



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

**DETERMINATION OF ADMINISTRATIVE PENALTY**

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June 19, 2024

File: 2023-69  
RR115523

Email: [kayvan@wavescoffee.ca](mailto:kayvan@wavescoffee.ca)

Waves Coffee Inc.  
100 – 713 Columbia Street  
New Westminster, BC V3M 1B2

Attention: Waves Coffee Inc.

**RE: Determination of Administrative Penalty**

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Further to the Notice Prior to Determination of Administrative Penalty issued to you on March 14, 2024, 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 Waves Coffee Inc. has contravened Section 2(1)(a) and 2(2) of the Recycling Regulation 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 250-622-6908 or [Stephanie.Little@gov.bc.ca](mailto:Stephanie.Little@gov.bc.ca).

Sincerely,

Stephanie Little  
for Director, *Environmental Management Act*

Attachments:

2023-03-14 2023-69 Penalty Assessment Form

cc: Ashly Dixon, Environmental Protection Officer  
[Ashly.Dixon@gov.bc.ca](mailto:Ashly.Dixon@gov.bc.ca)

Kevin Vu, Environmental Protection Technician  
[Kevin.Vu@gov.bc.ca](mailto:Kevin.Vu@gov.bc.ca)

Brady Nelles, Executive Director, Compliance & Environmental Enforcement  
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[COS Zone Mailbox](#)



## DETERMINATION OF ADMINISTRATIVE PENALTY

FILE: 2023-69

### Name of Party:

Waves Coffee Inc.

### AMOUNT OF ADMINISTRATIVE PENALTY:

**\$30,891**

### Contravention or Failure:

#### Contravention of the Recycling Regulation Section 2(1)(a) (Duty of producer):

Except as otherwise specifically provided in this regulation, a producer must

(a) have an approved plan under Part 2 [Extended Producer Responsibility Plans] and comply with the approved plan,

### Date of Contravention or Failure:

March 29, 2023, to November 30, 2023

### Directors Summary:

1. Waves Coffee Inc. (Waves Coffee) is a coffee shop franchise based in New Westminster, British Columbia (BC) and has 21 locations in BC alone.
2. This administrative penalty (AMP) assessment is limited to the period of March 29, 2023, to November 30, 2023, when Waves Coffee used, sold, or distributed packaging and paper products (PPP) in BC without an approved extended producer responsibility plan, or had appointed an agency to carry out its duties, as required by the Recycling Regulation.
3. The Recycling Regulation, under the authority of *Environmental Management Act*, S.B.C. 2003, c. 53 (EMA), sets out the requirements for BC's Extended Producer Responsibility (EPR).
4. EPR is an approach to recycling that requires producers, such as manufacturers, distributors, and retailers to take responsibility for the life cycle of the products they sell, use, or distribute including collection, such as curbside collection or collection depots, and recycling the packaging and products they collect. Producers often come together to form agencies that operate recycling programs on their behalf.
5. Section 2(1) of Recycling Regulation states:

*“2. (1) Except as otherwise specifically provided in this regulation, a producer must  
(a) have an approved plan under Part 2 [Extended Producer Responsibility Plans] and  
comply with the approved plan, or*

*(b) comply with Part 3 [Extended Producer Responsibility Program Requirements if No  
Extended Producer Responsibility Plan]*

*with respect to a product in order to use in a commercial enterprise, sell, offer for sale or  
distribute the product in British Columbia.”*

6. In Section 1 of Recycling Regulation, the definition of “producer” includes:

*“(b) in respect of the producer of a product within a product category other than the  
beverage container product category or the tire product category,*

*(i) a person who manufactures the product and uses in a commercial enterprise, sells,  
offers for sale or distributes the product in British Columbia under the manufacturer's  
own brand,*

*(ii) if subparagraph (i) does not apply, a person who is not the manufacturer of the  
product but is the owner or licensee of a trademark under which a product is used in a  
commercial enterprise, sold, offered for sale or distributed in British Columbia, whether  
or not the trademark is registered, or*

*(iii) if subparagraphs (i) and (ii) do not apply, a person who imports the product into  
British Columbia for use in a commercial enterprise, sale, offer for sale or distribution in  
British Columbia” (Producer).”*

7. In Section 1 of Recycling Regulation, “product category” means any of the following  
categories described in the Schedules... (b) Beverage Contain Product category...(n)  
packaging and paper product category” (Product Category).

