containers lost each year, Encorp has faced no consequences for its poor performance.

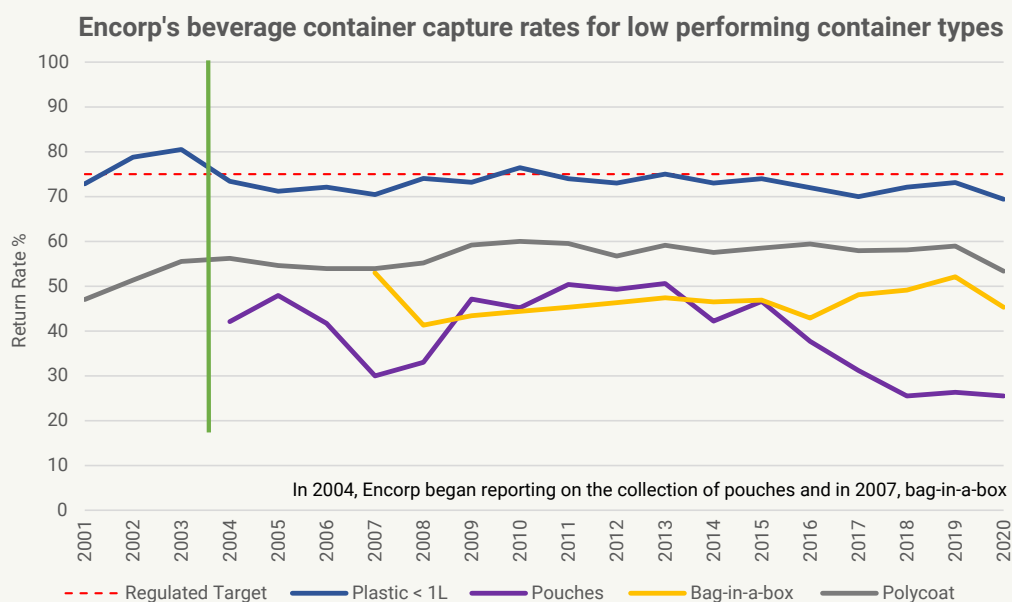


Figure 9 <sup>20, 21</sup>

18 Note: Encorp's 2014-2018 Stewardship Plan required that Encorp achieve these minimum recovery rates by 2018. Encorp's new Stewardship Plan, which covers the years 2020-2024, was not approved until August 31, 2021.

19 Polycoat containers (i.e., commonly called gable top and aseptic containers/drink boxes) are constructed from layers materials, including paperboard, plastic, and for aseptic containers, aluminum.

20 Data retrieved from Annual Reports submitted by Encorp Pacific to the Government of BC. Available online: <https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/extended-producer-responsibility-reports-plans> (viewed July 22, 2021).

21 From 2004-2016 Encorp reported on 'polycoat' containers as one category. In 2017, Encorp Pacific began to report on 'drink boxes' and 'gable top containers' separately. As a result, to enable this chart to show trends over time, the recovery rate data from 2017-2020 for polycoat containers were calculated by combining the data for drink boxes and gable top containers.

## Recycle BC

- **Requested targets below the regulated 75% for several material streams, which were subsequently approved by the Government of BC**

The Government of BC agreed to lower the regulated 75% target for several of the materials managed by Recycle BC – BC’s residential packaging and paper recycling program operator.

This means British Columbians have been greenwashed into celebrating when Recycle BC met its newly approved lower targets by reporting it collected only 52% of plastics overall, including only 24% of its flexible plastics.

Recycle BC met its lower targets for these materials. However, meeting its targets in 2020 meant that more than 30,000 tonnes of plastics were lost to BC’s environment through litter and disposal (Table 3).<sup>22</sup>

Material category	Recovery Rate 2019	Recovery Rate 2020	Target
Plastic (combined)	46%	52%	<b>50%</b>
Rigid Plastic	56%	64%	<b>55%</b>
Flexible Plastic	22%	24%	<b>22%</b>

Table 3

22 In 2020, a 24% flexible plastic recovery rate equates to 4,840 gross tonnes of flexible plastics collected, which means over 15,000 gross tonnes of flexible packaging was lost in BC’s environment or disposed in landfill. For rigid plastics, a 64% recovery rates equated to 27,964 gross tonnes collected, which means that almost 16,000 tonnes of rigid plastics were also lost. Data source: Recycle BC, 2021. 2020 Annual Report. Tables: 1) Managing Environmental Impacts. p.21. 2) Year-Over-Year Performance. p.26. Available online: <https://recyclebc.ca/wp-content/uploads/2021/06/RecycleBC-2020AR-FINAL.pdf> (viewed July 30, 2021).



