



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

DETERMINATION OF ADMINISTRATIVE PENALTY

June 25, 2024

File: 2022-40
7726

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Teck Coal Limited
Suite 3300, 550 Burrard Street
Vancouver, BC V6C 0B3

Attention: Teck Coal Limited

RE: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on November 7, 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 Teck Coal Limited has contravened Section 6(2) of the *Environmental Management Act* (EMA) in respect of which an administrative penalty is being imposed pursuant to Section 115 of 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:

2023-11-07 2022-40 Penalty Assessment Form

cc: Kelly Mills, Section Head – Heavy Industry
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DETERMINATION OF ADMINISTRATIVE PENALTY

FILE: 2022-40

Name of Party:

Teck Coal Limited (Fording River Operations)

AMOUNT OF ADMINISTRATIVE PENALTY:

\$13,500

Contravention or Failure:

Contravention of Section 6(2) of the Environmental Management Act (EMA):

6(2) Subject to subsection (5), a person must not introduce or cause or allow waste to be introduced into the environment in the course of conducting a prescribed industry, trade or business.

Date of Contravention or Failure:

- January 5, 2021
January 31, 2021
February 26, 2021
March 2, 2021
May 6, 2021
May 24, 2021*
June 7, 2021
June 15, 2021
June 28, 2021
July 1, 2021
July 3, 2021
July 4, 2021

*Two contraventions occurred on this date.

The dates listed above represent a total of 13 contraventions.

Directors Summary:

- 1. Teck Coal Limited (Teck) is a company registered in British Columbia (BC) that operates five metallurgical (steelmaking) coal mines in the Elk Valley near Elkford and Sparwood (southeastern BC).
2. Teck employs approximately 4,000 people between the five mine sites: Fording River Operations (FRO), Greenhills Operations (GHO), Elkview Operations (EVO), Line Creek Operations (LCO), and Coal Mountain Operations (CMO) (collectively, the Mine Sites). FRO, GHO, EVO and LCO are currently operational mines, whereas CMO was decommissioned in 2018, is in care and maintenance, and undergoing reclamation.

3. FRO is located approximately 29 km northeast of the community of Elkford, BC. It began operation in 1969 and currently employs approximately 1,400 workers. Proven and probable reserves at FRO are projected to support mining at the site for a further 28 years.
4. FRO is located in the Ktunaxa First Nations' district of ʔamakʔis Qukin (Land of the Raven). The Ktunaxa First Nations rely on the lands, waters and resources of ʔamakʔis Ktunaxa to support its people culturally, economically and spiritually.
5. The provincial regulatory authorization governing the discharge of waste to the land from the FRO coal mining operation is Permit 7726 (Permit) issued pursuant to EMA.
6. The Permit was issued and is administered by the BC Ministry of Environment and Climate Change Strategy (Ministry).
7. The Permit authorizes a variety of waste discharges to a landfill, including office and shop waste, wash bay and shop sumps, and oil-water separator cell residuals.
8. The Permit also authorizes the discharges of waste soil from a soil treatment facility (STF), designed to treat hydrocarbon contaminated soil resulting from spills at FRO. Remediated waste soil, after it can be shown to meet specific BC Contaminated Sites Regulation (CSR) criteria, is authorized to be disposed at designated locations at FRO.
9. The Permit was issued on February 2, 1988, and was most recently amended on April 2, 2020.
10. On September 15, 2022, the Ministry issued inspection report (IR) 195030, a Referral for an administrative penalty (AMP). In IR 195030, Teck was found to be out of compliance with Section 6(2) of EMA for 13 events where hydrocarbons were spilled to the environment and no clean-up of contaminated soil occurred.
11. On November 7, 2023, the Ministry issued a Notice Prior to Determination of Administrative Penalty (Notice) and accompanying Penalty Assessment Form (PAF) to Teck via email. The Notice recommended one penalty:
 - **2022-40:** \$29,500 for contravention of Section 6(2) of EMA on 12 occasions, representing 13 contraventions, between January 5, 2021 and July 4, 2021.
12. In the Notice, Teck was offered an Opportunity to be Heard (OTBH) and given thirty (30) days to request an OTBH.
13. Based on Ministry past practice, the Notice was also provided to the Ktunaxa Nation Council (KNC) via email, and submissions were invited for my consideration. I understand that KNC represents the rights and interests of the Ktunaxa Nation and four Ktunaxa First Nations: ʔakisq̓nuk First Nation, ʔaq̓am, yaq̓an nuʔkiy and Yaq̓it ʔa·knuq̓hi‘it..
14. On November 7, 2023, Teck confirmed receipt of the Notice and PAF via email.

15. On November 30, 2023, the Ministry emailed Teck a courtesy reminder of the upcoming due date (December 7, 2023) to request an OTBH.
16. On December 6, 2023, Teck initially declined an OTBH.
17. On December 7, 2023, KNC advised the Ministry that it intended to submit a response to the Notice and requested a due date in January 2024.
18. On December 8, 2023, the Ministry acknowledged KNC's request to submit a response and set a due date of January 31, 2024.
19. On January 31, 2024, KNC submitted a response (KNC Submission) to the Ministry.
20. On February 12, 2024, Teck requested to submit a response to the KNC Submission.
21. On February 12, 2024, the Ministry confirmed Teck's request to submit a response, confirmed it would be by written submission, and set a due date of May 30, 2024.
22. On May 23, 2024, the Ministry emailed Teck a courtesy reminder of the upcoming due date (May 30, 2024) to submit the response.
23. On May 30, 2024, Teck submitted the response (Teck 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 KNC Submission and Teck Submission. In reaching this decision, I have carefully considered all the arguments, relevant documents, evidence, and submissions before me, whether or not they are specifically referred to. I thank KNC and Teck for providing very thorough and well-organized submissions.
25. My reasons for decision include a consideration of the contraventions of Section 6(2) of EMA 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 calculation.

PENALTY CALCULATION

FILE: 2022-40

Environmental Management Act Section 6(2)

The Contravention:

29. An unauthorized discharge occurs when waste is introduced into the environment while conducting an industry, trade, or business that is prescribed under the Waste Discharge Regulation (WDR) of EMA, and the discharge is not authorized by the Ministry.
30. The mining and coal mining industry is a prescribed industry under Schedule 1 of WDR. Therefore, all discharges to the environment from FRO must be authorized by the Ministry.
31. Teck is not authorized under the Permit to discharge waste hydrocarbons into the environment from its prescribed industry at FRO.
32. As outlined in the PAF shared at Notice, in 13 incidents between January 5, 2021 and July 4, 2021, Teck discharged waste hydrocarbons into the environment from its mining and coal mining industry at FRO, thus contravening Section 6(2) of EMA.
33. The KNC Submission, at pages 1-2, provided some context for my consideration as I assess *“the significance of the contraventions at issue in the Notice.”* At page 2, it stated:

“Under EMA, Fording River Operations (and all of Teck Coal Ltd.’s coal operations) have effluent, refuse, and air permits intended to regulate pollution discharges to the environment in ʔamakʔis Ktunaxa. These EMA permits do not exist in isolation; but are all part of a series of interrelated measures designed, in part, to accommodate for and mitigate impacts of mine development to Ktunaxa rights. Through the reporting of Teck’s non-compliance with EMA 6(2) KNC has become aware of other reporting and remediation deficiencies under both FRO’s refuse permit (including Sections 4(2), 4(5)) as well as other requirements of EMA (including Section 91 Spill Prevention and Reporting). This indicates to KNC that not only has the environment been degraded by hydrocarbon spills, it appears likely that unaddressed contamination persists (based on the failure or unwillingness of the permittee to provide the documentation and evidence demonstrating clean up and remediation). This context suggests to

¹ [EAB-EMA-21-A005a.pdf \(bceab.ca\)](#)

KNC that the regulatory system and instruments put in place to protect and address Ktunaxa rights through EMA are not working as intended.”

