



MINISTRY OF ENVIRONMENT AND PARKS
COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

DETERMINATION OF ADMINISTRATIVE PENALTY

October 15, 2025

File: 2024-37
2149

Email: Francesca.Apruzzese@domtar.com, Ingrid.Mora@domtar.com,
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Domtar Inc. doing business as Skookumchuck Pulp
395, Boulevard de Maisonneuve Ouest
Montreal, QC H3A 1L6

Attention: Domtar Inc., doing business as Skookumchuck Pulp

RE: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on May 27, 2025, 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 that Domtar Inc. doing business as Skookumchuck Pulp has failed to comply with Permit 2148 Sections 1.2.2, 2.3, 2.5, 3.2.2, 3.3, 4.b and 4.c 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 250-505-3159 or Jennifer.Mayberry@gov.bc.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Mayberry". The signature is written in a cursive style and is positioned above a horizontal line.

Jennifer Mayberry
for Director, *Environmental Management Act*

Attachments:

2025-05-27 2024-37 Penalty Assessment Form

cc: Katelyn Dick, Senior Environmental Protection Officer
Katelyn.Dick@gov.bc.ca

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

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

[COS Zone Mailbox](#)



DETERMINATION OF ADMINISTRATIVE PENALTY

FILE: 2024-37

Name of Party:

Domtar Inc. doing business as Skookumchuck Pulp

AMOUNT OF ADMINISTRATIVE PENALTY:

2024-37a: \$5,500	2024-37b: \$11,500
2024-37c: \$8,000	2024-37d: \$10,750
2024-37e: \$24,500	2024-37f: \$2,700

TOTAL: \$62,950

Contravention or Failure:

A. Failure to comply with Permit 2149 Section 1.2.2 (Authorized Discharges):

1.2 This section applies to the discharge of contaminants to the air from a WOOD WASTE FIRED POWER BOILER. The site reference number for this discharge is E102357.

1.2.2 The characteristics of the discharge must not exceed:

Total Particulate Maximum: 70 mg/m3
Sulphur Dioxide Maximum: 75 ppmv

Opacity: Discharge smoke opacity must not exceed 20% for periods longer than 3 minutes in any 1/2 hour interval and must not exceed 40% at any time.

During cold start-up of the boiler, a variance from the above requirement to a maximum opacity of 40% is permitted for a maximum duration of two hours.

B. Failure to comply with Permit 2149 Section 2.3 (Maintenance of Works and Emergency Procedures):

The Permittee must inspect the authorized works regularly and maintain them in good working order. In the event of an emergency or condition beyond the control of the Permittee which prevents effective operation of the authorized works or leads to unauthorized discharge, the Permittee must:

- i) Comply with all applicable statutory requirements, including the Spill Reporting Regulation;
ii) Immediately notify the Regional Manager, Environmental Protection or an Officer designated by the Director; and
a) by e-mail and telephone if the condition occurs between the hours of 08:00 and 16:30 Monday to Friday; or
b) by e-mail and fax if the condition occurs at any other time.
iii) Take appropriate remedial action for the prevention of pollution.

The Director may reduce or suspend operations to protect the environment during an emergency until the authorized works have been restored and/or corrective steps have been taken to prevent unauthorized discharges.

During and/or after the emergency event or condition, the Permittee must conduct sampling and analysis of discharges which may be equivalent to or more stringent than the monitoring requirements of this permit and/or applicable statutory requirements. As the results of such sampling become available, the Permittee must provide the results to the Regional Manager, Environmental Protection. The Director may require additional monitoring at any time by specifying such in writing to the Permittee. The Permittee must prepare contingency plans outlining emergency procedures to be undertaken in the event of foreseeable emergency incidents that may result in significant release of contaminants to the atmosphere.

C. Failure to comply with Permit 2149 Section 2.5 (Bypasses):

The discharge of contaminants which have bypassed the authorized treatment works is prohibited unless the prior approval of the Director is obtained and confirmed in writing.

D. Failure to comply with Permit 2149 Section 3.2.2 (Ambient TRS Control Regime):

TRS emissions from the mill are to be controlled so that 90% of all measured 1- hour average values in any calendar month are less than or equal to 5 ppbv (7 ug/m³) and no 1 hour average exceeds 20 ppbv (28 ug/m³) at the ambient station detailed in Section 3.2.1. The method for calculating 1-hour average values must be approved by the Director. In the event of an hourly TRS average at any one station exceeding 20 ppbv the permittee is required to immediately notify the Regional Manager, Environmental Protection, or an Officer designated by the Director. The notification must include the duration, magnitude, possible reason and steps taken to resolve the exceedance, location, meteorological conditions, date and time of such an occurrence and be issued through e-mail to the Ministry.

E. Failure to comply with Permit 2149 Section 3.3 (Plant Operating Conditions):

For the purpose of validating the sampling and monitoring data, sampling should be conducted at "actual operating conditions" of the plant. Actual operating conditions are defined as representing an operational level equal to or greater than the 90th percentile for the ninety (90) days prior to the date the sample is to be taken. This information should be retained by the permittee for inspection by the Ministry of Environment upon request. This requirement may be waived with the prior written permission of the Director.

F. Failure to comply with Permit 2149 Section 4.b (Monthly Data Submissions):

i. The permittee must submit the results of any source monitoring including discharge volumes and ambient air quality monitoring data to the Regional Manager, Environmental Protection or designate. This information must be submitted prior to the end of the month following the month of collection of the data. This information must be tabulated and in a form suitable for release to the public.

ii. Data must be submitted monthly to the Ministry of Environment computer database.

iii. Ambient monitoring data and meteorological data must be submitted to the Provincial Air Data Management System or its equivalent upgrade. The first submission must be on or before June 30th, 2011.

iv. All occurrences of non-compliance with the requirements of this permit or applicable statutory requirements, all relevant results of sampling and analysis, explanation of the most probable cause(s) of the occurrences, and corresponding corrective and preventive actions.

v. Failures of Ministry audits of continuous monitors, explanation of the most probable cause(s) of the failures, and corresponding corrective and preventive actions.

G. Failure to comply with Permit 2149 Section 4.c (Annual Reports):

Each year on or before March 31:

- i. A compilation and interpretation of all occurrences of non-compliance with this permit or applicable statutory requirements, and continuous monitor audits of the previous calendar year, with evaluation of the corrective and preventive actions taken. A summary of all previous year's emergency venting periods of NCG.
- ii. A comprehensive review and analysis of the ambient air monitoring data and meteorological data obtained during the previous calendar year as this data relates to Provincial objectives, this includes but is not limited to trend analysis, conclusions and recommendations.
- iii. The annual report must summarize source monitoring as per subsection 3.1. The source monitoring analysis must include but not limited to the following; trend lines, the statistical significance of the trend, for time series data log scale data to determine descriptive statistics.