8. In Schedule 5, Section 4(1)(b) of Recycling Regulation, the definition of “Single-use  
products” includes:

*“(a)a product that is ordinarily disposed of after a single use or short-term use, whether or  
not it could be reused;*

*(b)without limiting paragraph (a), the following products, if the product is ordinarily  
disposed of after a single use or short-term use, whether or not it could be reused:*

*(i)straws and items used to stir beverages;*

*(ii)utensils, plates, bowls and cups;*

*(iii)party supplies.”*

9. Section 2(2) of Recycling Regulation allows for a Producer to appoint an agency to carry  
out its duties under Part 2 of Recycling Regulation on behalf of the Producer.

10. Section 9(2)(a) of Recycling Regulation states that Part 3 of Recycling Regulation does not  
apply to the PPP category. Consequently, Producers of PPP do not have the option of

complying with Part 3 of Recycling Regulation and must comply with Part 2 of Recycling Regulation either themselves or through an authorized agency.

11. If a Producer is a “*small producer*”, it is exempt from Section 2 of Recycling Regulation and is not obligated to have an approved EPR Plan or appoint an agency to act on its behalf.
12. In Section 1 of Recycling Regulation, “*small producer*” is defined as:

*“in respect of the producer of a product within the packaging and paper product category, means one of the following:*

  - (a) the producer is a charitable organization registered under the Income Tax Act (Canada);*
  - (b) the producer meets one or both of the following criteria:*
    - (i) subject to subsection (2), the producer had a gross revenue in the most recent calendar year of less than \$1,000,000 in BC;*
    - (ii) subject to subsection (2), the producer produced in the most recent calendar year less than one tonne of products within the packaging and paper product category that have been or will be used in a commercial enterprise, sold, offered for sale or distributed in BC;*
  - (c) subject to subsection (2), the producer, other than a producer of newspaper, does not have more than one point of retail sale in BC (Small Producer).”*
13. The Recycling Regulation is administered by the BC Ministry of Environment and Climate Change Strategy (Ministry).
14. On March 14, 2024, the Ministry issued a Notice Prior to Determination of Administrative Penalty (Notice) and accompanying Penalty Assessment Form (PAF) to Waves Coffee via email. In the Notice, Waves Coffee was offered an Opportunity to be Heard (OTBH) and given thirty (30) days to request an OTBH.
15. On March 19, 2024, Waves Coffee confirmed receipt of the Notice and PAF via email.
16. On March 19, 2024, Waves Coffee requested an OTBH.
17. On March 20, 2024, the Ministry acknowledged Waves Coffee’s request for an OTBH and confirmed the OTBH would be by written submission and set a due date of April 22, 2024.
18. On April 15, 2024, the Ministry emailed Waves Coffee a courtesy reminder of the upcoming due date (April 22, 2024) to submit their OTBH.
19. On April 22, 2024, Waves Coffee submitted their OTBH (OTBH Submission) to the Ministry.
20. On May 24, 2024, the Ministry emailed Waves Coffee requesting some clarification on the OTBH Submission. Waves Coffee was given until May 30, 2024, to respond.

21. On May 27, 2024, emails were exchanged regarding clarification of the requested information.
22. On Monday, June 3, 2024, after the initial deadline for the information request had passed, phone voicemails were exchanged. Waves Coffee indicated that the data would be forthcoming by June 4, 2024.
23. As nothing was received by Thursday, June 4, 2024, the Ministry sent a final email stating that any information received by Monday, June 10, 2024, would be considered.
24. On June 10, 2024, at 11:24 PM waves supplied via email a table of data/numbers for ‘to go option hot cups’ sold at all locations in a table for the calendar year of 2023.
25. On June 11, 2024, a subsequent email was sent that contained a snip of an excel spreadsheet that was purported to show the number of cups ordered from June 1, 2024 to December 31, 2023.

