



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

DETERMINATION OF ADMINISTRATIVE PENALTY

June 3, 2024

File: 2023-36
17679

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Conuma Resources Limited
25th Floor – 666 Burrard Street
Vancouver, BC V6C 2X8

Attention: Conuma Resources Limited

RE: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on October 12, 2023, 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 Conuma Resources Limited has failed to comply with Section 3.1.1 (Monitoring Program), Section 4.1.1 (Monitoring Program), Section 4.1 (Monthly Reports), and Section 5.4 (Electronic Submission of Results) 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 250-312-7179 or Jason.Bourgeois@gov.bc.ca.

Sincerely,

Jason Bourgeois
for Director, *Environmental Management Act*

Attachments:

2023-10-12 2023-36 Penalty Assessment Form

cc: Jack Green, A/Section Head – Heavy Industry
Jack.Green@gov.bc.ca

Nadine Schwager, Environmental Protection Technician
Nadine.Schwager@gov.bc.ca

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DETERMINATION OF ADMINISTRATIVE PENALTY

FILE: 2023-36

Name of Party:

Conuma Resources Limited

AMOUNT OF ADMINISTRATIVE PENALTY:

2023-36a: \$40,000

2023-36b: \$1,100

TOTAL: \$41,100

Contravention or Failure:

A. Failure to comply with Section 3.1.1 of Permit 17679 (Monitoring Program), amended April 9, 2018 (2018 Permit Amendment):

The Permittee must follow the Brule Mine Water Quality Monitoring Program attached to this permit in Appendix A, unless the mine is in care and maintenance and the director has approved a care and maintenance monitoring program.

B. Failure to comply with Section 4.1.1 of Permit 17679 (Monitoring Program), amended June 3, 2022 (2022 Permit Amendment):

The permittee must follow the Brule Mine Water Quality Monitoring Program attached to this permit in Appendix A.

C. Failure to comply with Section 4.1 of the 2018 Permit Amendment (Monthly Reports):

All available field and laboratory monitoring results required by this permit, and associated quality assurance data required in Section 3.8, collected each month must be electronically submitted in tabulated formats acceptable to the director to EnvAuthorizationsReporting@gov.bc.ca within 30 days of the end of the month in which the sampling occurred.

The Permittee must submit the results of effluent discharge and receiving environment water quality sampling programs listed in Appendix A to the ministry’s Environmental Management System (EMS) database using the appropriate EMS site identification numbers (provided by the ministry) within 60 calendar days of the end of the month in which the samples were collected.

Missing results or monitoring results that exceed permit limits or water quality guidelines must be highlighted in each respective report, along with a discussion of responses and mitigations undertaken by the Permittee.

D. Failure to comply with Section 5.4 of the 2022 Permit Amendment (Electronic Submission of Results):

The Permittee must submit the results of effluent discharge and receiving environment water quality sampling programs listed in Appendix A to the ministry's Environmental Management System (EMS) database using the appropriate EMS site identification numbers in Appendix A - Table 1 and 2 within 60 calendar days of the end of the quarter in which the samples were collected.

All original laboratory reports for submitted data must be kept on site and are to be provided to the Ministry within seven days, in an electronic format, upon written request by the director.

Note: Appendix A is lengthy and can be found at pages 25 to 27 in the 2018 Permit Amendment and pages 34 to 37 in the 2022 Permit Amendment.

Date of Contravention or Failure:

A. Section 3.1.1 of the 2018 Permit Amendment on 244 dates between October 21, 2020 and September 1, 2021:

- October 21 to November 8, 2020 (19)
- November 10 to 22, 2020 (13)
- November 24 to 29, 2020 (6)
- December 1 to 2, 2020 (2)
- December 4 to 6, 2020 (3)
- December 8 to 16, 2020 (9)
- December 18, 2020 to January 1, 2021 (15)
- January 3 to April 14, 2021 (102)
- April 18, 2021
- April 29, 2021
- May 1, 2021
- May 4, 2021
- May 10, 2021
- May 12, 2021
- May 14, 2021
- May 17, 2021
- May 20, 2021
- May 24, 2021
- May 27, 2021
- May 31, 2021
- June 7, 2021
- June 14, 2021
- June 17, 2021
- June 21, 2021
- June 24, 2021
- June 28, 2021
- July 1 to 7, 2021 (7)
- July 9 to 18, 2021 (10)
- July 20 to 31, 2021 (12)
- August 2 to 4, 2021 (3)
- August 6 to 19, 2021 (14)
- August 21 to 30, 2021 (10)
- September 1, 2021

(##) indicates number of days

B. Section 4.1.1 of the 2022 Permit Amendment on 162 dates between June 8, 2022 and January 1, 2023:

- June 8, 2022
- June 15, 2022
- August 27 to 29, 2022 (3)
- August 31, 2022

- June 21 to 22, 2022 (2)
- June 29, 2022
- July 1, 2022
- July 4 to 7, 2022 (4)
- July 9, 2022
- July 13, 2022
- July 15 to 25, 2022 (11)
- July 27 to August 3, 2022 (8)
- August 7 to 8, 2022 (2)
- August 10 to 15, 2022 (6)
- August 17, 2022
- August 20 to 25, 2022 (6)
- September 2 to 15, 2022 (14)
- September 17 to 19, 2022 (3)
- September 21 to 22, 2022 (2)
- September 24, 2022
- September 26, 2022
- September 28 to 29, 2022 (2)
- October 1 to November 14, 2022 (45)
- November 16 to December 4, 2022 (19)
- December 7 to 29, 2022 (23)
- December 31, 2022
- January 1, 2023

(##) indicates number of days

C. Section 4.1 of the 2018 Permit Amendment on 15 dates between October 31, 2020 and May 31, 2022:

- | | | |
|---------------------|------------------|----------------------|
| • October 31, 2020 | • April 2, 2021 | • August 30, 2021 |
| • November 30, 2020 | • April 30, 2021 | • September 30, 2021 |
| • December 31, 2020 | • May 31, 2021 | • October 31, 2021 |
| • January 30, 2021 | • June 30, 2021 | • March 2, 2022 |
| • March 2, 2021 | • July 31, 2021 | • May 31, 2022 |

D. Section 5.4 of the 2022 Permit Amendment on seven dates between August 30, 2022 and March 2, 2023:

- | | | |
|----------------------|---------------------|--------------------|
| • August 30, 2022 | • November 30, 2022 | • January 30, 2023 |
| • September 30, 2022 | • December 31, 2022 | • March 2, 2023 |
| • October 31, 2022 | | |

Directors Summary:

1. Conuma Resources Limited is a steelmaking coal producer which owns and operates three mining operations in north-east British Columbia (BC). Conuma Resources Limited employs approximately 900 people in the Peace River Regional District across the three operations.
2. One of the three operations, Brule Mine, is an open pit metallurgical coal mine located approximately 57 km southwest of Chetwynd, BC.
3. Brule Mine was first approved in 2006 and was operational until 2014 when it entered care and maintenance. Conuma Resources Limited took ownership of Brule Mine in September 2016 and mining recommenced in October 2016.

4. The provincial regulatory authorization governing the discharge of effluent from Brule Mine is Permit 17679 (Permit) issued pursuant to the *Environmental Management Act*, S.B.C. 2003, c. 53 (EMA).
5. The Permit was issued and is administered by the BC Ministry of Environment and Climate Change Strategy (Ministry).
6. The Permit was first issued on May 30, 2005, and amended on December 12, 2016 (2016 Permit Amendment), when it was transferred from Walter Energy to Conuma Coal Resources Limited.
7. The Permit was amended on April 9, 2018 (2018 Permit Amendment), which is relevant to this administrative penalty (AMP). The Permit was amended again on June 3, 2022 (2022 Permit Amendment), which included Conuma Coal Resources Limited changing its name to Conuma Resources Limited (Conuma). The 2022 Permit Amendment is also relevant to this AMP. Going forward, this AMP will reference the regulated party as “Conuma”.
8. The Permit authorizes the discharge of surface runoff, seepage water and other mine influenced water from Brule Mine into the environment, including Blind Creek and its tributaries.
9. Brule Mine is located within the Blind Creek watershed, which is a tributary of the Sukunka River. Brule Mine has two effluent discharge points to surface water, one from the Main Sediment Pond (MSP) and the second from Sediment Pond 2 (SP2). Effluent from the MSP discharges to Blind Creek and the effluent from SP2 discharges to Tributary 3 (Trib-3), a tributary of Blind Creek.
10. Blind Creek is fish bearing, but the two effluent discharge points to surface water at Brule Mine are upstream from a waterfall (i.e. barrier to fish passage). The Sukunka River is also fish bearing and home to Rocky Mountain whitefish, Artic Grayling and Dolly Varden. The Sukunka River was stocked with Rainbow Trout to establish a population.
11. On February 3, 2022, the Ministry issued inspection report (IR) 170462, a Referral for an AMP. In IR 170462, Conuma was found to be out of compliance with Section 3.1.1 of the 2018 Permit Amendment, including failures to conduct required monitoring during 2020 and 2021. Conuma was also found to be out of compliance with Section 4.1 of the 2018 Permit Amendment, for failing to upload data to the Ministry’s Environmental Management System (EMS).
12. On June 27, 2023, the Ministry issued IR 201966, a Referral for an AMP. In IR 201966, Conuma was found to be out of compliance with Section 4.1.1 of the 2022 Permit Amendment, including failures to conduct required monitoring during 2022. Conuma was also found to be out of compliance with Section 5.4 of the 2022 Permit Amendment, for failing to upload data to EMS.

