



MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE STRATEGY
COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

DETERMINATION OF ADMINISTRATIVE PENALTY

February 16, 2023

File: 2022-44
1668

Email: rkowsari@lantic.ca

Lantic Inc.
123 Rogers Street
Vancouver, BC V6A 3N2

Attention: Lantic Inc.

RE: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on November 30, 2022, and your opportunity to be heard respecting the alleged contraventions, I have now made a Determination in this matter.

After reviewing the information available to me, I have concluded Lantic Inc. has failed to comply with Sections 1.1.3, 1.2.3, and 1.3.3 of Permit 1668 in respect of which an administrative penalty is being imposed pursuant to Section 115 of the *Environmental Management Act* (EMA) and the Administrative Penalties (EMA) Regulation. The amount of the penalty, reasons for my decision, payment, and appeal information are provided in the attached decision document.

If you have any questions with regards to this Determination, please contact me at 778-622-6908 or Stephanie.Little@gov.bc.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Little".

Stephanie Little
for Director, *Environmental Management Act*

Attachments:

2022-44 Penalty Assessment Form REVISED

cc: Kelly Mills, Senior Environmental Protection Specialist
Kelly.Mills@gov.bc.ca

Brady Nelles, Executive Director, Compliance & Environmental Enforcement
Brady.Nelles@gov.bc.ca



DETERMINATION OF ADMINISTRATIVE PENALTY

File: 2022-44

Name of Party:

Lantic Inc.

AMOUNT OF ADMINISTRATIVE PENALTY: \$32,200

Contravention or Failure:

Failure to comply with Section 1.1.3, 1.2.3, and 1.3.3 of Permit 1668 (Permit) – Temperature, Total Suspended Solids, and Biochemical Oxygen Demand limits (Authorized Discharges):

1.1 This section applies to the discharge of effluent from COOLING WATER FROM NON-CONTACT STEAM TURBINE OIL COOLERS, AND STORMWATER TO BURRARD INLET. The site reference number for this discharge is E208249. 1.1.3 The characteristics of the discharge must be equivalent to or better than:

Total Suspended Solids	Maximum:	25 mg/L
Biochemical Oxygen Demand	Maximum:	30 mg/L
Temperature	Maximum:	27 °C

1.2 This section applies to the discharge of effluent from CONDENSER COOLING WATER AND CONDENSATES FROM LIQUID SUGAR OPERATIONS, AND STORMWATER TO BURRARD INLET. The site reference number for this discharge is E208250. 1.2.3 The characteristics of the discharge must be equivalent to or better than:

Total Suspended Solids	Maximum:	25 mg/L
Biochemical Oxygen Demand	Maximum:	30 mg/L
Temperature	Maximum:	27 °C

1.3 This section applies to the discharge of effluent from CONDENSER COOLING WATER AND CONDENSATES FROM DIRECT CONTACT BAROMETRIC CONDENSERS ASSOCIATED WITH EVAPORATORS AND VACUUM PANS, COMBINED WITH COOLING WATER TO BURRARD INLET. The site reference number for this discharge is E243144. 1.3.3 The characteristics of the discharge must be equivalent to or better than:

Total Suspended Solids	Maximum:	10 mg/L
Biochemical Oxygen Demand	Maximum:	10 mg/L
Temperature	Maximum:	27 °C

Date of Contravention or Failure:

Temperature Exceedances (13)

Section 1.1.3	Section 1.2.3	Section 1.3.3
<ul style="list-style-type: none">• August 15, 2020• September 4, 2020• September 9, 2020• July 26, 2021• July 31, 2021	<ul style="list-style-type: none">• August 7, 2020• August 8, 2020	<ul style="list-style-type: none">• April 3, 2020• April 8, 2020• May 27, 2020• May 28, 2020• July 20, 2020• April 19, 2022

TSS Exceedances (2)

Section 1.2.3	Section 1.3.3
<ul style="list-style-type: none">• January 27, 2021	<ul style="list-style-type: none">• November 19, 2020

BOD Exceedances (4)

Section 1.2.3	Section 1.3.3
<ul style="list-style-type: none">• June 10, 2020• January 27, 2021• April 7, 2021	<ul style="list-style-type: none">• March 5, 2020

Directors Summary:

1. On November 30, 2022, the Ministry of Environment and Climate Change Strategy (Ministry) issued a Notice Prior to Determination of Administrative Penalty and accompanying Penalty Assessment Form (PAF) to Lantic Inc. (Lantic) via email. In the Notice, Lantic was offered an Opportunity to be Heard (OTBH) and given thirty (30) days to request an OTBH.
2. On December 5, 2022, Lantic confirmed receipt of the Notice and PAF via email.
3. On December 21, 2022, the Ministry emailed Lantic a courtesy reminder of the upcoming due date (January 4, 2023) to request an OTBH.
4. On December 22, 2022, Lantic requested an OTBH.

