

Chapter 3

Department of the Environment and Local Government

Beverage Containers Program

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Department of the Environment and Local Government Beverage Containers Program

Background

3.1 The Province of New Brunswick's *Beverage Containers Act* was proclaimed in 1992 and the Beverage Containers Program came into effect soon afterward. The Program's goals were to:

- reduce the number of beverage containers which are littered;
- divert beverage containers from the solid waste streams; and
- encourage the sound use of resources and energy.

3.2 Since the inception of the program, the Department of the Environment and Local Government estimates that New Brunswickers have diverted approximately three billion beverage containers from landfills and roadsides. This represents an overall recovery rate of approximately 81% (according to the Department's data as at May 2003). When originally implemented, the Beverage Containers Program was seen as a very innovative program. We were intrigued by aspects of it and included it in our 1994 value-for-money audit of the Department of the Environment.

3.3 Since it has been ten years since our Office conducted an audit of the Beverage Containers Program, and twelve years since the program's inception, we decided to look at it again to determine if it has reached its intended results. We also had some interest in following up on the findings of our 1994 Report.

3.4 To aid in understanding our findings and recommendations, we believe it is important for the reader to have an adequate knowledge of the key components of the Beverage Containers Program and its functions. In the sections that follow we give a brief

overview of the beverages covered by the legislation, the key players involved with the program, and a description of how the deposit and refund system works.

Beverages included in the Beverage Containers Legislation

3.5 A beverage container is described in the *Beverage Containers Act* as a container that holds five litres or less, and that is delivered sealed to a retailer or food service. These include beverages such as soft drinks, beer, wine and spirits, water, fruit juices and vegetable juices. Beverages excluded by regulation include apple cider that has not been heated, pasteurized or otherwise processed, milk and milk products, chocolate milk, soy milk and concentrated drinks.

Distributors

3.6 Beverage distributors are permitted to sell beverages only in containers which have a management plan approved by the Department. This plan indicates how the container will be managed after the beverage has been consumed; either to refill or recycle it. All distributors must also be registered by the Department.

Encorp Atlantic Inc.

3.7 The soft drink industry created Encorp Atlantic Inc. to act as its agent to manage their non-alcoholic, recyclable beverage containers. Encorp receives all deposits from the distributors, reimburses the redemption centres for the refunds paid out, remits to the Province a fee for the Environmental Trust Fund and pays a handling fee to the redemption centres. Note that the handling fee is separate from the deposit collected – it is a fee paid by Encorp to the redemption centre for the cost of sorting and processing the containers.

3.8 As their agent, Encorp is required to fulfill the responsibilities of the distributors under the Act, which is to manage (i.e. recycle or refill) the Department approved plan for their beverage containers. Encorp is entitled to all revenue generated by the sale of the recovered “recyclable” materials.

Neighbourhood Recycling

3.9 Neighbourhood Recycling is the agent for New Brunswick Liquor Corporation (NBLC) and performs a similar function to that of Encorp for recyclable alcoholic beverage containers. The major difference is that NBLC, not Neighbourhood Recycling, collects the deposits and remits the provincial share of the environmental fee directly to the Environmental Trust Fund. The handling fee paid to the redemption centre by Neighbourhood Recycling is the same as that paid by Encorp - 3.4¢ per unit.

Breweries

3.10 The only refillable container on the market today is the beer bottle. The breweries in New Brunswick (mainly Labatt and Moosehead) collect the returned beer bottles directly from the redemption centres. The breweries pay a handling fee of 2.4¢ per unit to the redemption centre, and reimburse the redemption centre for the refund paid to the customer, \$1.20 per dozen beer bottles.

Redemption centres

3.11 In order to operate, a redemption centre must be licensed by the Province. There are 83 redemption centres in New Brunswick, employing approximately 250 New Brunswickers. The redemption centre industry is one of the benefits that arose from the program, creating employment and providing a valuable service to the beverage containers recycling process.

Environmental Trust Fund

3.12 The Beverage Containers Program is essentially the sole source of funding for the Environmental Trust Fund (ETF). According to the Department's website, 2.5¢¹ of every 10¢ deposit paid on a recyclable beverage container goes into this fund, whether the empty beverage container makes its way back to a redemption centre or not. The ETF provides funding for various projects that encourage and enable the protection, restoration, sustainable development, conservation, education and beautification of New Brunswick's environment. In the year 2002-03, the fund awarded over \$4.1 million to various projects across the Province.

How the Beverage Containers Program works

3.13 To demonstrate how the Beverage Containers Program works, we will use a recyclable, non-alcoholic beverage container with a 10¢ deposit as an example. When consumers purchase a beverage, they pay a 10¢ deposit at the time of purchase. At this point, the retailer is effectively recovering a 10¢ deposit previously paid to the distributor of the beverage. The distributor sends the deposits to Encorp, their registered agent. When the consumer returns the empty container to a redemption centre, the redemption centre will refund the individual 50% of the initial deposit paid, in this case 5¢.

3.14 When the redemption centre has collected a sufficient amount of empty beverage containers, Encorp will retrieve the containers from the redemption centre and pay the redemption centre owner a handling fee of 3.4¢ per unit, in addition to reimbursing the redemption centre for the refund paid to the customer (5¢). Encorp collects all non-alcoholic recyclable beverage containers, and processes them to be sold on the recycled material market.