13. On October 12, 2023, the Ministry issued a Notice Prior to Determination of Administrative Penalty (Notice) and accompanying Penalty Assessment Form (PAF) to Conuma via email. The Notice recommended two penalties:
 - **2023-36a:** \$40,000 for failure to comply with Section 3.1.1 of the 2018 Permit Amendment and Section 4.1.1 of the 2022 Permit Amendment.
 - **2023-36b:** \$1,400 for failure to comply with Section 4.1 of the 2018 Permit Amendment and Section 5.4 of the 2022 Permit Amendment.
14. In the Notice, Conuma was offered an Opportunity to be Heard (OTBH) and given thirty (30) days to request an OTBH.
15. On October 12, 2023, Conuma confirmed receipt of the Notice and PAF via email.
16. On October 23, 2023, Conuma requested an OTBH.
17. On October 23, 2023, the Ministry acknowledged Conuma's request for an OTBH and confirmed the OTBH would be by written submission and set a due date of January 5, 2024.
18. On November 20, 2023, Conuma requested an extension to the due date for its OTBH submission.
19. On November 20, 2023, the Ministry granted the request for an extension and set a new due date of May 10, 2024.
20. On April 16, 2024, Conuma requested additional information on the non-compliances that was not originally included in the PAF.
21. On April 18, 2024, the Ministry provided Conuma with the following two documents that detailed the locations, parameters, and dates of all missed monitoring events and failures to comply:
 - 2022-02-03 IR170462 Section 3.1.1 AMP dates
 - 2023-06-27 IR201996 Section 4.1.1 AMP dates
22. On May 2, 2024, the Ministry emailed Conuma a courtesy reminder of the upcoming due date (May 10, 2024) to submit its OTBH.
23. On May 10, 2024, Conuma submitted its OTBH (OTBH Submission) to the Ministry.

Reasons for Decision:

24. In making this Determination of Administrative Penalty (Determination), I have considered all of the information available to me, including the OTBH Submission provided by Conuma. I thank Conuma for providing a very thorough and well organized OTBH Submission.

25. My reasons for decision include a consideration of the failures to comply with the Permit as well as the matters listed in Section 7(1) of the Administrative Penalties (EMA) Regulation (APR), as applicable.
26. 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. I have considered the AMP Handbook in making this Determination.
27. Considering the AMP Handbook in making my Determination is consistent with the Environmental Appeal Board’s (EAB) findings in *United Concrete & Gravel Ltd. v Director, Environmental Management Act* (Decision No. EAB-EMA-21-A005(a), September 27, 2021)¹ (United Concrete), at para. 72:

“Throughout my reasons, I have referred to the Handbook. After having reviewed the Handbook, I find it to be a reasonable guide for determining the appropriate quantum of an administrative penalty under the Act. It fosters consistency and predictability in decision-making. No other resources or authorities were provided to me. For these reasons, I have found the Handbook persuasive in my reasoning.”
28. Details will be provided below in the penalty calculations.

PENALTY CALCULATION

FILE: 2023-36a

Section 3.1.1 (2018 Permit Amendment) (Monitoring Program) **Section 4.1.1 (2022 Permit Amendment) (Monitoring Program)**

The Contravention or Failure:

29. Section 3.1.1 in the 2018 Permit Amendment and Section 4.1.1 in the 2022 Permit Amendment both require Conuma to follow the Brule Mine Water Quality Monitoring Program in Appendix A.
30. For the purposes of this Determination, I find that Section 3.1.1 in the 2018 Permit Amendment and Section 4.1.1 in the 2022 Permit Amendment are considered as the same regulatory requirement; all non-compliances with both versions will be included in one penalty, as opposed to two separate penalties.
31. As outlined in the PAF shared at Notice, I found that on 246 dates, Conuma failed to comply with Section 3.1.1 of the 2018 Permit Amendment. The PAF shared at Notice included failures to comply on November 30, 2020 and May 21, 2021. However, after a careful review of the alleged failures, I have removed these two dates from this Determination.

¹ [EAB-EMA-21-A005a.pdf \(bceab.ca\)](https://www.bceab.ca/EAB-EMA-21-A005a.pdf)

32. For this Determination, I find that on the following 244 dates between October 21, 2020 and September 1, 2021, Conuma failed to conduct monitoring, as required by Section 3.1.1 of the 2018 Permit Amendment:

- October 21 to November 8, 2020 (19)
- November 10 to 22, 2020 (13)
- November 24 to 29, 2020 (6)
- December 1 to 2, 2020 (2)
- December 4 to 6, 2020 (3)
- December 8 to 16, 2020 (9)
- December 18, 2020 to January 1, 2021 (15)
- January 3 to April 14, 2021 (102)
- April 18, 2021
- April 29, 2021
- May 1, 2021
- May 4, 2021
- May 10, 2021
- May 12, 2021
- May 14, 2021
- May 17, 2021
- May 20, 2021
- May 24, 2021
- May 27, 2021
- May 31, 2021
- June 7, 2021
- June 14, 2021
- June 17, 2021
- June 21, 2021
- June 24, 2021
- June 28, 2021
- July 1 to 7, 2021 (7)
- July 9 to 18, 2021 (10)
- July 20 to 31, 2021 (12)
- August 2 to 4, 2021 (3)
- August 6 to 19, 2021 (14)
- August 21 to 30, 2021 (10)
- September 1, 2021

33. As outlined in the PAF shared at Notice, I found that on 162 dates, Conuma failed to comply with Section 4.1.1 of the 2022 Permit Amendment.

34. In Section 2.A. of the OTBH Submission, Conuma disputes the following non-compliances, stating that monitoring was not completed due to unsafe conditions:

- Q3 2022 – MINK DS
- Q3 2022 – NBC

35. In Section 2.B. of the OTBH Submission, Conuma disputes the following non-compliances, stating that monitoring was completed:

- 2022 Annual – MSP-B, SP2-B
- Q3 2022 – UMINK, MINK

36. I find that these four non-compliances disputed above by Conuma were not part of the Section 4.1.1 non-compliances identified in IR 201996 or detailed in the summary document 2023-06-27 IR201996 Section 4.1.1 AMP dates. In the result, they are not relevant to this Determination.

37. For this Determination, I find that on the following 162 dates between June 8, 2022 and January 1, 2023, Conuma failed to conduct monitoring, as required by Section 4.1.1 of the 2022 Permit Amendment:

- June 8, 2022
- June 15, 2022
- June 21 to 22, 2022 (2)
- June 29, 2022
- July 1, 2022
- July 4 to 7, 2022 (4)
- July 9, 2022
- July 13, 2022
- July 15 to 25, 2022 (11)
- July 27 to August 3, 2022 (8)
- August 7 to 8, 2022 (2)
- August 10 to 15, 2022 (6)
- August 17, 2022
- August 20 to 25, 2022 (6)
- August 27 to 29, 2022 (3)
- August 31, 2022
- September 2 to 15, 2022 (14)
- September 17 to 19, 2022 (3)
- September 21 to 22, 2022 (2)
- September 24, 2022
- September 26, 2022
- September 28 to 29, 2022 (2)
- October 1 to November 14, 2022 (45)
- November 16 to December 4, 2022 (19)
- December 7 to 29, 2022 (23)
- December 31, 2022
- January 1, 2023

38. For this Determination, I have the discretion of determining a separate \$40,000 penalty for each of these 406 failures to comply with Sections 3.1.1 and 4.1.1. I also have the discretion of consolidating into one penalty, to a maximum of \$40,000. Since this is the first administrative penalty for Conuma regarding these sections of the Permit, I have decided to exercise my discretion in favour of Conuma and confirm this as one penalty as proposed at Notice, with a maximum of \$40,000.

39. However, I note that if Conuma fails to comply with Section 4.1.1 in the future, a subsequent statutory decision maker could review the relevant facts and this Determination and determine that separate penalties for failures are necessary to deter non-compliance.

40. As the failures themselves were not disputed, my reasons for decision will address each factor individually. My considerations under Section 7(1) of the APR are as follows:

Factor a): Nature of Contravention or Failure

41. The PAF shared at Notice proposed that the failures were moderate. In the AMP Handbook, a “moderate” contravention or failure includes “*failure to undertake required monitoring*”.

42. Conuma disputes the nature of the contravention in Section 3.A. of the OTBH Submission and submits that it should be categorized as minor.

43. I have considered the AMP Handbook which describes a moderate nature of contravention as “*generally, this category refers to a failure to comply with operational requirements that at a minimum create a risk of harm to the environment or human health and safety.*” It includes “*failure to conduct required sampling or studies; failure to undertake required monitoring*”.