### **Reasons for Decision:**

26. In making this Determination of Administrative Penalty (Determination), I have considered all of the information available to me, including the OTBH Submission provided by Waves Coffee. 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.
27. 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.
28. 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)<sup>1</sup> (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.”*

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

**Recycling Regulation Section 2(1)(a)**

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**The Contravention or Failure:**

29. The Ministry finds that, Waves Coffee is a user, seller, or distributor of PPP in BC and meets the definition of a Producer under the Recycling Regulation.
30. The Ministry finds that Waves Coffee is not exempt under the Small Producer definition of the Recycling Regulation. Waves Coffee does not meet the definition as they are not a charitable organization, has a gross annual revenue of over \$1,000,000 in BC, produces more than one metric tonne of PPP annually, and has more than one point of retail in BC. Subsequently, Waves Coffee is required to have an approved EPR Plan, or to have appointed an agency with an approved EPR Plan.
31. The Ministry finds that between March 29, 2023, and November 30, 2023, Waves Coffee was a Producer within the PPP category, and was in contravention of its obligations under Section 2 of the Recycling Regulation by reason of its failure to have an approved EPR Plan or to have appointed an agency with an approved EPR Plan under Part 2 of the Recycling Regulation.
32. The Ministry finds that between March 29, 2023 and November 30, 2023, Waves Coffee contravened Section 2(1)(a) of the Recycling Regulation by failing to submit a EPR Plan to the ministry.
33. The Ministry finds that the non-compliance was persistent from March 29, 2023, to November 30, 2023, undermining the basic integrity of the BC recycling regulatory regime. It also undermined the Ministry's capacity to protect and conserve the natural environment.
34. The Ministry finds that, as early as 2020, Waves Coffee was aware of their responsibilities as a Producer under the Recycling Regulation.
35. The Ministry finds that, in March 2023, Waves Coffee was warned of non-compliance with Section 2(1)(a) of the Recycling Regulation.
36. The Ministry finds that, in March 2023, Waves Coffee was reminded of their responsibility as a Producer under the Recycling Regulation
37. Waves Coffee, in the OTBH, asserts that "*Waves Coffee Inc. does not operate in British Columbia (B.C.) in terms of coffee distribution or sales. While we do have five locations in Alberta under the Waves Coffee Inc. umbrella, each store operates independently under a franchise model. Therefore, any environmental programs or regulations applicable to B.C. would not directly pertain to our operations unless Alberta is included in the scope of the program.*"

38. Recycling Regulation Section 2 (1.1) it states, *“if a franchisor and a franchisee operating under a franchise agreement are producers in relation to the same product, the duty set out in subsection (1) (a) must be carried out by the franchisor.”*
39. A search of BC Online finds that Waves Coffee Inc. is a registered business in BC with Kayvan Rahmati listed as the Director. At the time of this Determination, the Waves Coffee website (<https://wavescoffee.com/locations>) lists 21 current BC locations, with plans to expand in several new locations.
40. In an email on May 27, 2024, Kayvan Rahmati confirmed *“Yes, Waves Coffee has 21 locations in B.C, Waves Coffee Inc is a Bc Registered company owned by me...”*
41. I am satisfied that Waves Coffee contravened Section 2(1)(a) of the Recycling Regulation and as such, my reasons for decision will now address each factor individually. My considerations under Section 7(1) of the APR are as follows:

