



BC VEGETABLE MARKETING COMMISSION

WWW.BCVEG.COM

Compliance & Enforcement Policy & Procedures Manual

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Maintenance

Responsibility

The accountability for the development and maintenance of this document belongs to the Licensing and Compliance Manager, BC Vegetable Marketing Commission.

Revisions

All requests for change must be made through the Licensing and Compliance Manager, BC Vegetable Marketing Commission using the Revision Request Form located in this section of the manual.

Revision Request Form

Requested by:	Date:
Dept/ Agency:	Phone No.:
Revision Type: <input type="checkbox"/> Addition <input type="checkbox"/> Deletion <input type="checkbox"/> Correction	
Manual Section:	Page:
Revision (attach separate sheet if necessary):	
Signature of Requestor:	
Send to: Licensing and Compliance Manager BC Vegetable Marketing Commission 207 - 15253 – 32 nd Avenue Surrey, BC V3Z 0R7 Canada. Fax: 604-542-9735 Email: info@bcveg.com	
To be completed by Licensing and Compliance Manager	
Date Received:	Comments:
Date Reviewed:	
Issued as Revision: Y/ N	
If No, reason for Rejection:	
Signature Licensing and Compliance Manager	

Control Sheet

Revision Number	Date of Revision	Change(s)
1		
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Definitions

Administrative Monetary Penalties (AMPs): financial penalties that may be imposed on any Regulated Entity that contravenes the Biosecurity Program requirements of the Natural Products Marketing (BC) Act.

Audits: an examination, on site, of a Regulated Entities documentation by BCVMC staff or contracted Subject Matter Experts.

BCVMC: British Columbia Vegetable Marketing Commission.

Compliance: conformity with regulatory requirements established by the BCVMC and the Government of British Columbia.

Compliance Monitoring: the activities conducted by the BCVMC to determine whether a Regulated Entity is complying with regulatory requirements.

Complaint: a written or spoken statement in which a non-compliance issue has been brought to the attention of BCVMC against a Regulated Entity.

Desk Review: a desk review is a compliance assistance tool that consists of phone call interviews, emails, and document exchanges between BCVMC staff and the Regulated Entity.

Due Diligence: the diligence expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or discharge an obligation. In the context of regulatory requirements administration, it includes things done and not done in good faith while exercising powers and performing duties granted by the BCVMC and the Government of British Columbia.

Enforcement: compelling a Regulated Entity to comply with a law, rule, or obligation through Punitive compliance measures. In the context of progressive enforcement, once consultation, education, and motivation attempts have been exhausted, it is the escalating functions of non-compliance letters, warnings, compliance orders, administrative penalty, court order, and further or additional penalties (change in licence class). In some instances, it may be the immediate issuance of a compliance order, and in instances of imminent serious non-compliance, it may be the action of mitigating that risk of non-compliance.

Enhanced Compliance Monitoring: an increased level of monitoring of a Regulated Entity that may include, but is not limited to:

- increased frequency of site visits;
- meetings between the BCVMC and the Regulated Entity; and
- submission of additional documentation deemed necessary by the BCVMC to assess the progress of the Regulated Entity toward meeting identified compliance requirements.

Inspections: action taken to verify compliance with regulatory requirements. Inspections are conducted on-site at a Regulated Entities facility or at other locations in the field such as on the roadside in the case of a vehicle inspection.

Investigate: in the context of progressive enforcement, the collection process of pertinent facts, related circumstances, and influencing factors; and the analysis of all of them to determine compliance with legislation, orders, best practice, professional conduct, or other governing requirements.

Non-compliance: Failure of the Regulated Entity to meet regulatory requirements.

Non-Punitive Compliance Measures: action for a non-compliance incident that does not involve any form of punishment. Focuses on identifying the root cause of the non-compliance and ensuring it does not reoccur.

Punitive Compliance Measures: action for a non-compliance incident that involves a form of punishment. This can take many forms including monetary penalties, change in license class or other forms of legal sanctions against the Regulated Entity.

Provincial Court Charges: The laying of an information (charge) under the Natural Products Marketing (BC) Act compelling a Regulated Entity to appear in Provincial Court.

