

August 14, 2003

Mr. P.K. Misra
Director
Waste Diversion Policy Branch
Ministry of the Environment
135 St. Clair Avenue West
Toronto, Ontario, M4V 1P5

Dear Dr. Misra,

On behalf of the WDO Board of Directors I submitted a letter to you dated May 20, 2003 in response to your letter of April 17, 2003 in which you requested clarification of four aspects of the Blue Box Program Plan (BBPP). You have stated that this response did not adequately address your request for clarification regarding the rules to be adopted by Stewardship Ontario for identifying stewards and for the determination of fees to be paid by stewards. Please accept this letter as our revised response to your original request.

In order to ensure that we have adequately addressed your request for clarification of all four of the issues that you set out in your letter of April 17, 2003, I have attached to this letter four Addendums to the BBPP:

Addendum 1 - Our original response as to how the BBPP seeks to affect Ontario's marketplace in a fair manner.

Addendum 2 - Our original response outlining the dispute resolution process for matters related to municipal payments.

Addendum 3 - A revised response on the rules to be adopted by Stewardship Ontario regarding identifying stewards and for determining fees to be paid by stewards.

Addendum 4 - A revised amendment to the Program Agreement between the WDO and Stewardship Ontario specifying agreement to the rules as outlined in Addendum 3.

In addition to addressing these four matters, which were set out in your letter of April 17, 2003, I would like to take this opportunity to provide additional clarification on two other issues resulting from review of the BBPP as submitted.

A number of commentators have noted that the BBPP as submitted does not clearly state the material specific recycling targets expected to be achieved from implementation of the plan. This issue is addressed in:

Addendum 5 - Material specific diversion targets of the BBPP.



Furthermore, Stewardship Ontario has provided an addendum intended to replace the bylaws of the corporation included as Appendix V to the BBPP after Stewardship Ontario is continued under the WDA and designated an industry funding organization. The revised wording as attached authorizes the associations which are represented on the Board of Stewardship Ontario to appoint Directors and Alternates to the board in the first year of the BBPP, post continuance under the WDA 2002. The restructuring committee of Stewardship Ontario will then recommend a long term governance model following review of the data to be submitted by stewards and to allow for members to directly elect directors in subsequent years in a manner that enjoys the support of a large portion of the community of stewards:

Addendum 6 – Stewardship Ontario Bylaws

The WDO Board of Directors has reviewed and approved submission of this letter and the six Addenda to the BBPP as attached and confirm that these addenda set out the directions and steps to be taken by Stewardship Ontario upon approval of the BBPP.

I believe that this submission provides the clarifications that you have requested in your letter of April 17, 2003. With these clarifications the WDO reconfirms its approval of the BBPP in its entirety and we request that the Minister approve the program plan as quickly as possible.

Sincerely,



Gemma Zecchini
Chair
Waste Diversion Ontario

Attached:

- 1) BBPP Addendum 1 – How the BBPP Seeks to Affect Ontario’s Marketplace in a Fair Manner
- 2) BBPP Addendum 2 - Dispute Resolution Process for Matters Related to Municipal Payments
- 3) BBPP Addendum 3 – Rules For Stewards With Regards To Payment of Fees
- 4) BBPP Addendum 4 - Addendum to the Program Agreement
- 5) BBPP Addendum 5 – Material Specific Diversion Targets
- 6) BBPP Addendum 6 – Stewardship Ontario Bylaws

ATTACHMENT 1

BBPP ADDENDUM 1

HOW THE BLUE BOX PROGRAM PLAN SEEKS TO AFFECT ONTARIO'S MARKETPLACE IN A FAIR MANNER

Section 5(c): "Seek to ensure that waste diversion programs developed under this Act affect Ontario's marketplace in a fair manner."

The procedures used in the development of the Blue Box Program Plan in general and the structure of the proposed fee setting methodology and governance model in particular ensure that all persons likely to be affected by the program are treated in a fair manner. Key examples of this include:

1. Extensive consultation was held with potential stewards, materials and packaging suppliers, municipalities and the public during the development of the program as outlined in Sections 4.4, 4.5, 4.6 and Appendix VII. Opportunities to participate in the development of the program were widely promoted and hundreds of affected companies participated and contributed to the design of the BBPP.
2. A broad range of Stewards and their material and packaging suppliers were directly involved in the development of the BBPP, including creation of a process to determine the costs to manage blue box materials and in the development of the proposed fee setting methodology. In addition to participation through the consultation program and direct submissions to Stewardship Ontario, two primary advisory committees were established to support the development of the BBPP:
 - a. The Materials and Packaging Advisory Committee included representation from brand owners, retailers, publishers and all major packaging material suppliers.
 - b. The Data and Reporting Advisory Committee included representation from all major industry sectors expected to be designated as Stewards under the program.
3. The cost allocation and fee setting methodologies adopted in the development of the program assessed the printed papers and packaging material streams separately, and determined the actual costs to manage each of these material groupings. A key principle underpinning this work was that there would be no cross-subsidization of these material groups.
4. The vast majority of Stewards responsible for putting blue box materials into the marketplace sell their products in a variety of obligated materials. Given that the financial obligation to municipalities is fixed at 50% of the net costs of all municipal Blue Box programs, Stewards have a clear incentive to ensure that all designated Blue Box wastes are treated in a fair and equitable manner and that all material and packaging options remain available to them.
5. The BBPP addresses all Blue Box materials in the Ontario market, regardless of whether they are produced in the province or imported. Given that the proposed fees apply equally to businesses located within the province, or to the first importer of material into the province, Ontario and out of province businesses are treated equally.
6. The proposed fee setting methodology:

- a. Supports the stated purpose of the Act to promote the reduction, reuse and recycling of waste;
- b. Supports existing policies of the Ministry of Environment and the Government of Ontario to encourage the diversion of waste from landfill through Blue Box recycling programs;
- c. Assigns fees which take into consideration the recovery rates that have been achieved by each designated blue box waste; the costs to manage each of these wastes; and the costs that would be incurred to manage each of these wastes at an equal rate of diversion.

This fee setting methodology has the intent of providing a financial incentive to achieve higher diversion rates; to encourage Stewards to select materials that have a lower net cost to manage; and to share the BBPP costs across all Blue Box materials sold in the Ontario market while providing recycling collection, processing, promotion & education, market development and research and development services for all affected Stewards.

7. The Board of Directors of Stewardship Ontario has reviewed and approved all elements of the BBPP throughout its development. The Stewardship Ontario board includes representation from all the affected industry sectors with voting powers appointed to the WDO under the Act. Collectively these industry sectors represent more than 90% of obligated Blue Box materials. Stewardship Ontario has concluded that the BBPP as submitted treats all affected companies in a fair manner.
8. The Board of Directors of the WDO has reviewed and approved all elements of the BBPP throughout its development and has concluded that the BBPP as submitted treats all affected companies in a fair manner.

ATTACHMENT 2

BBPP ADDENDUM 2

**DISPUTE RESOLUTION PROCESS FOR MATTERS RELATED TO MUNICIPAL
PAYMENTS**

Section 5(e): “Establish a dispute resolution process for, i) IFO and municipality Re: payments.”

Under the Blue Box Program Delivery Model as outlined in Section 5 of the BBPP, disputes pertaining to payments to municipalities would not arise between the IFO and municipalities, but rather between the WDO and municipalities, as it is the WDO that approves the funding allocation model and that makes the final decision regarding funding allocation.

That said two possible types of disputes could arise related to the allocation of funding.

- i) A dispute over the funding allocation model or an aspect of the funding allocation model.
- ii) A dispute over municipal specific information (tonnage, population density) that is input to the model to determine a municipality’s annual funding allocation. The population density inputs to the model are from an established information source (Census data). It was determined that the only element over which a dispute could reasonably arise would be adjustments to a municipality’s reported tonnage data, which has a direct effect on the allocation of funding to that municipality.

Given this possibility the proposed dispute resolution mechanism that would be used under these circumstances is as follows:

i) Disputes related to the allocation model

Given that the municipal funding allocation model has been approved by the WDO Board, and is a significant part of the WDO Blue Box Plan it would be inappropriate to subject the model itself to a dispute resolution process. However, the WDO should continue to review the model itself and its key parameters through the annual review of the Blue Box Plan.

ii) Disputes related to adjustments to a municipality’s reported tonnage data

With regard to the second category, disputes could arise over adjustments that may be required to the tonnage data reported by a municipality. These disputes could arise in instances where municipal tonnage data are submitted and reviewed by MIPC. This review and any proposed adjustments to the data would be based on objective and transparent criteria. Through the review process, MIPC may question some material-specific tonnage data, for example, because it is either significantly lower or significantly higher than the average recovery rate for that material.

In these instances, the municipality would be contacted to determine why its tonnage data were not consistent with data from other municipalities. If the response is satisfactory, the tonnage recorded will remain unchanged. The municipality also has the opportunity (as outlined in Section 6.3.3 of the Blue Box Program Plan) to have a program review conducted to resolve the issues in question.