44. I have also considered the AMP Handbook and how it describes a minor nature of contravention as “*generally, refers to non-compliance with administrative requirements such as not providing reports within legislated timeframes*”. But for a minor contravention,

the AMP Handbook also states, “*Consider administrative requirements carefully: if a late or missing report is the only insight to the performance of a facility or its pollution abatement equipment, then a late submission would be considered more than of minor interest to the Ministry.*”

45. In this Determination, Conuma failed, on 406 occasions, to follow various aspects of the Surface Water and Groundwater Monitoring Program, required in Appendix A of the Permit. These 406 failures to comply are described in detail in the additional information provided to Conuma on April 18, 2024 (i.e. 2022-02-03 IR 170462 Section 3.1.1 AMP dates and 2023-06-27 IR 201996 Section 4.1.1 AMP dates).
46. I have also considered Section 1 of the Permit, which sets discharge limits on the following relevant parameters:
 - Section 1.1 applies to the discharge of effluent from MSP into Blind Creek and sets different limits for Total Suspended Solids (TSS) and 96-hour rainbow trout (RBT) acute toxicity tests, depending on MSP discharge flow rates.
 - Section 1.2 applies to the discharge of effluent from SP2 into Trib-3 of Blind Creek and sets different limits for TSS and 96-hour RBT acute toxicity tests, depending on SP2 discharge flow rates.
 - Section 1.3.1 applies to the management of biochemical reactors (BCR1 and BCR2) to facilitate the precipitation of Selenium and sets limits for Biochemical Oxygen Demand (BOD), Total Organic Carbon (TOC) and Dissolved Oxygen (DO).
 - Section 1.3.2 applies to effluent discharged from BCR1 and BCR2 to either MSP or SP2 and sets limits for BOD and Total Phosphorus.
47. After a review of Ministry files, I find that the Director decided, in the 2016 Permit Amendment, to require Conuma to follow the Surface Water and Groundwater Monitoring Program in Appendix A and also meet the discharge limits set in Section 1.
48. I find that the Director decided in the 2018 and 2022 Permit Amendments, to keep the requirements to monitor in Appendix A and the discharge limits in Section 1. At those times, Conuma did not appeal the decisions to the EAB, within 30 days as required by EMA.
49. I note that under Section 16 of EMA, a Director may amend any permit requirement for the protection of the environment. Any permit amendment follows a cautious and technically rigorous process when assessing the potential risks of damage to the environment.
50. Further, I did not make the Permit amendment decisions in 2016 (or 2018 or 2022) and cannot comment on how the requirements to monitor in Appendix A and the discharge limits in Section 1 were assessed and set, or what was considered in the cautious and technically rigorous process at those times. My jurisdiction in this Determination is limited to assessing whether the facts support an AMP, and I cannot decide whether the requirements to monitor in Appendix A and the discharge limits in Section 1 ought to be changed.

51. After considering the relevant information above, I find that all monitoring requirements in Sections 3.1.1 and 4.1.1 are valid legal requirements that Conuma must follow. I further find that Conuma failed to comply with Section 3.1.1 and 4.1.1, 406 times between October 21, 2020 and January 1, 2023.
52. While there are 406 failures to comply that form the basis of this Determination, I find that the 73 missed monitoring events at the following Sample Sites are of particular concern:
- MSP-D (MSP Discharge)
 - Quarterly 96-hour RBT acute toxicity test missed in 2020 Q4.
 - Quarterly 96-hour RBT acute toxicity test missed in 2022 Q2.
 - SP2-D (SP2 Discharge)
 - Quarterly 96-hour RBT acute toxicity test missed in 2020 Q4.
 - Weekly Lab TSS monitoring missed 10 times between April 8 and July 12, 2021.
 - Daily Flow Rate monitoring missed 14 times between April 8, 2021 and July 12, 2021.
 - Quarterly 96-hour RBT acute toxicity test missed in 2022 Q2.
 - Weekly Lab TSS monitoring missed 5 times between June 21 and October 12, 2022.
 - Agridrain-1 (BCR1 agridrain discharge)
 - Continuous DO monitoring missed 3 times between July 5 and December 21, 2022.
 - Agridrain-2 (BCR2 agridrain discharge)
 - Weekly BOD monitoring missed 12 times between September 8 and November 24, 2022.
 - Weekly TOC monitoring missed 12 times between September 8 and November 24, 2022.
 - Continuous DO monitoring missed 4 times between June 21 and December 21, 2022.
 - BCR1-D (BCR1 aeration pond discharge)
 - Twice per week DO monitoring missed on July 5, 2022.
 - Weekly Total Phosphorus missed 8 times between June 8 and July 27, 2022.
53. These 73 missed monitoring events are of particular concern because the specific parameters have limits set in Section 1, and, in some cases, vary depending on the discharge flow rates. Because Conuma failed to conduct the monitoring required in Appendix A, the Ministry could not determine whether the limits in Section 1, set to protect the environment, were exceeded. Not providing this required data interfered with the Ministry's ability to adequately assess Conuma's compliance with Section 1 of the Permit and to determine if any changes to the Permit were required.
54. Sampling and monitoring surface water and groundwater quality at the Brule Mine, on the schedules set in Appendix A, is critical to determine whether the existing Authorized Works described in Section 1 are effective and whether Brule Mine is impacting the environment, including downgradient groundwater and aquatic life in downstream waters. Without this knowledge, a risk of harm to the environment is created.

55. I find that none of these 73 failures, even if considered separately, would meet the AMP Handbook definition of a minor contravention. In fact, the four failures to conduct quarterly 96-hour RBT acute toxicity tests, could be considered major contraventions since I find they significantly undermined the basic integrity of the overarching regulatory regime and significantly interfered with the Ministry's capacity to regulate. Conducting RBT toxicity tests (and ensuring a pass) is considered one of the Ministry's most important regulatory requirement to protect the aquatic environment.
56. I find that the 406 failures to comply with the monitoring operational requirements have, on average, created a risk of harm to the environment or human health and safety and best meet the AMP Handbook definition of a moderate contravention. This is especially true in the context of this Determination, where all 406 failures to comply are consolidated into one penalty, with a maximum of \$40,000. The risk of harm to the environment or human health and safety will be considered in more detail below in Factor b).
57. Finally, I have considered the *United Concrete* EAB decision which I find helpful in determining the nature of contravention in this Determination. In *United Concrete*, the Appellant failed to regularly sample and analyze process water and runoff discharged from a concrete and glass abrasives facility. At paras 73 and 75, the EAB stated:

[73] I agree with the Director that the nature of this contravention is "moderate" because of the risk of harm it creates, to the environment and/or human health. Without the required sampling and analysis, no one has an accurate understanding of what the Appellant is discharging into the environment. There is no way to promptly or effectively respond if any discharges of process water or runoff from an establishment exceed the limits in section 7(2)(b) of the Code, or if pollution takes place, for example.

...

[75] Because the lack of sampling and analysis in this case poses an increased risk of undetected contamination or pollution, and a more difficult response to any such issues that arise (given the lack of information on the discharges and the ensuing need for more investigation in such a circumstance), I agree with the guidance provided in the Handbook, that a "... failure to conduct required sampling or studies; [or] a failure to undertake required monitoring ..." is an example of a moderate contravention. The circumstances of this case fit that description."

58. After considering the relevant information above, I confirm that the 406 failures to comply are moderate.

Factor b): Actual or Potential Adverse Effects

59. Section 7(1)(b) of the APR requires that I must consider the real **or potential** adverse effect of the failure. A finding of potential adverse effect of the failure is enough to apply this factor.
60. The PAF shared at Notice proposed that the failures were medium. Reducing monitoring without Ministry approval is assessed as medium which aligns with the AMP Handbook

description “*the contravention interferes with the Ministry’s capacity to protect the environment or human health, or has the potential to do so, but does not result in an adverse effect or the potential to do so is moderate. Any effect is localized, short-term and can be mitigated or damage repaired within a reasonable timeframe.*”

61. Conuma disputes the actual or potential adverse effects and submits that they should be categorized as low to none. Part of Section 3.B. of the OTBH Submission stated:

“Additionally, some of the discharge points for the constituents listed in the IRs flow into bodies of water that are not fish bearing. In particular, monitoring location SP2-D flows directly into Tributary 3, which is not fish bearing, and then into BC-01a, which is also devoid of fish. Similarly, MSP-D discharges into Blind Creek from monitoring location BC-02 to BC-01a. Despite Blind Creek being classified as fish bearing, BC-01a is above a natural fish barrier (waterfall), which renders the area upstream of this monitoring location to be non fish bearing. Monitoring locations SP2-D, BC-01a, and MSP-D are attributed to 529 missed sampling events in IR 170462 and 400 missed sampling events in IR 201966. Therefore, any lack of monitoring on these locations is likely to not have an adverse impact upon the receiving environment. For this reason, if the Director finds that Conuma did fail to monitor, the lack of monitoring did not have a real or potential adverse impact to the environment.

In Pacific Coast Renewables Corp v. Director, Environmental Management Act², a penalty was levied against Pacific Coast for unauthorized discharge of waste into the environment and for failing to install a flowmeter or monitor the rates of discharge. In discussing the nature of the contravention, the Environmental Appeal Board (“EAB”) noted there was insufficient evidence before it to establish on a balance of probabilities that both the unauthorized discharge or the flowmeter matters suggest harm to, or adverse effects on the environment or human health. Following Pacific Coast, if the Director determines that Conuma was not in compliance with the Monitoring Requirements, the Ministry must provide evidence that the lack of monitoring had a real or potential adverse impact to the environment. There is no evidence provided in the Form or its supporting documents that the failure to monitor resulted in adverse effects. The Handbook states that contraventions that do not result in adverse effects, or the potential to do so are low and is more accurately categorized as having a low to no real or potential adverse effects.”

62. In the *Pacific Coast* EAB decision, the Director submitted that the Appellant’s persistent non-compliance and significant exceedances with discharge requirements supported the characterization of a “major” contravention, **for Factor a) of the APR**. However, the EAB disagreed and found there was insufficient evidence submitted before it to establish, on a balance of probabilities, that the contraventions resulted in a sustained impact or threat to the integrity of the of the environment or human health. Additionally, the EAB found insufficient evidence before it to establish, on a balance of probabilities, that the contraventions undermined the basic integrity of the regulatory regime.