1. The Department has indicated that the actual amount that goes into the Environmental Trust Fund is 2.174¢ (2.5¢ less HST).

3.15 According to the Beverage Containers Program website, 2.5¢¹ of the 10¢ deposit is remitted to the Environmental Trust Fund, 2.5¢² is kept by Encorp to cover industry recycling cost and the remaining 5¢ is used to reimburse the redemption centre for the refund paid to consumers. If a container is not returned to a redemption centre, Encorp gets to keep the unredeemed deposit, and doesn't have to pay the handling fee (therefore, it keeps the 5¢ refund and the 2.5¢ industry recycling fee portion of the 10¢ deposit).

Scope

3.16 The objectives for this audit were:

To determine if the Department of the Environment and Local Government has established satisfactory procedures to measure and report on whether the Beverage Containers Program is achieving its intended results; and

to provide the Legislative Assembly with a status report on progress the Department has made in implementing the recommendations and responding to the findings of our 1994 report on the Beverage Containers Program.

3.17 To further focus our audit efforts, we developed four audit criteria. These were discussed with the Department and it was agreed that they were reasonable.

3.18 Our work included reviewing relevant documents; interviewing program staff, as well as industry representatives; testing a sample of program files; and performing an analytical review on program information.

3.19 We compared the audit evidence against the audit criteria in order to develop the findings, conclusions and recommendations that are presented in this chapter.

Results in brief

3.20 **Since the inception of the program New Brunswickers have diverted approximately three billion beverage containers from landfills and roadsides. This represents an overall recovery rate of approximately 81%.**

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1. The Department has indicated that 2.174¢ (2.5¢ less HST) is remitted to the Environmental Trust Fund.
 2. The Department has indicated that the industry recycling fee is actually 2.174¢ (2.5¢ less HST).

3.21 The Department has established three broad goals for the Beverage Containers Program. These goals are to reduce the number of beverage containers which are littered; divert beverage containers from the solid waste streams; and encourage the sound use of resources and energy. It also has a recovery rate objective. Unfortunately there are no target-specific objectives to indicate whether or not the program is achieving its goals.

3.22 We were disappointed to find that the Department has taken limited action on our recommendations from 1994. Many of the same issues remain today.

3.23 The Province of New Brunswick does not know if the Environmental Trust Fund has received its full share of the environmental fee.

3.24 As at January 2004, distributors and/or their agents have retained, since the beginning of the program, close to \$34 million from unredeemed deposits on beverage containers that were not returned to a redemption centre. In addition, they collected \$17 million in fees to help cover the cost of recycling these containers, which did not occur.

3.25 The Department of the Environment and Local Government does not know the extent to which these funds are being used to offset program costs or provide a reasonable rate of return for distributors and/or their agents.

3.26 The Department does not have a system in place to determine if all recyclables collected are in fact sold and ultimately recycled.

3.27 The Department does not present sufficient effectiveness information to the members of the Legislative Assembly and general public. As well, the Department does not report what is required by legislation.

3.28 The issue of recycling dairy beverage containers is far from resolved.

Setting goals and objectives

3.29 Our first criterion was:

The Department should have clearly understood goals and objectives for the Beverage Containers Program.

3.30 Our criteria cover four main components of effective program management that can be used by an organization to achieve its intended results. These are setting goals and objectives; monitoring program success against these goals and objectives; identifying program modifications as required; and reporting on results. Our first criterion addresses the first component of setting goals and objectives.

3.31 A goal can be defined as a *general* statement of desired results to be achieved, while an objective is a *specific* statement of results to be achieved over a specific period of time. An objective sets a target, and aids in the achievement of the goal. Hence, goals and objectives are important tools for setting program direction and achieving intended results. They also establish a basis for year-to-year comparison.

3.32 When the Beverage Containers Program was created, three main goals were established. They are:

- to reduce the number of beverage containers which are littered;
- to divert beverage containers from the solid waste streams; and
- to encourage the sound use of energy and resources.

3.33 In addition to these three broad goals, the Department established a target recovery rate of 80% by year five of the program. The Department has informed us that it recognizes an 80% recovery rate as acceptable and appropriate in that it represents significant progress toward the three stated program goals. However, as indicated to us by the Department, there is no established rationale or analysis that demonstrates the effect of the recovery rate on the three goals. Nonetheless, the Department has stated that it is confident that a positive correlation exists.

3.34 In our opinion, the recovery rate objective was set independently of the three program goals. The Department has not demonstrated any cause-and-effect relationship between the recovery rate objective and the goals. For instance, when the Department conducted a review in 1997 and re-examined the goals of the Beverage Containers Program, the Department did not utilize the recovery rate as an indicator of whether the three goals of the program had been met. Instead, the Department considered the number of beverage containers collected and the use of refillable beverage containers on the market as indicators of the achievement of the program's goals.