**Factor a): Nature of Contravention or Failure**

42. The PAF shared at Notice proposed that the contravention was major. Included in the AMP Handbook description of major natures of contravention is *“administrative requirements that form the basis of a regulatory regime and government’s only way to ensure that regulatory objectives will be met. Examples include failure of a person to provide information (such as a stewardship or operational plan, or a monitoring report)”*.
43. Ensuring that producers take responsibility for their PPP under the required stewardship plan is the foundation of the regulatory regime. Allowing some Producers to avoid their obligation creates an uneven playing field, requirement compliant produces to pay for the recycling of non-compliance Producers’ materials.
44. A finding of major is also consistent with *MTY Tiki*, where the EAB, at para. 77, held that failure by a producer to provide a stewardship plan was “major” in nature, given that such a plan is a foundation of the regulatory regime:

*“Regarding the nature of the contravention, and the real or potential adverse effect of the contravention, the Panel agrees with the proposition generally advanced in the [AMP] Handbook that a failure by a producer to provide a stewardship plan when required under the Regulation, could be seen as a “major” non-compliance given that such a plan is a foundation of the regulatory regime and is the government’s only way to ensure that the regulatory objectives are being met. Persistent non-compliance with section 2 of the Regulation by producers within the packaging and paper products category, from and after the May 19, 2014 effective date, would undermine the basic integrity of the regulatory regime and significantly interfere with the Ministry’s capacity to protect and conserve the natural environment.”*

45. This factor was not disputed in the OTBH Submission.
46. After considering the relevant information, I confirm the contravention is major.



**Factor b): Actual or Potential Adverse Effects**

47. 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.
48. The PAF shared at Notice proposed that the contravention was **low to none**. Waves Coffee's failure to have an approved EPR Plan or to have appointed an agency to carry out the duties of a Producer is assessed as low, which aligns with the AMP Handbook description "*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. Generally, administrative requirements fall into this category – providing security; not signing a stewardship plan; or it could include an unauthorized discharge or permit exceedance with no discernable environmental or human health impact.*" A lack of Producer fees to fund the PPP program in BC undermines program delivery, resulting in a lack of recycling service to some or all BC residents. This could negatively impact recycling rates and the waste stream, resulting in environmental impact.
49. 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 a contravention resulting in a low potential to cause an adverse effect or interfere with the Ministry's capacity to protect the environment or human health is considered a low to none classification.
50. This is also consistent with MTY Tiki, where the EAB, at para. 83, held that there was a low immediate environmental impact from a contravention of Section 2 of the Regulation:
- "The Panel agrees with MTY's submission in its Notice of Appeal that there is no evidence of actual environmental damages directly linked to its contravention. However, the Panel also agrees with the statement in the Penalty Assessment Form that, although the immediate environmental impact of this contravention was low, a lack of producer fees to fund the packaging and printed paper recycling program in BC may undermine the program entirely with negative effect."*
51. After considering the relevant information, I confirm that the contravention is low to none.
52. The base penalty is therefore confirmed at \$10,000 as proposed at Notice.
53. 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 contravention, and the OTBH Submission from Waves Coffee.

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

54. I am guided by the AMP Handbook for this factor, to consider Waves Coffee's compliance history. This factor could increase or decrease the penalty.

55. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty for the previous AMP 2021-05 issued on July 21, 2021.
56. AMP 2021-05 was for \$1,000 for contravention of EMA Section 109 (6), specifically for failing to provide information to an Officer while attempting to determine if Waves Coffee was obligated under the Recycling Regulation, which is entirely pertinent to this penalty.
57. This factor was not disputed in the OTBH Submission.
58. After considering the relevant information, I confirm the increase of twenty-five percent of the base penalty.

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

59. 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 contravention should have alerted Waves Coffee to the contravention and the need to take action. If I am persuaded that Waves Coffee failed to take action, this factor could increase the penalty.
60. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty for the continuous nature of the contravention from March 29, 2023 to November 30, 2023 (247 days).
61. This factor was not disputed in the OTBH Submission.
62. After considering the relevant information, I confirm the increase of twenty-five percent of the base penalty.