² [EAB-EMA-22-A009a.pdf \(bceab.ca\)](#)

63. However, at para. 32 of *Pacific Coast*, regarding **Factor b) of the APR**, the EAB stated:

“The parties agree that the categorization of “medium” for real or potential adverse effects is appropriate. Given a “moderate” contravention with “medium” potential for adverse effects, the base penalty suggested by the Handbook is \$10,000. I see no compelling reason to depart from this suggestion, and I set the base penalty for the Discharge Contraventions at \$10,000.”

64. In this Determination, the PAF shared at Notice proposed that the failures were medium, which I find is consistent with the *Pacific Coast* EAB decision.

65. I have also considered the *United Concrete* EAB decision which I also find helpful in determining the potential for adverse effects in this Determination. In *United Concrete*, the EAB stated at paras. 76 and 77:

“[76] I also find that the adverse effect of the Appellant’s contravention was “medium”. As stated by the Director and in the Handbook, the contravention impacted the Ministry’s ability to protect the environment or human health, but on a localized and mitigable scale. I agree that this is a “medium”, in terms of the adverse impact or potential impact of the contravention.

[77] For all of these reasons, I conclude that \$10,000 is a suitable base penalty, given the “moderate” nature of the contravention and the “medium” nature of the adverse effect of the contravention.”

66. For Factor b), Section 7(b) of the APR requires that I must consider *“the real or potential adverse effect of the contravention or failure”*. [emphasis added]

67. There are many parameters of concern at Brule Mine, and some representative examples are RBT acute toxicity, TSS, BOD (and DO), and Phosphorus.

68. Toxicity tests are conducted to determine how damaging a substance is to living organisms. These tests represent key environmental thresholds and help form the minimum requirements that must be met to prevent pollution to the environment. Acute toxicity tests are used to determine the effects of a single exposure to a substance in a short period of time, and the measurable endpoint is the survival of the test organism.

69. Effluent is acutely toxic if there is greater than 50% mortality to RBT during a 96-hour exposure in a 100% effluent concentration using “Biological Test Method; Reference Method for Determining Acute Lethality of Effluent to Rainbow Trout, EPS 1/RM/13 Second Edition December 2000”. An effluent sample is considered to have passed if at 100% effluent concentration, $\leq 50\%$ of the test fish die after 96-hours of exposure, the test is considered to have failed if $> 50\%$ of the test fish die after 96-hours. The test must be reported in percent (%) mortality.

70. TSS is a parameter of concern when discharged to the environment from sediment ponds. High TSS concentrations absorb heat and can block light required for the survival of photosynthetic vegetation, and decay of this vegetation can lead to depletion of oxygen levels in the receiving environment. High TSS concentrations also affect aquatic life through physical abrasion, clogging of gills, interference with underwater navigation, and smothering of eggs and life at the bottom of a water body.
71. The first response of an aquatic system to Phosphorous additions is increased plant and algal growth. Although this may be desirable in some cases, beyond a certain point, further Phosphorous addition can cause undesirable effects such as: decrease in biodiversity and changes in dominant biota, decline in ecologically sensitive species, increase in turbidity, increase in organic matter leading to increased sedimentation, and anoxic conditions.
72. BOD is a measurement used to estimate the oxygen demand placed on a receiving water by biota in the process of assimilating the organic matter contained in a waste. BOD is used to measure the effect that an effluent will have on receiving waters. Elevated BOD concentrations can potentially result in low DO in receiving waters which negatively impacts aquatic life. Elevated BOD concentrations can potentially lead to a failing disposal field.
73. Before I make this Determination, I must consider whether there is any evidence of real adverse effects on the environment. Under the AMP Handbook, I am guided to consider whether the real or potential adverse effects have a low to none, medium, or high classification. The AMP Handbook provides guidance that potential effects are an important consideration to factor into the gravity of the contravention although they may not be given the same weight as actual adverse effects. The Ministry's mandate is to prevent harm to the environment and human health, not wait to act until something bad has happened.
74. I have considered the AMP Handbook which describes a medium real or potential adverse effect as *“the contravention interferes with the Ministry’s capacity to protect the environment or human health, or has the potential to do so, but does not result in a significant adverse effect or the potential to do so is moderate.”*
75. I have also considered the AMP Handbook which describes a low to none real or potential adverse effect as *“the contravention does not result in an immediate adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.”*
76. The 406 missed monitoring events included a variety of parameters, including turbidity, Non-Metals, Metals, Flow Rates, 96hr RBT toxicity, Lab TSS, sulphate, DO, Total Phosphorus, BOD, TOC, and EPH.
77. Of the 406 failures to comply, 73 were related to missed monitoring of parameters that had specific limits set out in Section 1 of the Permit. Those limits, set by the Director to protect the environment, could not be assessed because of Conuma’s failure to conduct the

sampling and monitoring required in Appendix A. I find that missing the 73 sampling events significantly interfered with the Ministry's capacity to protect the environment.

78. I have considered IR 201996, which described a RBT acute toxicity test failure at MSP-D for 2022 Q4. Part of the "Details/Findings" for Section 4.1.3 in IR 201996 stated:

"ENV Mining Authorizations emailed Conuma on 15 March 2023, requesting all 2022 toxicity results after it became apparent that Conuma had failed to report these results in the Monthly Reports, as required by Permit section 5.3.1. Conuma responded on 17 March 2023, providing the toxicity results for 2022. These results indicated that the toxicity sample taken at MSP-D in December 2022 resulted in a failure, with 0% survival (as per Permit section 1.1.1, a failure is considered below 80% survival)."

79. While that particular toxicity test failure from 2022 Q4 is not part of this Determination, I find that it further confirms the potential for harm to the environment and the importance of obtaining the results from all required RBT acute toxicity tests. I find that failing to conduct the four required RBT acute toxicity tests on discharges to Trib-3 and Blind Creek most significantly interfered with the Ministry's capacity to protect the environment, especially considering the previous failure from 2022 noted above, and have created a risk of harm to the environment or human health and safety.
80. I find that Conuma's 406 failures to follow Appendix A had, on average, a medium potential to interfere with the Ministry's capacity to protect the environment, which includes aquatic life in downstream surface waters. Most concerning are the four occasions when Conuma failed to conduct quarterly RBT toxicity tests at MSP and SP2.
81. I find that these 406 failures to comply denied the Ministry the opportunity to know the concentrations of parameters, toxicity test results, and flow rates at various locations around Brule Mine, including discharges to the environment, whether the existing authorized pollution control works are effective, and whether the Brule Mine coal mining operations are impacting downgradient groundwater, or downstream surface waters. Without this knowledge, a risk of harm to the environment or human health and safety was created, which includes aquatic life in downstream surface waters. Further, the Ministry was unable to determine whether it might have been necessary to order any additional protective measures or inform potentially affected parties.
82. In its OTBH Submission, Conuma submitted that Blind Creek and Trib-3 are non fish bearing and that they are both located upstream of a natural fish barrier (i.e. waterfall). However, I find that discharges from Brule Mine may potentially impact downstream surface waters including the fish bearing lower reaches of Blind Creek as well as the Sukunka River. The Sukunka River is also fish bearing and home to Rocky Mountain whitefish, Artic Grayling, and Dolly Varden. The Sukunka River was stocked with Rainbow Trout to establish a population.
83. Monitoring surface water and groundwater at Brule Mine, on the schedule set by the Director in Appendix A, is critical to determine whether the existing authorized pollution

control works are effective and whether the Brule Mine coal mining operations are impacting downgradient groundwater, or downstream surface waters. I find that without this knowledge, what is created is a medium potential to interfere with the Ministry's capacity to protect the environment or human health, which includes aquatic life in downstream surface waters. Most concerning are the four occasions when Conuma failed to conduct quarterly RBT toxicity tests in the MSP and SP2 discharges.

84. After considering the relevant information above, I confirm that the failures to comply are medium.
85. The base penalty is therefore confirmed at \$10,000 as proposed at Notice.
86. 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 failures, and the OTBH Submission from Conuma.

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

87. I am guided by the AMP Handbook for this factor, to consider Conuma's compliance history. This factor could increase or decrease the penalty.
88. The PAF shared at Notice proposed no increase for this factor.
89. This factor was not disputed in the OTBH Submission.
90. In this Determination, I considered applying an increase of the base penalty due to the previous \$609,000 AMP issued to Conuma (2019-35) for failure to comply with other sections of the 2018 Permit Amendment. However, I have chosen to not exercise that discretion and apply no increase.
91. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

92. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Conuma to the failures and the need to take action. If I am persuaded that Conuma failed to take action, this factor could increase the penalty.
93. The PAF shared at Notice proposed an increase of thirty percent of the base penalty (+ \$3,000) for the repeated nature of the failures.
94. In the PAF shared at Notice, I considered imposing separate penalties for each failure described in this administrative penalty since there were multiple failures of permit

sampling requirements over multiple years; however, for this administrative penalty only, these failures will be treated as repeated.

95. Conuma disputes the thirty percent increase for the repeated nature of the failures. Part of Section 3.D. of the OTBH Submission stated:

“Conuma submits that this contravention does not form a larger pattern and should be considered as a single contravention, not a repeated failure to comply with the Permit. The adjustment for repetition is inappropriate and should be removed or substantially reduced to reflect the circumstances more accurately.”