34. The question of whether there are other alleged failures by Teck to comply with other requirements in its permits or EMA regarding reporting or remediation deficiencies is not, however, before me. The issue before me in this Determination is limited to whether Teck discharged waste hydrocarbons into the environment from its mining and coal mining industry at FRO, in 13 incidents between January 5, 2021 and July 4, 2021.
35. For this Determination, I find that, in the following 13 incidents between January 5, 2021 and July 4, 2021, Teck discharged waste hydrocarbons into the environment from its mining and coal mining industry at FRO, thus contravening Section 6(2) of EMA:

Date	DGIR #	Volume (L)	Material	Details
2021-01-05	203628	1,325	hydraulic oil	spill to ground
2021-01-31	204012	950	hydraulic oil	spill to ground
2021-02-26	204408	800	hydraulic oil	spill to ground
2021-03-02	204635	100	hydraulic oil	spill to ground
2021-05-06	210463	100	hydraulic oil	spill to ground
2021-05-24	210662	200	engine oil	spill to ground
2021-05-24	210663	180	insulating oil	spill to ground
2021-06-07	210844	100	hydraulic oil	spill to ground
2021-06-15	210961	500	hydraulic oil	spill to ground
2021-06-28	211143	100	hydraulic oil	spill to ground
2021-07-01	211192	700	hydraulic oil	spill to ground
2021-07-03	211216	415	hydraulic oil	spill to ground
2021-07-04	211218	800	hydraulic oil	spill to ground
Total:		6,270 L		

36. For this Determination, I have the discretion of determining a separate \$75,000 penalty for each of these 13 contraventions of Section 6(2) of EMA. I also have the discretion of consolidating into one penalty, to a maximum of \$75,000. I have decided to exercise my discretion in favour of Teck and confirm this as one penalty as proposed at Notice, with a maximum of \$75,000.
37. However, I note that if Teck contravenes Section 6(2) of EMA in the future, a subsequent statutory decision maker could review the relevant facts and this Determination and determine that separate penalties for contraventions are necessary to deter non-compliance.
38. As the contraventions themselves were not disputed by KNC or Teck, 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

39. The PAF shared at Notice proposed that the contraventions were major. A major nature of contravention is described in the AMP Handbook and includes “*an unauthorized*

discharge". Teck has discharged waste hydrocarbons into the environment from a prescribed industry, trade, or business under Schedule 1 of WDR without authorization from the Ministry. This undermines the basic integrity of the overarching regulatory regime and significantly interferes with the Ministry's capacity to regulate.

KNC Submission

40. This factor was not disputed by KNC.

Teck Submission

41. This factor was not disputed by Teck.

Director's Findings

42. I have considered the AMP Handbook which describes a major nature of contravention as *"the most serious compliance issues that by their nature result in a threat to the integrity of the environment or to human health or where non-compliance undermines the basic integrity of the overarching regulatory regime and significantly interferes with the Ministry's capacity to protect and conserve the natural environment."*

43. After considering the relevant information above, I confirm the contraventions are major.

Factor b): Actual or Potential Adverse Effects

44. The PAF shared at Notice proposed that the contraventions were low to none. While the potential for an adverse effect from a single, low volume spill may be low, the cumulative and repeated nature of these spills increases the potential for adverse effects to the environment. None of the spills impacted surface water, vegetation, or aquatic and/or terrestrial habitats. The failure to clean-up the spills could result in some potential for groundwater contamination. The volume of these 13 spills ranged from 100 L to 1,325 L, totalling 6,270 L; however, the contraventions have not resulted in an actual adverse effect and the potential to do so is low.

KNC Submission

45. KNC disagrees that the actual or potential adverse effects should be characterized as low to none and submits that they ought to be medium. KNC's argument, described in detail on pages 2-5 of the KNC Submission, can be summarized as follows:

- **Self-reporting of spills indicating no impacts:** *"These conclusions are not substantiated by any evidence and appear to be based on minimal to non-existent analysis of the actual risks posed to the receiving environment from the spills."*
- **The risk of hydrocarbons to the environment:** *"Environmental effects from spilled oils can be expected to partition into the subsurface as: vapour in soil gas, adsorbing into the soil, or dissolving into groundwater. ... Teck has acknowledged that*

hydrocarbon contaminated soil that is not excavated/properly treated is a pathway to environmental degradation... ”.

- **Potential impacts to the environment:** *“It is apparent to KNC that there are nearby environmental components that should be described and sampled to provide assurances that the environment is not being adversely impacted (i.e., soil monitoring confirming that impacted material has been removed and conditions reflect soils that meet applicable standards) and that any further migration of the hydrocarbons has been addressed.”*
- **Long-term environmental implications:** *“Teck’s failure to remediate soil due to spill contamination is likely to further compromise future uses and achieving end land use objectives for Ktunaxa, directly affecting the exercise of their rights and title. ... Additional contamination from hydrocarbons poses additional risks to ecological receptors including wildlife and will in turn affect Ktunaxa rights, including the right to hunt. Overall, hydrocarbons within the soil contribute to the significant cumulative impacts on ʔamakʔis Ktunaxa. Teck’s operating practices, such as inadequate spill response and clean up, are likely to compound problems in the soils and landforms for generations to come, including the potential to impact harvesting rights and cultural practices.”*

46. At page 4 of the KNC Submission, KNC concludes:

“Based on the AMP’s definition in Section 3.6.1, it is KNC’s perspective that the potential for adverse effect should be ‘Medium’, based on medium effects being defined as ‘localized, short term, and can be mitigated or damage repaired within a reasonable timeframe’. Given the surficial geology and the nature of the material spilled (hydraulic oil), KNC believes it is reasonable to assume that the effects were likely localized and could be mitigated within a reasonable timeframe (using mechanical equipment such as bulldozers, loaders, scrapers in addition to surface measures like sorbent pads). However, the failure to apply the mechanical measures proposed in the initial spill reports indicates that in most cases the contaminated soils were not removed and that residual hydrocarbon contamination has persisted for years, which KNC does not believe is a reasonable response. The lack of spill response measures, adequate reporting and identifying affected receptors, and confirmation testing of remediation have likely resulted in actual and prolonged adverse effects from the 32 spills from the time of the spills to present day (a period of 5 years).”

Teck Submission

47. In Section 1 of the Teck Submission, Teck provided “Additional Information” that it submitted was relevant to this Determination, including the location of the spills. Part of Section 1(a) of the Teck Submission stated:

“The spills that are being considered for administrative penalty did not occur on soil. All of the spills occurred within the bedrock pit shell of the active mining area and on mine rock spoil material, ranging from 100 m to 600 m horizontal distance from known environmental receptors (i.e., streams, ponds, rivers). A map identifying the approximate locations of the spills is provided in Appendix A.