3.35 That being said, it certainly appears that the recovery rate could be an objective for the goal of reducing the amount of beverage containers being littered, since one can deduce that an increasing recovery rate impacts the amount of beverage containers being littered. But we do not see how the recovery rate, at least on its own, is a valid indicator of the program's two other goals. Even though an 80% recovery rate is achieved, it does not indicate that the beverage containers are diverted from the solid waste stream (the second goal). Unless the recovered beverage containers are sold to a secondary market, the beverage containers are not out of the solid waste stream. A more relevant objective would be related to the % of recovered beverage containers sold to a secondary market.

3.36 In addition, the recovery rate on its own does not indicate that the third goal of sound use of energy and resources has been achieved. For instance, if the cost to recycle the recovered beverage containers exceeds the value of the material, sound use of financial resources is not achieved. Or, if the energy consumed in transporting and processing recovered materials exceeds that of using new packaging and/or refillable containers, sound use of energy and resources is not achieved. In our opinion, clear objectives need to be directly linked to each of the program's stated goals.

3.37 Further, we found that unlike the other two goals, the third goal of sound use of energy and resources does not meet the 'clearly understood' part of our criterion. It is not clear what is meant by the sound use of resources, i.e. does this refer to financial resources, natural resources, or other resources. The Department's 1997 review indicated that the purpose of the goal is to encourage the use of refillable containers. This is not immediately clear from reading the goal.

3.38 Finally, the goals of the program as well as the recovery rate objective have remained the same since the inception of the program in 1992. Periodic assessments at scheduled intervals are necessary to ensure the goals and objectives of the program continue to be relevant and challenge the program in order to build on its success and improve its performance.

Conclusion

3.39 This criterion is partially met. It is clear that goals exist, and there is an objective for a target recovery rate that can be related to the goal of litter reduction. However, one of the goals is not clear and two of the goals do not have objectives.

Recommendations

3.40 The Department should clarify the purpose and intent of the third program goal (to encourage the sound use of energy and resources).

3.41 The Department should establish clear objectives that are directly linked to each of the three program goals and their achievement. These objectives should be quantified and measurable, have target achievement dates, foster improvement, be communicated to staff and be assessed or reviewed periodically.

Departmental response

3.42 *Contrary to the analysis provided in the audit report, the Department does not recognize the third program goal to be exclusively an issue of “returnable” versus “recyclable” beverage containers. It is agreed that the Department should clarify the intent of this third goal so as to prevent such confusion in the future.*

3.43 *The Department remains satisfied that the redemption rate is a suitable indicator for Departmental performance, on a relative basis, for all three of the program goals. One need not quantify such objectives as “reduced volume of waste”, “litter abatement”, or “energy/resource savings” in order to be confident that a higher redemption rate indicates superior performance to a lower one. Nevertheless, the Department acknowledges the intent of the report’s recommendation in that the establishment of such objectives would provide assurance to the public that their deposit monies are being well spent. Additional goal-specific objectives will be developed.*

Measuring progress

3.44 Our second criterion was:

The Department should measure its progress towards the achievement of the goals and objectives of the Beverage Containers Program.

3.45 Our second criterion reflects a second component of effective program management: measuring the success of the program against goals and objectives. As mentioned in the previous section, the Beverage Containers Program has three goals. However, there were no specific objectives linked to the achievement of these goals, making it difficult for the Department to meet this criterion. Nevertheless, we still wanted to determine if the Department was monitoring the program against these three goals.

Limited formal monitoring

3.46 There is no formal monitoring process in place for this program. Although staff does review program reports and conduct inspections at redemption centres, formal monitoring specific to the achievement of goals and objectives has been limited.

3.47 The Department is collecting limited information from the various industry players (Encorp, NB Liquor Corporation, breweries, Neighbourhood Recycling), each with varying levels of detail, and this information is entered into an information system. The Department has maintained this information database since 1992. This information could be used to measure at least two of the three goals. However, departmental staff indicated that it is not used for this purpose in a regular or routine manner.

3.48 The Department did perform an assessment of the program in 1997. This assessment addressed the results of the program, future needs of industry and consumers, actual versus intended results, and past recommendations made by our Office. It found that the goals of reduction of litter and diversion of waste were met, while the goal of sound use of energy and resources has only been partially met. The assessment stated the following:

To date, the Beverage Containers Program has diverted over 550 million recyclable beverage containers from the waste stream. In addition, the litter problem associated with beverage containers prior to the introduction of the [Beverage Containers Act] has been virtually eliminated. Therefore, ... the first two (to reduce the number of beverage containers which were littered and to divert

beverage containers from the solid waste stream) of the objectives of the [Act] had been achieved.

The final objective, that is to encourage the sound use of resources and energy, has been partially successful. Although the Beverage Containers Program has produced considerable waste diversion, one of the intents of the Act was to encourage the use of refillable beverage containers over recyclable beverage containers. Unfortunately, this has not occurred as distributors have actually increased the use of recyclable beverage containers since the [Act] was introduced. This move was prompted by the lack of consumer demand for refillables. [The Department] has received no complaints from the public since the withdrawal of refillables.

3.49 We found the evidence supporting the conclusions to be relatively general in nature as few measurements were used to assess the achievement of the goals. Although no measurement or analysis was used, litter from beverage containers was assessed as ‘being virtually eliminated’ since the beginning of the program. The total number of containers returned to redemption centres was the measure used to assess diversion of waste from the solid waste stream. There was no evidence that the returned containers were recycled. The goal of sound use of energy and resources was assessed as only partially successful due to the fact the intended increase in use of refillable beverage containers was not achieved. In fact, other than for beer, refillable containers disappeared. We noticed that the recovery rate, which the Department believes is a suitable indicator for measurement, was not used to assess any of the three goals at the time of the 1997 program review.