Regulated Entity: A person or business subject to regulatory requirements of the Natural Products Marketing (BC) Act; Natural Products Marketing (BC) Act Regulations; British Columbia Vegetable Scheme; and the British Columbia Vegetable Marketing Commission General Orders.

Regulatory Requirement: Any restriction, duty, or obligation imposed on a Regulated Entity or other person by legislation (e.g., regulations, rules, codes, guidelines, and policy documents), approval (e.g., licenses, permits, authorizations, leases), orders, directions, declarations, or other documents issued by the BCVMC or the Government of British Columbia.

Supreme Court Injunction: a judicial remedy issued by the Supreme Court of BC compelling a Regulated Entity to take a certain course of action and/or preventing or restraining that Regulated Entity from performing a certain action.

Voluntary Compliance: When a Regulated Entity meets regulatory requirements without the BCVMC initiating enforcement action.

Purpose

The purpose of this Manual is to:

- Explain the compliance & enforcement policy & procedures of the British Columbia Vegetable Marketing Commission (BCVMC); and
- Explain how the BCVMC determines appropriate compliance and enforcement action in response to non-compliance issues.

This manual is a guidance tool. It is not legal advice, and it does not restrict the professional judgement, discretion, and autonomy of the BCVMC Board or its employees. This manual does not supersede any Legislation and/or Orders, and if any discrepancy exists between this manual and any Legislation and/or Orders, the Legislation and/or Orders prevail.

Authority

The BCVMC's authority is derived from:

1. Natural Products Marketing (BC) Act
2. Natural Products Marketing (BC) Act Regulations
3. British Columbia Vegetable Scheme
4. British Columbia Vegetable Marketing Commission General Orders

Guiding Principles

The BCVMC is guided by the following principles:

- ✓ **Administrative Fairness** – To act in good faith and without bias in contemplating or initiating any compliance and enforcement action and to give a Regulated entity the opportunity to know the case against them and the opportunity to be heard.
- ✓ **Timeliness** – To conduct any compliance and enforcement action in a timely manner.

- ✓ **Transparency** – To conduct any compliance and enforcement action in an open and transparent manner so that a Regulated entity understands what is expected of them and what they can expect for the BCVMC.
- ✓ **Objectivity** – To conduct any compliance and enforcement action based on evidence and that the appropriate checks and balances exist in the decision-making process to ensure that all regulated parties are treated fairly.
- ✓ **Accessibility** – To provide regulated parties and industry stakeholders with information on the legislation, orders, and policies BCVMC administers and its role as a regulator.

Compliance and Enforcement System Overview

BCVMC believes that the best approach to ensuring compliance is for the Regulated Entity to understand their obligations as a Regulated Entity and voluntarily comply with the requirements of the licence they hold. Voluntary Compliance is achieved through education when a Regulated Entity is first designated and licensed, then through the annual licence renewal process as well through targeted outreach to help the Regulated Entity fully understand their obligations and the consequences of non-compliance. Should a non-compliance issue arise, the BCVMC will employ a progressive compliance model to bring the Regulated Entity back into compliance.

To voluntarily comply with a regulatory requirement, a Regulated Entity must be:

- Aware of the requirements;
- Able to understand the requirements and the consequences of non-compliance;
- Willing to comply with the requirements; and
- Have the ability and resources to be able to comply with the requirements.

Regular compliance monitoring of all Regulated Entities by the BCVMC will ensure all non-compliance matters will be treated consistently. Continuous compliance monitoring and verification are essential to preventing any ongoing non-compliance does not result in an unfair economic advantage or harm to the industry. Regulated Entities voluntarily being compliant with all applicable requirements demonstrates their corporate commitment to maintaining a level playing field for all Regulated Entities and protecting the industry.