## Canadian Electrical Stewardship Association and Electronic Products Recycling Association

- Requested to operate their programs without collection and recovery targets, which was approved by the Government of BC

The Canadian Electrical Stewardship Association (CESA) and the Electronic Products Recycling Association (EPRA) manage province-wide collection of BC's electrical products (i.e., small appliances, tools, sports and hobby equipment) and electronic products, respectively. The Government of BC approved stewardship plans for each of these programs without collection or recovery targets even after identifying that both plans were deficient in providing "specific and measurable language" for plan commitments.<sup>23</sup> Neither plan provides metrics that would allow the Government of BC to understand the relative proportion of regulated materials still escaping into BC's environment through disposal or litter.

CESA does provide the results of regional/municipal waste audits, but states these audits cannot be used to make province-wide conclusions. The data shows on average more CESA regulated materials are being disposed in landfills per capita in these communities than are collected per capita through the program province-wide (Figure 10).

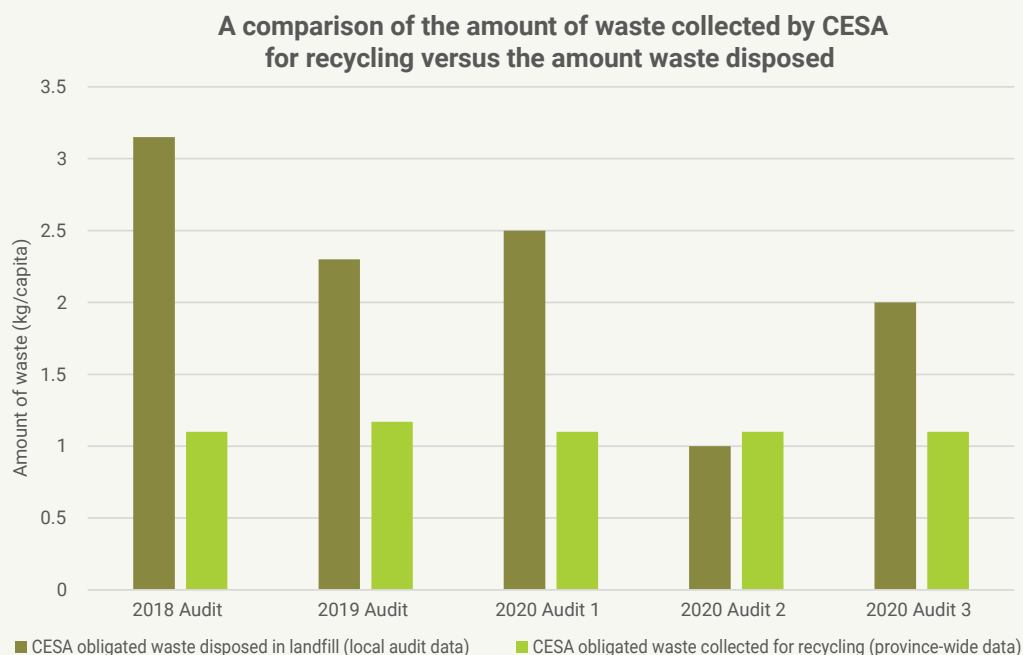


Figure 10<sup>24</sup>

23 Government of British Columbia, n.d. Extended producer responsibility plans and annual reports. See approval letters for each plan. CESA Approval Letter (reference 314485) dated August 7, 2018. EPRA approval letter (reference 33043) dated November 6, 2018. Available online: <https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/extended-producer-responsibility-reports-plans> (viewed September 13, 2021).

24 Data for kg/capita was calculated using the reported tonnes collected in each CESA Annual Report (2018, 2019, 2020) and dividing by the population of BC as reported by Statistics Canada 2016 Census (i.e., same population source used by CESA to calculate kg/capita disposed for each waste audit undertaken). CESA Annual Reports for 2018, 2019, and 2020 are available online: <https://www.electrorecycle.ca/stewards/resources-documents/> (viewed July 30, 2021).



## **BROKEN PROMISE #3:**

# **SYSTEM FAIRNESS**

When the Government of BC established its 75% material recovery target in regulation in 2004, it also established **a number of other legal rules for EPR**. Among them, the Government of BC made it obligatory for producers to:

- pay the full cost of managing their end-of-life materials, and
- consult stakeholders in their recycling systems.

It required PROs – the organizations that administer and/or operate collection and recycling programs on behalf of producers - to establish dispute resolution systems to resolve disputes with service providers (see *Recycling Regulation s.5(1)*).

The purpose of these legally required actions is to ensure producers develop and implement recycling systems that are **fair** to British Columbians as well as to the various stakeholders (e.g., the collection service providers –such as Depots– they contract to operate their systems).

When EPR was introduced in 2004, competition was alive and well in the system, fair expectations and rates of pay, collaboration, and partnerships<sup>25</sup> were top of mind, and the rules likely seemed like a precaution and more than enough.