Date of Contravention or Failure:

A. Section 1.2.2:

Exceedance of the 20% opacity limit for periods longer than 3 minutes in any half-hour interval:

- July 3, 2022
- July 27, 2022
- October 16, 2022
- January 13, 2023
- March 17, 2023
- December 5, 2023

Exceedance of the 40% opacity limit at any time:

- July 3, 2022
- February 22, 2023 (2)
- March 17, 2023
- April 7, 2023
- April 11, 2023 (2)

(2) two exceedances on that date

B. Section 2.3:

- June 8, 2022
- July 3, 2022
- July 4, 2022
- July 27, 2022
- August 17, 2022
- September 18, 2022
- October 16, 2022
- November 13, 2022
- January 13, 2023
- February 4, 2023
- March 17, 2023
- April 11, 2023
- April 18, 2023

C. Section 2.5:

- June 8, 2022
- July 6, 2022
- August 12, 2022
- August 17, 2022
- November 13, 2022
- December 22, 2022
- January 29, 2023
- January 30, 2023
- February 4, 2023
- April 18, 2023
- August 9, 2023
- August 17, 2023
- September 21, 2023 (2)
- September 28, 2023
- October 6, 2023

(2) two bypasses on that date

D. Section 3.2.2:

Exceedance of the monthly average ambient TRS limit (90% of all measured 1-hour average values in any calendar month are less than or equal to 5 ppb_v):

- July 2022
- October 2022
- May 2023
- June 2023
- July 2023
- August 2023
- September 2023
- October 2023
- December 2023

Exceedance of the hourly average ambient TRS limit (20 ppb_v):

- October 15, 2022 (2)
- October 16, 2022 (8)
- May 3, 2023
- June 7, 2023 (5)
- June 8, 2023 (7)
- June 9, 2023 (6)
- July 2, 2023
- July 3, 2023
- July 4, 2023 (2)
- July 5, 2023 (2)
- July 6, 2023 (10)
- July 7, 2023 (4)
- July 30, 2023 (8)
- July 31, 2023 (8)
- August 1, 2023 (8)
- August 2, 2023 (6)
- August 3, 2023 (6)
- August 4, 2023 (2)
- August 7, 2023 (6)
- August 8, 2023 (6)
- August 11, 2023 (4)
- August 12, 2023
- August 13, 2023
- August 14, 2023 (9)
- August 15, 2023 (2)
- August 16, 2023 (11)
- August 17, 2023 (9)
- August 27, 2023 (2)
- August 28, 2023 (10)
- August 29, 2023 (12)
- September 8, 2023 (2)
- September 14, 2023
- September 15, 2023
- October 3, 2023 (2)
- November 7, 2023
- November 18, 2023
- November 19, 2023
- November 20, 2023 (3)
- December 6, 2023
- December 27, 2023 (4)
- December 28, 2023 (7)
- December 29, 2023 (2)

(#) number of exceedances on that date

E. Section 3.3:

- September 29, 2022
- September 30, 2022
- October 1, 2022 (2)
- October 2, 2022
- October 26, 2022
- December 5, 2022
- January 9, 2023
- February 22, 2023
- February 23, 2023
- March 9, 2023
- March 21, 2023
- March 23, 2023
- June 20, 2023
- September 21, 2023
- September 22, 2023
- October 17, 2023
- November 30, 2023

(2) Two non-compliances on that date

F. Section 4.b:

- June 1, 2022 (Apr 2022)
- July 1, 2022 (May 2022)
- August 1, 2022 (Jun 2022)
- September 1, 2022 (Jul 2022)
- October 1, 2022 (Aug 2022)
- November 1, 2022 (Sep 2022)

- December 1, 2022 (Oct 2022)
- January 1, 2023 (Nov 2022)
- February 1, 2023 (Dec 2022)
- March 1, 2023 (Jan 2023)
- April 1, 2023 (Feb 2023)
- May 1, 2023 (Mar 2023)
- June 1, 2023 (Apr 2023)
- July 1, 2023 (May 2023)
- August 1, 2023 (Jun 2023)
- October 1, 2023 (Aug 2023)
- November 1, 2023 (Sep 2023)
- December 1, 2023 (Oct 2023)
- February 1, 2024 (Dec 2023)

(reporting period in brackets)

G. Section 4.c: April 1, 2023 and April 1, 2024

Directors Summary:

1. Domtar Inc. doing business as Skookumchuck Pulp (“Skookumchuck”), operates a combined bleached kraft pulp mill (“Facility”) and energy co-generation facility in Skookumchuck, British Columbia (“BC”), approximately 55 kilometers from Cranbrook, BC.
2. The Facility opened in 1968 and produces approximately 245,000 tonnes of bleached softwood kraft pulp per year.
3. As a result of the pulp production and bleaching processes, several waste discharges occur at the site, including air emissions, effluent, and refuse discharges.
4. Air emission discharges at the site include particulate matter (“PM”), total reduced sulphur compounds (“TRS”), sulphur dioxide (“SO₂”), chlorine dioxide, and nitrogen oxides (“NO_x expressed as NO₂”).
5. Air emissions are discharged from a variety of sources including a recovery boiler, power boilers, lime kiln, bleach plant, and others. The discharge sources are equipped with various applicable pollution control works. Note that the Section 1.2 wood waste fired power boiler is also referred to as the wood waste (hog) boiler, hog boiler and power boiler. Other than direct quotes, this boiler will be referred to as the “hog boiler” for the remainder of this Administrative Penalty (“AMP”).
6. This administrative penalty is for the period of June 1, 2022 to February 1, 2024, when Skookumchuck failed to comply with Sections 1.2.2, 2.3, 2.5, 3.2.2, 3.3, 4.b, and 4.c of Permit 2149.
7. The provincial regulatory authorization governing the discharge of air from the Facility is Permit 2149 (“Permit”) issued pursuant to the *Environmental Management Act*, S.B.C. 2003, c. 53 (“EMA”).
8. The Permit was issued and is administered by the BC Ministry of Environment and Parks (“Ministry”).
9. The Permit authorizes emissions to the air from a bleached kraft pulp mill.

10. The Permit was first issued on July 14, 1978, and was amended on June 13, 2013. On February 14, 2023, a letter amendment was issued that did not change any of the clauses in this administrative penalty. On October 3, 2023, the Ministry issued a letter consenting to a change in name in ownership of the Permit from Skookumchuck Pulp Inc. to Domtar Inc. doing business as Skookumchuck Pulp.
11. This AMP applies to the June 13, 2013, version of the Permit.
12. Section 2.4 of the Permit states, *“The Permittee must immediately notify the Regional Manager, Environmental Protection, of periods of venting of NCG from any of the sources authorized in Section 1, that are of one hour or longer duration. A summary of these venting periods must also be provided in the Annual Report as required by Section 4.*
13. The Permit was subsequently amended on May 30, 2025 (“2025 Permit Amendment”).
14. On November 7, 2023, the Ministry conducted an inspection to verify compliance with the Permit during the period of April 1, 2022 to March 1, 2024. On July 16, 2024, the Ministry issued Inspection Report (“IR”) 214838 and found Skookumchuck out of compliance with a number of requirements, including Sections 1.2.2, 2.3, 2.4, 2.5, 3.2.2, 3.3, 4.b, and 4.c. The outcome of IR 214838 was determined to be a Referral for an AMP.
15. On May 27, 2025, the Ministry issued a Notice Prior to Determination of Administrative Penalty (“Notice”) and accompanying Penalty Assessment Form (“PAF”) to Skookumchuck via email. The Notice recommended six penalties:
 - **2024-37a:** \$8,500 for failure to comply with Section 1.2.2 13 times on nine dates between July 3, 2022 and December 5, 2023
 - **2024-37b:** \$11,500 for failure to comply with Section 2.3 on 13 dates between June 8, 2022 and April 18, 2023
 - **2024-37c:** \$10,750 for failure to comply with Section 2.5 16 times on 15 dates between June 8, 2022 and October 6, 2023
 - **2024-37d:** \$12,750 for failure to comply with Section 3.2.2 195 times on 51 dates between July 2022 and December 2023
 - **2024-37e:** \$32,000 for failure to comply with Section 3.3 18 times on 17 dates between September 29, 2022 and November 30, 2023
 - **2024-37f:** \$2,700 for failure to comply with Sections 4.b and 4.c on 20 dates between June 1, 2022 and April 2, 2024
16. In the Notice, Skookumchuck was offered an Opportunity to be Heard (“OTBH”) and given thirty (30) days to request an OTBH.
17. On June 2, 2025, Skookumchuck confirmed receipt of the Notice and PAF via email.
18. On June 2, 2025, Skookumchuck requested an OTBH.
19. On August 8, 2025, Skookumchuck provided the OTBH submission (“OTBH Submission”) to the Ministry.