Current practice at FRO is to strip the useable and accessible original ground surficial materials prior to pit development and stockpile for use later in reclamation. In the case of all the spills being considered for administrative penalty, the spilled material was either within the bedrock pit shell or to mine rock spoil material located multiple meters above the original ground elevation and/or the mine pit floor. Spoils at FRO range 15 m to 350 m above the original ground elevation and are typically constructed of compact mine rock, placed above the original ground, or mined out pits. The spills within the bedrock pit shell also occurred on mine rock spoil material as this is required as an equipment running surface on each active mining bench.

The geology of FRO is well understood as the mined portion of the Mist Mountain Formation has been exposed as part of active operations for almost 50 years. Hydrogeological analysis completed for various pit development projects shows low hydraulic conductivity (K) values typical of the Fernie Formation rockmass, common in the pit areas of reported spills.”

48. Teck provided submissions on the scope and scale of impact. Part of Section 1(b) of the Teck Submission stated:

“Given the location of the spills within the bedrock pit shell or adjacent spoils, the relatively small volume, the low permeability of the underlying geologic formation and the distance to known receptors, it is unlikely that there would be a pathway to the receiving environment through downward or horizontal migration. Typically, once a spill is identified, it is immediately assessed, reported and cleaned-up by containing free liquid and removing contaminated materials.

Teck employs several mitigation strategies at FRO to reduce potential pathways in the event of a spill. For one, clean water diversions capture surface water where possible to prevent water from entering the mining areas. Additionally, dewatering wells are utilized within the pit shell to dewater ahead of mining to reduce groundwater interactions. These common mining practices further reduce the risk of surface and groundwater receptors being potential pathways for adverse effects to be realized in the environment. Relatively small volumes of mine-affected surface water are left to manage within pit....

The FRO database contains over 2000 samples analyzed for PAH/EPH at permitted and non-permitted locations. In 2021, approximately 290 samples were analyzed (with another 860 additional analyses in 2022 through to present). Various locations located hydraulically downstream of the spills were sampled in 2021 and in the following years (these include instream, pond discharge, groundwater, and seep locations). A desktop review of the PAH/EPH data from 2021 to present indicates there was no apparent pattern of increasing hydrocarbon presence at any of the sampling locations located downstream of the reported spills in 2021. This provides supporting evidence that the spills did not migrate beyond direct mine disturbance areas.

The KNC Submission references FRO’s 2017 Landfill Design and Operations Plan (Landfill DO Plan) and states that section 3 of the Landfill DO Plan acknowledges that hydrocarbon-

contaminated soil that is not excavated/treated properly is a pathway to environmental degradation. The Landfill DO Plan does not include this statement. The FRO spill management processes do, however, support timely spill cleanup in order to minimize the amount of material that requires treatment in the on-site Soil Treatment Facility. All spills being considered in the Notice were contained to the bedrock pit shell of the active mining area and on compact mine rock spoil material. Based on the information presented above, no evidence suggests that the spills have caused an environmental impact to surface water, groundwater, vegetation, or soil.

49. Teck submits that it has undertaken additional efforts to clean-up and respond to the spills relevant to this Determination, which further reduces the potential impacts under this factor. Part of Section 1(d) of the Teck Submission stated:

“For eleven of the thirteen spills, Teck removed the free liquid for off-site disposal, leaving only residuals entrained within the mine rock material. Free liquid removal was accomplished by either a vacuum truck or utilizing absorbents. For the remaining spills, free liquid was not identified, only ground staining was evident.”

50. Teck submits that the nature of the contraventions is low to none. Part of Section 2(b) of the Teck Submission stated:

“There is no foundation to conclude that a “medium” classification is warranted on the facts. The KNC Submission presents no evidence of real or potential adverse effects. To the contrary, evidence suggests that no actual harm has resulted. For example, as set out above, a desktop review of the PAH/EPH data from 2021 to present indicates there was no apparent pattern of increasing hydrocarbon presence at any of the sampling locations located downstream of the spills.

There is also no basis to conclude that there is any potential for adverse effects. The spills occurred within the bedrock pit shell of the active mining area and on mine rock spoil material. None of the potential pathways identified in the KNC Submission are likely given the landscape at FRO.

Finally, all of the spills were of relatively low volume. Only a single spill exceeded 1000 L, with the majority of the spills significantly below that figure and for all but two of the spills, a portion of that total was removed as free liquid and taken off site for appropriate disposal. Notwithstanding the fact that the pathways identified by KNC are not likely given the location of the spills, this fact even further reduces the threat of harm to known environmental receptors.”

Director’s Findings

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

52. 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.
53. 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.”*
54. 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.”*
55. I acknowledge that FRO is within the Ktunaxa First Nations’ district of ʔamakʔis Qukin (Land of the Raven). I further acknowledge that the Ktunaxa First Nations rely on the lands, waters and resources of ʔamakʔis Ktunaxa to support its people culturally, economically and spiritually.
56. I find that the environment relevant to this Determination, while geographically within the boundaries of ʔamakʔis Qukin and ʔamakʔis Ktunaxa, is limited to the very large previously disturbed footprint at the FRO industrial coal mine site, that has been authorized and active for over 55 years.
57. In this Determination, the waste discharged into environment was limited to relatively small volume spills of hydrocarbons, specifically hydraulic, engine, and insulating oils. I find that the individual discharges were separated over an area of several square kilometres. They were mainly spills from damaged heavy equipment to the ground, specifically within the bedrock pit shell of the active mining area and on mine rock spoil material areas. I find no evidence before me that any of the discharges reached any surface waters in the area, no matter the distance. I further find that the discharges were limited to bedrock/mine rock spoil material, and not “soil” as alleged by the Ministry at Notice.
58. This is important because hydrocarbons spilled on soil behave differently than when spilled on rock materials. Hydrocarbons spilled on soil readily adsorbs onto the smaller soil particles with the relatively high surface area, which tends to “soak up” the hydrocarbons. The result is that contaminated soil in the area of a spill can be practically and reasonably excavated and transported for remediation, for example at the STF. Alternatively, hydrocarbons spilled on rock material tend not to be “soaked up” and, after an initial response (e.g. vacuum trucks and absorbent pads), cannot be practically and reasonably excavated and transported for remediation.

59. I find that Teck, using vacuum trucks or utilizing absorbents, removed an undetermined volume of free product from each spill and left only residuals that may have penetrated into the rock material. These response measures would have reduced the volume of oil remaining in the environment and thus reduced the potential for adverse effects. However, there is insufficient evidence before me, to determine how quickly Teck responded to the spills and thus how much time the hydrocarbons had to penetrate the rock material.
60. I find no evidence before me that any of the discharges reached groundwater. I find that the discharges occurred in areas that were up to 350 m above the original ground elevation, and thus there was significant vertical separation with the natural groundwater table. I further find that due to dewatering and diversion efforts by Teck in the area of the pit (and the spills), the groundwater table was actually much lower below ground surface than the natural groundwater table and thus there would be even more vertical separation between it and the surface spills. Because of the very significant separation between the relatively small surface spills and the groundwater table deep below, I find it unlikely that any free product oil reached the groundwater table.
61. I further find that these oils, which are known to have a very low solubility in water, even if they reached the groundwater table, would be unlikely to dissolve and migrate. This is especially true considering that the underlying geologic formation at FRO has a very low permeability, and thus a very low potential for subsurface transport.
62. I find that there is no evidence before me of real adverse effects on the environment. However, I do find that the contraventions have resulted in potential adverse effects on the environment, but that potential is low.
63. After considering the relevant information above, I confirm that the contraventions are low to none.
64. The base penalty is therefore confirmed at \$10,000 as proposed at Notice.
65. 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 contraventions, the KNC Submission and the Teck Submission.