Unfortunately, competition, fairness, collaboration, and partnerships have deteriorated over the years – more with some producers and their PRO than others. **While the regulatory intent of the Government of BC is still relevant, it's been demonstrated time and time again that the regulation itself doesn't hold enough practicality nor provide enough specificity to ensure producers and their PROs operate a system that is fair to British Columbians and its various stakeholders.**

Since 2004, producers have shifted BC's EPR landscape:

- **from** a competitive marketplace with buyers working collaboratively with collection service providers to get the best environment outcomes for the province
- **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 (*Table 4*).

25 Encorp Pacific, 2013. 2012 Annual Report. Quote: "The ongoing support of all our partners - depot operators, transporters, material processors and the larger community of stewardship agencies, local governments and public interest groups - is vital to making the Encorp system one of the most admired in North America. It is greatly appreciated..." Available online: <https://www2.gov.bc.ca/gov/content/environment/waste-management/recycling/extended-producer-responsibility/extended-producer-responsibility-reports-plans> (viewed September 13, 2021).

BC HAS MOVED FROM...	AND INTO...
<p>A competitive recycling marketplace with many buyers (e.g., municipalities, businesses).</p>	<p>A handful of regulated mega-monopolies – known as Producer Responsibility Organizations (PROs) - that control the marketplace for BC’s entire recycling system.</p>
<p>Buyers, including PROs, partnering with and fairly paying service producers (e.g., Depots) to achieve improved outcomes. Service providers having profitability and the incentive to reinvest in their businesses to improve their services.</p>	<p>PROs using government-endorsed market power to dictate contract pricing for the entire marketplace (i.e., they can refuse to negotiate a fair rate of return and can instead set a take-it-or-leave-it price). Service providers become so financially stretched and lean that they are unable to invest to improve their services.</p>
<p>Buyers working cooperatively with small businesses with roots and investments in local communities across BC, such as Depots.</p>	<p>PROs using program funds to open their own fully funded collection sites that compete with buyers while at the same time not providing a fair rate of return to the private sector local service providers. Local small businesses are unable to fairly compete in the marketplace.</p>

Table 4



**LET’S TAKE A LOOK AT**  
**Broken Promise #3: System Fairness in action...**

As a result of the government designing a regulatory framework for EPR that sanctions mega-monopoly PROs and allows them to manipulate the market to their advantage, the private sector –primarily small businesses that are the backbone of recycling in BC– are being treated unfairly. The PROs unfair practices are a combination of overt actions to show small businesses who holds the power (e.g., take it or leave it contract negotiations, contract cancellations, using program funds to compete directly against small businesses in the same geographic area) and actions that result in ‘death by a thousand cuts’ (e.g., requiring small businesses to adopt mandated programs and processes that incur more costs, use mandated high-cost vendors, and make frequent changes to their mandated operational requirements).

The four biggest issues with fairness in BC's recycling marketplace at the moment are:

1. **The Government of BC created a regulatory environment where PROs can and do require private sector operators to invest in and enhance their operations without offering them a fair rate of return for the upgrades or for their services.**

PROs are legally required to cover the full costs of managing their obligated materials. In theory, this should ensure that PROs act fairly in the marketplace and provide a fair rate of return when acquiring the services needed to meet their recycling goals. In practice, PROs have the right and the financial clout to determine how to calculate what constitutes 'the full cost' of managing their materials (i.e., what costs to include and what costs to exclude and download to service providers) and to implement this methodology after 'consultation' (i.e., where input is sought but there is no requirement to use it) but without 'negotiation' (i.e., where negotiation is a normal and expected practice in a healthy marketplace). The way that the Government of BC designed and is implementing EPR allows PROs absolute power to 'price set', and government has no ability to intervene if PROs prices do not provide a fair rate of return to collection service providers or fund innovation.

The result is that BC's EPR system is just like David (service providers) versus Goliath (PROs) except service providers don't have a sling or stones. Service providers effectively have no power in the system because the regulation:

- allows PROs to function as monopolies – giving them absolute power to manage obligated materials;
- does not require the monopolies to use a common collection system, which gives them the absolute right to use alternatives to legacy system service providers (i.e., many who have invested and operated in BC communities for more than 50 years) and put them out of business without any form of compensation;
- allows PROs to price set for an entire system (e.g., the entire network of independent Depots); and
- allows PROs to refuse to negotiate contracts with Depots collectively or with the Depots' hired consultants, which is important to Depots because they are small businesses with have minimal financial clout to negotiate one-on-one contracts with mega-monopoly PROs with deep financial pockets backed by endless consumer funds.

Some might argue the role of PROs is to drive program costs down and efficiencies up. This would be a fair and sound argument in a free and functioning marketplace with multiple competitors. It would allow service providers to only work with PROs that negotiate with them fairly and, as a result, offer them fair payment for their services and enough of a return on investment to continue to invest in their businesses and the services they offer. Instead, monopolies can and do put small business service providers, such as Depots, out of business by cancelling contracts with them and offering take-it-or-leave-it contract terms (i.e., no negotiation) that do not provide fair rates of pay nor consideration for Depots' requirement to further invest in their businesses.