Reasons for Decision:

20. In making this Determination of Administrative Penalty (“Determination”), I have considered all of the information available to me, including the OTBH Submission provided by Skookumchuck. In reaching this Determination, I have carefully considered all the arguments, relevant documents, evidence, and submissions before me, whether or not they are specifically referred to. My reasons for decision include a consideration of the failures as well as the matters listed in Section 7(1) of the Administrative Penalties (EMA) Regulation (“APR”), as applicable.
21. The “Administrative Penalty Handbook: Version 2 – Ministry of Environment and Parks – *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.
22. 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, 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.”

23. The detailed reasons for decision are provided in the penalty calculation(s) below.

PENALTY CALCULATION

FILE: 2024-37a

Section 1.2.2 (Authorized Discharges)

The Contravention or Failure:

24. Under Section 1.2.2, the opacity of the air discharge from the hog boiler must not exceed 20% for periods longer than 3 minutes in any half- hour interval and must not exceed 40% at any time.
25. On the following six dates, Skookumchuck failed to operate the wood waste fired power boiler such that the characteristics of the discharge did not exceed 20% opacity for periods longer than 3 minutes in any half-hour interval, as required by Section 1.2.2:
 - July 3, 2022
 - July 27, 2022
 - October 16, 2022
 - January 13, 2023
 - March 17, 2023
 - December 5, 2023

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

26. On the following five dates, representing seven exceedances, Skookumchuck failed to operate the wood waste fired power boiler such that the characteristics of the discharge did not exceed 40% opacity at any time, as required by Section 1.2.2:

- July 3, 2022
- February 22, 2023 (2)
- March 17, 2023
- April 7, 2023
- April 11, 2023 (2)

(2) Two exceedances on that date

27. Skookumchuck submits that it should not be penalized. At paragraph 7 of the OTBH Submission it stated, *“Skookumchuck respectfully submits that it should not be financially penalized for exceeding a limit that the Ministry has since determined is not required to protect the environment or human health, particularly when the Mill began pursuing that amendment three years before these exceedances occurred. Penalizing Skookumchuck in these circumstances does not further the Environmental Management Act objectives or the purposes of enforcement – encouraging compliance or deterring future contraventions.”*

28. The 2019 Permit amendment request and the 2025 Permit Amendment are considered below in Factor i).

29. Skookumchuck submits that, alternatively, select dates should not be penalized. At paragraph 8 of the OTBH Submission it stated, *“Further, the alleged exceedances on 2022-07-03, 2022-07-27, 2022-10-16, 2023-01-13 and 2023-04-11 stem from the same events in which the Director is recommending penalties for failure to maintain authorized works in the section below. The Mill submits it should not be penalized twice for the same event.”*

30. It is acknowledged that one event may have resulted in multiple failures. Regardless, the nature and real or potential adverse effects of each failure were considered separately.

31. 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

32. The PAF shared at Notice proposed that the failures were moderate. In the AMP Handbook, a "moderate" contravention or failure includes *“Moderate exceedance of a discharge limit (for example, 50% or less of the authorized limit) with no sustained impact to the environment or human health”*.

33. While there may be no sustained impact, the opacity limit is an operational requirement of the permit at the time of the failures and best fits the description of a moderate failure.

34. Skookumchuck submits that the nature of the failures should be minor. At paragraph 9(a) of the OTBH Submission it stated, *“In the [AMP Handbook], a ‘minor’ contravention includes ‘operational requirements that relate to low-risk activities or wastes.’ In contrast, the AMP Handbook describes ‘moderate’ contraventions as including a [m]oderate exceedance of a*

discharge limit (for example, 50% or less of the authorized limit).’ In her analysis, the Director states that ‘there may be no sustained impact’, the exceedances ‘do not suggest that significant risks to human health or the environment are expected’ and ‘the opacity limit is an operational requirement’. Further, the Director finds that the actual or potential for adverse effects are ‘low to none’ and there is no evidence in the Penalty Assessment Form that indicates the amount the opacity limits were exceeded and therefore no evidentiary support for the Ministry’s suggestion that the exceedances were ‘moderate’. As such, this contravention best fits the description of ‘minor’, particularly since the Ministry has subsequently decided an opacity limit is not required in the Air Permit.”

35. The opacity limit is an operational requirement, and an exceedance of a discharge limit would generally not be considered a “minor contravention”. I was unable to consider the amount the opacity limits were exceeded as this information was not provided by Skookumchuck but note that, in accordance with the AMP Handbook, a moderate failure includes exceedances from 1% to 50% over the authorized limit.
36. It is noted that while the opacity limit was removed during the 2025 Permit amendment, the limit was replaced with a PM_{2.5} limit.
37. After considering the relevant information above, I confirm the nature of the failures are moderate.

Factor b): Real or Potential Adverse Effects

38. Section 7(1)(b) of the APR requires that I must consider the real **or potential** adverse effect of the failures. A finding of potential adverse effect of the failures is enough to apply this factor.
39. The PAF shared at Notice proposed that the failures were low to none. Low to none actual or potential adverse effects are described in the AMP Handbook. Included in the AMP Handbook’s description of "low to none" is *“The contravention does not result in an adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.”*
40. Particulate matter is well understood to be an important air contaminant that impacts air quality. Opacity is used as a proxy for smoke and dust particulate, because it is easier and more efficient to measure in real-time at the point of discharge than direct stack testing sampling and measurements. It is common for opacity limits to be specified in permits alongside PM concentration limits. Opacity at Skookumchuk is measured by a continuous emissions monitoring system. A high opacity result for an air discharge, as a proxy for PM, could have real or potential adverse effects to human health, namely, the health of the workers at the Facility or the local community of Skookumchuck, BC.
41. While air quality modelling presented in the previous AMP 2023-12 OTBH Submission are not a reflection of actual conditions during the dates of contravention, they do not suggest that significant risks to human health or the environment are expected.
42. This factor was not disputed in the OTBH Submission.

43. After considering the relevant information above, I confirm that the failures are low to none.
44. The base penalty is therefore confirmed at \$5,000 as proposed at Notice.
45. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from Skookumchuck.