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

66. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty (+ \$2,500) for the previous contravention of Section 6(2) of EMA and failures to comply with Teck's waste discharge permits in the Elk Valley.
67. In May 2022, Teck was previously issued a \$198,000 AMP for contravention of Section 6(2) of EMA for 12 spills of process slurry and tailings at EVO, totalling 51,825 L, that occurred from July 22, 2020 to December 28, 2020. Two of those spills reached nearby surface waters.

KNC Submission

68. KNC disputes the twenty-five percent increase and submits that it ought to be greater. At pages 5-6, the KNC Submission stated:

“KNC would also note that in addition to ENV’s compliance findings that EAO’s December 2020 inspection² also found that FRO’s management of hydrocarbon impacted soils and appropriate hazardous waste storage resulting in a finding of non compliance.

Substantive non compliance at FRO in 2019 and 2020 were revealed by the Ministry’s inspection of spills and treated soil in assessing compliance with FRO’s EMA Permit 7726. In 2019, KNC notes FRO was found to be reporting only 25-30% of spilled hydrocarbon volumes as treated (through the STF or providing manifests of the materials being taken offsite), 75% in 2020, and 72% in 2021. The PAF and spill reports reveal there have been 32 spills with no evidence of clean up – resulting in more than 16,000 L hydrocarbon releases to the environment (i.e., 2,100-2,800 L in 2019, 7,200 L in 2020, and 6,800 L in 2021). Despite two warnings in 2019 and 2020, it does not appear that escalating enforcement action has improved FRO’s reporting or management practices. Further, the substantive list of previous enforcement actions should have, but does not seem to have had, a deterrent effect on Teck Coal Ltd.’s continued contraventions.”

Teck Submission

69. Teck also stated, in Section 2(c) of the Teck Submission, that it does not dispute the twenty-five percent increase.
70. Teck submits that the twenty-five percent increase is appropriate. Part of Section 1(c) of the Teck Submission stated:

“Teck has adjusted and continues to adjust its practices in response to previous enforcement action and is continually working to reduce the frequency and quantity of unauthorized discharges at FRO. It is incorrect to suggest that previous enforcement action has not had a deterrent effect and to infer that improvements have not been progressed.”

Director’s Findings

71. I am guided by the AMP Handbook for this factor, to consider Teck’s compliance history. This factor could increase or decrease the penalty.
72. I have considered the AMP Handbook which states, *“When considering the relevance of previous contraventions, consider the degree of similarity and extent to which the previous enforcement action should have deterred the person from doing the same type of thing again.”*
73. I find some similarity between the previous AMP 2020-70 for 12 spills of process slurry and tailings at EVO with the contraventions at FRO in this Determination. However, I find less

similarity with the previous failures to comply with Teck’s waste discharge permits in the Elk Valley.

74. In establishing the amount of an administrative penalty in a particular case, Section 7(1)(c) of the APR requires that I must consider “*any previous contraventions or failures by, administrative penalties imposed on, or orders issued*”.
75. In Section 1 of the APR, “contraventions or failures” is limited to a contravention of EMA or its regulations, failure to comply with an order under EMA, or a failure to comply with a permit or approval under EMA. In the result, under this factor I am unable to consider any compliance findings regarding the Environmental Assessment Certificate made by Environmental Assessment Office staff, as submitted by KNC.
76. The EAB in *1782 Holdings Ltd. v. Director, Environmental Management Act* (Decision No. EAB-EMA-22-A011(a) to A015(a), January 16, 2024) (*1782 Holdings*)² considered the relevance of previous inspections and warnings under this factor:

“Regarding the effect of previous contraventions required to be considered under factor 7(1)(c) of the Regulation, in Randy Carrell, doing business as Iron Mask Trailer Park v. Director, Environmental Management Act, 2019 BCEAB 24 (CanLII), at para. 62, and in Woodland Heights Investments, Ltd. v. Director, Environmental Management Act, 2020 BCEAB 15 (CanLII), at para. 133, the Board found that warning letters or other similar communications do not constitute “any previous contraventions, administrative penalties imposed on, or orders issued to the person who is the subject of the determination.” There must be orders or formal findings of a contravention for them to properly be taken into consideration under this factor.” (para. 70)

77. After considering the *1782 Holdings* EAB decision, I find that I am unable to apply the previous 2019 and 2020 inspections and warnings of non-compliances at FRO to increase this aggravating factor, as submitted by KNC.
78. After considering the relevant information above, I confirm that an increase of twenty-five percent of the base penalty (+ \$2,500) is appropriate for the previous contraventions of Section 6(2) of EMA and the other failures to comply with Teck’s waste discharge permits in the Elk Valley.

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

79. The PAF shared at Notice proposed an increase of thirty percent of the base penalty (+ \$3,000) for the repeated nature of the contraventions.

KNC Submission

80. KNC disputes the thirty percent increase and submits that it ought to be greater due to the continuous nature of the contraventions. At page 7 of the KNC Submission, it stated:

² [EAB-EMA-22-A011a12a13a14a15a.pdf \(bceab.ca\)](https://www.bceab.ca/eab-ema-22-a011a12a13a14a15a.pdf)

“KNC also considers the contraventions to be continuous, as the contraventions have not demonstrated compliance and the AMP Handbook notes that contraventions may be considered continuous from the day the non-compliance is confirmed (spill reported) until the day that compliance is demonstrated, documented in the End of Spill reporting; the lack of any such reporting is a major deficiency (as per Section 3.6.2). ... Recognizing that Teck cannot provide evidence that any of the 13 contraventions have been addressed, it is KNC’s perspective that they should be considered continuous until documentation of clean up/remediation of the contraventions is provided.”

Teck Submission

81. In Section 2(d) of the Teck Submission, Teck stated that it does not dispute the thirty percent increase.
82. Teck submits that the contraventions are not continuous. Part of Section 1(d) of the Teck Submission stated:

“A ‘continuous’ contravention implies that the spill came from a single source on a continuous basis. This is not supported by the facts. Each spill was an isolated incident with no relation to the other spills. There was no continuity between any of the spills, nor did the spills continue throughout the duration of the time period identified in the Penalty Assessment Form. Each incident was and should be considered a discrete event.”

Director’s Findings

83. 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 contraventions should have alerted Teck to the contraventions and the need to take action. If I am persuaded that Teck failed to take action, this factor could increase the penalty.
84. In the PAF shared at Notice, I considered imposing separate penalties for each contravention described in this administrative penalty since there were multiple contraventions in 2021; however, for this administrative penalty only, these contraventions will be treated as repeated.
85. I agree with KNC’s interpretation of the AMP Handbook that a contravention is continuous from the day the non-compliance is confirmed until the day the person demonstrates compliance. However, I find that each of the 13 separate contraventions of Section 6(2) of EMA in this Determination, occurred on a specific date. While the duration of each discharge was undetermined and estimated to be less than one day, there was most likely a start and stop period that was minutes or hours. In the result, and for the purpose of this Determination, I find that each contravention ended when the discharge stopped, as opposed to when it may have been cleaned up. I further find that they are repeated, but not continuous.