3.50 In 1999 the Department engaged an accounting firm to inspect the books and records of the distributors and/or their agents. One of the purposes of the review was to determine the percentage of recycled material collected and processed for re-sale. At that time the firm found that 100% of glass, 99% of aluminum and 94% of PET (a plastic used for soft drink, water and juice containers) was processed for resale. This type of information is relevant for assessing the achievement of the second goal. Unfortunately the study is five years old and no current data is available because the Department does not request this type of information on a regular basis.

3.51 In our opinion, the program requires more frequent formal monitoring. At the time of our 1994 audit, we reported that the Beverage Containers Program was assigned three regular civil service positions and a number of seasonal and part-time positions. Currently, there is one person assigned to the program, and this individual has other responsibilities in addition to the Beverage Containers Program. The recovery rate identified at the time of the assessment was 83%, while the current recovery rate is approximately 81% (these recovery rates represent the overall rate for all containers, including beer bottles and recyclable containers). These changes may indicate a decrease in priority towards the program and a loss of momentum.

3.52 In addition to the recovery rate, we believe the Department could use more frequent monitoring of other measures. These include:

- roadside litter surveys;
- volume of material collected and therefore diverted from landfill;
- amount of landfill space saved by diverting containers from landfill;
- amount of material actually processed for resale;
- energy savings by container type; and
- number of units by container type that save the most resources and energy (such as those that preserve non-renewable natural resources, and whether their recycling has increased or not).

Conclusion

3.53 This criterion has been partially met. There is limited formal monitoring of the program goals, although it should be noted that the Department prepared a program review in 1997 and engaged an accounting firm to examine the sale of recovered materials in 1999. As noted in our first criterion, the Department has not established measurable objectives that are directly linked to the program goals and their achievement.

Recommendation

3.54 **The Department should review its monitoring system and make improvements, where necessary, to ensure that relevant data is collected with respect to the program goals and the objectives. This could include making better use of the data provided through meaningful and relevant interpretation with respect to the goals and objectives.**

Departmental response

3.55 *While the Department remains satisfied with the program's ability to track redemption rates, it is clear that new monitoring*

mechanisms will need to be developed in relation to any additional objectives that are created. The Department will develop monitoring capabilities in relation to the new objectives.

Taking corrective action

3.56 Our third criterion was:

Where the objectives have not been achieved, the Department should take corrective action, as required.

3.57 A third component of good program management is determining what program modifications may be indicated from measuring the program's success. In other words, we expect that the Department would actively monitor a program and take corrective action as required if the program's goals and objectives were not achieved. This is important to ensure that a program is achieving its intended purpose.

3.58 Although the Department has a target recovery rate of 80%, it has not identified a clear and formal relationship between this target recovery rate and the three program goals. There is also a lack of formal monitoring, as we have pointed out earlier.

Conclusion

3.59 This criterion is not met. Since there are no clear objectives related to the program goals, corrective action is not possible.

Recommendation

3.60 **We recommended the Department establish clear objectives that are directly linked to each of the three program goals and their achievement. When an objective is not achieved, the Department should review the circumstances of non-achievement and take corrective action.**

Departmental response

3.61 *The Department will continue with its ongoing efforts to ensure its redemption rate target is maintained. Where applicable, similar efforts will be undertaken with respect to any additional program objectives that are developed.*

Reporting on results

3.62 Our fourth criterion was:

The Department should report on the effectiveness of the Beverage Containers Program to the Legislative Assembly and the general public.

3.63 The final component of effective program management is reporting of results. Our final criterion addresses the Department's accountability towards the Legislative Assembly and the public for its management of the beverage containers program and the results the program has achieved.

3.64 In this section, we are making comments on effectiveness reporting under three broad categories. The first is reporting through the annual report with particular reference to the accountability reporting requirements of government's annual report policy. The second area concerns the specific reporting requirements of section 4(8) of the *Beverage Containers Act*. The third is comparing the reporting requirements of the Beverage Containers Program to those of the Tire Stewardship Program.

Government annual reporting requirements not met

3.65 The Province's annual report policy states that the objective of an annual report is to be the major accountability document by departments for the Legislative Assembly and the general public, serving as the key link between the objectives and plans of a department and the results obtained.

3.66 The policy clearly states that "to the degree possible, departments and agencies should give a clear account of goals, objectives and performance indicators." It also adds that "the report should show the extent to which a program continues to be relevant, how well the organization performed in achieving its plans and how well a program was accepted by its client groups." We reviewed the Department's annual report for 2002-03 (the most current report available at the time of our audit). In our opinion, reporting on the Beverage Containers Program does not address these requirements of the annual report policy.

Legislated reporting requirements not met

3.67 Section 4(8) of the *Beverage Containers Act* states that the Minister shall submit annually to the Legislature a report on

(a) the distributor's compliance with plans submitted under subsection (3), and

(b) the refilling and recycling of beverage containers in the Province.