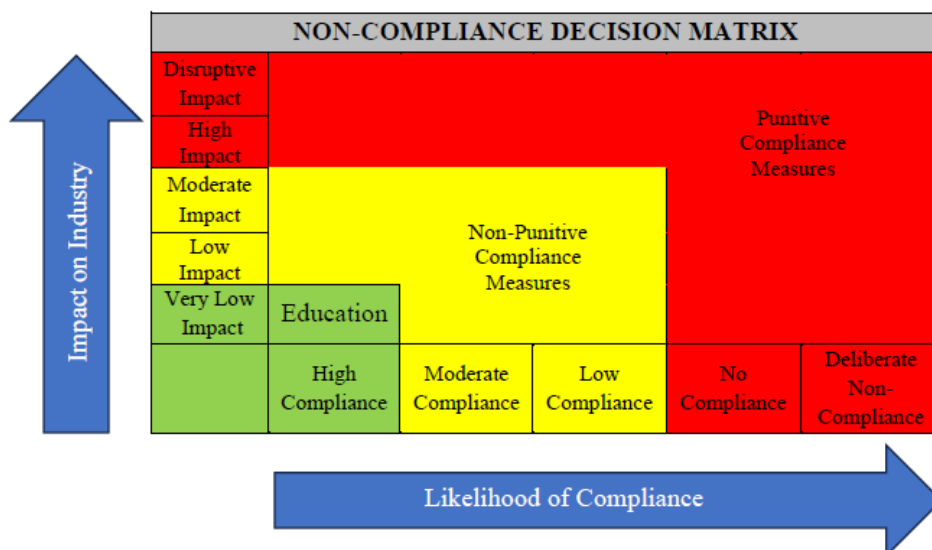
When a non-compliance issue arises, the initial step will be to bring the non-compliance issue to the Regulated Entity's attention and provide the Regulated Entity with the opportunity to correct the issue on their own. Should this initial step fail to bring the Regulated Entity back into compliance, a graduated/progressive compliance & enforcement process will be initiated consisting of:

1. Compliance Letter Phase 1;
2. Compliance Letter Phase 2;
3. Warning Letter;
4. Administrative Monetary Penalty (if appropriate);
5. Licence Class review and/or revocation by Commission (if appropriate);
6. Request for a Supreme Court injunction (if appropriate);
7. Laying of charge in Provincial Court under the Natural Products Marketing (BC) Act (if appropriate); and
8. Enhanced monitoring of non-compliant Regulated Entity until such time as the non-compliance issue has been resolved and unlikely to re-occur.

Non-Compliance Decision Matrix

The Non-Compliance Decision Matrix is a risk-based tool for assessing the factors that determine the selection of compliance and enforcement actions. These factors include:

- Escalating level of impact on Regulated Vegetable Industry; and
- Diminishing level of compliance.



Impact on Industry (Actual or Potential)	
Very Low Impact	<ul style="list-style-type: none"> Non-compliance that does not result or is unlikely to result in any measurable impact on industry; and/or Minor administrative non-compliance.
Low Impact	<ul style="list-style-type: none"> Non-compliance that results in a minor, temporary impact, or a minor temporary threat to industry; and/or Significant administrative non-compliance.
Moderate Impact	<ul style="list-style-type: none"> Non-compliance that results in a moderate, temporary impact, or a moderate, temporary threat to industry.
High Impact	<ul style="list-style-type: none"> Non-compliance that results in a significant impact, or a significant threat to industry.
Disruptive Impact	<ul style="list-style-type: none"> Non-compliance that results in a severe effect and/or has long term consequences to industry.

Likelihood of Compliance (Compliance history/Willingness to Comply)	
High Compliance	<ul style="list-style-type: none"> Indications of future and ongoing compliance is very high; Regulated Entity has a reasonable and cooperative attitude towards compliance; No previous occurrences of non-compliance; and/or Solid demonstration of awareness of regulatory requirements.
Moderate Compliance	<ul style="list-style-type: none"> Indications of future and ongoing compliance are uncertain; Few previous occurrences of non-compliance; and/or Questionable awareness of regulatory requirements.
Low Compliance	<ul style="list-style-type: none"> Indications of future and ongoing compliance are unlikely; Numerous occurrences of non-compliance; and/or Little to no awareness of regulatory requirements.
No Compliance	<ul style="list-style-type: none"> No Indication of future and ongoing compliance; Demonstrated history of non-compliance; Willful violation of regulatory requirements; and/or Little or no demonstrated willingness to meet regulatory requirements.
Deliberate Non-Compliance	<ul style="list-style-type: none"> Indications of obstruction and ongoing non-compliance; Hindering or obstructing BCVMC compliance efforts; Refusing to furnish required information; and/or Intentionally including false or misleading information in any required document.