However, if the response from the municipality is insufficient, MIPC reserves the right to adjust the tonnage data in question, and will inform the municipality of the adjustment and the reasons for the adjustment.

At this point in the process, the municipality may return to the MIPC with additional information, or may opt for the more formal dispute resolution process available to them through the WDO.

Dispute Resolution Process

The Executive Director (E.D.) of the WDO would administer the Dispute resolution process as follows:

Steps

- i) The E.D. would begin to review the case within two weeks of receiving the request from the municipality for the dispute resolution process.
- ii) The E.D. or her designate (e. g., external reviewer) would consider, within one week of its receipt, the information provided by the municipality and the information provided by MIPC. The E.D. would consider the criteria and process used by MIPC to reach its decision.
- iii) The E.D. would either make her judgment based on the information provided, or, if this information was considered insufficient, may request further information from the municipality and/or MIPC.
- iv) If this information still proved insufficient to reach an informed judgment, the E.D. may request, with the consent of the municipality, that an external reviewer be sent to the municipality to review the collection and processing facility, or to gather other information as required to reach a final judgment.
- v) The E.D.'s judgment would be final and a further appeal would not be permitted. The WDO Board would not be involved in the dispute resolution process.

ATTACHMENT 3

BBPP ADDENDUM 3

RULES FOR STEWARDS WITH RESPECT TO PAYMENT OF FEES

Section 25(4) of the Waste Diversion Act states: “ The agreement referred to in section (3) must set out the wording of the rules that the industry funding organization proposes to make under section 30 and must include the agreement of Waste Diversion Ontario to the making of those rules.”

The WDO Board of Directors has approved an addendum to the Blue Box Program Plan as submitted to the Minister of Environment on February 28, 2003 as follows:

Article 10.3.6

Subject to the approval of the Minister, the Blue Box Program Plan and the Rules made by Stewardship Ontario arising therefrom as set out in Schedules A and B respectively, are hereby accepted by Waste Diversion Ontario.

Schedule B

Rules made by Stewardship Ontario respecting the Blue Box Program Plan

In these Rules:

Adoption Date means the date on which Stewardship Ontario formally makes these rules under section 30 (1) of the Act. The adoption date will be established within 30 days of the date that the Minister files a regulation continuing Stewardship Ontario as an industry funding organization under the Waste Diversion Act, 2002 and designating Stewardship Ontario as the industry funding organization for the Blue Box program;

Base Interest Rate means the pre-judgement interest rate established from time to time under the Rules of Civil Procedures of the Courts of Justice Act for pre-judgement interest;

Brand Owner, with respect to a specific trademarked printed material which is Designated Blue Box Waste, and with respect to a specific good, the packaging of which is Designated Blue Box Waste, where either the good or the packaging bears a trademark, means a person resident in Ontario who is the registered holder of the trademark, or licensee of a nonresident holder of the trademark, or a person who owns the intellectual property rights to the brand of the product or printed material or is the licensee of those rights;

Commencement Date means the first day of the month that falls not less than 30 nor more than 90 days after the Minister files a regulation continuing Stewardship Ontario as an industry funding organization under the Waste Diversion Act, 2002 and designating Stewardship Ontario as the industry funding organization for the Blue Box program;

Designated Blue Box Waste means Packaging and Printed Materials that are comprised of metal, glass, paper, plastics, textiles or any combination thereof but does not include packaging or printed materials used exclusively for packaging products during their shipment from their place of manufacture to their place of distribution in Ontario, and packaging that is intended for continued use as packaging by the consumer over a period of five years or more;

Excluded Waste means Designated Blue Box Waste that is retained by a steward or its commercial customer, franchisee or licensee, at a location which one of them owns or occupies and is not carried away by retail customers and is not collected by municipal waste management services.

Filed means electronically submitted at www.stewardshipdatasystem.ca or delivered to 26 Wellington Street East, Suite 601, Toronto, Ontario, M5E 1S2;

First Importer means a person resident in Ontario, who imports into Ontario:

- a) a specific printed material which is Designated Blue Box Waste, for which a Brand Owner does not exist, or
- b) a specific good, the packaging of which is Designated Blue Box Waste, for which a Brand Owner does not exist;

Franchisor, Franchisee and Franchise System have the meaning ascribed thereto under the Arthur Wishart Act (Ontario);

Packaging means materials that are used for the containment, protection, handling, delivery and presentation of goods sold or delivered to consumers in Ontario;

Printed Materials means printed materials that are sold, issued, distributed or delivered to consumers in Ontario;

Published Address means an address in Ontario appearing in a current telephone directory or a recognized current published business directory;

Resident in Ontario has the meaning ascribed hereunder by the Income Tax Act (Ontario);

Rules means these rules;

Steward's Report means a report prepared by a steward and filed with Stewardship Ontario, describing the amount of Designated Blue Box Waste, expressed in kilograms by category as required under these Rules, that were sold or delivered in Ontario in 2002 by the steward and containing the information and calculated in accordance with Appendix A.