## ▼ Example of Price Setting and Its Effect on the Marketplace

Encorp Pacific (Encorp) is the PRO that manages BC's beverage container system for all containers except refillable beer bottles and alcohol cans. Over the last five years, it has managed between \$155.4 - \$212.7 million in gross revenue each year and between \$23 - \$34 million in 'reserve' funds, depending on its spending in any given year.<sup>26</sup>

Encorp, the deposit return system, and Depots existed prior to government shifting the deposit return system from a government-directed system to EPR.

Every five years, Encorp is required to consult with the 168 independent small businesses (i.e., Depots) that collect beverage containers on its behalf and provide a deposit return to consumers. The consultation is part of setting the handling fees (HFs) it pays to Depots on each container collected. Once Encorp sets its HFs, its next step is to establish contracts with the Depots.

While 'consultation' suggests that Encorp will consider the input of small businesses to set HFs and then negotiate contracts, Depots are finding Encorp is using its financial clout to set HFs regardless of input and offer unreasonable take-it-or-leave-it contracts to Depots. Depots have lost faith in Encorp's HF consultation process and willingness to negotiate contracts. Few are willing to participate in the process Encorp says it will use to establish HFs, as they don't agree the process accurately reflects the full cost of collection service providers managing Encorp's obligated materials and they have put a lot of time, energy, and resources into previous processes with little to negative return.

### WHAT ENCORP SAYS ABOUT ITS PROCESS TO ESTABLISH HFS

"Depot collection services 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 involves a nearly year-long process, which was utilized in 2010 and in the most recent negotiation that took place in 2017. The 2017 handling fee schedule is in effect until 2021 [sic]. Encorp will continue to use this established process to determine the next handling fee schedule and will begin that process in the third quarter of 2020. This process provides the basis for future fee setting, although we expect with varying commercial conditions it will evolve."<sup>27</sup>

*As an important note, the 2017 handling fee schedule is in place until May 2022. Encorp's reference to 2021 is an error.*

26 Encorp Pacific, 2021. 2020 Annual Report. Section 7.3: Operating reserves. Available online: [https://ar.return-it.ca/ar2020/pdf/Return-It\\_2020\\_Annual\\_Report.pdf](https://ar.return-it.ca/ar2020/pdf/Return-It_2020_Annual_Report.pdf) (viewed September 13, 2021).

27 Encorp Pacific, 2021. Beverage Container Stewardship Plan. (Targets provided for 2020 - 2024) Available at: <https://www.return-it.ca/beverage-plan2020> (viewed September 13, 2021).

## THE REALITY OF ENCORP'S NEGOTIATION TO SET HANDLING FEES

- Encorp expects Depots to participate in a financial study to help establish the HFs.
- Neither Depots nor the Government of BC have a say in the methodology that Encorp uses for its financial study nor whether the results of that study will be used to inform the HFs.
- Depots have experience with past Encorp financial reviews that disregarded the results of the review process, including the financial study, and where the financial study overlooked key contributions to the cost of managing materials for Encorp (e.g., the Government of BC's increase to minimum wage, inflation, program requirements established and required by Encorp including costs associated with the Return-it Express program).
- As part of the current review, Encorp indicated at the outset that it intends to find efficiencies in how Depots operate in order to further decrease HFs.
- Encorp has a history of introducing new operational requirements without amending the HFs as new costs – costs that it has dictated - emerge.
  - For example, Encorp recognizes it is underpaying Depots based on their own requirements and has explicitly referred to the increased labour costs associated with the Return-it Express program, but still has not increased its compensation to Depots.
- As part of the current review, Encorp is undertaking a time and motion study to inform its efficiency-finding mission into how Depots sort beverage containers, and plans to make its HF offer by October 2021.

## 2. PROs can download costs, unfettered by government oversight, and drive the profitability and competition out of the private sector, especially small business.

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 (see fairness issue #1). This gives PROs unfair licence to pass along costs they don't deem to be their responsibility to the private sector collection service providers they hire to help implement their recycling systems. There are ample examples of PROs downloading high costs to collection service providers for everything from technology hardware and software requirements to specifically-dictated brands of high-cost printer paper. These ever-changing and uncompensated demands are analogous to the “straw that broke the camel's back”. The costs keep increasing for Depots until their operations are no longer sustainable. On top of this, many PROs also expect small businesses to invest in innovative approaches to increase material recovery on their behalf – again without full compensation. PROs can take advantage of the economic hardship they create for their collection service providers by establishing their own fully-funded corporately run collection service providers in the same geographic areas – thereby using their monopoly power to eliminate small businesses from the once competitive market. The effect: PROs can essentially annex these small businesses without compensation.