96. Conuma submits that the contraventions do not form a larger pattern. I disagree. I find a larger pattern is exactly what is formed by 406 failures to comply, covering approximately three years.
97. After considering the OTBH Submission, and as described above, I find that, between October 21, 2020 and January 1, 2023, Conuma failed to conduct required monitoring 406 times and thus failed to comply with Sections 3.1.1 and 4.1.1. Even though these 406 failures are separate failures, I have exercised my discretion to consolidate them into one penalty for this Determination only. By doing that, a small increase of the one base penalty is more than warranted for the repeated nature of the 406 failures to monitor between October 21, 2020 and January 1, 2023.
98. After considering the relevant information above, I am convinced that an increase of thirty percent of the base penalty (+ \$3,000) is appropriate to reflect the repeated nature of the 406 failures to comply with Sections 3.1.1 and 4.1.1 between October 21, 2020 and January 1, 2023.

Factor e): Whether contravention or failure was deliberate

99. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Conuma deliberately failed to conduct monitoring. If I am persuaded that Conuma deliberately failed to conduct monitoring, this factor could increase the penalty.
100. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$2,000) for the deliberate nature of the failures.
101. Conuma disputes the deliberate nature of the failures. Part of Section 3.E. of the OTBH Submission stated:

“Furthermore, Conuma’s Environmental Manager at Willow Creek, Brett Mackenzie, responded to the Notice on October 12, 2023, acknowledging receipt of the Notice. This communication is attached at Exhibit E. In this response, Mr. Mackenzie notified the Ministry that three of the requisite personnel who the Notice was emailed to were no longer employed with Conuma. The issues associated with staff turn over are further explained in Section J of this Submission. Despite this difficulty, Conuma engaged Mr. Mackenzie who is

responsible for a different mine, to respond to the Notice on Conuma's behalf so that Conuma may continue to uphold its compliance obligations. For these reasons, Conuma requests that the Director consider the efforts Conuma has made to uphold compliance with the Monitoring Requirements and Reporting Requirements when determining whether Conuma was deliberately took actions to avoid its monitoring requirements.

In 93 Land Company v. Director, Environmental Management Act, The EAB considered the meaning of deliberate. It used in this factor, that it required consideration of whether the person was intentionally in contravention, or at least wilfully blind as to whether they were in contravention of the EMA. As demonstrated further in Section J of this Submission, Conuma was experiencing high turnover of staff during the contravention period due to its relatively remote location and adverse winter weather conditions which impacted Conuma's continuity of its monitoring requirements. This was evidenced by Willow Creek staff responding to the Notice addressed to the Brule Mine. Under these circumstances, it would be unreasonable to characterize Conuma as possessing knowledge, wilfulness, and intent to contravene its monitoring requirements."

102. Despite multiple Warnings and Referrals for AMPs in 2018, 2019, and 2020, I find that Conuma, on 406 occasions between October 21, 2020 and January 1, 2023, failed to conduct monitoring, as required by Sections 3.1.1 and 4.1.1. On multiple occasions, in 2018, 2019, and 2020, I further find that Conuma was reminded to monitor surface water and groundwater at Brule Mine in accordance with Appendix A.
103. As discussed below in Factor g), Conuma's failure to diligently comply with the monitoring requirements in Sections 3.1.1 and 4.1.1 does not amount to due diligence. However, I am persuaded by Conuma that this does not rise to the level of the failures to comply being deliberate.
104. After considering the relevant information above, I am convinced that no increase ought to be applied under this aggravating factor.

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

105. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Conuma obtained an economic benefit from the failures. If I am persuaded that Conuma obtained an economic benefit from the failures, this factor could increase the penalty.
106. The PAF shared at Notice proposed an increase of \$38,000 for the economic benefit from avoided costs. This included calculated analysis and shipping costs of \$33,767.88 and an applied value for monitoring costs of \$5,000.
107. Conuma disputes the economic benefit derived from the failures. Part of Section 3.F. of the OTBH Submission stated:

“There was no economic benefit obtained from failing to sample in accordance with the Monitoring Requirements and no evidence is provided in the Form or IR to prove that there was. As outlined, Conuma allocated time and resources to sampling in accordance with its Permit. ... Conuma did not obtain an economic benefit for failing to monitor. This is not a case of Conuma avoiding its monitoring requirements, or delaying costs associated with monitoring.

Conuma has invested significant financial resources to uphold these requirements. As further explained in Section J of this Submission, Conuma was experiencing issues with staff continuity at Brule. Ultimately, in an effort to address staff hiring and retention difficulties for the Brule location and in an effort to grow commercial capacity in the Treaty 8 Indigenous Nations, Conuma worked with Salteau First Nation to develop a third-party ground water sampling program to be placed with Aski Reclamation LP, an Indigenous contractor. A purchase order for ASKI’s service during 2023 is attached as Exhibit F. A schedule for ASKI’s contract prices is attached as Exhibit G. The 2021 Master Services Agreement between Conuma and ASKI is attached as Exhibit H.

Conuma took these steps for a dual purpose – to grow business opportunities with Indigenous Nations, and to ensure there was a dedicated, locally-based team to conduct sampling in the event that Conuma lacked the requisite staff in order to uphold its monitoring requirements, as further explained in Section J of this Submission. Significant investment has also been made into hiring dedicated Conuma personnel with respect to environmental monitoring which is further articulated in Section H of this Submission. Conuma has spent more than \$1 million in the hiring and training of devoted compliance personnel.

Conuma has also made significant investment in monitoring software to ensure it upholds its regulatory requirements. In November 2022, Conuma invested more than \$275,000 in new monitoring software which is further detailed in Section G of this Submission. Conuma has also invested \$40,000 into an Environmental Data Management System (“EDMS”), which is more closely aligned with the ISO14001:2015 standard and provides a structured approach for identifying and managing Conuma’s environmental impacts more effectively at its operations. If anything, Conuma has made notable financial investments to improve its monitoring activities, rather than benefiting from any alleged noncompliance.

Conuma submits that as outlined in this section, the missed sampling events were not caused by any deliberate actions on Conuma’s part and that it neither intended to or did gain financially from missed sampling. For this reason, and the reasons outlined in this Submission, no addition should be made for economic benefit or otherwise and the addition should be substantially reduced or removed entirely.”

108. For this factor, I must consider whether there is any evidence indicating that Conuma obtained an economic benefit from the failures. While Conuma has outlined investments it has made at Brule Mine, I find those expenditures were made **in response to** the failures and are not relevant to my consideration of the economic benefit that Conuma obtained **from** the failures.

109. Part of Section 3.F. of the OTBH Submission that described Conuma’s expenditures near the end of or after the dates of contravention will be considered below in Factor i), efforts to prevent reoccurrence of the failures.
110. Conuma did not dispute any of the missed monitoring dates identified in 2022-02-03 IR 170462 Section 3.1.1 AMP dates or 2023-06-27 IR 201996 Section 4.1.1 AMP dates.
111. I have considered the OTBH Submission and am persuaded that the economic benefit derived by Conuma from the failures to comply with Sections 3.1.1 and 4.1.1 ought to be recalculated as explained below.
112. I have revisited the analysis and shipping costs. The 2020 and 2021 missed sample numbers were recalculated and reduced, and the sample cost calculator has been updated as indicated below (changes to original in blue):

2020-2021 Missed Sample Cost Calculator

Parameter	# Missed Samples	ALS Lab Cost	Total
Turbidity	67	\$7.00	\$469.00
TSS	55	\$12.00	\$660.00
Non-metals*	33	\$157.00	\$5,181.00
Metals (total and dissolved)	33	\$200.00	\$6,600.00
EPH	2	\$85.00	\$170.00
Rainbow Trout Toxicity	2	\$539.00	\$1,078.00
Total			\$14,158

* Non-metals includes – electrical conductivity, ammonia, nitrate, nitrite, total kjeldahl nitrogen, chloride, orthophosphorus, total and dissolved phosphorus, alkalinity, sulphate (TSS and turbidity calculated separately)

113. The PAF shared at Notice included \$5,000 in applied value for missed monitoring costs. Exhibit H of the OTBH Submission included the 2021 Master Services Agreement between Conuma and ASKI. The ASKI 2021 field technician rate was \$65/hr. I have estimated the time saved from missed monitoring at 70 hours and \$4,550 has been included in the updated economic benefit table below, replacing the applied value.

Assessment – True or Estimated Values

Item Description	True or Estimated Value	Value (\$)	Avoided or Delayed	Lifespan ¹	Time Length ²	Interest Rate ³	Total ⁴ (\$)
2020-2021 analyses	Estimated	\$14,158	Avoided	n/a	2 yr	5.8%	\$15,847
2022 analyses	Estimated	\$8,700	Avoided	n/a	n/a	5.8%	\$8,700
Shipping	Estimated	\$3,669	Avoided	n/a	n/a	5.8%	\$3,669
Monitoring (labour)	Estimated	\$65/hr * 70 hrs = \$4,550	Avoided	n/a	n/a	5.8%	\$4,550
TOTAL		\$32,766					

1. The lifespan of a fixed asset or frequency of a service/deliverable. E.g. QP review conducted annually = 1 year. Fixed asset lifespan to be entered if known.
2. Time period of the avoided or delayed cost, for calculation of interest.
3. Canada’s central bank average rate was 5.8% from 1990 until 2022.