86. 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 natures of the 13 contraventions of Section 6(2) of EMA between January 5, 2021 and July 4, 2021.

Factor e): Whether contravention or failure was deliberate

87. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$2,000) to reflect the deliberate nature of the contraventions.

KNC Submission

88. KNC agrees that the contraventions were deliberate because Teck has deliberately chosen to manage spills in a way that led to additional contraventions. On pages 7-8 of the KNC Submission, it stated:

“KNC agrees with the Ministry’s assessment that Teck was aware of their permit requirements and despite increasing enforcement action has deliberately chosen to continue to manage unauthorized discharges in the same manner as to lead to additional contraventions. Despite years of communications on this issue, rather than address the contraventions with corrective measures, Teck has supplied false and misleading information around the unauthorized discharges (see PAF findings 20-22) in contravention with EMA and have continued to operate and report in the same manner.”

89. However, KNC also submits that Teck did not deliberately or intentionally spill hydrocarbons into the environment. KNC disputes the twenty percent increase and submits that it ought to be greater. On page 8 of the KNC Submission, it stated:

“KNC is not suggesting that the unauthorized discharges of hydrocarbons into the receiving environment were done deliberately or intentionally, but rather that Teck has not taken a reasonable standard of care by not implementing preventative planning or adequate inspections. It is clear in the PAF and in Teck’s December 6th response that the company is aware of its contraventions. The company has chosen not to include any evidence on how their ‘corrective actions’ have resulted in, or could be reasonably expected to result in, future unauthorized discharges. The Appellant’s failure to address the contraventions in a direct manner suggests deliberateness.

KNC agrees with the Ministry determination that an aggravating factor should be applied for the deliberate nature of the contravention, but would recommend a more substantive adjustment than the Ministry’s proposed 20%.”

Teck Submission

90. Teck disputes the proposed increase of twenty percent of the base penalty due to the deliberate nature of the contraventions. Part of Section 2(e) of the Teck Submission stated:

“The Ministry applied a 25% [sic] increase (+\$2,000) to the base penalty to reflect the deliberate nature of the contraventions. Teck disputes this adjustment. While Teck was aware that hydrocarbon discharges of this nature are not authorized, Teck exercised diligence to prevent and mitigate the occurrence of hydrocarbon releases and has a practice of immediate clean up response. The level of evidence does not rise to level of supporting a finding that Teck has deliberately contravened the Environmental Management Act. As discussed above, releases can and do happen for various reasons due to unforeseen and unavoidable site conditions. For example, releases can occur due to rock punctures, which can even occur on brand-new hoses and other components.”

Director’s Findings

91. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Teck deliberately discharged waste hydrocarbons into the environment. If I am persuaded that Teck deliberately discharged waste hydrocarbons into the environment, this factor could increase the penalty.
92. I find that Teck was aware that it was not authorized to discharge hydrocarbons into the environment at FRO.
93. As discussed above in Factor b), I find that the discharges associated with these spills between January 5, 2021 and July 4, 2021 were limited to bedrock/mine rock spoil material, and not “soil” as alleged at Notice. In the result, excavating, transporting and remediating contaminated spills at the STF is not relevant to this Determination. However, I find that Teck’s inaccurate or incomplete spill reporting resulted in a lack of clarity around the proper disposal of the materials impacted by the spills.
94. Despite Warnings in 2020 and 2021, I find that Teck, in 13 incidents between January 5, 2021 and July 4, 2021, discharged waste hydrocarbons into the environment. On multiple occasions, in 2020 and 2021, Teck was reminded that spills at FRO must be treated or disposed of and documented in an authorized manner and that no waste is introduced into the environment unless it is done so in accordance with an authorization issued under EMA.
95. The EAB in *93 Land Company v Director, Environmental Management Act* (Decision No. EAB-EMA-22-A007(a), December 23, 2022)³, considered the meaning of deliberate under this factor:

The word “deliberate” as used in this factor requires a consideration of whether the person was intentionally in contravention, or at least willfully blind as to whether they were in contravention of the Act. (para. 143)

96. As discussed below in Factor g), Teck’s failure to dispose of and document spills in an authorized manner and ensure no waste is introduced into the environment does not amount to due diligence. However, I am persuaded by Teck that this does not rise to the level of the contraventions being deliberate.

³ [EAB-EMA-22-A007a.pdf \(bceab.ca\)](https://www.bceab.ca/eab-ema-22-a007a.pdf)

97. 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

98. The PAF shared at Notice proposed an increase of \$14,000 for the economic benefit of avoided costs. The “applied value” method was used to calculate the economic benefit from excavating, transporting, and remediating hydrocarbon contaminated soil.

KNC Submission

99. While KNC agrees that Teck derived an economic benefit from the contraventions, it submits that the \$14,000 increase ought to be greater. At page 9 of the KNC Submission, it stated:

“The Ministry used the “Applied Value” approach as per the Economic Benefit Guidance for AMP supplement, which is an estimating technique that KNC believes reflects low accuracy. In KNC’s experience, the cumulative ‘True Value’ to properly perform cleanups, including confirmatory sampling, monitoring and risk assessments (i.e. in accordance with CSR guidance documents) for the relatively large number of contraventions would be much greater than \$14,000. KNC suggests that ENV consider that more information is needed to determine the true or at least a reasonably estimated Economic Benefit as indicated in the Section ‘Considerations - When to Acquire Information?’ of the Economic Benefit Guidance for AMP supplement. If the Ministry retains the ‘Applied Value’ approach, the items incorporated into the Assessment – Applied Value table at p. 19 should be expanded to include cost savings to Teck from failing to allocate staff resources to fulfill clean up obligations and failure to conduct soil and groundwater sampling to assess potential environmental harm.”

100. At page 9 of the KNC Submission, KNC further submits that Teck has avoided additional operational costs by not allocating the time and resources “to fulfill their obligations as a responsible person” to:

- *“Ensure skilled persons with the right response equipment are onsite responding;*
- *Assess, monitor, and prevent the threat;*
- *Stabilize, contain, remove, and clean up the spill;*
- *Identify and evaluate the immediate risks to protect human health, the environment, and infrastructure;*
- *Identify and evaluate long-term effects of the spill; and*
- *Take steps to resolve or mitigate long-term impacts.”*

101. At page 9 of the KNC Submission, its concern is that “*the proposed penalty will not motivate positive change in future behaviour and practices, as the penalty proposed still demonstrates a significant cost savings to FRO by not properly reporting, tracking, and cleaning up hydrocarbon discharges.*”

102. At page 9 of the KNC Submission, KNC further states:

“As it stands, the proposed penalty is likely to incentivize future non-compliance (as the penalty is a cost savings in comparison with remediation and reclamation such that contaminants are managed and removed and the contaminated soil is then replaced with clean soil). It is KNC’s belief that the AMP in question should consider whether the final penalty is a deterrent in future non-compliance and changing operational behaviour or if it is a cost savings via the “cost of doing business.”