A) Designation of Stewards

- (i) A Brand Owner is designated as a steward with respect to all Printed Material and the Packaging of all goods for which he is Brand Owner.
- (ii) A First Importer is designated as a steward with respect to all Printed Material and the Packaging of all goods for which he is First Importer.
- (iii) A Franchisor is designated as a steward with respect to all Printed Material and the Packaging of all goods, which are within the relevant Franchise System.
- (iv) Notwithstanding clause (iii), a Franchisee is designated as a steward with respect to all Printed Material and the Packaging of all goods which are within the relevant franchise system in the event the Franchisor is not the supplier to the Franchisee of all or substantially all of such material and in such case, the Franchisor is not designated as a steward.

- (iv) Any person who elects to become a steward respecting Designated Blue Box Waste that would otherwise be the responsibility of another steward, shall be designated a steward upon execution of a contract with Stewardship Ontario, notice of which appears on the Stewardship Ontario website, and the person otherwise responsible is exempt from the requirement to pay fees respecting such Designated Blue Box Waste during the currency of the contract.

B) Fees Payable

- i) Stewards shall pay fees to Stewardship Ontario in accordance with these Rules. The amount of fees payable shall be the sum for categories set out in the Steward's Report of the product of the amount of each such Designated Blue Box Waste set out in a Stewards' Report multiplied by the rates set out in the table of fees attached as Table 1 to these rules.

Table 1: Table of Fees

Category	Material	<i>Annualized Fee</i>
<i>Printed Paper</i>	Newspaper	0.028 ¢/kg
	Magazine and Catalogues	0.081 ¢/kg
	Telephone Directories	0.081 ¢/kg
	Other Printed Paper	0.251 ¢/kg
<i>Packaging</i>		
Paper based packaging		4.728 ¢/kg
Plastic packaging		6.692 ¢/kg
Steel packaging		3.633 ¢/kg
Aluminum packaging		-5.465 ¢/kg
Glass packaging	Flint/Clear	3.723 ¢/kg
	Coloured	4.016 ¢/kg

- ii) The fees payable under the Steward's Report shall be prorated to the portion of the year 2003 between the Commencement Date and December 31st 2003;
- iii) Stewards who are members of the Canadian Newspaper Association and the Ontario Community Newspapers Association shall be entitled to pay up to \$1,300,000, in the aggregate, of fees payable, by providing advertising and in-kind services as approved by Waste Diversion Ontario, and valued in accordance with their published advertising rates at the time of the appearance of such advertising. The \$1,300,000 maximum amount for in-kind payment shall be prorated to the portion of the year 2003 between the Commencement Date and December 31st 2003.
- iv) Notwithstanding the above the Liquor Control Board of Ontario shall pay fees of \$5,000,000 for 2003.

C) Steward's Report

Every steward shall file a Steward's Report with Stewardship Ontario not later than 60 days after the Commencement Date, or 90 days after such steward is notified, whichever is later, together with the fees payable under these rules. A steward is notified:

- a) on the day the steward receives personal service, or

- b) three days following the sending by prepaid first class postage to the steward at its Published Address in Ontario, of a copy of these Rules or a notice of how to obtain a copy of these Rules.

D) Penalties, Interest and Back Fees

Stewards who fail to pay fees within 60 days of the date specified in C), above will be subject to a penalty calculated at 10% of fees due and payable. Interest on unpaid fees shall accrue from such date at the Base Interest Rate plus 3%.

E) Steward Exemptions

- i) Stewards are exempted from filing a Steward's Report and paying the fees otherwise due if in 2002, the steward had gross revenues in Ontario of less than \$2 million in 2002, which in a retail context shall mean the cost of goods purchased was less than \$2 million.
- ii) Steward's shall file a Steward's Report but will be exempt from payment of fees otherwise due provided that in 2002:
 - a) the steward sold, distributed, issued or delivered Printed Materials which are newspapers in a quantity less than 75 tonnes, and
 - b) the steward sold, distributed, issued or delivered Packaging and Printed Materials, other than newspapers, in a quantity less than 15 tonnes.
- iii) Notwithstanding the above Stewardship Ontario may, acting reasonably require a steward to file a Steward's Report by sending a written request to a steward.