4. Total economic benefit for avoided costs is the value with interest compounded annually, calculated over the time length of the dates of contravention (partial year interest included). Total economic benefit for delayed costs is the interest only compounded annually, calculated over the time length of the dates of contravention (partial year interest included).

114. After considering the relevant information above, I am persuaded by Conuma that the economic benefit proposed in the PAF shared at Notice ought to be reduced.

115. After considering the relevant information above, I adjust the economic benefit derived by Conuma from the failures to comply with Section 3.1 of the Permit and add \$32,700 to the base penalty for this factor.

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

116. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence that Conuma took **all** reasonable measures to prevent the failures. If I am persuaded that Conuma took all reasonable measures to prevent the failures, this factor could decrease the penalty.

117. The PAF shared at Notice proposed no mitigating factor for this factor to **prevent** the failures to comply with Sections 3.1.1 and 4.1.1.

118. Conuma disputes that it failed to take all reasonable measures to prevent the 406 failures to comply with Sections 3.1.1 and 4.1. Part of Section 3.G. of the OTBH Submission stated:

“Due diligence requires taking reasonable measures to ensure compliance and prevent foreseeable events. Perfection is not required. Conuma took reasonable steps to ensure its compliance with the Monitoring Requirements and the Reporting Requirements.

In this case, Conuma was duly diligent regarding the Monitoring Requirements. As of 2021, Conuma hired ASKI to conduct its on the ground water sampling program. ASKI was onboarded to the sampling program in March 2022 and took full control of water sampling in September 2022. As noted, ASKI is a Saulteau First Nation company responsible for collecting the samples, as per the procedures outlined in the British Columbia Field Sampling Manual as well as for sending the samples to the lab. To guide ASKI’s sampling, ASKI has Key Performance Indicators (“KPIs”) outlined in the Master Service Agreement with Conuma to ensure compliance and accuracy of the monitoring programs. The KPIS are reviewed bi-weekly with ASKI project management and Conuma’s Environmental Coordinator. Once the samples are collected, Conuma’s environmental staff ensure quality control of the samples and receives the data from the lab which is used to compile the report.

Conuma works closely with ASKI to increase efforts and staffing, both in the office and in the field to oversee the monitoring program. Conuma continuously strives to maintain a suitable number of on-site personnel, with both ASKI staff and Conuma’s Environmental Technician present on the Brule Site seven days a week to complete the sampling program. ASKI management and Conuma’s Environmental Managers meet monthly to discuss scheduling, deficiencies, and safety concerns. The reliance on specialized personnel has

allowed Conuma to commit its personnel to more of a supervisory role which helps ensure compliance and prevent missing monitoring requirements. The details of the retention of the specialized personnel are further articulated in Section H of this Submission.

As discussed in Section F of this Submission, Conuma invested into the EDMS system. In addition to the specialized software, Conuma has hired employees who are tasked with upholding compliance obligations, as further explained in Section H of this Submission. Investing in software that tracks monitoring requirements, hiring additional personnel, and hiring a third party to conduct water sampling are reasonable steps to ensure compliance. The standard of care does not require perfection, but that the person took reasonable steps to be duly diligent.”

119. I will now address other parts of the OTBH Submission, where Conuma raised what may be considered due diligence arguments under this factor.
120. In Section 3.F. of the OTBH Submission, Conuma submitted that it “*was experiencing issues with staff continuity at Brule*” and had “*staff hiring and retention difficulties for the Brule location.*”
121. In Section 3.I. of the OTBH Submission, Conuma submitted that “*there was difficulty hiring and retaining qualified technicians*” at Brule Mine.
122. In Section 3.J. of the OTBH Submission, Conuma submitted that “*Due the remote region of Conuma’s operations, Conuma has experienced difficulties with hiring qualified individuals willing to relocate to the Peace Region with the relevant level of education and expertise required to fulfill roles at its operations.*”
123. In Section 3.J. of the OTBH Submission, Conuma further submitted that it “*experienced significant personnel turnover during the period of the contravention, and experienced extenuating circumstances outside of its control with respect to the retention of qualified individuals who are responsible for environmental compliance.*”
124. I find that Conuma retained ASKI, a third-party professional environmental consulting business to oversee all sampling and monitoring at Brule Mine, starting in 2022. I accept that AKSI was onboarded to the Brule Mine sampling program in March 2022 and took full control of water sampling in September 2022. However, I find that 244 of the failures to comply with Section 3.1.1 were in 2020 and 2021, **before** AKSI was retained and not relevant to Factor g).
125. Further, I have carefully reviewed Exhibit H of the OTBH Submission, which is a Master Services Agreement, dated May 1, 2021 between Conuma and AKSI (MSA). I note the MSA is not signed by Conuma. More importantly however, Section 2 of Schedule “B” to the MSA lists the Wolverine Mine Site as the Work Site. In the result, I find the MSA may not be that relevant to this Determination for Brule Mine.

126. I find that it is commendable that Conuma retained AKSI to commence, in 2022, the oversight of all sampling and monitoring at Brule Mine. However, Conuma took over the Brule Mine in 2016, six years earlier, and ought to have, much earlier, devoted more resources to retaining its own internal specialized personnel in order to ensure compliance and prevent missing monitoring requirements. I also find it foreseeable that Conuma ought to have known that sampling and monitoring at Brule Mine was important and it could have, much earlier, devoted more resources to retaining its own internal specialized personnel, or retaining a more local roster of environmental technicians as provided by AKSI.
127. The EDMS system and additional employees hired that are tasked with upholding compliance obligations, will be considered under Factor i), efforts to prevent reoccurrence of the failures to comply.
128. Conuma was aware of the requirements under Sections 3.1.1 and 4.1.1 to complete monitoring in accordance with Appendix A. In 2018, Conuma was previously warned for non-compliances with the same regulatory requirements as found in Section 3.1.1. In 2019 and 2020, the Ministry previously found Conuma out of compliance with Section 3.1.1, which resulted in two Referrals for AMPs for other sections of the Permit. In those IRs, the non-compliances with Section 3.1.1 were brought to Conuma's attention. In 2018, 2019, and 2020, Conuma was reminded to monitor surface water and groundwater at Brule Mine in accordance with Appendix A.
129. The onus to prove due diligence lies with Conuma. In order to establish due diligence, Conuma would have been expected to provide evidence that it took all reasonable measures to prevent the failures. I find that Conuma may have taken some measures to comply, but it has not taken all reasonable measures to comply. Based on the above, Conuma failed to exercise due diligence to prevent the failures.
130. After considering the relevant information above, I confirm that Conuma did not take **all** reasonable measures to prevent the 406 failures to comply with Sections 3.1.1 and 4.1.1 and no reduction will be applied under this factor.

Factor h): Efforts to correct the contravention or failure

131. I am guided by the AMP Handbook for this factor, to consider what Conuma did **after** the failures to restore compliance or reverse or mitigate the impacts. If I am persuaded that Conuma did take actions after the failures to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
132. The PAF shared at Notice proposed no adjustment for this factor. Conuma disputes this and submits that there ought to be a reduction in the penalty.
133. Conuma submits that it has taken efforts to correct the failures. Part of Section 3.H. of the OTBH Submission stated:

“As discussed in Section G, Conuma has engaged ASKI as third-party consultants to operate its ground sampling program. To ensure that ASKI is informed of Conuma’s monitoring requirements, Conuma’s environmental field staff meets with staff from ASKI on a daily basis to discuss the required monitoring plan for the day. Conuma also holds bi-weekly and monthly meetings for its Environmental Coordinators, Environmental Managers, and ASKI Project Managers to discuss progress and any concerns related to the field sampling program.

Conuma has made considerable efforts to correct its efforts to uphold its monitoring requirements. Since the period of contravention, being January 2023, Conuma has made significant investment into its internal business structure and personnel resources. Conuma revised its business structure to create a policy and compliance department, and specifically hired a Director of Environmental Operations to ensure more coverage at sites at a leadership level to ensure compliance. This department is responsible for ensuring that Conuma maintains compliance with the Permit and regulatory requirements.

In 2023 and 2024, Conuma hired three individuals responsible for assisting with environmental management systems, reporting and department management. Conuma created a new position, Director of Environmental Operations, which performs a compliance function and provides site leadership and direction to field functions. The Director of Environmental Operations is the position accountable for, among other things, building and maintaining site capacity as well as working with site employees and contract staff (including ASKI) for meeting water sampling requirements and objectives. Conuma also hired two additional environmental coordinators, with one responsible for reporting and the other for creation and maintaining of environmental systems. The Environmental Coordinator for Systems is responsible for creating and implementing environmental management systems that assist in maintaining compliance against commitments, including Conuma’s new EDMS...

...
To onboard its personnel, Conuma has invested resources into creating internal policies and training for its employees...

...
Conuma has since implemented internal practices and training to facilitate reporting of information and to address and further prevent gaps within its monitoring program. This includes the addition of a new table to the monitoring sheets provided to ASKI to track monitoring conditions, implementing quality assurance and quality control measures to be conducted by Conuma staff, and establishing proper procedures to raise these challenges with the Ministry, by both ASKI and Conuma Staff. Conuma has also created a new policy for its Trigger Response Plans.”

134. The retaining of AKSI, creating three new key internal environmental positions, and creating new internal environmental practices, policies and training for employees will be considered under Factor i), efforts to prevent reoccurrence of the failures to comply, and will be addressed next.

135. After considering the relevant information above, I confirm no adjustment of the base penalty for Conuma's efforts to correct the failures to comply with Sections 3.1.1 and 4.1.1.