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

46. I am guided by the AMP Handbook for this factor, to consider Skookumchuck's compliance history. This factor could increase or decrease the penalty.
47. In the five years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck seven Warning IRs. In the ten years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck eight AMPs. Each time, Skookumchuck was given the opportunity to respond to these 15 compliance and enforcement measures.
48. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$2,500) for the previous failures.
49. Skookumchuck disputes the fifty percent increase. At paragraph 9(c)(i) of the OTBH Submission it stated, "*As set out above, since at least 2019, the Mill has been pursuing an Air Permit amendment, which the Ministry granted in 2025, resulting in the removal of an opacity limit altogether.*"
50. Efforts to remove the opacity limit from the Permit are considered below in Factor i) and are not relevant to Skookumchuck's overall compliance history, which is considered here in Factor c).
51. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$2,500) is applied for the previous failures.

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

52. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Skookumchuck to the failures and the need to take action. If I am persuaded that Skookumchuck failed to take action, this factor could increase the penalty.
53. The failure to comply with the 20% opacity limit was repeated on six dates. The failure to comply with the 40% opacity limit was repeated seven times, on five dates.
54. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between July 2022 and December 2023; however, for this administrative penalty, these failures will be treated as repeated.

55. The PAF shared at Notice proposed an increase of thirty percent of the base penalty (+ \$1,500) for the repeated nature of the failures.
56. Skookumchuck disputes the thirty percent increase. At paragraph 9(c)(ii) of the OTBH Submission it stated, *“A \$1,500 increase for the repeated or continuous nature of the failures is not warranted. Again, the Ministry’s approach ignores the Mill’s successful pursuit of a permit amendment which removed the opacity limit.”*
57. Efforts to remove the opacity limit from the Permit are considered below in Factor i) and are not relevant to the repeated nature of the failures, which is considered here in Factor d).
58. After considering the relevant information above, I confirm an increase of thirty percent of the base penalty (+ \$1,500) is applied for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate

59. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Skookumchuck deliberately failed to operate the wood waste fired power boiler such that the characteristics of the discharge would meet Section 1.2.2 opacity limits. If I am persuaded that Skookumchuck deliberately failed to operate the wood waste fired power boiler such that the characteristics of the discharge would meet Section 1.2.2 opacity limits, this factor could increase the penalty.
60. In 2019, 2021, and 2022, Skookumchuck was found out of compliance with Section 1.2.2. In 2019 and 2021, Skookumchuck was reminded to operate the hog boiler in a manner that ensures Section 1.2.2 opacity limits are met.
61. From 2020 to 2025, the Ministry issued the following AMPs to Skookumchuck for failure to comply with Section 1.2.2:
 - AMP 2019-02 (\$8,640) for failure to comply in 2017 and 2018
 - AMP 2019-61 (\$13,000) for failure to comply in 2019 and 2020
 - AMP 2021-52 (\$18,500) for failure to comply in 2020 and 2021
 - AMP 2023-12 (\$13,500) for failure to comply in 2021
62. Skookumchuck performed at least some preventative measures including regularly making operational changes to address opacity, repairing equipment, replacing equipment, washing the electrostatic precipitator (“ESP”), and improving hog blending. Skookumchuck also submitted a Permit amendment request that included amending Section 1.2.2 and the opacity limits.
63. Based on the information above, Skookumchuck demonstrated no to low deliberateness.
64. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$1,000) for the deliberate nature of the failures.
65. The 2025 Permit Amendment removed the opacity limit for the wood waste fired power boiler.

66. Skookumchuck disputes the twenty percent increase. At paragraph 9(c)(iii) of the OTBH Submission it stated, *“The alleged non-compliance was not deliberate and the evidence does not support such a finding, nor does it support an increase in the base penalty for alleged ‘deliberateness’. In 1782 Holdings Ltd. v. Director, Environmental Management Act, 2024 BCEAB 2, the Environmental Appeal Board made findings of deliberateness on the basis that the company continued the same contravention without any direct attempts to resolve the non-compliance. An allegation (or finding) of deliberateness is serious, and the Ministry should have reliable evidence to support such an allegation before it is made. Here, the Ministry has clear evidence that: (1) the Mill did not take any deliberate actions to cause the contraventions; and (2) the Mill directly attempted to resolve any reoccurrence by successfully applying to amend its Air Permit. The fact that major permit amendments commonly take years to complete is not a reason for penalizing the Mill in the interim and certainly not for concluding the Mill acted ‘deliberately’. There is no basis for concluding these contraventions ‘deliberate’ – to the contrary, the Ministry has evidence before it that the Mill worked to resolve the non-compliance prior to, during, and after the non-compliances occurred. On that basis, the penalty should not be increased by \$1,000 for any ‘deliberateness’, as proposed or at all.”* [original emphasis]
67. As stated in the AMP Handbook, *“Deliberateness refers to a person’s **awareness** of their requirements and the **control** they had over the events that led to the contravention. For a contravention to be considered deliberate, the person must have been aware of their requirements and have had some degree of control over the events that constituted the contravention.”* Skookumchuck was aware of the requirements and had some degree of control. In accordance with AMP Handbook guidance (Table 3: Assessing deliberateness of non-compliance), I determine that the level of deliberateness to be no to low.
68. After considering the relevant information above, I confirm an increase of ten percent of the base penalty (+ \$500) is applied for the deliberate nature of the failures.

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

69. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that Skookumchuck obtained an economic benefit from the failures. If I am persuaded that Skookumchuck obtained an economic benefit from the failures, this could increase the penalty.
70. The PAF shared at Notice proposed no adjustment for this factor.
71. This factor was not disputed in the OTBH Submission.
72. After considering the relevant information above, I confirm no increase is applied under this factor.

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

73. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **before** the failures to prevent the failures. If I am persuaded that Skookumchuck did take

measures to prevent the failures, this factor could decrease the penalty.

74. Skookumchuck made some additional efforts to prevent the failures by regularly making operational changes to address opacity, repairing equipment, replacing equipment, washing the ESP, and improving hog blending.
75. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for due diligence to prevent the failures.
76. The 2025 Permit Amendment removed the opacity limit for the wood waste fired power boiler.
77. Skookumchuck submits that the decrease should be higher. At paragraph 9(c)(v) of the OTBH Submission it stated, *“In weighing the Penalty Adjustment Factors, the Director appears to place significantly more emphasis on factors that favour increasing a penalty and much less emphasis on factors that decrease the penalty. Skookumchuck submits a more balanced approach to the various factors would result in it being afforded more credit for this factor as a result of the efforts outlined at subsection (g) of the Penalty Assessment Form.”*
78. During the OTBH, Skookumchuck did not provide any new/additional information demonstrating due diligence to prevent the failures.
79. After considering the relevant information above, I confirm a decrease of ten percent of the base penalty (- \$500) is applied for measures taken to prevent the failures.