F) Record Retention

Stewards shall maintain records to substantiate and verify the amount set out in their respective Report for a period of not less than five years from the date of the Report to which they relate. Stewardship Ontario shall have the right to audit and inspect such records respecting a Report up to five years after the date of receipt of such Report by Stewardship Ontario.

G) Dispute Resolution

If any dispute arises between a steward and Stewardship Ontario as to the amount of Designated Blue Box Waste that is required to be included in a Steward's Report:

- i) The parties shall attempt to resolve the dispute through designated representatives from each of Stewardship Ontario and the steward within thirty (30) days upon which written notice of the dispute was first given, or as otherwise agreed upon;

- ii) If the parties are unable to resolve the dispute within the above period, the steward and Stewardship Ontario shall within thirty (30) days thereafter jointly select an arbitrator to arbitrate the dispute.
- iii) The arbitrator shall render a decision on the dispute and the award arising therefrom, in accordance to the Arbitration Act Ontario.
- iv) Non-payment or failing to file a Steward's Report by a steward shall not be items subject to arbitration.

Appendix A

Form of Steward's Report

Name of Steward

Mailing address

Billing address

Contact Person for Steward Report

Brand names responsibility of Steward

Kilograms of Designated Blue Box Waste sold or delivered in 2002

Printed Paper Categories	Kilograms
Newspaper	
Magazines and Catalogs	
Telephone Books	
Other Printed Papers	

Packaging Categories	Kilograms
Corrugated packaging,	
Boxboard packaging,	
Gable top containers,	
Aseptic containers,	
Paper laminants	
PET bottles,	
HDPE bottles,	
Other rigid plastics,	
Polystyrene,	
LDPE/HDPE film,	

Plastic laminant films Steel paint cans, Steel aerosol containers, Other steel cans, Aluminum containers, Aluminum semi-rigid and flexible foil packaging, Glass packaging-Flint (clear), Glass packaging-colored, LCBO Glass packaging-Flint (clear), LCBO Glass packaging-colored	
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Description of methodology and data used to prepare this Report

Description of Excluded Waste deductions from Report, including kilograms or percentage used by material type

Notwithstanding the above, a Steward may elect to use the Sectoral Calculator as described in the Plan.

ATTACHMENT 4

BBPP ADDENDUM 4

ADDENDUM TO THE PROGRAM AGREEMENT

Section 30(4) of the Waste Diversion Act states, "A rule made under this section is not valid unless the wording of the rule is set out in the agreement referred to in subsection 25(3)."

The WDO Board of Directors has approved an addendum to the Blue Box Program Plan as submitted to the Minister of Environment on February 28, 2003 with the following addition to paragraph 10.18.1 to the Program Agreement:

10.18.1 This Agreement *and the rules pertaining to Section 30 of the Act as set out in Addendum 3 to the Blue Box Program Plan* embodies the entire Agreement between the parties with regard to the operation of Stewardship Ontario and supercedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of the agreement.

Signatures

IN WITNESS WHEREOF the parties hereto have executed this agreement as of August 14, 2003

I have the authority to bind Waste Diversion Ontario.
WASTE DIVERSION ONTARIO



Gemma Zecchini
Chair

I have the authority to bind Stewardship Ontario.
STEWARDSHIP ONTARIO



Dennis Darby
Chair

ATTACHMENT 5

BBPP ADDENDUM 5

MATERIAL SPECIFIC DIVERSION TARGETS

The WDO Board of Directors has approved an addendum to the Blue Box Program Plan as submitted to the Minister of Environment on February 28, 2003 as follows:

Section 6.2.5 – Interim Material Specific Diversion Targets

Section 6.2.3 outlines a process by which the WDO will review and set material specific diversion targets for the period 2004 – 2006 based upon detailed audits of municipal waste and material specific target setting linked to market development efforts. Section 6.2.4 outlines two possible future waste recovery scenarios that may result from implementation of the Blue Box Program Plan.

While this detailed planning work is being completed, the WDO has adopted as interim material specific waste diversion targets those set out in Table 6.6 of the Blue Box Program Plan under the 50% waste diversion scenario.