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

136. I am guided by the AMP Handbook for this factor, to consider whether Conuma has taken any action to avoid the failures happening again in the future. If I am persuaded that Conuma has taken any action to avoid the failures happening again in the future, this factor could decrease the penalty.

137. The PAF shared at Notice proposed no adjustment for this factor. Conuma disputes this and submits that there ought to be a reduction in the penalty.

138. Regarding Conuma's actions to prioritize sampling and compliance at Brule Mine, part of the OTBH Submission Section 3.I. stated:

"Conuma hired ASKI in 2021 to oversee the entirety of the water sampling program with Conuma staff overseeing the monitoring and prioritizing site compliance. Conuma took this step so that there would be a specialized team devoted to the significant amount of sampling required at Brule as there was difficulty hiring and retaining qualified technicians which is further detailed in Section J of this Submission.

In addition to the retention of ASKI, Conuma has increased training for ASKI staff and its own internal environmental staff. ASKI implemented a rigorous training and onboarding program for its field staff with oversight by Conuma. Conuma has taken this step to achieve improved monitoring performance at Brule's sampling sites. In addition to Conuma's Environmental Coordinator and Technicians present on-site seven days a week to support the monitoring program, ASKI field staff are presently scheduled to be on-site seven days a week.

Furthermore, Conuma has engaged with ASKI to organize a workshop set for June 7, 2024. This workshop will focus on continuous improvement for Conuma's environmental programs. Conuma has organized quarterly meetings with ASKI leadership to communicate and manage improvement of Conuma's sampling programs as well as to look at stop work instances and missed sampling that occurred over the previous period. Conuma also increased its environmental staffing, as further articulated in Section H of this Submission. The agenda for the meeting with ASKI on June 7 is attached as Exhibit I.

139. Regarding Conuma's actions to implement an environmental monitoring data management system at Brule Mine, part of the OTBH Submission Section 3.I. stated:

"As mentioned, Conuma invested in the Monitor Pro software to implement a system to track its monitoring requirements. This will prevent future contraventions of missed monitoring irrespective of staff retention issues. Monitor Pro tracks monitoring schedules and will send out alerts if Conuma is not complaint with these schedules, identifies any non-compliances, and sends alerts for missed samples. Recently, Conuma raised its purchase

order for Monitor Pro in order to export the database. The Ministry's reporting software for field data requires the data to be manually updated and Conuma has taken the steps to export the database in order for the data to be uploaded to the Ministry. This will result in increased compliance with Conuma's reporting of its field data results."

140. Regarding Conuma's actions to implement an environmental monitoring data management system at Brule Mine, part of the OTBH Submission Section 3.F. further stated:

"Conuma has also made significant investment in monitoring software to ensure it upholds its regulatory requirements. In November 2022, Conuma invested more than \$275,000 in new monitoring software which is further detailed in Section G of this Submission. Conuma has also invested \$40,000 into an Environmental Data Management System ("EDMS"), which is more closely aligned with the ISO14001:2015 standard and provides a structured approach for identifying and managing Conuma's environmental impacts more effectively at its operations."

141. Regarding Conuma's actions to replace the staff flow rate gauge, part of the OTBH Submission Section 3.I. stated:

"Conuma has also taken steps to prevent further equipment malfunction associated with its flow rate gauge. As per IR 170462 and IR 201996, a total of 705 measurements were missed that were attributable to the flow rate and staff gauge. Conuma has since replaced the staff gauge as an effort to prevent missed measurements associated with the equipment."

142. I am persuaded by Conuma that, by retaining ASKI, a third-party professional environmental consulting business to oversee all sampling and monitoring at Brule Mine, it has taken some action to avoid the failures from happening again in the future.

143. I am persuaded by Conuma that, by implementing an environmental monitoring data management system at Willow Creek Mine, it has taken some action to avoid the failures happening again in the future.

144. I am persuaded by Conuma that, by replacing the staff flow gauge, it has taken some action to avoid many of the failures happening again in the future.

145. I am persuaded by Conuma that, by creating three new key internal environmental positions, and creating new internal environmental practices, policies and training for employees (Part 3.H. of the OTBH Submission), it has taken some action to avoid many of the failures happening again in the future.

146. After considering the relevant information above, I am convinced that a reduction of thirty percent of the base penalty (- \$3,000) is appropriate for Conuma's efforts to prevent reoccurrence of the failures.

Factor j): Other

147. I am guided by the AMP Handbook for this factor, to consider any additional factors which could increase or decrease the penalty. Such factors could include self-reporting, cost to government, cooperation, remorse and accountability, ability to pay, and financial impact of other obligations.

148. The PAF shared at Notice proposed no adjustment for this factor.

149. Conuma disputes this. The OTBH Submission Section 3.J. stated:

“Due the remote region of Conuma’s operations, Conuma has experienced difficulties with hiring qualified individuals willing to relocate to the Peace Region with the relevant level of education and expertise required to fulfill roles at its operations. Of its three operations, Brule is the most challenging to staff as it is located midway between Tumbler Ridge and Chetwynd and more than 30 km down a difficult Forest Service Road access. The bus ride to site typically takes more than an hour each way from either Chetwynd or Tumbler Ridge. Conuma went through literally hundreds of resumes quarterly to staff the Brule operation, and offered higher than market wages, and creative, non-standard work schedules in an effort to hire and retain staff. To demonstrate the difficulty of employee retention in the region, Conuma has provided a summary of environmental positions that have been held by various individuals over the contravention period.

This table provides evidence that Conuma experienced significant personnel turnover during the period of the contravention, and experienced extenuating circumstances outside of its control with respect to the retention of qualified individuals who are responsible for environmental compliance. To address this issue, Conuma proactively hired ASKI to conduct its water quality monitoring program. An important aspect of ASKI’s suitability for Conuma is that 75% of its employees are from the South Peace region, with more than 50% self-identifying as Indigenous. By growing the capacity with ASKI, whose employees are far more locally based, Conuma created a “win/win” – the economic participation with Indigenous Nations increased, and the roster of environmental technicians shifted to more locally based, decreasing the likelihood of turnover. This more local workforce has assisted in ensuring that any personnel turn over at Conuma does not impact monitoring requirements. This development of a local third party relationship with an Indigenous owned contractor, hiring new personnel, and devoting more resources to retaining personnel are all factors that should be considered in any penalty determination.”

150. I find this is essentially a continuation of Conuma’s due diligence and efforts to prevent reoccurrence arguments, which I have considered above in Factors g) and i).

151. After considering the relevant information above, I confirm no adjustment for this factor.

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

152. After determining a base penalty of \$10,000 for these failures and applying the mitigating and aggravating factors (+\$33,700) discussed above, the penalty is established at \$40,000.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Actual or potential adverse effect	medium	moderate
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	\$0	\$0
d) Whether contravention or failure was repeated or continuous	+ \$3,000	+ \$3,000
e) Whether contravention or failure was deliberate	+ \$2,000	\$0
f) Economic benefit derived by the party from the contravention or failure	+ \$38,000	+ \$32,700
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	- \$3,000
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j))</i> Total Penalty Adjustments:	\$43,000	\$32,700
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$53,000 <i>The APR prescribes \$40,000 as the maximum daily penalty for this contravention or failure. Accordingly, the calculated penalty has been adjusted from \$53,000 to \$40,000</i>	\$42,700 <i>The APR prescribes \$40,000 as the maximum daily penalty for this contravention or failure. Accordingly, the calculated penalty has been adjusted from \$42,700 to \$40,000.</i>
Application of multiplier: No	N/A	N/A
Final Penalty:	\$40,000	\$40,000

Section 4.1 (2018 Permit Amendment) (Monthly Reports)

Section 5.4 (2022 Permit Amendment) (Electronic Submission of Results)

The Contravention or Failure:

154. Section 4.1 in the 2018 Permit Amendment and Section 5.4 in the 2022 Permit Amendment both require Conuma to submit Brule Mine Water Quality Monitoring Program results to the EMS database.

155. For the purposes of this Determination, I find that Section 4.1 in the 2018 Permit Amendment and Section 5.4 in the 2022 Permit Amendment are considered as the same regulatory requirement; all non-compliances with both versions will be included in one penalty, as opposed to two separate penalties.

156. On the following 15 dates between October 31, 2020 and May 31, 2022, Conuma failed to upload data to the EMS, as required by Section 4.1 of the 2018 Permit Amendment:

- October 31, 2020
- November 30, 2020
- December 31, 2020
- January 30, 2021
- March 2, 2021
- April 2, 2021
- April 30, 2021
- May 31, 2021
- June 30, 2021
- July 31, 2021
- August 30, 2021
- September 30, 2021
- October 31, 2021
- March 2, 2022
- May 31, 2022

157. On the following seven dates between August 30, 2022 and March 2, 2023, Conuma failed to upload data to the EMS, as required by Section 5.4 of the 2022 Permit Amendment:

- August 30, 2022
- September 30, 2022
- October 31, 2022
- November 30, 2022
- December 31, 2022
- January 30, 2023
- March 2, 2023

158. In Section 2.A. of the OTBH Submission, Conuma disputes the following non-compliances stating that monitoring was not completed due to unsafe conditions:

- Q3 2022 – MINK DS
- Q3 2022 – NBC

159. I agree with Conuma that these results for MINK DS and NBC would not have been uploaded to EMS because monitoring did not occur due to unsafe conditions. However, this does not affect the dates of contravention for AMP 2023-36b. While the samples referenced above would have contributed to the November 30, 2022 date of contravention, additional samples from September 2022 (i.e. Q3 2022), including UMINK and MINK, were not uploaded to EMS and also have dates of contravention of November 30, 2022.