5. On December 22, 2022, the Ministry acknowledged Lantic’s request for an OTBH, confirmed it would be by written submission, and set a due date of January 24, 2023.
6. On January 24, 2023, Lantic submitted their OTBH to the Ministry.

Reasons for Decision:

7. I have considered all of the information submitted to me, including the written submission provided by Lantic. My evaluation has included a consideration of the matters listed in Section 7(1) of the Administrative Penalties (EMA) Regulation, as applicable.
8. The Ministry of Environment and Climate Change Strategy, Administrative Penalties Handbook – *Environmental Management Act* and *Integrated Pest Management Act* (AMP Handbook) provides high level guidance to Ministry staff considering the assignment of administrative penalties. Statutory decision makers consider, and decisions are informed by this document.

The Contravention or Failure:

9. With the exception of two temperature exceedances, which are addressed in Factor c) below, the failure to comply was not disputed by Lantic. As such, my reasons for decision will address each factor individually.
10. I note that in the OTBH submission, Lantic requested the Ministry “change our status from Level 2, Category B to Level 1, Category B” which I believe refers to the outcome of inspection report 190198 dated October 5, 2022. The application of the non-compliance decision matrix and the determination of the outcome of an inspection is at the sole discretion of the inspecting officer with delegated inspection powers under EMA. It is outside my authority to re-evaluate and change the application of the non-compliance decision matrix in individual inspection reports.

Factor a): Nature of Contravention or Failure

11. The PAF shared at Notice proposed that the failures to comply were major because three temperature exceedances ranged from 52% to 85% over the Permit limit, one Total Suspended Solids (TSS) exceedance was 420% over the Permit limit, and five Biochemical Oxygen Demand (BOD) exceedances ranged from 155% to 115,560% over the Permit limit.
12. In the OTBH submission, Lantic did not dispute the assessment of major for this factor. It acknowledged that Lantic provided corrected sample results for BOD exceedance which occurred March 5, 2020, under Section 1.3.3. Rather than returning a result of 11,566 mg/L this sample had a result of 464 mg/L. In addition, Lantic identified that they erroneously reported one BOD exceedance to have occurred at two locations, and the additional exceedance has therefore been removed from location where it was initially reported (1.1.3, E208249), resulting in a total of four BOD exceedances, ranging from 155% to 4,540% over the Permit limit.

13. After considering the relevant information, I confirm the failure to comply is major.
14. Adjustments to the PAF are indicated by blue font and ~~strikethrough~~.

Factor b): Actual or Potential Adverse Effects

15. The PAF shared at Notice proposed that the failure to comply was medium as high levels of TSS can provide a particulate medium for pathogens, increase of water temperatures, reduce light penetration in the water column, decrease dissolved oxygen levels, and cause clogging and abrasion of fish gills, behavioral impacts, altered resistance to disease, and changes to habitat. High BOD discharges can result in low dissolved oxygen in receiving waters and impact aquatic life. These potential impacts were assessed as likely to be localized, short-term and able to be mitigated within a reasonable timeframe, which aligns with the AMP Handbook description of medium.
16. In the OTBH submission, Lantic did not dispute the assessment of medium for this factor. Although Lantic provided supporting information on sucrose toxicology data and outfall surveys, I find that the description of “localized, short-term and able to be mitigated within in reasonable timeframe” still applies. While the historical toxicity data may support an assertion of “not being deleterious to fish” it does not provide evidence to support an assessment of “low” in the context of all potential receptors in the receiving environment. The outfall survey data showing that the “biophysical conditions observed remain largely unchanged from previous surveys” does not contradict a finding of short-term impacts that may be mitigated within a reasonable timeframe.
17. After considering the relevant information, I confirm that the failure is medium.
18. The base penalty is therefore confirmed at \$20,000 as proposed at Notice.
19. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failure, and the OTBH submission from Lantic.

Factor c): Previous contraventions or failures, penalties imposed, or orders issued:

20. The PAF shared at Notice proposed no increase for this factor and it was not raised by Lantic in the OTBH.
21. I confirm no increase to the base penalty for this factor.

Factor d): Whether contravention or failure was repeated or continuous

22. The PAF shared at Notice proposed a ten percent increase of the base penalty for the repeated nature of the failure to comply.