Factor h): Efforts to correct the contravention or failure

80. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **after** the failures to restore compliance or reverse or mitigate the impacts. If I am persuaded that Skookumchuck did take actions after the failures to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
81. Skookumchuck made some efforts to correct the failures including shutting down equipment, closing dampers, reducing air flow, adjusting the boiler and associated precipitators, adding combustion air, restarting equipment and rapping the ESPs.
82. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to correct the failures.
83. Skookumchuck submits that the decrease should be higher. At paragraph 9(c)(vi) of the OTBH Submission it stated, *“In addition to the efforts outlined by the Director at subsection (h) of the Penalty Assessment Form, the Mill took further efforts to correct the failures by, in each case, reducing the firing rate and troubleshooting the possible cause, resulting in an immediate reduction in opacity. As set out in the GHD Report, in the Mill’s Air Episode Management Plan, an alarm is set for 15% opacity for the Recovery Boiler and Wood Waste Boiler. If this opacity limit is reached, the firing rate is reduced and the shift supervisor notified to troubleshoot the possible cause. GHD opined that ‘this is a sensible*

management strategy and could provide an early warning system that could prevent and minimize impacts on the environment'. The Ministry has this GHD Report, but has not taken it into account in proposing a penalty."

84. I have reviewed and taken into consideration the GHD Report as well as Skookumchuck's Air Emissions and Episode Management Plan.
85. After considering the relevant information above, I confirm a decrease of twenty percent of the base penalty (- \$1,000) is applied for efforts made to correct the failures.

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

86. I am guided by the AMP Handbook for this factor, to consider whether Skookumchuck has taken any action to prevent the failures happening again in the future. If I am persuaded that Skookumchuck has taken any action to prevent the failures happening again in the future, this factor could decrease the penalty.
87. Skookumchuck made some efforts to prevent reoccurrence of the failures by lubricating and inspecting air dampers, repairing multiclones, replacing hoppers, ductwork and flanges, washing the ESPs, improved hog blending, and a request for Permit amendment.
88. On September 23, 2019, Skookumchuck submitted a Permit amendment request that included amending Section 1.2.2 and the opacity limits. The final application package was submitted by Skookumchuck on October 17, 2022 and a request for further information was sent to Skookumchuck on June 8, 2023. At the time of the Notice, the Ministry was reviewing the Permit amendment request and no decision had been made by the Ministry at that time.
89. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to prevent reoccurrence of the failures.
90. Skookumchuck submits that the decrease should be higher. At paragraph 9(c)(vii) of the OTBH Submission it stated, *"As noted above, the Mill has pursued a lengthy and costly permit amendment, which included the removal of the opacity limit. In addition, through its Air Episode Management Plan discussed in (vi) above, the Mill made efforts to ensure opacity levels are reduced, such as reducing firing rates when 15% opacity is reached. A decrease of ten percent of the base penalty is not sufficient to recognize the Mill's success in preventing all future reoccurrence of the contravention."*
91. The 2025 Permit Amendment removed the opacity limit for the wood waste fired power boiler though I note it was replaced with a PM_{2.5} limit.
92. After considering the relevant information above, I confirm a decrease of fifty percent of the base penalty (- \$2,500) is applied for efforts made to prevent reoccurrence of the failures.

Factor j): Other

93. 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.
94. The PAF shared at Notice proposed no adjustment for this factor.
95. This factor was not disputed in the OTBH Submission.
96. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

97. After determining a base penalty of \$5,000 for these failures and applying the mitigating and aggravating factors (+ \$1,000) discussed above, the penalty is established at \$6,000.
98. The final penalty calculations are summarized in the table below:

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	low to none	low to none
Base Penalty:	\$5,000	\$5,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$2,500	+ \$2,500
d) Whether contravention or failure was repeated or continuous	+ \$1,500	+ \$1,500
e) Whether contravention or failure was deliberate	+ \$1,000	+ \$500
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	- \$500	- \$500
h) Efforts to correct the contravention or failure	- \$500	- \$1,000
i) Efforts to prevent reoccurrence of the contravention or failure	- \$500	- \$2,500
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j))</i> Total Penalty Adjustments:	+ \$3,500	+ \$500
Penalty after considering all factors:	\$8,500	\$5,500

<i>(base penalty plus penalty adjustments)</i>		
Application of multiplier: No	N/A	N/A
Final Penalty:	\$8,500	\$5,500

PENALTY CALCULATION

FILE: 2024-37b

Section 2.3 (Maintenance of Works)

The Contravention or Failure:

99. Under Section 2.3, Skookumchuck must maintain the Authorized Works in good working order and immediately notify the Ministry of an emergency or condition beyond their control which prevents the effective operation of the authorized works or leads to unauthorized discharge.

100. While some failures may have spanned multiple days, they are each treated in this administrative penalty as single dates.

101. On the following 13 dates, Skookumchuck failed to comply with Section 2.3 when it failed to maintain the Authorized Works in good working order:

- June 8, 2022
- July 3, 2022
- July 4, 2022
- July 27, 2022
- August 17, 2022
- September 18, 2022
- October 16, 2022
- November 13, 2022
- January 13, 2023
- February 4, 2023
- March 17, 2023
- April 11, 2023
- April 18, 2023

102. Skookumchuck submits that it should not be penalized. It details this in paragraphs 11 to 15 of the OTBH Submission and is summarized as follows:

- More than half of the events *“do not relate to a failure to inspect and maintain the authorized works. Instead, these events stem from events unrelated to inspection and maintenance, such as start-up issues, operational issues, and power outages outside the Mill’s control. These events occurred notwithstanding the Mill’s adequate inspection and maintenance of the works in question and compliance with section 2.3 of the Air Permit.”*
- That the events that occurred on June 8, 2022, July 4, 2022 and March 17, 2023 constituted *“an emergency or condition ‘beyond [the Mill’s] control which prevented the effective operation of the authorized works’”* and that means these *“do not constitute failures to inspect or maintain”*.
- The remaining five events were *“single incidents that were not repeated, the specific failures at issue were corrected, and the Mill takes appropriate measures to inspect and maintain its authorized works”*.

103. "Maintenance of Authorized Works" and maintaining Authorized Works "in good working order" are distinct concepts. If an Authorized Work is not functioning as intended, then in that instance, it is not maintained in good working order, regardless of how much previous

maintenance was conducted on it. In most situations, if an Authorized Work is not operating normally, the Ministry considers it to not be maintained in good working order.

104. 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

105. The PAF shared at Notice proposed that the failures were moderate. In the AMP Handbook, a "moderate" contravention or failure includes "*failure to perform required tasks or actions such as ... properly installing or maintaining equipment*".

106. Skookumchuck's failure to maintain the Authorized Works in good working order is a moderate contravention. The requirement to maintain the Authorized works is set to protect the environment and human health, and the failure created at least a risk of harm to the environment and human health. The risk of harm to the environment and human health will be considered in more detail next in Factor b).

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

108. After considering the relevant information above, I confirm the failures are moderate.

Factor b): Real or Potential Adverse Effects

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

110. The PAF shared at Notice proposed that the failures were low to none. Low to none actual or potential adverse effects are described in the AMP Handbook. Included in the AMP Handbook's description of "low to none" is "*the contravention does not result in an adverse effect or interfere with the Ministry's capacity to protect the environment or human health, or the potential to do so is low.*" In the AMP Handbook, a "medium" actual or potential for adverse effect is described 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 an adverse effect or the potential to do so is moderate. Any effect is localized, short-term and can be mitigated or damage repaired within a reasonable timeframe.*"

111. The failure to maintain Authorized Works in good working order can have a variety of potential effects. However, based on a review of the failures associated with this administrative penalty, the actual or potential adverse effects are expected to be low to none. For this AMP assessment only, I am categorizing the failures as low to none actual or potential adverse effects.