160. Next, my reasons for decision will address each factor under Section 7(1) of the APR individually. My considerations are as follows:

Factor a): Nature of Contravention or Failure

161. The PAF shared at Notice proposed that the failure was minor. Minor natures of contravention are described in the AMP Handbook and include “*Not providing reports within legislated timeframes.*”

162. This factor was not disputed in the OTBH Submission and remains unchanged.

163. After considering the relevant information above, I confirm the 22 failures to comply are minor.

Factor b): Actual or Potential Adverse Effects

164. Section 7(1)(b) of the APR requires that I must consider the real **or potential** adverse effect of the failures. A finding of potential adverse effect of the failures is enough to apply this factor.

165. The PAF shared at Notice proposed that the failure was low to none. Not uploading the data to EMS falls under low to none as described in the AMP Handbook as it “*does not result in an immediate adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.*”

166. This factor was not disputed in the OTBH Submission.

167. After considering the relevant information above, I confirm that the failures are low to none.

168. The base penalty is therefore confirmed at \$1,000 as proposed at Notice.

169. 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 failures, and the OTBH Submission from Conuma.

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

170. I am guided by the AMP Handbook for this factor, to consider Conuma’s compliance history. This factor could increase or decrease the penalty.

171. The PAF shared at Notice proposed no adjustment for this factor.

172. This factor was not disputed in the OTBH Submission.

173. After considering the relevant information above in AMP 2023-36a, I confirm no adjustment is applied under this factor.

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

174. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Conuma to the failures and the need to take action. If I am persuaded that Conuma failed to take action, this factor could increase the penalty.
175. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$200) for the repeated nature of the failures.
176. This factor was not disputed in the OTBH Submission.
177. After considering the relevant information above, I am convinced that an increase of twenty percent of the base penalty (+ \$200) is appropriate to reflect the repeated nature of the 22 failures to comply with Sections 4.1 and 5.4.

Factor e): Whether contravention or failure was deliberate

178. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Conuma deliberately failed to upload data to the EMS. If I am persuaded that Conuma deliberately failed to upload data to the EMS, this factor could increase the penalty.
179. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$200) for the deliberate nature of the failures.
180. Conuma disputes the deliberate nature of the failures. Part of Section 3.E. of the OTBH Submission stated:
- “Conuma has engaged with the Ministry regarding issues with submitting monitoring results into the Ministry’s Environmental Management System (“EMS”). This communication is attached as Exhibit C and D. This effort to correct Conuma’s monitoring submission demonstrates Conuma’s willingness to uphold the requirements of the Permit.*
181. Despite multiple Referrals for an AMP in 2019 and 2020, I find that Conuma, on 22 dates between October 31, 2020 and March 2, 2023, failed to upload data to the EMS, as required by Sections 4.1 and 5.4. On multiple occasions, in 2019 and 2020, I further find that Conuma was reminded to upload data to the EMS.
182. As discussed below in Factor g), Conuma’s failure to diligently comply with requirement to upload data to the EMS in Sections 4.1 and 5.4 does not amount to due diligence. However, I am persuaded by Conuma that this does not rise to the level of the failures to comply being deliberate.
183. After considering the relevant information above, including AMP 2023-36a, I am convinced that no increase ought to be applied under this aggravating factor.

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

184. The PAF shared at Notice proposed no adjustment for this factor.

185. This factor was not disputed in the OTBH Submission.

186. After considering the relevant information above, I am convinced that Conuma has not obtained any quantifiable economic benefit from the 22 failures to comply with Sections 4.1 and 5.4, and thus no increase is applied under this aggravating factor.

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

187. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence that Conuma took **all** reasonable measures to prevent the failures. If I am persuaded that Conuma took all reasonable measures to prevent the failures, this factor could decrease the penalty.

188. The PAF shared at Notice proposed no mitigating factor for this factor to prevent the failures to comply with Sections 4.1 and 5.4.

189. The onus to prove due diligence lies with Conuma. In order to establish due diligence, Conuma would have been expected to provide evidence that it took all reasonable measures to prevent the failures.

190. Conuma was aware of the requirements under Section 4.1 of the 2018 Permit Amendment to upload data to the EMS.

191. In 2019 and 2020, the Ministry previously found Conuma out of compliance with Section 4.1 of the 2018 Permit Amendment, which resulted in two Referrals for an AMP for other sections. In those IRs, the non-compliances with Section 4.1 were brought to Conuma's attention.

192. In 2019 and 2020, Conuma was reminded to submit all required monitoring results to the EMS database.

193. After considering the relevant information above, including AMP 2023-36a, I confirm that Conuma did not take **all** reasonable measures to prevent the 22 failures to comply with Sections 4.1 and 5.4 and no reduction will be applied under this factor.

Factor h): Efforts to correct the contravention or failure

194. I am guided by the AMP Handbook for this factor, to consider what Conuma did **after** the failures to restore compliance or reverse or mitigate the impacts. If I am persuaded that Conuma did take actions after the failures to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.

195. The PAF shared at Notice proposed no adjustment for this factor.
196. Section 3.H. of the OTBH Submission discussed actions taken near the end of or after the dates of contravention. These actions are considered next in Factor i), efforts to prevent reoccurrence of the failures.
197. After considering the relevant information above, including AMP 2023-36a, I confirm no adjustment of the base penalty for Conuma’s efforts to correct the failures to comply with Sections 4.1 and 5.4.

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

198. I am guided by the AMP Handbook for this factor, to consider whether Conuma has taken any action to avoid the failures happening again in the future. If I am persuaded that Conuma has taken any action to avoid the failures happening again in the future, this factor could decrease the penalty.
199. The PAF shared at Notice proposed no adjustment for this factor.
200. Conuma disputes this and submits that it has taken efforts to prevent reoccurrence of the failures. Part of Section 3.I. of the OTBH Submission stated:

“As mentioned, Conuma invested in the Monitor Pro software to implement a system to track its monitoring requirements. This will prevent future contraventions of missed monitoring irrespective of staff retention issues. Monitor Pro tracks monitoring schedules and will send out alerts if Conuma is not complaint with these schedules, identifies any non-compliances, and sends alerts for missed samples. Recently, Conuma raised its purchase order for Monitor Pro in order to export the database. The Ministry’s reporting software for field data requires the data to be manually updated and Conuma has taken the steps to export the database in order for the data to be uploaded to the Ministry. This will result in increased compliance with Conuma’s reporting of its field data results.”

201. Conuma provided further information on preventing reoccurrence of the failures in Section 3.H. of the OTBH Submission, which stated:

“While Conuma was reviewing its internal records to determine the explanation for the allegations of missed monitoring and subsequent monitoring, it highlighted the gaps with its previous approach to sampling and information reporting. This review acknowledged that there were no clear entries showing instances of unobtainable samples from either unsafe work, frozen or dry conditions, or equipment malfunction. This lack of category created additional complexities when Conuma reviewed its records to determine responses to the alleged contraventions. Conuma has since implemented internal practices and training to facilitate reporting of information and to address and further prevent gaps within its monitoring program. This includes the addition of a new table to the monitoring sheets provided to ASKI to track monitoring conditions, implementing quality assurance and quality control measures to be conducted by Conuma staff, and establishing proper

procedures to raise these challenges with the Ministry, by both ASKI and Conuma Staff. Conuma has also created a new policy for its Trigger Response Plans.

Conuma has taken these steps to implement more diligent internal tracking to ensure data is electronically reported. The additional of the third-party developed EDMS has allowed for increased accuracy and consistency in sample tracking, from field through to laboratory results.”

202. I do note that, on May 15, 2024, Ministry staff searched the EMS database and confirmed that the data identified in IR 170462 Section 4.1.1. and IR 201996 Section 5.4 has still not been uploaded to EMS.

203. I am persuaded by Conuma that, by implementing an environmental monitoring data management system at Brule Mine, it has taken some action to avoid the 22 failures happening again in the future.

204. After considering the relevant information above, including AMP 2023-36a, I am convinced that a reduction of ten percent of the base penalty (- \$100) is appropriate for Conuma’s efforts to prevent reoccurrence of the failures.

Factor j): Other

205. The PAF shared at Notice proposed no adjustment for this factor.

206. After considering the relevant information above, including AMP 2023-36a, I confirm no adjustment for this factor.

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

207. After determining a base penalty of \$1,000 for these failures and applying the mitigating and aggravating factors (+\$100) discussed above, the penalty is established at \$1,100.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	minor	minor
b) Actual or potential adverse effect	low to none	low to none
Base Penalty:	\$1,000	\$1,000
c) Previous contraventions or failures, penalties imposed, or orders issued	\$0	\$0
d) Whether contravention or failure was repeated or continuous	+ \$200	+ \$200

e) Whether contravention or failure was deliberate	+ \$200	\$0
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
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	- \$100
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j) Total Penalty Adjustments:</i>	\$400	\$100
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$1,400	\$1,000
Application of multiplier: No	N/A	N/A
Final Penalty:	\$1,400	\$1,100

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:

Financial Services Branch
Corporate Services for the Natural Resource Ministries
Ministry of Water, Land and Resource Stewardship
PO Box 9356 Stn Prov Govt
Victoria, BC V8W 9M2

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://nrced.gov.bc.ca/>

Dated this 3rd day of June, 2024.