The Non-Compliance Decision Matrix is a guidance tool that helps BCVMC staff ensure that a consistent approach is used in assessing and responding to non-compliance.

Factors for Consideration in Applying Non-Compliance Decision Matrix

In developing a response to a non-compliance matter, it is necessary to examine the available information to determine the full extent of the non-compliance and any related regulatory history. The following factors are to be considered when developing an appropriate response.

1. Effectiveness in achieving the desired outcomes.

Each set of circumstances will be different in relation to non-compliance but the key factor in determining an appropriate response is the effectiveness of the tools used in achieving compliance quickly and without recurrence.

Factors to consider include:

- Related history of non-compliance;
- Willingness to cooperate;
- Corrective action already taken; and
- Parallel action taken by other regulatory bodies.

2. Nature of the non-compliance.

This includes:

- The seriousness of the actual or potential impact on industry;
- The level of Due Diligence exercised by the Regulated Entity;
- Whether the non-compliance was deliberate;
- Whether there was a monetary gain from the non-compliance;
- Whether the non-compliance is a repeated occurrence;
- Whether there were attempts to conceal information or bypass regulatory requirements; and
- Whether there is a need for general deterrence.

3. Consistency in enforcement.

Compliance activities must be consistent in response to non-compliance. Similar situations must be addressed in a similar manner unless different circumstances prevail that require a different response.

Tools used to Ensure Compliance

Compliance will be monitored and verified using the following tools:

- Desk Reviews;
- Inspections;
- Audits; and
- Complaint Investigations.

Timeliness

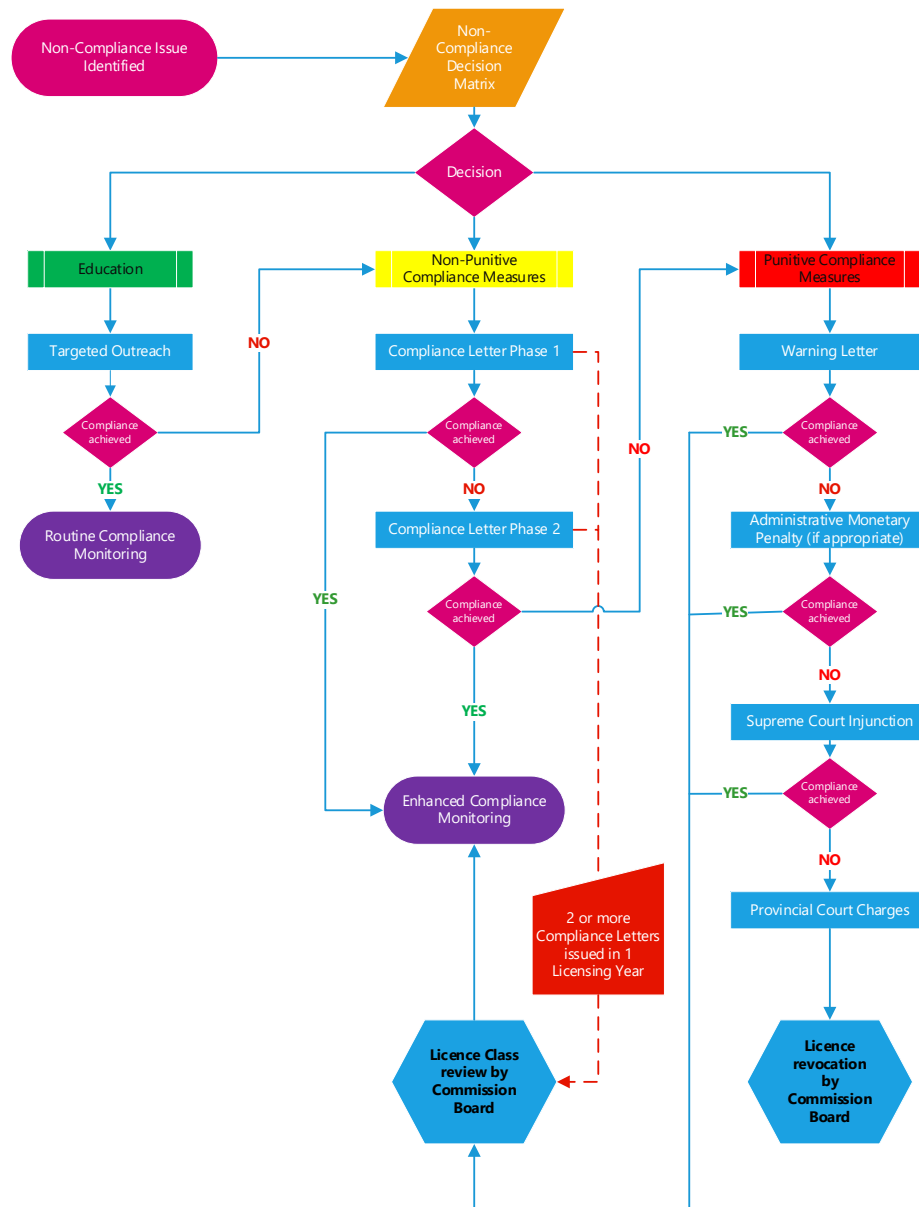
The BCVMC conducts Desk Reviews, Inspections, Audits, and Complaint Investigations and enforcement to support timely and effective compliance oversight of the General Orders. The BCVMC sometimes is required to triage workload based on the ongoing nature of non-compliances and the impacts of those non-compliances.