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

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

114. The base penalty is therefore confirmed at \$5,000 as proposed at Notice.

115. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from Skookumchuck.

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

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

117. In the five years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck seven Warning IRs. In the ten years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck eight AMPs. Each time, Skookumchuck was given the opportunity to respond to these 15 compliance and enforcement measures.

118. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$2,500) for the previous failures.

119. Skookumchuck disputes the fifty percent increase. At paragraph 16(a) of the OTBH Submission it stated, *"Of the prior AMPs, only one was in relation to failures to maintain works. While a second AMP was issued for failure to comply with section 2.3, this noncompliance was in relation to failure to provide immediate notification rather than a failure to maintain."*

120. I have considered the AMP Handbook, which states, *"Under Factor C, Ministry staff are required to consider **any** previous contraventions or failures, administrative penalties imposed, or orders issued to the regulated party. These considerations form the person's history of non-compliance."* [emphasis added]

121. The proposed fifty percent increase is based on Skookumchuck's general history of non-compliance and not related to any specific failures.

122. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$2,500) is applied for the previous failures.

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

123. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Skookumchuck to the failures and the need to take action. If I am persuaded that Skookumchuck failed to take action, this factor could increase the penalty.

124. The failure was repeated on 13 dates.

125. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between June 2022 and April 2023; however, for this administrative penalty, these failures will be treated as repeated.

126. The PAF shared at Notice proposed an increase of thirty percent of the base penalty (+ \$1,500) to account for the repeated nature of the failures.

127. Skookumchuck disputes the thirty percent increase. At paragraph 16(b) of the OTBH Submission it stated, *“A \$1,500 increase for the repeated or continuous nature of the failures is not warranted. As set out above, the Director does not have evidence to substantiate at least half of the alleged failure to inspect and maintain. Further, the AMP Handbook states that a contravention is repeated if the ‘same incident or behaviour occurs two or more times’. The alleged failures related to different incidents that stem from different behaviours, operational issues and/or causes. No, or a lower, increase for this factor is appropriate.”*

128. As stated above, if an Authorized Work is not functioning as intended, then it is not maintained in good working order, regardless of the cause.

129. After considering the relevant information above, I confirm an increase of thirty percent of the base penalty (+ \$1,500) is applied for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate

130. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Skookumchuck deliberately failed to maintain works. If I am persuaded that Skookumchuck deliberately failed to maintain works, this factor could increase the penalty.

131. In 2021 and 2022, Skookumchuck was found out of compliance with Section 2.3 for not maintaining the Authorized Works in good working order. In 2021, Skookumchuck was reminded to maintain the Authorized Works in good working order.

132. In 2022, the Ministry issued AMP 2021-49 for \$4,500 to Skookumchuck for failure to comply with Sections 2.3 and 2.5 in 2019 and 2020. These failures were related to failing to maintain works related to the chip bin fan bearing failures and unauthorized bypasses of the non-condensable gases (“NCG”) Incinerator during the failures.

133. While Skookumchuck may have performed at least some preventative measures, the failures to maintain multiple Authorized Works suggest that some key elements of preventative maintenance have been missed. While Skookumchuck did not take direct action to cause the failures, its inaction increased the likelihood of failures. In most cases, it does appear that the source of the failure was understood by Skookumchuck and efforts were taken to address or mitigate.

134. Based on the information above, Skookumchuck demonstrated medium deliberateness.

135. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$2,500) for the deliberate nature of the failures.

136. Skookumchuck disputes the fifty percent increase. At paragraph 16(c) of the OTBH Submission it stated, *“The alleged non-compliance was not deliberate and the Director*

does not have evidence to support this allegation, which it ought to possess before it raises such a serious claim. The Director erroneously relies on previous contraventions as evidence of alleged deliberateness. However, a finding of deliberateness requires evidence that the Mill repeated the same continuing contravention without any attempts to resolve the non-compliance. The events set out in Table 2 are not a continuation of the prior contraventions set out in subpara. (e) of the Penalty Assessment Form, but are separate, single events involving: (1) different authorized works; or (2) different causes of the ineffective operation of the authorized works. These are not chronic continuations of the same events, but are multiple single events occurring from difference causes. Specifically, AMP 2021-49 concerned failures to maintain works related to the chip bin fan. All but one of the events in Table 2 are not related to the chip bin fan and therefore cannot stem from the continuation of the same conduct. With respect to the one event (on 2022-08-17) relating to the chip bin fan, there is no basis for a finding that the alleged failure at issue is a continuation of the same conduct that caused the prior failure, particularly given the failures are isolated events that occurred two years apart. On that basis, the penalty should not be increased for any ‘deliberateness’, as proposed or at all.” [original emphasis]

137. As stated in the AMP Handbook, “*Deliberateness refers to a person’s **awareness** of their requirements and the **control** they had over the events that led to the contravention. For a contravention to be considered deliberate, the person must have been aware of their requirements and have had some degree of control over the events that constituted the contravention.*” Skookumchuck was aware of the requirements and had some degree of control. In accordance with AMP Handbook guidance (Table 3: Assessing deliberateness of non-compliance), I determine that the level of deliberateness to be medium.

138. Skookumchuck submitted specific actions that it took to prevent the failures, which are detailed below in Factor g).

139. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$2,500) is applied for the deliberate nature of the failures.

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

140. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that Skookumchuck obtained an economic benefit from the failures. If I am persuaded that Skookumchuck obtained an economic benefit from the failures, this could increase the penalty.

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

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

143. After considering the relevant information above, I confirm no increase is applied under this factor.

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

144. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **before** the failures to prevent the failures. If I am persuaded that Skookumchuck did take measures to prevent the failures, this factor could decrease the penalty.
145. The PAF shared at Notice proposed no adjustment for this factor.
146. Skookumchuck submits that it took measures to prevent the failures. At paragraph 16(e) of the OTBH Submission it stated, *“The Mill respectfully requests the Director to consider the efforts set out in para. 14 of this submission (above), which describes the Mill’s efforts to diligently inspect and maintain all authorized works on a regular basis.”*
147. At paragraph 14 of the OTBH Submission, Skookumchuck submits that it took the following actions; note that actions (e) and (f) are considered below under Factor i):
- (a) *“The entire Mill is shut down every 12 to 18 months to complete in depth inspections, repairs and preventative maintenance on authorized works.*
 - (b) *In advance of each Mill shut down, the Mill retains qualified independent professionals to conduct detailed internal and external inspections of the authorized works and conducts regular preventative maintenance in accordance with the inspections’ recommendations.*
 - (c) *The Mill retains independent qualified professionals with appropriate expertise for the applicable authorized work to conduct repairs and preventative maintenance.*
 - (d) *In addition to its annual shutdown, the Mill conducts regular preventative maintenance on certain authorized works on a weekly basis (such as instrumentation and analytical equipment). For example, between January 1, 2022 – July 4, 2022, preventative work orders for maintenance were conducted on the Recovery Boiler SO2 Continuous Analyzer on a weekly basis (a total of 26 preventative maintenance work orders).”*
148. As stated above, if an Authorized Work is not functioning as intended, then it is not maintained in good working order, regardless of the cause or how much previous maintenance was conducted on it.
149. After considering the relevant information above, I confirm no decrease is applied under this factor.