Teck Submission

103. Teck disputes that it derived any economic benefit from the contraventions. Part of Section 2(f) of the Teck Submission stated:

“Teck disputes this adjustment since, as discussed above, significant effort and expense has been employed in implementing improved spill prevention planning, specific initiatives aimed at preventing or reducing releases of hydrocarbons from mining equipment, training and processes, and spill response actions including for the spills included in the Notice.

... The assumption underlying this statement is that it is cheaper to allow and deal with the consequences of unauthorized discharges than to take steps to prevent and properly address them. However, as demonstrated above, Teck’s spending on both proactive and follow up actions and infrastructure are significant.

Non-compliance does not represent a cost savings to Teck. In fact, there are significant costs associated with spills. Teck has a financial interest in preventing spills, as volume lost is money lost. For example, spills resulting from hose leaks decrease equipment availability for a period of time, leading to costs associated with repairs and downtime for the equipment. It was noted that in 2023 alone, the cost of downtime associated with hose replacement and leak repair cost FRO approximately \$72 Million.”

104. In the Teck Submission, Teck has submitted the following expenditures related to prevent, respond to and mitigate releases to the environment at FRO:

- Fluid Loss Index: approximately \$45,962 cost incurred per year
- Hose Replacement Program: Teck increased spending by a factor of 2.26 times on proactive hose replacement in 2023 compared to 2018; in 2023, Teck spent approximately \$2,990,000
- Leak Detection Program: approximately \$4,340,000 per year
- Thermal Desorption Unit: approximately \$842,000 spend-to-date
- New hydrocarbon-contaminated material treatment facility: approximately \$3,620,000

105. Section 3 of the Teck Submission stated:

“In conclusion, we believe that the penalty amount of \$29,500 reflects the principles of the EMA and, in particular, the s. 7 factors. Teck has demonstrated significant efforts to

improve spill prevention and response strategies at FRO. These strategies are robust and demonstrate Teck's commitment to spill management at FRO. These management strategies are also continually evolving in response to new information that Teck gathers about the root causes of unauthorized discharges."

Director's Findings

106. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Teck obtained an economic benefit from the contraventions. If I am persuaded that Teck obtained an economic benefit from the contraventions, this factor could increase the penalty.
107. In the PAF shared at Notice, the "applied value" method was proposed to calculate the economic benefit derived through avoiding costs associated with excavating, transporting, and remediating hydrocarbon contaminated soil. An increase of \$14,000 was proposed for the economic benefit of avoided costs.
108. I am guided by the AMP Handbook, that the test for estimating economic benefit is one of "reasonableness" and I should provide a "best estimate" based on a "defensible methodology." (p. 66) However, as I have described above in Factor b), I find that the discharges were limited to bedrock/mine rock spoil material, and not "soil" as alleged at Notice. It was likely unreasonable to expect Teck to excavate, transport, and remediate bedrock/mine rock spoil material. In the result, I cannot find that Teck derived an economic benefit through avoiding costs associated with excavating, transporting, and remediating hydrocarbon contaminated soil.
109. I can consider, however, whether Teck derived any economic benefit through delaying costs associated with implanting an adequate preventative maintenance and inspection program, prior to January 5, 2021, that would have been reasonably expected to have avoided the contraventions. I am still guided by the AMP Handbook that my estimate must be reasonable.
110. In the Teck Submission, Teck has provided annual leak prevention expenditures of approximately \$7,375,962 (\$45,962 for the fluid loss index, \$2,990,000 for the hose replacement program, \$4,340,000 for the leak detection program). Teck also submitted that, in 2023, the cost of downtime associated with hose replacement and leak repair at FRO cost approximately \$72,000,000.
111. Based on Section 7(1)(f) of the APR, I must consider any economic benefit derived by Teck from the 13 contraventions of Section 6(2) of EMA between January 5 and July 4, 2021. Any other consideration of Teck's finances, accounting, or balance sheets is not relevant here. In other words, Teck's full financial outlook is not relevant to the consideration of economic benefit, but rather only the costs that are avoided or delayed from the contraventions.

112. I find there is insufficient evidence before me to determine whether all, or only some of the expenditures for leak prevention measures were being incurred prior to January 5, 2021. I find that Teck has provided these expenditures, with often no indication of what year they were from, or how the specific leak prevention measures were directly related to the contraventions in this Determination. This is important because expenditures for specific leak prevention measures implemented prior to January 5, 2021, would not suggest any economic benefit derived. Whereas expenditures for specific leak prevention measures implemented after January 5, 2021, could suggest economic benefit derived. I find that there is insufficient evidence before me to make a reasonable best estimate.
113. In this Determination, there is no evidence before me of “true” or “estimated” values of economic benefit that Teck derived from the contraventions with Section 6(2) of EMA between January 5 and July 4, 2021. In the EBG, the “applied value” is acknowledged as the least accurate determination of an economic benefit.
114. KNC submits that Teck has avoided additional operational costs by not allocating the time and resources to fulfill its obligations as a “responsible person”, as that term is considered in Section 91.2 of EMA and its associated Spill Reporting Regulation and Spill Preparedness, Response and Recovery Regulation. I find that this Determination is limited to the 13 contraventions with Section 6(2) of EMA between January 5 and July 4, 2021, and any alleged non-compliance with other sections of EMA or its regulations, is outside my scope of consideration.
115. KNC further submits that Teck benefited from a significant cost savings “*by not properly reporting, tracking, and cleaning up hydrocarbon discharges.*” However, KNC has not provided any evidenced to support these assertions and I am unable to substantiate these claims.
116. After considering the relevant information above, I am convinced that Teck likely derived some economic benefit from the contraventions with Section 6(2) of EMA. However, I find that the specific economic benefit for failing to prevent the oil discharges from heavy equipment operating at FRO, prior to January 5, 2021, would be difficult to estimate or quantify. To attempt to do so in the context of these contraventions, would not even meet the applied value method, and would be entirely speculative and not defensible. This specific economic benefit has been considered but will not be pursued in this Determination.
117. After considering the relevant information above, I confirm that no increase of the base penalty will be applied under this factor.

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

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

KNC Submission

119. KNC agrees that Teck did not exercise a reasonable standard of care to prevent the contraventions from occurring. On page 10 of the KNC Submission, it stated:

“KNC further notes that Teck has failed to demonstrate due diligence in addressing maintenance deficiencies that contribute to frequent spills. The majority of spills were caused by preventable equipment failures, such as broken fuel lines. It would be reasonable to expect that Teck would have taken preventative measures to avoid future contraventions such as routine maintenance and inspections of vehicles and machinery. Instead, the company has focused on measures related only to tracking their soil treatment facility, ignoring the broader issue of the adequacy in spill response and remediation of the environment.”

Teck Submission

120. Teck disputes that it failed to take all reasonable measures to prevent the contraventions. Part of Section 2(g) of the Teck Submission stated:

“As discussed above, Teck is continually monitoring and improving its spill prevention and response practices and supporting personnel, equipment and infrastructure and has seen success in the overall reduction and severity of spills at FRO.

... just because Teck’s spill prevention strategies have not been able to prevent all spills does not mean that Teck has not invested a significant amount of time and resources into these strategies.”