Voluntary Disclosure of Non-Compliance

The BCVMC encourages all Regulated Entities to conduct internal reviews to ensure they are in compliance with Provincial Legislation and the General Orders. Voluntary Disclosure of Non-Compliance encourages Regulated Entities to come forward with a non-compliance issue that they have identified through those internal reviews and to voluntarily bring themselves back into compliance in concert the BCVMC ahead of any enforcement action. The BCVMC will review any Voluntary Disclosure of Non-Compliance and, at its sole discretion, determine the appropriate course of action.

***Note: Voluntary Disclosure of Non-Compliance is not intended to serve as a means by which Regulated Entities can intentionally avoid their legal responsibilities under Provincial Legislation and/or the General Orders but rather as a means to provide an acceptable alternative for Regulated Entities to bring themselves into compliance.*

Compliance and Enforcement Process



***Note: Compliance and Enforcement action will generally be taken using the progressive enforcement model. However, the BCVMC has discretion in whether to strictly adhere to the continuum. The exercise of discretion is based on the facts of a particular case. In assessing which option is appropriate, the BCVMC may consider:*

- *the severity of the non-compliance at issue;*
- *whether the Regulated Entity has exercised due diligence; and*
- *the likelihood of ongoing non-compliance.*

More significant initial responses will be considered if a non-compliance issue is:

- *significant; and/or*
- *the Regulated Entity has not exercised due diligence and there is a likelihood or history of recurrence (e.g., the Regulated Entity does not accept responsibility for the action of staff).*

Education

Targeted Outreach for non-compliance issues that are minor in nature and can be corrected with a minimum of intervention and the issue is not likely to recur.

Should the Targeted Outreach approach fail to achieve the desired results, compliance action will move to the next phase, Non-Punitive Compliance Measures.

Non-Punitive Compliance Measures

Non-Punitive Compliance Measures are divided into two (2) categories:

- Compliance Letter – Phase 1
- Compliance Letter – Phase 1

Compliance Letter – Phase 1

The first phase of the Non-Punitive Compliance Measures is the issuance of a Compliance Letter – Phase 1.

The non-compliance issue is identified, and corrective action recommended. The Regulated Entity is provided ten (10) business days to respond and/or remedy the non-compliance issue. The Regulated Entity is advised that if they fail to comply with the Compliance Letter – Phase 1, further compliance action will be initiated.

Should the Compliance Letter – Phase 1 fail to achieve the desired results, compliance action will move to the next phase, Compliance Letter – Phase 2.

Should a Regulated Entity have a recurrence of the non-compliance issue identified in a previous Compliance Letter – Phase 1 issued within the previous consecutive 365 day period (year), beginning on the date the previous Compliance Letter – Phase 1 was dated, the process will move directly to a Compliance Letter – Phase 2.