**Factor e): Whether contravention or failure was deliberate**

63. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Waves Coffee deliberately contravened the Recycling Regulation Section 2(1)(a). If I am persuaded that Waves Coffee deliberately contravened the Recycling Regulation Section 2(1)(a), this factor could increase the penalty.
64. The PAF shared at Notice proposed an increase of twenty percent of the base penalty for the following rationale;

*“In 2023, Waves Coffee was found out of compliance with Section 2(1)(a) of the Recycling Regulation. In 2023, Waves Coffee was reminded of their responsibility as a Producer under Recycling Regulation. As early as 2020, the Ministry made Waves Coffee aware of the requirements of a Producer under the Recycling Regulation.*

*Waves Coffee has a history of failing to respond to the Ministry, refusing to provide information, and generally being non-cooperative. I find Waves Coffee to have had significant awareness of the requirement to appoint a stewardship agency or get a plan approved, and the control to come into compliance was firmly within their power. They have chosen not to.”*

65. In the OTBH, Waves Coffee stated, *“While my name has been associated with Waves Coffee Inc. since its inception, I officially assumed ownership and operational responsibilities only on March 6th, 2022, following the sudden passing of my father. Prior to this date, my father managed the company under my name for logistical reasons, and I had limited involvement in its operations, especially during my youth. I understand the need to take responsibility for the use of my name, but the circumstances surrounding its usage were beyond my control.”*
66. No evidence was provided to support this assertion. I further find that Kayvan Rahmati has been in contact with the Ministry since 2019 regarding this matter. I give more weight to the evidence documented by Ministry staff that demonstrates Kayvan Rahmati has been aware of this issue since at least April of 2019.
67. After considering the relevant information, I confirm the increase of twenty percent of the base penalty for this factor.

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

68. The PAF shared at Notice proposed an increase of \$56,900 for the economic benefit.
69. In the OTBH, Waves Coffee stated, *“the estimated figure of 500 cups per location per day appears to be a considerable overestimation, particularly for our busiest locations. We are willing to provide accurate data on our actual cup consumption to facilitate a more informed decision-making process. Additionally, it's worth noting that Waves Coffee distinguishes itself by offering dine-in options, resulting in a higher proportion of reusable cups and plates compared to other coffee chains that predominantly focus on takeout services.”*
70. The Economic Benefit gained by Waves Coffee was estimated using statements and rates from Recycle BC and the number of Waves Coffee locations in BC. Waves Coffee disputes the estimation of number of daily coffee cups used and was given the opportunity to submit evidence to support a more accurate estimate.
71. The ‘evidence’ supplied was a table of numbers broken down by location by four different types and said to represent *‘to go option hot cups for the year of 2023’* generated by point of sales (POS) tracking. The supporting POS data to back up the numbers in the table was not provided.
72. When reviewing the table, there were four locations that stood out as extremely low in comparison to other locations (ex. Port Moody was presented as selling 39 hot to go cups for all of 2023).
73. When asked about the four locations with extremely low number, Waves replied that *‘I believe there was a technical error on how there to go or for how selections were reading’*. This raises concerns of the validity of the evidence provided. Were I to accept the data as presented, the calculation of cups sold per day would be 46.3 across averaged across all locations. If I remove the 4 outliers from the calculations that estimate changes to 57 cups per day.

74. I find when considering the information provided, I have concerns about its validity. I am unwilling to accept that data provided at face value (a table with numbers entered but no supporting documentation), but will accept an argument that the 500 cups per day at Notice was an overestimate.
75. Using 100 cups per location, for 360 days a year, that reduces the economic benefit estimate to \$11,391.
76. As stated in the PAF, *“This calculation of Economic Benefit does not include other products within the packaging and paper product category such as packaging, utensils, or food containers.”* Inclusion of these additional PPP would increase the fees due to Recycling BC and the economic benefit gained through the avoided fee.
77. When reviewing the Recycle BC fees schedule, I find it reasonable to capture the other PPP with an additional \$2,500 to capture all other PPP that would be captured, sold across all of Waves 21 locations for the calendar year of 2023.
78. After considering the relevant information, I confirm a reduction of the economic benefit applied for this factor to \$13,891.