The setting of material specific diversion targets within the Blue Box Program Plan will be linked to the setting of steward's fees under the program in order to promote the following objectives:

1. To promote the recovery through blue box programs of the “next least costly unit of waste” to the benefit of all parties while sharing some of these program costs fairly across all stewards.
2. To promote the selection by stewards of materials with higher recovery rates given that there are benefits to all stewards from the high recycling rates achieved by some materials.
3. To encourage stewards to take steps to encourage their customers to recycle the materials the steward uses.
4. To promote the selection by stewards of materials with lower recycling costs in order to reduce the costs of the program to all parties.
5. To reach the overall diversion targets set out in the Plan in the most cost effective manner to all stakeholders while sharing program costs fairly among all stewards.
6. To discourage the selection by stewards of materials that are not widely accepted in blue box programs, but are often collected and processed as residuals in these programs, resulting in program costs to municipalities and shared by all stewards under the program.

BBPP ADDENDUM 6

STEWARDSHIP ONTARIO BYLAWS

**GENERAL BY-LAWS
GOVERNING THE AFFAIRS OF
STEWARDSHIP ONTARIO**

Interpretation

Definitions. In this by-law, unless the context otherwise requires:

"Act" means the *Corporations Act*, R.S.O. 1990, C.C-38, as amended.

"Applicable Law" means all requirements which the Corporation has agreed to meet, imposed by governments, courts or other regulatory bodies, including this by-law, as amended or supplemented from time to time.

"Board" means the Board of Directors of the Corporation.

"Board Resolution" means:

a resolution passed at the meeting of the Board by a simple majority of the votes cast by directors entitled to vote at such a meeting; or

a resolution that is consented to in writing by all of the directors.

"By-Law" means this by-law as amended from time to time.

"Corporation" means Stewardship Ontario.

"Director" means a director of the Corporation.

"WDA" means the *Waste Diversion Act*, 2002, S.O., 2002, as amended.

Words importing the singular number include the plural and vice-versa; and words importing gender include the masculine, feminine and neuter genders; and words importing a person include an individual, partnership, association, body corporate, trustee, executor, administrator and legal representative.

Affairs of the corporation

Head Office. The head office of the Corporation shall be in the city of Toronto in the province of Ontario, Canada, or at such location therein as the Board from time to time determines. The location of the head office may be changed in accordance with this By-Law and the Act.

Financial Year. Until changed by the Board, the financial year of the Corporation shall end on the last day of December in each year.

Execution of Instruments. Deeds, transfers, assignments, contracts, obligations, certificates and other instruments must be signed on behalf of the Corporation by two persons, one of whom holds the office of the Chair or Vice Chair and the other of whom holds the office of Chief Executive Officer or Secretary or any other office created by By-Law or by the Board. In addition, the Board may from time to time authorize such person or persons to execute any particular instrument or class of instruments.

Banking Arrangements. The banking business of the Corporation, including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Board.

Authority. The maximum amount of funds which the Corporation can borrow will be limited by budgets approved from time to time by the Board.

Auditors. The Corporation shall appoint an auditor to audit the accounts of the Corporation. The remuneration of the auditor shall be fixed by the Board.

Minutes. The minutes of the Board or any committee thereof shall be available to the members of the Board, each of whom shall, upon request, receive a copy of such minutes.

Rules and Regulations. Subject to the Act and the WDA, the Board may establish rules and regulations not inconsistent with the By-Laws relating to the management and operation of the Corporation.

Directors

First Directors. The applicants for incorporation shall be the first directors of the Corporation.

Composition of Corporation. Upon continuance of the Corporation under the WDA, the Corporation shall be composed of its Board of Directors, and the Board of Directors shall be composed of:

One member appointed by the Food and Consumer Products Manufacturers of Canada

One member appointed by the Canadian Council of Grocery Distributors

One member appointed by the Retail Council of Canada

One member appointed by Refreshments Canada

One member appointed by the Canadian Newspaper Association

One member appointed by the Liquor Control Board of Ontario

One member appointed jointly by the Canadian Paint and Coatings Association and the Canadian Consumer Specialty Products Association

The chief executive officer of the corporation who shall be appointed by the board of directors.

Appointment of Alternates. Each member of the Board, other than the Chief Executive Officer, may from time to time, in his or her absence, appoint an alternate, who may participate in Board meetings and vote on matters before the Board.

Qualification. No person shall be qualified for election as a Director if such person is less than 18 years of age; is of unsound mind and has been so found by a court in Canada or elsewhere; is not an individual; or has the status of a bankrupt.

Action by the Board. The Board shall manage the business and affairs of the Corporation. When there is a vacancy in the Board, the remaining directors may exercise all the powers of the Board as long as a quorum remains in office.