Compliance Letter – Phase 2

The next phase of the Non-Punitive Compliance Measures is the issuance of a Compliance Letter – Phase 2.

The Regulated Entity is advised that they have failed to comply with the Compliance Letter - Phase 1. The non-compliance issue is identified, and corrective action recommended once again. The Regulated Entity is provided an additional ten (10) business days to respond and/or remedy the non-compliance issue. The Regulated Entity is advised that if they fail to comply with the Compliance Letter – Phase 2, further compliance action will be initiated.

Should the Compliance Letter – Phase 2 fail to achieve the desired results, compliance action will move to the next phase, Warning Letter (Punitive Compliance Measures).

Should a Regulated Entity have a recurrence of the non-compliance issue identified in a previous Compliance Letter – Phase 2 issued within the previous consecutive 365 day period (year), beginning on the date the previous Compliance Letter – Phase 2 was dated, the process will move directly to a Warning Letter.

Two (2) or more Compliance Letters (Phase 1 and/or Phase 2) issued to a Regulated Entity within the same Annual Licence Renewal Cycle (see Schedule VII, General Orders) will result in a Licence Class Review by the Commission Board.

Punitive Compliance Measures

Punitive Compliance Measures are divided into four (4) categories:

- Warning Letter
- Administrative Monetary Penalties
- Supreme Court Injunction
- Provincial Court Charges

Warning Letter

The first phase of the Punitive Compliance Measures is the issuance of a Warning Letter.

The Regulated Entity is advised that they have failed to comply with the Compliance Letter - Phase 2 (*In the case where the Compliance action went directly to this step, the non-compliance issue is identified, and corrective action recommended. The Regulated Entity is provided ten (10) business days to respond and/or remedy the non-compliance issue.*) The non-compliance issue is identified, and corrective action recommended once again. The Regulated Entity is provided an additional ten (10) business days to respond and/or remedy the non-compliance issue. The Regulated Entity is advised that if they fail to comply with the Warning Letter, further compliance action will be initiated.

Should the Warning Letter fail to achieve the desired results, compliance action will move to the next phase, Administrative Monetary Penalties (if appropriate) or to Supreme Court Injunction.

Administrative Monetary Penalties

The Natural Products Marketing (BC) Act, Section 16.2, provides the authority to impose Administrative Monetary Penalties for a non-compliance issue relating to a Biosecurity Program. Penalties can be imposed up to \$10,000.00. A Regulated Entity will be served a notice of issuance of an Administrative Monetary Penalty in accordance with a British Columbia Farm Industry Review Board (BCFIRB) approved procedure.

Supreme Court Injunction

Should a Regulated Entity fail to comply with any of the above processes to remedy a non-compliance issue, or it is necessary to move to a Supreme Court Injunction immediately, the BCVMC will employ the services of Legal Counsel to draft and register an injunction requiring the Regulated Entity to take a prescribe action or to cease and desist an action.

The BCVMC will seek damages against any Regulated Entity to recover any costs associated with a Supreme Court Injunction.

A single (1) Warning Letter, Administrative Monetary Penalty, and/or Supreme Court Injunction issued to a Regulated Entity within an Annual Licence Renewal Cycle (see Schedule VII, General Orders) will result in a Licence Class Review by the Commission Board.

Provincial Court Charges

Should a Regulated Entity fail to comply with a Supreme Court Injunction, a recommendation for charges (Report to Crown Counsel) under the Natural Products Marketing (BC) Act will be forwarded to the British Columbia Prosecution Service (BCPS). The BCPS will review the recommendation for charges and will make the decision to pursue charges or not.

Should Provincial Court Charges be filed against a Regulated Entity at any time, the Commission Board will determine if that Regulated Entities Licence should be suspended for a given time period or revoked completely.

Licence Class Review

The Commission Board, upon issuing a determination in regard to a non-compliance issue, has the authority to change a Regulated Entities Licence Class and corresponding Annual Licence Fees (see Schedule III, General Orders). The change in Licence Class will remain in effect for a consecutive 365 day period, beginning on the date of the determination. On the next Annual Licence Renewal Cycle, after the consecutive 365 day period, the Regulated Entity may apply to the Commission Board to have their Licence Class changed back, upon evidence that the Regulated Entity has been in good standing since the original determination and any non-compliance issues will not reoccur.