23. In the OTBH submission, Lantic asserted that two of the three temperature exceedances (April 3, 2020 and April 19, 2022) were a result of the calibration or electronic error due to power spike.
24. Upon review of the information provided by Lantic to support striking the April 3, 2020 and April 19, 2022 temperature exceedance from the penalty, I disagree that these should be removed. Lantic reported that the April 3, 2020, exceedance was due to an unstable power supply and that the power supply was then upgraded. Lantic failed to provide proof that this upgrade occurred and used the same root cause justification for the May 27, 2020 temperature exceedance. The CriticPM spreadsheet does not list any work with a target start date of April 3, 2020, and no work orders related to a power supply upgrade were found near this date. In addition, Lantic failed to provide an explanation for how such an upgrade would result in a temperature exceedance. Lantic reported that the April 19, 2022, temperature exceedance was due to calibration. However, in the PAF issued at Notice, the Ministry noted that Lantic had reported resolving this issue, stating in Factor h) “In response to the temperature exceedances which occurred from 2014 to 2017, Lantic modified the data collection and reporting system to exclude exceedances related to equipment calibration.” However, even if this issue remains outstanding, Lantic failed to provide appropriate supporting information. The quarterly report provided by Lantic to support this states that the calibration occurred on April 20, 2022, at this location (E208250), the day after the exceedance occurred. The CriticPM spreadsheet provided by Lantic also fails to identify any temperature probe calibration event with a target start date of April 19, 2022. Finally, none of the other monthly temperature probe calibration events resulted in exceedances of the Permit temperature limits.
25. As discussed in Factor a), in their OTBH submission Lantic also identified that they erroneously reported one BOD exceedance to have occurred at two locations, and the additional exceedance has therefore been removed from location where it was initially reported (Section 1.1.3, E208249). The TSS exceedance associated with this event is instead assigned to the correct location (Section 1.2.3 E208250).
26. After considering the relevant information, and even with the removal of one BOD exceedance, I confirm that a ten percent increase remains reasonable for the repeated nature of the remaining exceedances.

Factor e): Whether contravention or failure was deliberate

27. The PAF shared at Notice proposed no increase for this factor and it was not raised by Lantic in the OTBH.
28. I confirm no increase to the base penalty for this factor.

Factor f): Economic benefit derived by the party from the contravention or failure

29. The PAF shared at Notice proposed an increase of eighty-one percent of the base penalty (\$16,200) using an applied value assessment of the cost to have a qualified professional review the pollution control works.
30. The proposed increase for this factor was not directly raised or disputed by Lantic in the OTBH submission. While the submission refers to monies spent on spill prevention capital projects, the spreadsheet provided (under the project tab) does not contain supporting evidence (i.e. invoices, photographs, engineer drawings) that these projects have been implemented. In addition, the projects listed were undertaken in response to maintenance and spill issues.
31. None of the projects listed referenced engaging a qualified professional to undertake a review the pollution control works at the site as a whole, which is what the eighty-one percent of the base penalty has been assigned for.
32. After considering the relevant information, I confirm the increase of \$16,200 proposed at Notice.

Factor g): Exercise of due diligence to prevent the contravention or failure

33. The PAF shared at Notice proposed no reduction from the base penalty for this factor. A finding of due diligence can only be applied as a mitigating factor in an administrative penalty. A finding of the lack of due diligence cannot result in the assignment of an aggravating factor. To find the exercise of due diligence in this instance, I would need to be persuaded that Lantic had taken all measures reasonably necessary to avoid these failures.
34. In their OTBH, Lantic described their preventative maintenance (PM) program and provided a list of work orders from 2019 in an excel spreadsheet. Lantic also described an Environmental Risk Matrix used to identify and address environmental risks associated with equipment at the site, a Spill Response and Prevention Plan, and investigations into environmental incidents. None of these measures are extraordinary; they represent industry operational standards.
35. Lantic also reported that they spent \$930,000 on projects addressing spill and discharge issues since 2020. A review of the details provided in the project tab of Lantic's supporting spreadsheet determined that each of these projects was undertaken in response to an identified maintenance issue or spill. Again, conducting repairs and containing spills are minimum actions that should be undertaken in response to identified issues.
36. After considering the relevant information, I confirm no reduction of the base penalty for this factor.

Factor h): Efforts to correct the contravention or failure

37. The PAF shared at Notice proposed no reduction from the base penalty for this factor.
38. In their OTBH, Lantic reported a number of actions and work undertaken in response to each contravention included in the penalty calculation. Rather than restore compliance or reverse or mitigate impacts, these actions speak to efforts to prevent reoccurrence of the contraventions, and they have therefore been considered in Factor i).
39. After considering the relevant information, I confirm no reduction from the base penalty for this factor.