Meeting by Telephone or Other Electronic Means. If all the Directors of the Corporation consent thereto generally or in respect of a particular meeting, a Director may participate in a meeting of the Board or of a committee of the Board by means of such conference telephone or other communications facilities as all directors consent to the use of in advance of the meeting, to which all Directors have equal access and as permit all persons participating in the meeting to communicate adequately with each other. A Director participating in such a meeting is deemed to be present at the meeting and may be counted in the quorum present at such meeting. Voting at such meetings shall be by poll of the participants signifying verbally or by electronic means of communication their assent or dissent on the matter before the Board for approval. If the electronic means of communication is not secure, each Director shall be so advised by the Chair and a procedure to secure discussion and voting on matters before the Board shall be agreed upon in advance of the meeting.

Place of Meetings. Meetings of the Board may be held at any place in or outside Ontario.

Calling of Meetings. Meetings of the Board shall be held from time to time at such time and at such place as the Board or any two Directors may determine.

Notice of Meeting. Notice of the time and place of each meeting of the Board shall be given in the manner provided in Section 7 to each Director not less than forty-eight hours (48 hrs) before the date of the meeting. A notice of a meeting of Directors need not specify the purpose of or the business to be transacted at the meeting. Notice of an adjourned meeting of the Board is not required if the time and place of the adjourned meeting is announced at the original meeting.

Regular Meetings. The Board may appoint a day or days in any month or months for regular meetings of the Board at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of such regular meetings shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting.

Chair. The Chair of the Corporation shall be the Chair of any meeting of the Board. If the Chair is not present, the Vice-Chair shall be the Chair of any meetings of the Board. If the Chair and Vice-Chair are not present, the Directors present shall choose one of their members to be Chair of the meeting.

Quorum. The quorum for the transaction of business at any meeting of the Board shall consist of a majority of the Directors.

Votes to Govern. Decisions of the Board shall be determined by majority vote. Each member of the Board, or his or her alternate in his or her absence, is entitled to one vote. In the event of a tie vote, the Chair is entitled to cast a second vote.

Remuneration and Expenses. The Directors shall serve as such without remuneration, and no Director shall directly or indirectly receive any profit from such position. However, directors will be entitled to be reimbursed for traveling and other expenses properly incurred by them in attending meetings of the Board or any committee thereof. Nothing herein shall preclude any Director who is engaged in or is a member of a firm engaged in any business or profession from acting in and being paid the usual professional costs and charges for any professional business required to be done in connection with the administration of the affairs of the Corporation. Also, nothing herein contained shall be construed to preclude any Director from serving the Corporation as an officer or in any other capacity and receiving reasonable compensation therefore.

Committees

Committees of the Board. The Board may appoint such committees as it, from time to time, considers advisable. No committee shall have the power to act for, or on behalf of, the Board but shall only have the power to make recommendations to the Board. Any committee member may be removed by a majority vote of the Board.

Future Structure Committee. There shall be a Future Structure Committee, which shall be comprised of up to twenty (20) persons and consist of such Directors and other persons as the Directors may from time to time determine. The Future Structure Committee shall prepare a written proposal for the directors, recommending a proposed future structure of the Board and their method of appointment, which would take effect at the end of the first year of the Corporation's existence. Such proposal shall take into consideration the amounts of money paid to the Corporation by its Members, the industry groups of such Members and such other factors as the committee may determine.

Other Committees of the Board. Subject to this Section, the Board may establish one or more other committees of the Board and fix their terms of reference and composition as it sees fit.

Procedure. Unless otherwise determined by the Board, each committee and advisory body shall have power to fix its quorum at not less than a majority of its members, to elect its chair and to regulate its procedure.

Officers

Appointment. The Board may from time to time appoint a Chair, Vice-Chair, Chief Executive Officer, Secretary or Treasurer, and other officers as the Board may determine, including one or more assistants to any of the officers so appointed. One person may hold more than one office. The Board may specify the duties of and, in accordance with this By-Law and subject to the Act, delegate to such officers, powers to manage the business and affairs of the Corporation. An officer, other than Chair, Vice Chair and the chief executive officer, may but need not be a director.

Chair of the Board. The Board shall appoint a Chair of the board who shall be a Director. The Chair shall be subject to the authority of the Board, preside at all meetings of the Board and Members; and shall have such other powers and duties as the board may specify.

Vice-Chair. The Board shall also appoint a Vice-Chair who shall be a Director. The Vice-Chair shall have such powers and duties as the Board may specify. During the absence or disability of the Chair, the Vice-Chair shall also have the powers and duties of that office.

Chief Executive Officer. The Chief Executive Officer shall, subject to the authority of the Board, have general supervision of the affairs of the Corporation, and shall be a director ex officio.