121. Teck also submits that it has been diligent in undertaking additional efforts to prevent the contraventions. Part of Section 1(c) of the Teck Submission stated:

“Teck has also undertaken significant effort and expense to prevent, respond to and mitigate releases into the environment at FRO. These practices have evolved significantly over the years as standards for environmental stewardship have grown. Teck has worked diligently to remain up to date with best practices for spill prevention, response and mitigation. As a result, FRO has over time experienced fewer spills. Spills at FRO, when they do occur, are also generally of less volume when compared to historical incidents. More comprehensive clean-up and treatment strategies have also been developed and deployed at the site.

Teck has invested and continues to invest in programs to prevent, respond to and mitigate releases to the environment at FRO, including a Hydrocarbon Management Program...”

122. The Hydrocarbon Management Program includes the Fluid Loss Index, The Hose Replacement Program, and the Leak Detection Program. Part of Section 1(c) of the Teck Submission further stated:

“In addition to these programs, Teck performs regular preventative maintenance and inspections on site equipment. These practices and strategies have also become more robust and comprehensive over time. In response to spills, Teck also undertakes thorough investigations to understand the spill’s cause and identify corrective actions. The analytics resulting from these investigations are used to inform and improve maintenance practices moving forward.

Teck added a new systems coordinator role in 2020 to support the management of spills at FRO. This provides an additional resource to better manage and improve spill clean-up on-site. The coordinator is responsible for verifying that all spills at FRO are cleaned up appropriately and promptly.”

123. Part of Section 1(c) of the Teck Submission further stated:

“That the spills occurred does not indicate that Teck has not exercised diligence to prevent the spills. Releases can and do happen for various reasons due to unavoidable site conditions. Not all releases are due to end-of-life-type failures; for example, releases can occur due to rock punctures, which are not uncommon and can even occur on brand-new hoses and other components. However, that these incidents can occur does not mean that Teck has not made efforts to prevent and manage spills at FRO.”

Director’s Findings

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

125. I find that in 2020, Teck committed to take corrective actions to better track contaminated ground material, implement additional training and awareness of proper clean up and verify that spills are cleaned up promptly and any impacted soil is disposed of at the STF or in appropriate waste soil bins.

126. I find that, in 2020, Teck has created a new Systems Coordinator role that supports the management of spills at FRO and is an additional resource to better manage and improve spill clean-up on-site. I further find that this role is responsible for verifying that all spills at FRO are cleaned up.

127. I find that Teck has made some efforts to manage spills that occur at FRO, after they occur.

128. I find that most of the contraventions were caused by heavy equipment failures (e.g. damaged hydraulic lines). I further find that Teck has failed to provide sufficient evidence that it had an adequate preventative maintenance and inspection program, prior to January 5, 2021, that would have been reasonably expected to have avoided the contraventions. While Teck has referred me to its extensive efforts (i.e. time and resources) under its Hydrocarbon Management Program, it is not clear to me when those efforts were made- either before or after the contraventions.

129. I find that it is unclear what Teck’s efforts were at FRO between January 5 and July 4, 2021, to prevent the spills before they occurred. Teck has suggested generally that some of the damages to the hydraulic lines were not preventable but failed to provide evidence of which ones and how specifically the damage was unavoidable.

130. As described above, Teck has provided information on efforts it has made to prevent, respond to and mitigate spills at FRO. However, I find that Teck has failed to provide details around the timing of most of these efforts (i.e. when the efforts commenced) and how they specifically prevented the contraventions with Section 6(2) of EMA for the penalty period of January 5 to July 4, 2021. I would have expected evidence of efforts clearly made prior to January 5, 2021 in order to consider under this factor.
131. The onus to prove due diligence lies with Teck. In order to establish due diligence, Teck would have been expected to provide evidence that it took all reasonable measures to prevent the contraventions. I find that Teck may have taken some measures to comply, but it has not taken all reasonable measures to comply. Based on the above, Teck failed to exercise due diligence to prevent the contraventions.
132. After considering the relevant information above, I confirm that Teck did not take **all** reasonable measures to prevent the 13 contraventions of Section 6(2) of EMA and no reduction will be applied under this factor.

Factor h): Efforts to correct the contravention or failure

133. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$1,000) for some efforts to correct the contraventions.

KNC Submission

134. KNC submits that there is no evidence of Teck’s efforts to correct the contravention, and on page 10 of the KNC Submission it stated:

“KNC echoes the Ministry’s assertion that there is no evidence that Teck undertook efforts to correct this contravention or to prevent its recurrence. KNC remains deeply concerned that Teck has provided no evidence that they have made, or intend to make, any efforts to prevent, eliminate, or ameliorate the adverse effects and repair any damage.”

135. KNC further submits that there was a lack of prompt and complete corrective action on the part of Teck and questions some of the “corrective actions” proposed by Teck. On page 6 of the KNC Submission, it stated, *“The list of corrective measures provided by Teck [on December 6, 2023] appears aimed at increasing awareness and education of staff but not at addressing the root cause of the contraventions.”*

Teck Submission

136. Teck submits that it has made efforts to correct the contraventions. Part of Section 2(h) of the Teck Submission stated:

“The Ministry has applied a 10% decrease (-\$1,000) to the base penalty to reflect Teck’s efforts to correct the contraventions. Teck believes this adjustment is appropriate given Teck’s efforts to remove the free liquid for off site disposal for all but two of the spills. For

those two spills, only residuals entrained within the mine rock material were left at the site of the spills.”

137. Teck submits that it has undertaken additional efforts to clean-up and respond to the spills. Part of Section 1(d) of the Teck Submission stated:

“The KNC Response provides that it “echoes the Ministry’s assertion that there is no evidence that Teck undertook efforts to correct this contravention”.⁶ The Ministry did not make this assertion. In the Penalty Assessment Form, the Ministry acknowledges Teck’s efforts to correct the contravention.⁷

For eleven of the thirteen spills, Teck removed the free liquid for off-site disposal, leaving only residuals entrained within the mine rock material. Free liquid removal was accomplished by either a vacuum truck or utilizing absorbents. For the remaining spills, free liquid was not identified, only ground staining was evident. As discussed above, Teck also conducts investigations to understand the cause of spills and to identify corrective actions, which are tracked for progress.”

Director’s Findings

138. I am guided by the AMP Handbook for this factor, to consider what Teck did **after** the contravention to restore compliance or reverse or mitigate the impacts. If I am persuaded that Teck did take actions after the contravention to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
139. As discussed above, Teck submits that there were no contaminated soils associated with these spills, since the spills occurred from heavy equipment operating on either bedrock or waste rock. However, I find that Teck’s inaccurate or incomplete spill reporting resulted in a lack of clarity around the proper disposal of the materials impacted by the spills.
140. I find that Teck has made some efforts to clean up and respond to the 13 hydrocarbon spills, including the use of hydrovac trucks, spill pools, and absorbent pads and socks. However, there is insufficient evidence before me, to determine how quickly Teck responded to the spills and thus how much time the hydrocarbons had to penetrate the bedrock/waste material.
141. After considering the relevant information above, I am convinced that a modest reduction of ten percent of the base penalty (- \$1,000) is appropriate for some efforts by Teck to correct the contraventions.

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

142. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$1,000) for some efforts to prevent the contravention.

KNC Submission

143. KNC submits that there is no evidence of Teck's efforts to prevent reoccurrence of the contravention. On page 10 of the KNC Submission, it stated:

"KNC echoes the Ministry's assertion that there is no evidence that Teck undertook efforts to correct this contravention or to prevent its recurrence. KNC remains deeply concerned that Teck has provided no evidence that they have made, or intend to make, any efforts to prevent, eliminate, or ameliorate the adverse effects and repair any damage."