## ▼ Examples of Ever-changing and Costly Requirements

Since 2016, the last time Encorp Pacific (Encorp) set the compensation rate for BC Depots to collect beverage containers, it introduced the following new requirements while not fairly adjusting compensation rates:

- In 2016, it began to roll out its Return-It Express program (requiring Depots to sort containers (which had been a task previously performed by consumers themselves and which increased labour costs), provide new storage space for the bags of containers, and provide and pay for bag labels). In 2020, Encorp admitted it was not fairly compensating Depots for this system, and had not been since the program's inception, but refused to correct this error and amend its fee structure.
- In 2019, it changed its requirements for the type of bags that Depots could use with their retail customers and removed funding for the bags.
- In 2019, it began requiring that Depots use the Encorp 'AMPM' computer system and an Encorp printer on Depot premises, including paying \$1500 every 6 months for a maintenance fee.
- In 2020, it began requiring Depots put up a specific 4'x6' sign with Encorp's logo on Depots' buildings at Depots' cost (~\$1000).
- Depots are required to have a dedicated phone and fax line for Encorp's computer system (\$30 per month).

### 3. **PROs are only required to go through the motions of consultation and not use the input.**

PROs are required to "consult" stakeholders on their five-year EPR plans, but consultation is only effective if stakeholders can hold the decision-maker accountable for the decisions they make and the effects of those decisions. The Government of BC does not have the regulatory authority to require PROs to provide 'fair' contracts that provide a fair rate of return, fair notice of and compensation for required changes in business practices, or fair compensation when corporate Depots are opened that compete with or put privately owned small business Depots out of business. Worse, the Government of BC's approval of EPR plans nullifies the ability of small businesses to complain about anti-competitive practices under Canada's *Competition Act* by providing PROs with a regulated conduct defense.

### 4. **PROs can use their deep pockets to outspend collection service providers and nullify the effectiveness of dispute resolution processes.**

On one hand, stakeholders who wish to contest unfair or anticompetitive PROs' actions through the available dispute resolution processes must be able to pay their share of accessing these typically high cost and lengthy processes. On the other hand, PROs can use their program funds to override government's requirement for a 'fair dispute resolution system' by entering into the dispute resolution process in bad faith and running up costs by refusing to reach an agreement during the process. Put simply, PROs can win contract disputes simply by outspending and outwaiting small businesses in the dispute resolution process.

### ▼ Example of Inaccessible Dispute Resolution Tools

As a requirement of its stewardship plan, the Government of BC requires Encorp Pacific (Encorp) to outline its dispute resolution process. Its process involves meetings with a service provider (i.e., contract holder) and, as required, mediation, and then arbitration. Given that Encorp contracts Depots individually and refuses to deal with the Depot's collective representative, Depots must engage in contract disputes with Encorp individually if they believe Encorp is treating them unfairly. Depots cannot engage in a 'class action' dispute even if the issue under dispute is industry-wide.

Encorp's dispute resolution process is unfair to Depots. It is an asymmetrical approach, where Encorp's power and deep pockets allow it to:

1. Hire experts and expensive lawyers that are unattainable for small businesses (e.g., Depots).
2. Drag out the mediation process until it is not financially feasible for a small business to continue with the dispute.
3. Punish Depots that pursue dispute resolution, including the ability to cancel future contracts or subject them to increased punitive audits.

One of the last disputes a Depot dared to take to mediation took place in the mid-2000s, where one Depot spent close to \$100,000 on arbitration costs. The threat of these types of costs in a system where small businesses cannot consistently recoup costs and earn a fair profit on their services are a significant barrier to an accessible dispute resolution process.

---

**BOTTOM LINE:** Government-sanctioned mega-monopolies following government-sanctioned and now outdated legal rules are skirting system fairness and manipulating the market to their advantage. They have found multiple ways to avoid their obligation to pay the full costs of managing their materials – the very incentive for them to improve their recycling systems under EPR. Their actions are unfair, costly, and damaging to the sustainability and, in many cases, viability of small businesses – including legacy system providers that have served and invested in British Columbia for over half a century.



## CASE STUDIES IN UNFAIR PRACTICES

### Encorp Pacific and its Return-it Express Program

- **Acknowledged that it introduced a program that increased costs for Depots without increasing compensation**
- **Has a record of consistently increasing costs for private sector Depots without increasing compensation, while at the same time using consumer funds to open corporately-owned, fully-funded Depots to compete directly against the private sector Depots they are underfunding**

Encorp Pacific (Encorp) initiated self-proclaimed 'system improvements' by rolling out a program called Return-It Express<sup>28</sup>, which allows consumers to drop off labeled bags of unsorted beverage containers to a Depot and receive reimbursement, in the form of electronic funds, at a later time. Before Encorp introduced this program, many private sector Depots already offered similar programs, although charged a small convenience fee for this extra service to sort the containers for consumers. (Encorp had refused to pay Depots to provide this service in previous contract negotiations.) When Encorp introduced Return-It Express, it required the private sector Depots to offer the program to consumers at no charge. Return-It Express created added costs for Depots: required additional labour, additional storage space within the Depots<sup>29</sup>, new operating systems, additional utility costs, new labelling systems, and more! All of these costs were changes required by Encorp but born by the Depots. Yet, Encorp has not offered reasonable compensation to the Depots for providing these new services.