Secretary: The Secretary shall attend and be the secretary of all meetings of the Board, members and committees of the Board, and shall enter or cause to be entered in the records kept for the purpose, minutes of all proceedings thereat. The Secretary shall give or cause to be given, as and when instructed, all notices to Members, Directors, officers, auditors and members of committees of the Board and shall be the custodian of all books, records and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose, and have such other powers and duties as otherwise may be specified.

Treasurer: The Treasurer, or person performing the usual duties of a Treasurer, shall arrange to keep full and accurate accounts of all receipts and disbursements of the Corporation in proper books of account and shall deposit all money or other valuable effects in the name and to the credit of the Corporation in such bank or banks as may from time to time be designated by the Board. He shall arrange to disburse the funds of the Corporation under the direction of the Board, taking proper vouchers therefor and shall render to the Board at the regular meetings thereof or whenever required of him, a written account of all his transactions as Treasurer, and of the financial position of the Corporation. He shall also perform such other duties as may from time to time be determined by the Board.

Powers and Duties of Officers. The powers and duties of all officers shall be such as the terms of their engagement call for or as the Board may specify. The Board may, from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any officer. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board otherwise directs.

Term of Office and Remuneration. The Board, in its discretion, may remove any officer of the Corporation. Otherwise each officer appointed by the Board shall hold office until a successor is appointed or until an earlier resignation is received by the Corporation. The officers shall be paid such remuneration for their services as the Board may from time to time determine.

Agents and Attorneys. The Corporation, by or under the authority of the Board, shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers (including the power to sub-delegate) of management, administration or otherwise as may be thought fit.

Protection of directors, officers and others

Limitation of Liability. Every Director and officer of the Corporation in exercising their powers and discharging their duties shall act honestly and in good faith with a view to the best interests of the Corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no Director or officer shall be liable for the acts, omissions, failures, neglects or defaults of any other Director, officer or employee, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the money of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the money, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgement or oversight on the part of such Director or officer, or for any other loss, damage or misfortune which shall happen in the execution of the duties of office or in relation thereto; provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the Act and the regulations thereunder.

Indemnity. Subject to the Act, the Corporation shall indemnify Directors or officers, former Directors or officers, or persons who act or acted as Directors or officers of the Corporation or at the Corporation's request as directors or officers of a body corporate of which the Corporation is or was a shareholder or creditor, and their heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgement, reasonably incurred by them in respect of any civil, criminal or administrative action or proceeding to which they are made a party by reason of being or having been a Director or officer of the Corporation or such body corporate, if (a) they acted honestly and in good faith with a view to the best interests of the Corporation; and (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, they had reasonable grounds for believing that their conduct was lawful. The Corporation shall also indemnify such persons in such other circumstances as the Act or law permits or requires. Nothing in this By-Law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this By-Law.

Notices

Method of Giving Notices. Any notice (which term includes any communication or document) to be given (which term includes sent, delivered or served) pursuant to the Act, the letters patent, the By-Law or otherwise to a Director, officer, auditor or Member of a committee of the Board shall be sufficiently given if delivered personally to the person to whom it is to be given or if delivered to the person's recorded address including fax number address or if mailed to such person at such recorded address by prepaid ordinary or air mail or if sent to such person at such recorded address by any means of prepaid transmitted or recorded communication. A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered for dispatch. The Secretary may change or cause to be changed the recorded address of any member, Director, officer, auditor or member of a committee of the board in accordance with any information believed by the Secretary to be reliable.

Computation of Time. In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the day of giving the notice shall be excluded and the day of the meeting or other event shall be included.

Omissions and Errors. The accidental omission to give any notice to any Member, Director, officer, auditor or member of a committee of the Board, or the non-receipt of any notice by any Member, Director, officer, auditor, or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

Waiver of Notice. Any Member (or duly appointed proxy holder), Director, officer, auditor may waive any notice required to be given under any provision of the Act, the letters patent, the By-Law or

otherwise and such waiver, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice.

Dispute resolutions

Disputes. Disputes among Members, and between any Member and the Corporation shall be referred to a Dispute Resolution Task Force (“Task Force”) established by the Directors within 10 days of receipt of a written notice of dispute from any member.

The Task Force shall convene a meeting following ten (10) days' written notice to all affected parties, and entitle the Corporation or Member as the case may be to attend with legal counsel and written documentation as it may see fit. The Task Force shall follow the principles of natural justice and not permit a Task Force member to participate in the event of a real or perceived conflict.

Any decision of the Task Force shall be made in writing.

Amendment

This By-Law may be amended by a resolution of the Directors.

Effective date

Effective Date. This By-Law shall come into force when made by the Board and upon continuance under the WDA.