Factor h): Efforts to correct the contravention or failure

150. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **after** the failures to restore compliance or reverse or mitigate the impacts. If I am persuaded that Skookumchuck did take actions after the failures to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
151. Skookumchuck made some efforts to mitigate the effects of the failures including shutting down equipment, closing dampers, reducing air flow, operational changes, inspecting mechanicals and electricals, adjusting the boiler and associated precipitators, reducing digester production rates, manually manipulating valves, restarting equipment, additional monitoring, re-establishing solution flow and rapping the ESPs. The balance of these efforts

did not contribute to correcting the failure to maintain the works; rather, they were reactionary responses to those failures.

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

153. Skookumchuck submits that it made efforts to correct the failures. At paragraph 16(f) of the OTBH Submission it stated, *“In addition to the efforts set out in para. 14, Table 2 sets out remedial actions taken by the Mill to maintain the works, including lubricating and inspecting the grate for proper operation (2022-07-27), inspection of the electrical and mechanical aspects of the precipitator to identify the appropriate preventative maintenance required (2022-09-18), callout for instrument mechanic to conduct preventative maintenance by replacing the failed solenoid (2022-11-13), and identifying the cause of the problem and conducting preventative maintenance by the instrument mechanic (2023-04-18).”*

154. If an Authorized Work is not functioning as intended, then it is not maintained in good working order, regardless of the cause or how much previous maintenance was conducted on it.

155. After considering the relevant information above, I confirm no decrease is applied under this factor.

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

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

157. Skookumchuck made some efforts to prevent reoccurrence of the failures including lubricating and inspecting air dampers, replacing equipment, and looking at backup analyzer options.

158. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to prevent reoccurrence of the failures.

159. Skookumchuck submits that the decrease should be higher. At paragraph 16(g) of the OTBH Submission it stated, *“asks the Director to consider the Mill’s implementation of the reliability programs set out in para. 14 above.”*

160. At paragraph 14 of the OTBH Submission, Skookumchuck submits that it took the following actions:

- (e) *“The Mill has developed and implemented reliability programs for significant aspects of operations and maintenance (such as lubrication, vibration, and preventative maintenance) in which operators check for the reliability of the authorized works in the field.*

(f) *The event on 2022-07-27 relating to the Hog Boiler may have been caused by a lack of lubrication. The Mill has addressed this through the implementation of reliability programs (i.e. lubrication program) referenced above.*”

161. If an Authorized Work is not functioning as intended, then it is not maintained in good working order, regardless of how much previous maintenance or reliability checks were conducted on it.

162. After considering the relevant information above, I confirm a decrease of ten percent of the base penalty (- \$500) is applied for efforts made to prevent reoccurrence of the failures.

Factor j): Other

163. 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.

164. Skookumchuck failed to immediately notify the Ministry of an emergency or condition beyond their control which prevented the effective operation of the authorized works or leads to unauthorized discharge on the following dates:

- June 8, 2022
- July 4, 2022
- March 17, 2023
- September 28, 2023

165. The PAF shared at Notice proposed an increase of ten percent of the base penalty (+ \$500) for additional relevant factors.

166. Skookumchuck disputes the ten percent increase. At paragraph 16(h) of the OTBH Submission it stated, *“The Mill has updated its internal procedure and forms with respect to non-compliance reporting (enclosed) and investigations (enclosed) to prevent future reoccurrences.”*

167. I have reviewed the updated internal procedure and forms related to non-compliance reporting. While efforts at continuous improvement are noted, it is not apparent how these updates will improve immediate notification to the Ministry, of emergencies or conditions beyond Skookumchuck’s control.

168. After considering the relevant information above, I confirm an increase of ten percent of the base penalty (+ \$500) is applied for additional relevant factors.

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

169. After determining a base penalty of \$5,000 for these failures and applying the mitigating and aggravating factors (+ \$6,500) discussed above, the penalty is established at \$11,500.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	low to none	low to none
Base Penalty:	\$5,000	\$5,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$2,500	+ \$2,500
d) Whether contravention or failure was repeated or continuous	+ \$1,500	+ \$1,500
e) Whether contravention or failure was deliberate	+ \$2,500	+ \$2,500
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	\$0	\$0
i) Efforts to prevent reoccurrence of the contravention or failure	- \$500	- \$500
j) Additional relevant factors	+ \$500	+ \$500
<i>(add factors (c) to (j)) Total Penalty Adjustments:</i>	+ \$6,500	+ \$6,500
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$11,500	\$11,500
Application of multiplier: No	N/A	N/A
Final Penalty:	\$11,500	\$11,500

PENALTY CALCULATION

FILE: 2024-37c

Section 2.5 (Bypasses)

The Contravention or Failure:

171. Under Section 2.5, the discharge of contaminants which have bypassed the authorized treatment works is prohibited without prior written approval of the Director. Under Section 2.4, Skookumchuck must immediately notify the Ministry of periods of NCG venting that are one hour or longer in duration.

172. While some failures may span multiple days, they are each treated in this administrative penalty as single dates.

173. On the following 15 dates, representing 16 bypasses, Skookumchuck failed to comply with Section 2.5 when it allowed the discharge of contaminants which had bypassed the authorized treatment works without prior written approval from the Director:

- June 8, 2022
- July 6, 2022
- August 12, 2022
- August 17, 2022
- November 13, 2022
- December 22, 2022
- January 29, 2023
- January 30, 2023
- February 4, 2023
- April 18, 2023
- August 9, 2023
- August 17, 2023
- September 21, 2023 (2)
- September 28, 2023
- October 6, 2023

(2) *Two bypasses on that date*

174. Skookumchuck submits that it should not be penalized. It details this in paragraphs 18 to 23 of the OTBH Submission and is summarized as follows:

- The 2025 Permit Amendment “*authorizes bypasses of NCG Incinerator Authorized Works for periods of 1 hour or less in the event of a malfunction of the authorized works*” and nine of the 16 bypasses “*lasted for approximately an hour or less*”
- NCG venting is required as “*a standard safety feature of NCG systems and a widely accepted practice of mill operations*” and “*the build-up of NCGs does not always result from ‘a problem’ or maintenance issues, but may also result from necessary and anticipated aspects of standard and safe mill operations*”
- Five of the bypass events stem from the same events captured in AMP 2024-34b and it should not be penalized twice

175. The 2025 Permit Amendment Section 2.3.2 states, “*In the event of a malfunction of the NCG Incinerator Authorized Works, bypasses of the NCG Incinerator Authorized Works listed in section 1.7.4 are permitted for periods equal to or less than 1 hour duration.*”

176. The failures stand against the requirement at the relevant time (i.e., prior to permit amendment); however, failures that would comply under a Permit amendment will be considered below in Factor i).

177. Regardless, the 2025 Permit Amendment language is “equal to or less than” one hour, not “approximately” one hour. A review of the included bypasses indicates that all of them exceeded the one-hour limit according to data and non-compliance reports (“NCRs”) submitted by Skookumchuck.

178. 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

179. The PAF shared at Notice proposed that the failures were moderate. In the AMP Handbook, a “moderate” contravention or failure includes “*failure to perform required tasks or actions*”

such as ... meeting operational standards or requirements". In the AMP Handbook, a "major" contravention or failure includes *"an unauthorized discharge"*.