3.68 The plan mentioned above refers to a plan for the recycling or refilling of the beverage container (section 4(3)). This plan must include the following:

- a list of redemption centres that will accept empty beverage containers;
- a description of the means of retrieval of empty beverage containers from redemption centres;
- a list of facilities to be used for refilling or recycling;
- a description of the means of delivery of empty beverage containers to the refilling or recycling facilities;
- a statement of how the distributor plans to dispose of broken or contaminated empty beverage containers;
- a description of the composition and shape of the beverage container;
- a description of the size, shape and location of markings on the beverage container;
- a description of the means by which the beverage containers will be held together so as not to present a hazard to wildlife; and
- a description of the distributor's contingency arrangements.

3.69 A distributor can assign all or part of the distributor's responsibilities to an agent (section 4(5)); however, the distributor is still responsible for the agent's violation of or failure to comply with the provisions of the Act (section 4(7)).

3.70 The Department does not "submit annually to the Legislature a report" that meets these requirements. As well, the information reported in the Department's annual report does not meet the legislated reporting requirements of section 4(8) of the Act. Since 2000-01, the annual report has made no mention of distributors' compliance with container management plans, nor has it reported data on the refilling and recycling of containers.

Reporting requirements inadequate compared to Tire Stewardship Program

3.71 The Department's publication "Reduce, Reuse, Recycle – The 3 Rs in New Brunswick" identifies beverage containers, scrap tires and used oil as products that are managed through regulated stewardship programs in New Brunswick. We compared the reporting requirements of the Beverage Containers Program to those of the Tire Stewardship Program. We found that reporting requirements are more enhanced for the Tire Stewardship Program.

3.72 For both programs, reporting requirements are identified in the respective legislation or regulation. In addition to submitting audited financial statements and an annual report within ninety days of year end, the Tire Stewardship Program is also required to report numerous details of operations, such as the number of tires sold, amount of fees collected, number of tires collected and processed, the cost to process the tires, the results of inspections and enforcement activities, and emerging trends in industry. The Beverage Containers Program, as noted, is required to report on distributors' compliance with their approved container management plan, and "on the refilling and recycling of beverage containers in the Province".

3.73 We found that the Tire Stewardship Program did appear to report all the categories required by legislation in its annual report. The Tire Stewardship Program also reported on three goals, and performance measures to assess the achievement of those goals. Another feature of the Tire Stewardship Program reporting is that it is very timely – reports must be submitted within ninety days of year end. As stated, for the Beverage Containers Program, the Minister is not providing the reports required by legislation.

Conclusion

3.74 This criterion has not been met. The Department does not present sufficient effectiveness information to the members of the Legislative Assembly and general public. As well, the Department does not report what is required by legislation.

Recommendations

3.75 We recommended the Department publish an annual report for the Beverage Containers Program that complies with the *Beverage Containers Act* and the government's policy on annual reports.

3.76 We recommended the Department compare reporting requirements of the *Beverage Containers Act* to those of the Tire Stewardship Board to determine what improvements should be made to the *Beverage Containers Act*.

Departmental response

3.77 *The Department agrees with the recommendation. It was an oversight that the Department's annual report was recently modified to exclude certain types of program information. The reporting requirements outlined in the Act will be respected in future annual reports.*

3.78 *The Department acknowledges the advantages of the Tire Stewardship Board's reporting requirements. Indeed, the Department was responsible for their creation. Thus, the recommendation is interpreted to mean that the Tire Stewardship Board's reporting requirements should be emulated for the Beverage Containers Program. Although the reporting requirements under the Beverage Containers Act are considered sufficient for the purposes of that program, the Department is currently considering several changes to the entire Beverage Containers Program. The Tire Stewardship Board's reporting model may be well suited to the program following any changes that may be forthcoming.*

Follow up to our 1994 report

3.79 Our second objective is to provide the Legislative Assembly with a status report on progress the Department has made in implementing the recommendations and responding to the findings of our 1994 report on the Beverage Containers Program.

3.80 In our 1994 audit, we made six recommendations to the Department. In Exhibit 3.1, we repeat the 1994 recommendations, the Department's responses, and provide an update on the current status of the recommendations.

3.81 As can be seen from Exhibit 3.1, five of these recommendations are still valid today. The Department agreed with four of these five recommendations at the time of our 1994 audit. None have been implemented.

3.82 We would like to discuss some of the underlying issues identified in the recommendations from our 1994 Report that are still relevant today.

Financial controls over environmental fees

3.83 As mentioned, the Environmental Trust Fund (ETF) receives the provincial share of the environmental fee. The process begins when distributors pay Encorp the deposits for all containers distributed to the New Brunswick market. Encorp forwards the provincial share of the environmental fee to the Department where the revenue is recorded.