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

79. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence that Waves Coffee took **all** reasonable measures to prevent the contravention. If I am persuaded that Waves Coffee took all reasonable measures to prevent the contravention, this factor could decrease the penalty.
80. The PAF shared at Notice proposed no adjustment for this factor.
81. This factor was not disputed in the OTBH Submission and no new information was presented for me to consider related to this factor.
82. After considering the relevant information, I confirm no adjustment for this factor.

**Factor h): Efforts to correct the contravention or failure**

83. I am guided by the AMP Handbook for this factor, to consider what Waves Coffee did **after** the contravention to restore compliance or reverse or mitigate the impacts. If I am persuaded that Waves Coffee did take actions after the contravention to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
84. The PAF shared at Notice proposed no adjustment for this factor.
85. No new information was presented for my consideration.
86. After considering the relevant information, I confirm no adjustment for this factor.

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

87. I am guided by the AMP Handbook for this factor, to consider whether Waves Coffee has taken any action to avoid the contravention happening again in the future. If I am persuaded that Waves Coffee has taken any action to avoid the contravention happening again in the future, this factor could decrease the penalty.
88. The PAF shared at Notice proposed no adjustment for this factor.
89. In the OTBH Submission, Waves Coffee asserted that *“I am committed to working collaboratively with the Ministry of Environment to develop and implement effective environmental strategies that align with both regulatory requirements and our corporate values.”*
90. While the spirit of the above statement is encouraging, in the absence of meaningful action to rectify the non-compliance (such as talks initiated with an agency or evidence of drafting their own plan), I find no compelling reason to apply a reduction for a statement of intent alone.
91. After considering the relevant information, I confirm no adjustment for this factor.

**Factor j): Other**

92. The PAF shared at Notice proposed no adjustment for this factor.
93. Waves Coffee stated in the OTBH Submission *“Lastly, I would like to highlight the challenges related to recycling and waste management in both B.C. and Canada as a whole. Despite our commitment to implementing environmentally responsible practices within our outlets, external factors such as landlord policies and inadequate recycling infrastructure pose significant challenges. I urge the government to address these systemic issues to facilitate broader environmental sustainability efforts across various industries.”*
94. I urge Waves Coffee to raise these concerns with government policy staff with whom they have been in contact with since 2019. These statements are not materially relevant to the contravention.
95. After considering the relevant information, I confirm no adjustment for this factor.

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

96. After determining a base penalty of \$10,000 for this contravention and applying the mitigating and aggravating factors (+ \$35,450) discussed above, the penalty is established at \$45,450. The APR prescribes \$40,000 as the maximum daily penalty for this contravention or failure. Accordingly, the calculated penalty has been adjusted from \$45,450 to \$40,000.
97. 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	major	major
b) Actual or potential adverse effect	low to none	low to none
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$2,500	+ \$2,500
d) Whether contravention or failure was repeated or continuous	+ \$2,500	+ \$2,500
e) Whether contravention or failure was deliberate	+ \$2,000	+ \$2,000
f) Economic benefit derived by the party from the contravention or failure	+ \$56,900	+ <b>\$13,891</b>
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	\$0
j) Additional relevant factors	\$0	\$0
(add factors (c) to (j)) Total Penalty Adjustments:	\$63,900	<b>\$20,891</b>
Penalty after considering all factors: (base penalty plus penalty adjustments)	\$73,900 <i>The APR prescribes \$40,000 as the maximum daily penalty for this contravention or failure. Accordingly, the calculated penalty has been adjusted from \$73,900 to \$40,000.</i>	<b>\$30,891</b>
Application of daily multiplier: No	N/A	<b>N/A</b>
<b>Final Penalty:</b>	<b>\$40,000</b>	<b>\$30,891</b>

## **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://nrccd.gov.bc.ca/>

Dated this 19<sup>th</sup> day of June, 2024.