Many Depots consider Return-It Express to be a financial disaster for their businesses and the evidence confirms they are right. In 2020, Encorp completed a study where it concluded it was not paying the private sector Depots enough to support its Return-It Express program and hadn't been for more than a year. Even after Encorp shared its conclusions with the private sector Depots, it still refused to provide fair compensation or back pay to cover these costs – costs the Government of BC would say should be included in the full cost of managing obligated materials.<sup>30, 31</sup> The Government of BC has yet to enforce its regulated requirement for Encorp to cover Depots' increased costs.

While Encorp is slowly bleeding Depots dry through underfunding, it is also growing its own fleet of Encorp-owned Depots. In Encorp's 2020 Draft Stewardship Plan, it states its intention to open four corporately-owned and fully-funded Depots before 2025, which will be developed and will be run using program funds and will compete directly with the undercompensated, private sector, small business Depots.<sup>32</sup> As of September 2, 2021, Encorp reports it has opened one corporate Return-It Express Plus™ Depot and seven unstaffed corporate Express & Go™ Depot (i.e., sea can) locations.<sup>33</sup>

28 The Return-It Express Program was first piloted in 2013. Encorp began rolling out the program in 2016 and pushed for expansion in 2019-2020.

29 In 2020, Depots reported that those operating Return-In Express have had back logs of 200 -650 megabags (~34,000 – 1.1 million containers) sitting in their Depots awaiting processing.

30 Encorp Pacific., 2020. Express Sorting Fee Review. December 15, 2020. Webinar Slide Deck. Electronic copy available upon request.

31 Government of British Columbia, 2018. Guidance Recycling Regulation: Producers paying the cost of managing obligated materials and dispute resolution. Available at: [https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/rel-res/guidance-producer\\_pay\\_the\\_cost\\_and\\_dispute\\_resolution\\_2018.pdf](https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/rel-res/guidance-producer_pay_the_cost_and_dispute_resolution_2018.pdf) (viewed September 2, 2021).

32 Encorp Pacific, 2020. Beverage Container Stewardship Plan. Draft. 2020-2024. Available at: <https://www.return-it.ca/beverageplan2020> (viewed August 3, 2021).

33 Encorp Pacific, 2021:

- Express & Go. Available at: <https://www.return-it.ca/express/expressandgo/> (viewed September 2, 2021).
- Return-It Express Plus. Available at: <https://www.return-it.ca/express/plus-lolo/> (viewed September 2, 2021).

## Product Care Recycling Take-It-Or-Leave-It Contracts

- **Fees for collection sites set after consultation but without negotiation**
- **Product Care's fees for collection sites have not increased in more than two decades**

Product Care Recycling (Product Care) has three approved stewardship plans, including household hazardous wastes or HHW (i.e., paints, solvents, pesticides and gasoline), lighting products, and alarms.

**PRODUCT CARE HAS OPERATED AN EPR PLAN FOR PAINT SINCE 1994** – it was a first generation EPR system that pre-dated BC's "official" adoption EPR as a model for all of their recycling systems in 2004. In 2004, it transitioned to manage all HHW. Product Care set the rates it pays its collection sites (e.g., Depots) for paint more than two decades ago and has not increased those rates since (i.e., fee/unit or fee/volume of material collected). Its last stakeholder consultation on fees took place in 2017, and, again, it provided no offer to increase fees for Depots. Instead, Depots were given two options: take the contract with no fee increase or lose the contract. The following is a quote from their consultation:

**ISSUE RAISED BY STAKEHOLDER** – "Financial Management: Operational Costs and Handling Fees are not aligned. Impact: Depot operators are paying rising costs for leases and taxes and therefore storage space. Outcome: Costs are rising and handling fees are not; Financial viability and return on product is deteriorating. Recommendation: Increase handling fees to account for inflationary pressure on base operating costs."

**RESPONSE BY PRODUCT CARE** – "A viable collection system is fundamentally important to the Program. [Product Care] generally uses a volume-based approach to compensate collection sites. The more Program Product collected, the greater the amount of compensation. In general, collection volumes, and hence compensation, increase year over year. Compensation rates are a business decision outside the scope of the Program Plan. The Program considers that it adequately provides for the costs."<sup>34</sup>

34 Product Care Recycling, 2018. British Columbia Paint and Household Hazardous Waste Stewardship Plan. Available online: [https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/paints-solvents-gas/sp/pca\\_regeneration\\_epr\\_plan\\_and\\_approval.pdf](https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/paints-solvents-gas/sp/pca_regeneration_epr_plan_and_approval.pdf) (viewed September 17, 2021).