Exhibit 3.1

Past recommendations on Beverage Containers Program

Recommendations made in 1994 audit	Department's response in 1994	Department's response to 1994 recommendations during 1996 follow-up	1994 recommendations still valid?	Our comments
Par. 2.152: We recommended the Department require Encorp to provide an audited summary report on container sales.	Agree	Encorp's Board of Directors resisted invoking the section of distributor agreements that requires an audited report of sales. As a result, the Department must resume random audits of distributors to ensure sales reports are accurate.	Yes	See section "Financial controls over environmental fees"
Par. 2.158: We recommended that the Department develop a written policy on the retention of unredeemed deposits.	Agree	The policy on unredeemed deposits is under review and will be re-established in writing at the end of the program's first five years ending May 31, 1997	Yes	See "Unredeemed deposits"
Par. 2.159: We recommended the Department require Encorp to provide an audited report verifying the redemption rates of the containers for each fiscal period.	Agree	The Department is satisfied that the data on redemption rates provided to the Department of the Environment is accurate and verifiable.	Yes	See "Unredeemed deposits"
Par. 2.166: We recommended that the Department continue to work with the beverage industry in finding a solution to the cross-border shipment of returnable containers.	Harmonization is the preferred approach.	The introduction of the Beverage Containers Program by the Government of Nova Scotia on June 1, 1996 eliminated the major source of the problem of trans-shipment of containers into New Brunswick.	No	N/A
Par. 2.170: We recommended the Department establish a monitoring process to ensure the distributors manage the recyclable material in accordance with their approved plans.	Agree with intent of recommendation.	Distributor agents Encorp and Rayan have not been forthcoming in providing information to verify sales of materials. Department of the Environment will continue to ensure the information is provided in satisfactory detail. (<i>Note that Rayan changed its name to Neighbourhood Recycling</i>)	Yes	See "Monitoring of recycled materials".
Par. 2.173: We recommended DOE publish an annual report for the BCA program in compliance with the <i>Beverage Containers Act</i> and the government's policy on annual reports.	DOE feels that it has reported to the legislature as required in the Act.	Section 4(8) of the <i>Beverage Containers Act</i> states that the Minister is required to submit a report to the Legislature each year which details a) the distributors' compliance with plans submitted under subsection (3), and b) the refilling and recycling of beverage containers in the Province. These reports have been made to the Legislature by the respective Ministers in the fall of 1992, in 1993, 1994, and in the Spring of 1995 in conjunction with the launch of the dairy pilot project. While there is also reference to the program in the department's annual report, this form of reporting is not necessarily in keeping with the requirements stipulated in the <i>Beverage Containers Act</i> .	Yes	See earlier comments on annual reporting requirements

3.84 When Encorp receives the deposits, it does not know if in fact the distributors have forwarded all deposits Encorp is entitled to receive. Consequently, the Province of New Brunswick does not know if the ETF has received its full share of the environmental fee. Over the years since the Province proclaimed the *Beverage Containers Act*, the Department has contracted for a number of reviews of beverage distributors. In recent audits, the Province has recovered monies that distributors had not properly remitted.

3.85 Because of this type of financial concern, we recommended in 1994 that the Department require Encorp to provide an audited summary report on container sales. This recommendation has not been implemented. The risk is that the ETF has not received all of the provincial share of the environmental fee.

3.86 Section 17(8) of the *Beverage Containers Act* gives the Minister the authority to obtain the information the Department needs to ensure the Environmental Trust Fund is receiving its share of the environmental fee. Section 17 (8) states that *a distributor (...) shall provide the Minister with records and reports as required by the Minister on a form provided by the Minister.*

3.87 Further on, section 20(2) (c) of the Act states that *an inspector (...) may for the purpose of administering this Act inspect any books, accounts, reports or records kept at any place or vehicle, relating to the storing, cleaning, handling, sorting, transporting, crushing, selling, refilling or recycling of beverage containers.*

Recommendation

3.88 **We recommended the Department use the full power of the Act to obtain information required to ensure the Province of New Brunswick's share of the environmental fee is deposited to the Environmental Trust Fund.**

Departmental response

3.89 *The Department agrees with the recommendation. Although it is not considered necessary to use such powers on a routine basis, it is clear that formal documentation from distributors and agents would be of value. The Department will develop procedures for document inspection and information verification pursuant to subsections 17(8) and 20(2) of the Act, to complement the ongoing informal exchange of information between the Department and distributors and agents.*

Unredeemed deposits

3.90 Even though the majority of beverage containers are being returned, millions are not. When a container is not returned, no deposit is refunded to the consumer. The fees on these containers are referred to as unredeemed deposits or unclaimed deposits. The amounts are significant.

3.91 In our 1994 report, we made recommendations around the issue of unredeemed deposits. We recommended that the Department develop a written policy on the retention of unredeemed deposits, and we recommended the Department require Encorp to provide an audited report verifying the redemption rates of the containers for each fiscal period.

3.92 The Department allows Encorp, the processor of the vast majority of recyclable containers in New Brunswick, to retain all unredeemed deposits from beverage containers that are not returned to a redemption centre. At current recovery rates, this represents approximately 25% of all non-alcoholic beverage containers. As for recyclable alcoholic containers, NB Liquor Corporation also retains the unredeemed deposits relative to their containers. As at January 2004, Encorp has retained just under \$27 million from unredeemed deposits since the beginning of the program (for its part, NB Liquor Corporation has retained approximately \$7 million). In addition, Encorp has retained 2.5¢ of each deposit to help defray the cost of recycling the beverage container, even though no recycling has occurred in the case of a container that is not returned to a redemption centre. As at January 2004, this amounts to approximately \$13.5 million for Encorp and \$3.5 million for NB Liquor Corporation.