Factor i): Efforts to prevent reoccurrence of the contravention or failure

40. The PAF shared at Notice proposed no reduction from the base penalty for this factor.
41. In their OTBH, Lantic reported corrective actions undertaken in response to each of the nine contraventions included in the penalty calculation to prevent their reoccurrence. These actions included undertaking regular scheduled maintenance, replacement of incorrectly installed valves, installing sumps and increasing sump capacity, creating and extending spill containment berms, operator training, installation of backup pumps, replacement of leaking gaskets, installation of high level alarms, increased monitoring, and adjusting the speed of pumps. Lantic also reported that they started taking “snap samples” on all saltwater outflows ever morning to ensure no upset in the effluent going out.
42. Lantic reported that as a result of their ongoing programs and initiatives, “The amount of sucrose spilled into Burrard inlet dropped from 9.9 tonnes in the Fiscal Year 2020 to 1.83 tonnes in F.Y. 2021 and net Zero in F.Y. 2022.”
43. After considering the relevant information, I confirm a thirty percent reduction from the base penalty in acknowledgment of these efforts.

Factor j): Other

44. The PAF shared at Notice did not identify any additional factors relevant to the matter.
45. No other information was presented in the OTBH submission for consideration that have not been addressed in the factors above.
46. After considering the relevant information, I confirm no increase or decrease from the base penalty for this factor.

Total Penalty after base penalty determination and Factors c) to j) considered:

47. After determining a base penalty of \$20,000 for these failures and applying the mitigating and aggravating factors (\$12,200) discussed above, the penalty is established at \$32,200.

48. The final penalty calculations are summarized in the table below:

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention of failure	Major	Major
b) Actual or potential adverse effect	Medium	Medium
Base Penalty:	\$20,000	\$20,000
c) Previous contraventions, penalties imposed, or orders issued	\$0	\$0
d) Whether contravention or failure was repeated or continuous	+ \$2,000	+ \$2,000
e) Whether contravention or failure was deliberate	\$0	\$0
f) Economic benefit derived by the party from the contravention or failure	+ \$16,200	+ \$16,200
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	\$0	\$0
i) Efforts to prevent reoccurrence of the contravention or failure	\$0	- \$6,000
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j) Total Penalty Adjustments:</i>	+ \$18,200	+ \$12,200
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$38,200	\$32,200
Application of daily multiplier: NO	N/A	N/A
Final Penalty:	\$38,200	\$32,200

DUE DATE AND PAYMENT

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this Determination of Administrative Penalty (Determination). You will be sent an invoice, to be paid via cheque or money order made **payable to the Minister of Finance**. Payment can be mailed to Business Services at:

Attn: Fees Analyst
Ministry of Environment and Climate Change Strategy
PO Box 9377 Stn Prov Govt
Victoria BC V8W 9M6

Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.

If payment has not been received in the thirty (30) calendar day period, interest will be charged on overdue payments at a rate of 3% + the prime lending rate of the principal banker to the Province per month and the amount payable is recoverable as a debt due to the government. In the event of non-payment you will be ineligible for a permit or approval, or to amend a permit or approval, until the penalty is paid in full. Further, I am authorized by Section 18 of EMA to cancel or suspend your current authorization in the event of non-payment and if I decide to do so, you will be notified accordingly.

RIGHT TO APPEAL

If you disagree with this Determination, Division 2 of Part 8 of EMA provides information for how to appeal my decision to the Environmental Appeal Board (EAB). In accordance with EMA and with the EAB Procedures Regulation, the EAB must receive Notice of the Appeal no later than 30 calendar days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form is available online at <https://www.bceab.ca/resources/forms-and-templates>. It should be completed and filed by registered mail or by leaving a copy at the EAB office during normal business hours. The street address is 4th Floor, 747 Fort Street, Victoria, BC, and the office is open from 8:30 am – 4:30 pm Monday through Friday, excluding public holidays.

Notice may also be sent by email or fax, provided the original Notice of Appeal and the appeal fee follows by mail. The mailing address of the EAB is:

Environmental Appeal Board
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9M6

For further information, please consult the EAB website at <https://www.bceab.ca>. If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 calendar days after receiving a copy of the order or decision of the appeal board, or, if the EAB has sent the matter back to the decision maker, within 30 calendar days after a new Determination of Administrative Penalty is served.

PUBLICATION:

Seven days after the date of service, this Determination will be published on the Natural Resource Compliance and Enforcement Database (NRCED) Website: <https://nrccd.gov.bc.ca/>

Dated this 16th day of February, 2023.