## Encorp Pacific and Take-It-Or-Leave-It Contracts

- **Contract terms that are overtly unfair to collection service providers yet result in cancelled contracts – and loss of primary income - if not accepted**

Prior to the implementation of EPR in 2004, privately-owned, small business Depots were free to negotiate a fair return on investment with the companies they served and their customers. They were able to run their businesses without intervention, compete amongst each other for customers, and build enough wealth to improve their businesses.

Since the introduction of EPR, Depots have been turned upside down and inside out by Encorp. As the major client for most Depots, Encorp used to recognize depots as important partners in material collection. Since 2011, Encorp has placed more and more distance between itself and Depots, demanding they act as contracted service providers while treating them as poorly regarded employees.

Over time, Encorp has given itself complete authority to dictate how Depots run their businesses, while refusing to engage in fair business negotiations to pay Depots a fair rate of return on their services. Government requires stakeholder consultation; however, Encorp has no obligation to reflect any of the input in its decisions on what it pays depots or what requirements it dictates about Depot operations. This effectively makes the value of consultation zero.

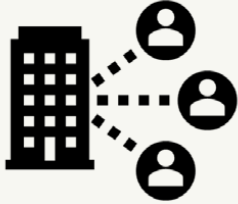
In 2021, Encorp displayed its true intentions by providing a ‘take-it-or-leave-it’ offer to Depots that will take effect in a matter of months. It informed Depots that it is replacing “Container Service Agreements” with “Master Service Agreements”, which require Depots to accept less compensation, manage more material streams (e.g., clothing), use new and more costly processes for handling materials, and use Encorp’s computer system for their operations. These demands are being dictated regardless of whether Depots have other business lines where, for example, they are required to use other types of computer systems.

If Depots refuse the new contracts, then Encorp has the power to shut them down by removing their major source of income. In 2020, Encorp closed a Depot in North Vancouver a few months after that Depot complied with Encorp’s demand for onsite improvements and invested \$20,000 in onsite improvements. Encorp then opened a new corporately-owned collection site right across the street.<sup>35</sup>

With this approach to business, Encorp is essentially annexing the businesses while bleeding them dry (*Figure 11*).

35 Encorp Pacific, 2021. Return-It Blog. Return-It & Loblaw Companies Ltd. Partnership Brings Express & Go to North Vancouver. Available at: <https://www.return-it.ca/blog/expressgo-northvan/> (viewed August 7, 2021).

## How EPR Enables Small Business Annexation



PROs set take-it-or-leave-it contract terms. No fair ROI. Contracts can be for as little as six months.



Terms require Depot investment.



Depot profitability doesn't allow for investment. Contract terms aren't long enough to enable the Depot to obtain financing.



Depot service quality falls and its service becomes non-compliant. PRO ends the contract with the Depot.



PRO opens corporately-owned Depot nearby.

Figure 11

# RECOMMENDATIONS:

## THE BRIGHT POSSIBILITY FOR EPR IN BC

BC is on the right track with using EPR as a policy framework to work towards achieving a circular economy, and the Government of BC was on the right track with the system it introduced in 2004. It recognized that mandatory targets, continuous improvement, and high costs are the basis of EPR – yet somehow these elements have been lost during the last 17 years of EPR implementation. Perhaps government didn't recognize the value or even necessity of a competitive system, or the importance of strong oversight and enforcement to ensure appropriate use of program funds and achievement of environmental targets and continuous improvement. These are improvements that can be made to the existing system.

By implementing six recommendations, BC can overcome the dark side of EPR, realize the bright possibility of EPR, and embrace the world-class waste management approach it set out to implement in 2004.

### Recommendation #1:

#### **Provide strong incentives for producers to achieve environmental results and continually improve beyond achieving just the minimum targets.**

Establish high recovery targets for all materials with meaningful consequences for not achieving targets, especially for systems that in been in place for more than five years. Establish reuse targets to drive material management up the “pollution prevention hierarchy” and ensure that PROs have incentive to invest in systems and develop products and packaging that provide opportunities for refilling (e.g., glass wine bottles), repair, remanufacturing, and reuse. Consequences will drive PROs and producers to innovate and invest in the system. If ‘recovery rate’ is not an appropriate target because of light-weighting or product lifespan, then a minimum number of waste and litter audits spanning the province should be undertaken at the PROs’ expense and there should be meaningful consequences for finding program material found in the waste-stream.

### Recommendation #2:

#### **Adopt a competitive system and eliminate government-approved stewardship plans.**

Instilling competition in the system along with consequences for not meeting targets would bolster the power of collection sites to fairly negotiate with producers. Eliminating government-approved stewardship plans will remove PROs’ regulated conduct defense under Canada’s *Competition Act* and better enable service providers to have legal recourse against anti-competitive practices that threaten their businesses.