3.93 A 1992 letter from the Minister of the Environment to Encorp allowed Encorp to keep all unredeemed deposits for the first year. The letter indicates that: “We are not philosophically opposed to distributors retaining revenue from unclaimed deposits to help offset costs of managing empty containers, or to Encorp earning a reasonable rate of return.”

3.94 However, this approach raises a number of questions:

- to what extent should the amount retained from unredeemed deposits offset costs?
- is there a % or dollar level implied by “offset”?
- what is meant by “reasonable rate of return”?

- how committed is Encorp to promoting a program that could reduce their net revenue¹?
- what process will the Department have to ensure the rate of return remains reasonable?

3.95 From our perspective, this last question is key. The Department relies to a large extent on the information provided by industry. This information is not verified, and has not been audited by the Department. Even if, for instance, the Department determines what exactly is meant by “reasonable rate of return”, it needs a process to verify that distributors and/or agents are not exceeding that through retaining more funds from unredeemed containers than necessary.

Recommendations

3.96 We recommended the Department obtain audit level assurance to determine to what extent the amount of unredeemed deposits is offsetting program costs or providing a reasonable rate of return for distributors and/or agents.

3.97 We recommended the Department document the costs and benefits of allowing distributors and agents to retain funds from unredeemed deposits. This should include establishing the extent to which the amount retained from unredeemed deposits should offset costs and what is meant by a reasonable rate of return.

Departmental response

3.98 *The Department agrees with the recommendations.*

Monitoring of recycled materials

3.99 In our 1994 Report, we commented that the Department is responsible to see that all recyclable materials collected by Encorp and Rayan Investments Ltd. (now Neighbourhood Recycling) are appropriately recycled and do not enter New Brunswick landfills. The Department does not have a system in place to determine if all recyclables collected are in fact sold and ultimately re-used. Departmental staff do get information about the number of tons shipped and some of the market destinations, but the information is insufficient to reconcile to the quantities of recyclable materials collected by Encorp and Rayan.

3.100 Although the Department agreed with our accompanying recommendation, it had some problems implementing it. At one time,

1. Encorp is allowed to retain unredeemed deposits; therefore, as recovery rates increase, the amount of unredeemed deposits Encorp retains decreases, decreasing its revenue.

the Department supplied forms to the distributors and/or agents indicating the type of information that was required from them. However, the Department did not have success in obtaining the information. As noted earlier, in 1999 the Department hired an accounting firm to review a number of areas. One of these was the disposition of materials to end markets for the period of June 1992-August 1998 (for alcoholic containers), and June 1992-March 1999 (non-alcoholic).

3.101 The Act clearly states in section 17 (8) that a *distributor (...)* shall provide the Minister with records and reports as required by the Minister on a form provided by the Minister. Encorp and Neighborhood Recycling are registered agents of the distributors and section 4(5) of the Act states that *a distributor may assign all or part of the distributor's responsibilities under this Act to an agent acceptable to the Minister.* The difficulties encountered in obtaining information from distributors and/or agents have significantly hindered the Department's ability to monitor the program goals.

3.102 As we have noted, two of the goals are to:

- divert beverage containers from the solid waste stream; and
- encourage the sound use of resources and energy.

3.103 Further, the Act requires the Minister to submit annually to the legislature a report on the distributors' compliance with plans submitted and the refilling and recycling of beverage containers in the Province. These two goals and the Act's reporting requirements reinforce the need for our 1994 recommendation. Therefore, once again, **we recommended the Department establish a monitoring process to ensure the distributors manage the recyclable material in accordance with their approved plans.**

Departmental response

3.104 *Although the Department already collects information, or otherwise regulates waste management to the extent that the final disposition of recyclable materials is in little doubt, the Department nevertheless agrees with the recommendation. The Department will undertake to verify compliance with approved plans on an ongoing and regular basis.*

Milk container recycling still an issue

3.105 The Beverage Containers regulation excludes milk and milk products, chocolate milk, and soya milk from the deposit-refund system. The reason for their exclusion is the notion that milk is considered a staple food product; by imposing a deposit on milk, the

Department would inhibit the ability of low income New Brunswickers to purchase milk because of its increased cost. Snack style dairy items such as boxed milk shakes are also covered by the exemption.

3.106 In our 1994 Report, we stated:

Dairy products are currently the only other major type of beverage containers that are not regulated by the BCA. The industry plans to carry out a pilot project for voluntary return of dairy containers to existing redemption centres. We have discussed the situation with DOE. DOE has agreed to move quickly to implement a stewardship program for dairy beverage containers.

3.107 Since we were convinced the issue would be addressed, we did not make a formal recommendation in the 1994 Report. Although the Department has attempted to address the problem, the issue of recycling of milk containers is far from resolved.

3.108 Last year, the Department initiated a stewardship program targeting milk cartons only. (Plastic milk containers are captured by curb-side programs, where they exist.) The New Brunswick Milk Dealers Association prepared a Milk Packaging Stewardship Program, which involved dairy farmers, the Milk Dealers Association and the Department. A Memorandum of Understanding was signed by the Department and the Milk Dealers Association. The Milk Dealers Association was responsible for entering into contracts with the individual solid waste commissions. The Westmorland-Albert Solid Waste Corporation entered into an agreement with the Milk Dealers Association to recover and recycle milk cartons.