144. KNC further submits a lack of measures on the part of Teck to prevent the contraventions from occurring again. On page 6 of the KNC Submission, it stated, *"Corrective actions should include preventative measures to address the root cause(s) or severity of the authorized discharges such as increased vehicle inspections and maintenance (noting that equipment failure is the listed cause of almost all of the contraventions), control measures (such as the timely mobilization of machinery to mechanically remove impacted soils rather than spill response primarily being absorbent pad application at soil surface)"*.

Teck Submission

145. Teck submits that it has made efforts to prevent reoccurrence of the contraventions. Part of Section 2(i) of the Teck Submission stated:

"In addition to the measures identified by the Ministry, Teck also has several programs to identify and address the root causes of spills, including the hose replacement program, the Fluid Loss Index program, and the Hydrocarbon Management Program. Teck also has robust training and education initiatives to ensure that staff on-site are better equipped to address the causes of and respond to spills."

Programs and initiatives for spill reduction and clean-up actions has been a primary focus and spend for FRO in the recent years. As noted above, significant resources and funds have been allocated to prevention, clean-up and treatment infrastructure. Including the significant costs associated with the thermal desorption unit and new facility under construction to bioremediate hydrocarbon-contaminated materials."

146. Teck's Hydrocarbon Management Program to identify and address the root causes of spills is described in more detail in Section 1(c) of the Teck Submission:

- Fluid Loss Index, designed to minimize the risk of fluid loss;
- Hose Replacement Program, aimed to minimize the risk of hose failure; and,
- Leak Detection Program, focussed on identifying, monitoring and downing leaking equipment proactively to be repaired.

147. In Section 1(c) of the Teck Submission, Teck described additional efforts to prevent reoccurrence of the contraventions:

- regular preventative maintenance and inspections on site equipment;
- thorough investigations to understand any spill’s cause and identify corrective actions;
- analytics resulting from spill investigations are used to inform and improve maintenance practices;
- training and education initiatives designed to address the root causes of spills; and,
- a new Environmental Management Systems (EMS) coordinator role was added in Q1 2023

148. In Section 1(c) of the Teck Submission, Teck further stated:

“Teck has worked diligently to remain up to date with best practices for spill prevention, response and mitigation. As a result, FRO has over time experienced fewer spills. Spills at FRO, when they do occur, are also generally of less volume when compared to historical incidents. More comprehensive clean-up and treatment strategies have also been developed and deployed at the site.”

149. In Section 2(i) of the Teck Submission, Teck agreed that a ten percent decrease to the base penalty was appropriate to reflect its efforts to prevent reoccurrence of the contraventions.

Director’s Findings

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

151. In August 2021, I find that Teck committed to focus on implementing measures to improve spill response, including the creation of an Environmental Coordinator role supporting spill management and response, weekly inspections of the STF to identify any new material, increased treatment and sampling of material in the STF to manage capacity for contaminated ground material from spills, and the FRO Environment team increasing engagements with appropriate site employees on proper spill cleanup actions.

152. As described above, Teck has provided information on significant expenditures and efforts it has made to prevent, respond to and mitigate spills at FRO. However, I find that Teck has failed to provide details around the timing of most of these efforts (i.e. when the efforts commenced) and how they specifically prevented reoccurrence of the contraventions with Section 6(2) of EMA for the penalty period of January 5 to July 4, 2021.

153. After considering the relevant information above, I am convinced that a modest reduction of ten percent of the base penalty (- \$1,000) is appropriate for some efforts by Teck to prevent reoccurrence of the contraventions.

Factor j): Other

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

KNC Submission

155. KNC submits that there are other relevant factors that I ought to consider. At pages 10-11 of the KNC Submission, it stated:

“...As there are no economic barriers to the company addressing their unauthorized hydrocarbon discharges, KNC recommends that in addition to the penalty imposed, there are other regulatory measures to ensure that the land is restored, so that the burden of this contamination does not rest with Ktunaxa or the province, assuming that remediation could end up being a cost to government in perpetuity and that if these contraventions are not being cleaned up as they occur, there is no consideration of them in the company’s closure plans or the Province’s bonding.

... The quality of the self reporting is grossly inadequate - there is no qualification of receptors, mapping does not show environmental features, and most importantly, there is no evidence and confirmation of clean up. KNC believes this is grounds for additional contraventions under EMA – under 6(5) and also permit 7726 Section 4(5).

... KNC believes that there should be, in addition to the penalty proposed through this AMP (2022-40), a compliance audit of FRO for their end of spill reports under EMA’s Spill Reporting Regulations as it appears that the chronology and relevant facts point to additional and compounding contraventions under PE7226’s Section 4(5) and EMA’s Spill Reporting Requirements, including the need to demonstrate clean up.”

156. KNC also asked that I consider its Closing, on pages 11-12 of the KNC Submission, where it stated:

“Permitted deposition of refuse and contaminants within Teck’s mine sites is leading to previously intact ecosystems in ʔamakʔis Ktunaxa being transformed into waste storage sites – whether that is tires, office and shop wastes, “treated”, or in 32 instances “untreated” hydrocarbon contaminated soil. Current areas that are being reclaimed show that the soils and the vegetation it supports are not going to meet long-term end goals such that Ktunaxa can be confident in harvesting plants or animals or in fulfilling their stewardship responsibilities. It is clear that current practices are in direct conflict with Ktunaxa worldview, culture, and values of stewarding the land, and will impose the burden of current polluting activities on future generations whom will have to live with the compromised landscapes left behind once the mines close. There is much work for the Ministry to do in order to restore Ktunaxa’s confidence that there are no persistent impacts from unauthorized pollution in ʔamakʔis Ktunaxa; this includes evaluating compliance with permit requirements, and in revisiting permit requirements to ensure that they meet the intent and need of environmental protection.”

Teck Submission

157. This factor was not disputed by Teck.

Director's Findings

158. 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.
159. KNC raises several serious concerns regarding area-wide remediation, closure plans, bonding, additional contraventions, quality of self-reporting, and others. While I recognize the importance of these concerns to KNC, I find that they fall far beyond the scope of this Determination.
160. I have considered KNC's submissions above regarding this factor. I find that my jurisdiction in this Determination is limited to the period of January 5, 2021 to July 4, 2021, when Teck contravened Section 6(2) of EMA by discharging waste hydrocarbons into the environment at FRO.
161. Further, I am unable to direct a compliance audit of FRO for its end of spill reports under EMA and its regulations.
162. Regarding the concerns regarding Teck's need to demonstrate clean up of the 13 spills included in this Determination, I have considered that above in Factor h) Efforts to correct the contravention.
163. 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:

164. After determining a base penalty of \$10,000 for this contravention and applying the mitigating and aggravating factors (+ \$3,500) discussed above, the penalty is established at \$13,500.
165. 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	+ \$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	+ \$14,000	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	- \$1,000	- \$1,000
i) Efforts to prevent reoccurrence of the contravention or failure	- \$1,000	- \$1,000
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j) Total Penalty Adjustments:</i>	\$19,500	\$3,500
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$29,500	\$13,500
Application of multiplier: No	N/A	N/A
Final Penalty:	\$29,500	\$13,500

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 25th day of June, 2024.