If moving to a competitive system is not possible in the short term, then take steps to level the playing field between PROs and service providers. Require PROs responsible for managing a significant percentage of the market share of any material stream to negotiate with their third-party collection sites through a process overseen by an independent and neutral third party, funded by the PROs but responsible to both entities, and require that the negotiation results in a fair rate of return. Ensure the individual business data provided to the independent third party is protected from release to PROs. Require PROs to recognize the autonomy of their small business service providers to engage third parties (e.g., associations, consultants) to participate in negotiations on their behalf.

## Recommendation #3:

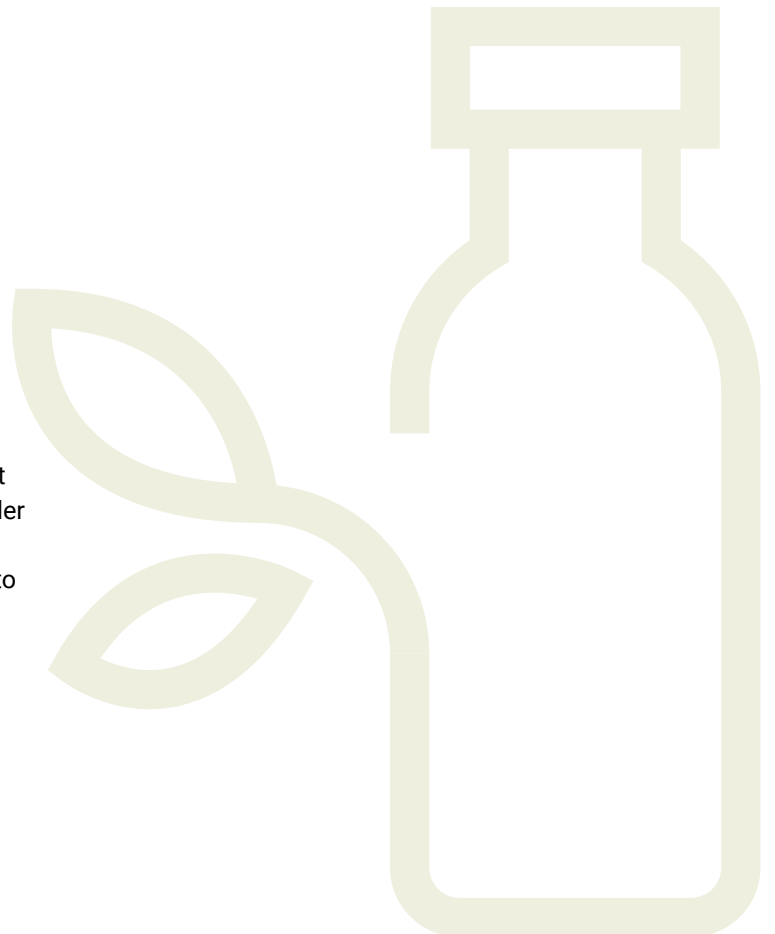
### **Hold producers accountable for transparent and responsible money management.**

Set a maximum reserve fund that any PRO can amass to an absolute maximum one year's operating expenses, based on an examination of risk and cost, and require that any money collected in eco-fees from British Columbians is spent on program operations in British Columbia. Prevent PROs and producers from using funds collected from consumers to finance dispute resolution processes or build other lines of business to offset the costs of recycling. Require PROs to be transparent about the use of unredeemed deposits and reserves, including how they are using consumer money to invest in system improvements.

## Recommendation #4:

### **Improve oversight and hold producers accountable for achieving environmental results.**

BC government staff are at capacity and its environment staff are not experts in reading financial returns. EPR can be greatly enhanced by creating a third-party oversight agency that can act as a clearinghouse for producer and service provider data, hold producers accountable to targets, and provide government with the information it needs to improve its regulations in the future.



## Recommendation #5:

**Encourage fair business practices by removing the ability for PROs to use their market power to devalue and bully legacy service providers.**

Make an amendment to the *Recycling Regulation* Schedule 1: Beverage Containers to recognize and protect the legacy Bottle and Recycling Depot system. Require Encorp and BRCCC to collect from and pay for beverage containers from all existing Return-It Bottle Depots.

## Recommendation #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.**

PROs can spend nearly endless program funds on dispute resolution systems, whereas small businesses are limited by their own reserves. This allows PROs to outspend small businesses during disputes and win through threat of small business bankruptcy. Level the playing field in dispute resolution by requiring any PRO managing a significant market share of any material stream to fund the majority of the costs any dispute resolution, proportional to the most recent annual revenues of each business. This will ensure that each party has a relative 'stake in the game' in resolving disputes.