Opportunity to be Heard

Prior to the BCVMC making a final determination on any non-compliance enforcement action, the Regulated Entity will be provided with the opportunity to be heard. The Regulated Entity will be given the opportunity to provide written (including electronic) or oral (in person or via video conference) submissions to the BCVMC in advance of a final determination of enforcement action.

Appendix I

BCVMC
BC VEGETABLE MARKETING COMMISSION

#207, 15252 – 32nd Avenue
Surrey, British Columbia, Canada V3Z 0R7
Telephone: (604) 542-9734 • Fax: (604) 542-9735 • Toll Free: 1-800-663-1461
Website: www.bcvég.com

(DATE)

BY EMAIL

Compliance Letter – Phase 1
Submission Deadline:

RE:

To:

The British Columbia Vegetable Marketing Commission (BCVMC) has identified that (name of Regulated Entity) is non-compliant with the BCMVC General Orders.

Specifically:

1. (Details of non-compliance)

To ensure (name of Regulated Entity) corrects this non-compliance, the BCVMC requires you to remedy the non-compliance within 10 business days from the date of this letter (**Submission Deadline:**) by:

1. (details of remedy needed)

If no response is received by the deadline or the non-compliance matters are not remedied, you will be given a final extension of 10 business days (Compliance Letter – Phase 2). If the BCVMC has still not received a response after the final Compliance Letter – Phase 2 extension, further compliance action (Warning Letter) will be initiated.

If you have any questions do not hesitate to contact me.

Sincerely,

Licensing and Compliance Manager

Attachments:

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Appendix II

BCVMC
BC VEGETABLE MARKETING COMMISSION

#207, 15252 – 32nd Avenue
Surrey, British Columbia, Canada V3Z 0R7
Telephone: (604) 542-9734 • Fax: (604) 542-9735 • Toll Free: 1-800-663-1461
Website: www.bcveg.com

BY EMAIL

(Date)

Compliance Letter – Phase 2
Submission Deadline:

RE:

To:

On (Date) the British Columbia Vegetable Marketing Commission (BCVMC) sent a Compliance Letter – Phase 1 to your organization, (name of Regulated Entity), identifying non-compliance with the BCMVC General Orders which included direction on how to remedy the non-compliant matters.

Specifically:

1. (Details of non-compliance and remedy)

To ensure (name of Regulated Entity) corrects this non-compliance, the BCVMC requires you to remedy the non-compliance within 10 business days from the date of this letter (**Submission Deadline:**) by undertaking the direction listed above.

If no response is received by the deadline or the non-compliance matters are not remedied, further compliance action (Warning Letter) will be initiated.

If you have any questions do not hesitate to contact me.

Sincerely,

Licensing and Compliance Manager

Attachments:

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1-800-663-1461

Appendix III

BCVMC
BC VEGETABLE MARKETING COMMISSION

#207, 15252 – 32nd Avenue
Surrey, British Columbia, Canada V3Z 0R7
Telephone: (604) 542-9734 • Fax: (604) 542-9735 • Toll Free: 1-800-663-1461
Website: www.bcveg.com

BY EMAIL

Date

Warning Letter
Submission Deadline:

RE:

To:

On (Date) the British Columbia Vegetable Marketing Commission (BCVMC) sent a Compliance Letter – Phase 2 to your organization, (name of Regulated Entity), identifying non-compliance with the BCMVC General Orders which included direction on how to remedy the non-compliant matters.

Specifically:

1. (Details of non-compliance and remedy)

To ensure (name of Regulated Entity) corrects this non-compliance, the BCVMC requires you to remedy the non-compliance within 10 business days from the date of this letter (**Submission Deadline:**) by undertaking the direction listed above.

If no response is received by the deadline or the non-compliance matters are not remedied, further compliance action will be initiated (Administrative Monetary Penalty, Supreme Court Injunction, Provincial Court Charges). In addition, your Licence will be brought before the Commission for review and determination of whether your current Licence status should be maintained, altered, or revoked.

If you have any questions do not hesitate to contact me.

Sincerely,

Licensing and Compliance Manager

Attachments:

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