3.109 In February 2003, all consumers in the Province began paying a levy on each *carton* of milk they bought – this levy was included in the price of milk. The levies per carton were 2¢ for 2-litre and 1¢ for 1-litre and 500 ml (no levy on 250 ml). The Milk Dealers Association collected and administered the fund via an advisory group. A representative of the Department sits on the advisory committee which oversees the program. The one solid waste commission that participated in the program collected the cartons through regular garbage pick-up. When it had collected a specified amount of cartons and shipped them to secondary markets, the solid waste commission applied to the Milk Dealers Association for payment by sending them

weight slips of shipments. The Milk Dealers Association paid the solid waste commission \$315/tonne of cartons shipped.

Goals of the Memorandum of Understanding will be difficult to measure

3.110 We obtained a copy of the agreement and reviewed it thoroughly. We were pleased to find that the agreement included two goals as follows:

- that all residents of the Province will have the opportunity to recycle all types of fluid milk packaging; and
- to achieve a recovery rate of at least 50% of waste milk containers (jugs, cartons and bags) at the end of five years.

3.111 Although we were pleased to find such goals identified in the agreement, we wondered how the parties would be accountable for their achievement, and how the goals would be measured. The first goal could be easily measured by reviewing the recycling programs offered by each solid waste commission. However, the second and more specific goal will prove more difficult to measure. The Milk Dealers Association can calculate the number of milk cartons they collect because the fund pays the solid waste commission by tonne of cartons shipped. On the other hand, it will be difficult to track other milk packaging because these containers will go to a depot (in most areas) and be included with other types of plastic packaging that are recovered in different areas of the Province. These plastic milk jugs and bags would not be sorted separately from non-milk plastic containers collected. Therefore, it is unclear how all the parties to the agreement will measure the success of the diversion of plastic milk containers from the solid waste stream. Further, we have determined that if Westmorland-Albert continues to be the only solid waste commission participating in the collection of milk cartons, the recovery of 50% of fluid milk packaging is not achievable.

Memorandum of Understanding has consequence for non achievement

3.112 The agreement clearly states that milk packaging will continue to be exempted from the Beverage Containers Program as long as the parties operate a successful stewardship program. Our understanding of this statement is that if the parties to the agreement do not operate a successful stewardship program, the consequence for non achievement would be the removal of the exemption of milk containers from the Beverage Containers Program. We assumed that 'successful' refers to, at the very least, the 50% diversion goal, or perhaps having full support and participation from all solid waste commissions.

3.113 Based on our findings, the program has not been a success. Milk cartons are being recycled by the Westmorland-Albert Solid Waste Corporation only. The application of levies to milk cartons ceased in February 2004. Neither the initial levy nor its removal appears to have been well communicated.

Memorandum of Understanding has monitoring requirements

3.114 The term of the agreement is five years. Each year, the program will be subjected to a management review. An advisory committee made up of representatives from the Department, Milk Dealers Association and dairy farmers is charged with reviewing the effectiveness and efficiency of the system each year. Based on their review, they must make recommendations to the Minister before the end of March each year.

Reporting requirement of memorandum was not met

3.115 As year one of the program ended in March 2004, a draft annual report was submitted to the Department. Although the reporting requirements were clearly identified in the memorandum, the draft report fell short in many areas. Department staff also noted the deficiencies in the report, and were working with the advisory committee to ensure that the final report contains the required information. Some of the information lacking was:

- there were no recommendations on the program;
- there was no information on goals or their achievement; and
- there was no clear statement on the efficiency of the system, although there was some financial information provided that could be used to partially evaluate the efficiency of the program.

Most milk containers would be recycled if containers were plastic

3.116 When eleven of the twelve solid waste commissions rejected the Memorandum of Understanding, they unanimously stated their support for the recycling of plastic milk containers. If all milk was packaged in plastic containers, these solid waste commissions could recover and recycle the bulk of containers.

Recommendation

3.117 We recommended the Department:

- **take any necessary actions to ensure that milk containers are recycled in all areas of the Province at reasonable rates or revise the *Beverage Container Act* regulation to remove the exemption on milk containers; and**
- **as an immediate temporary initiative, revise the Regulation to remove the exemption on snack style dairy items (e.g. chocolate milk, boxed milk shakes) which should not be considered staple food products.**

Departmental response

3.118 *The Department agrees with the spirit of the recommendation, which is that milk containers are a significant portion of the solid waste stream in New Brunswick, and should therefore be a recycling priority. The Department will continue in its efforts to address milk containers.*

3.119 *The Department is currently engaged in a Memorandum of Understanding (MOU) concerning the recycling of milk packaging. It is felt that moving to implement this [second part of the] recommendation prior to the expiration of that agreement would not be appropriate. However, this approach along with several others will be considered should the MOU approach fail. Also, the Department will continue to act in accordance with the wishes of Government with respect to which foods (and their derivatives) should be considered “food staples”.*

Conclusions on our second objective

3.120 The Department has not implemented recommendations made in our 1994 Report, despite their agreement to them at the time of our audit. Most are still applicable today.

3.121 The Department has not implemented a successful milk container recycling program.