180. Venting NCGs to the environment, bypassing incineration, is an unauthorized discharge. However, it is recognized that in the event of a circumstance that results in a build-up of NCGs, it is necessary to vent them in order to avoid potential explosive conditions. Therefore, these failures are classified as moderate.

181. Skookumchuck submits that the nature of the failures should be minor. At paragraph 24 of the OTBH Submission it stated, *"Only seven of the bypass events listed in Table 3 lasted for a duration longer than approximately one hour. All but one of those seven bypasses lasted for 1.5 – 3 hours and therefore were still of a short duration. Many mills are expressly permitted to bypass authorized NCG works for up to 4 hours without prior written authorization. For example, see Permit 2761 at section 3.3.2; Permit 2762 at section 14.3.1; and Permit 2559 at section 3.3.2. These permits for other mills indicate that the Ministry has accepted that NCG bypassing for a short duration are a standard function of an engineering NCG collection and incineration system. Bypasses lasting for a small duration past the period allowed in the Amended Permit are properly categorized as 'minor'."*

182. The failures stand against the requirement at the relevant time (i.e., prior to permit amendment) and the permit requirements of other facilities are immaterial. The 2025 Permit Amendment is considered below in Factor i).

183. After considering the relevant information above, I confirm the failures are moderate.

Factor b): Real or Potential Adverse Effects

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

185. The PAF shared at Notice proposed that the failures were low to none. Low to none actual or potential adverse effects are described in the AMP Handbook. Included in the AMP Handbook's description of "low to none" is *"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."*

186. There is no evidence that the unauthorized bypasses of the NCG Incinerator resulted in adverse effects to the environment.

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

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

189. The base penalty is therefore confirmed at \$5,000 as proposed at Notice.

190. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from Skookumchuck.

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

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

192. In the five years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck seven Warning IRs. In the ten years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck eight AMPs. Each time, Skookumchuck was given the opportunity to respond to these 15 compliance and enforcement measures.

193. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$2,500) for the previous failures.

194. Skookumchuck disputes the fifty percent increase. At paragraph 26(a) of the OTBH Submission it stated, *"Of the eight AMPs issued in the ten years prior to the inspection period for IR 214838, only one relates to failure to comply with section 2.5."*

195. The proposed fifty percent increase is based on Skookumchuck's general history of non-compliance, not related to any specific failures.

196. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$2,500) is applied for the previous failures.

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

197. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Skookumchuck to the failures and the need to take action. If I am persuaded that Skookumchuck failed to take action, this factor could increase the penalty.

198. The failure was repeated 16 times, on 15 dates.

199. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between June 2022 and October 2023; however, for this administrative penalty, these failures will be treated as repeated.

200. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$2,500) to account for the repeated nature of the failures.

201. Skookumchuck disputes the fifty percent increase. At paragraph 26(b) of the OTBH Submission it stated, *"A 50% increase for the repeated or continuous nature of the failures is not warranted. As set out above, more than half of the failures (nine out of 16) would not be considered in contravention under the Amended Permit. A lower increase for this factor should be applied as a result."*

202. As discussed above, a review of the included bypasses indicates that all of them exceeded the one-hour limit according to data and NCRs submitted by Skookumchuck and would be failures under the 2025 Permit Amendment. Regardless, the failures stand against the requirement at the relevant time (i.e., prior to permit amendment).

203. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$2,500) is applied to account for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate

204. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Skookumchuck deliberately allowed the discharge of contaminants which had bypassed the authorized treatment works. If I am persuaded that Skookumchuck deliberately allowed the discharge of contaminants which had bypassed the authorized treatment works, this factor could increase the penalty.

205. In 2019, 2021, and 2022, Skookumchuck was found out of compliance with Section 2.5 for bypassing without approval. In 2021, Skookumchuck was reminded to ensure no bypasses occur unless authorized and to meet any approved bypass conditions.

206. In 2022, the Ministry issued AMP 2021-49 for \$4,500 to Skookumchuck for failure to comply with Sections 2.3 and 2.5 in 2019 and 2020. These were related to failure to maintain works related to the chip bin fan bearing and unauthorized bypasses of the NCG Incinerator during the failures.

207. While Skookumchuck did not take direct action to cause the failures, its inaction in adequately maintaining works increased the likelihood of failures. However, it is acknowledged that in the event of a circumstance that results in a build-up of NCGs, it is necessary to vent them in order to avoid potential explosive conditions.

208. The PAF shared at Notice proposed an increase of ten percent of the base penalty (+ \$500) for the deliberate nature of the failures.

209. Skookumchuck disputes the ten percent increase. At paragraph 26(i) of the OTBH Submission it stated:

“The non-compliance was not deliberate and the evidence does not support such a finding, nor does it support any increase in the base penalty for alleged ‘deliberateness’. As set out above, a finding of deliberateness requires evidence that the Mill repeated the same continuing contravention without any attempts to resolve the non-compliance. The Ministry cannot conclude this non-compliance was ‘deliberate’ for the following reasons:

- *The events set out in Table 3 of the Penalty Assessment Form are not a continuation of the prior contraventions set out in subpara. (e) of the Penalty Assessment Form, but are separate, single events arising from different causes, including different operational issues.*

- *The Mill took numerous and continuous direct actions to resolve the non-compliances. As set out above, for five and a half years the Mill has pursued a permit amendment, both prior to and during the bypasses at issue. These efforts resulted in the Ministry issuing an Amended Permit that allows for NCG venting for one hour or less.*
- *The venting of NCGs are the result of a complex operational chain of events and a necessary aspect of safe, standard mill operations (as can be seen by the Ministry’s express allowance of the venting of NCGs in the Amended Permit). NCG venting cannot be prevented 100% of the time, regardless of preventative actions taken by the Mill.*
- *Many of the bypasses were caused by events outside the control of the Mill. For example, the bypass on 2023-09-28 was a result of a lightning strike that caused a power outage, not due to any deliberate actions of the Mill. Further, the bypass on 2023-02-04 was caused by a steam upset, resulting in a loss of vacuum from the ejector. Steam upsets can be caused by a multitude of factors and there is no evidence this event was within the control of the Mill.*

On the basis of the above, the penalty should not be increased for any amount for “deliberateness”, as proposed or at all.” [original emphasis]

210. As stated in the AMP Handbook, “*Deliberateness refers to a person’s **awareness** of their requirements and the **control** they had over the events that led to the contravention. For a contravention to be considered deliberate, the person must have been aware of their requirements and have had some degree of control over the events that constituted the contravention.*” Skookumchuck was aware of the requirements and had some degree of control. In accordance with AMP Handbook guidance (Table 3: Assessing deliberateness of non-compliance), I determine that the level of deliberateness to be no to low.
211. After considering the relevant information above, I confirm an increase of ten percent of the base penalty (+ \$500) is applied for the deliberate nature of the failures.

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

212. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that Skookumchuck obtained an economic benefit from the failures. If I am persuaded that Skookumchuck obtained an economic benefit from the failures, this could increase the penalty.
213. The PAF shared at Notice proposed no adjustment for this factor.
214. This factor was not disputed in the OTBH Submission.
215. After considering the relevant information above, I confirm no increase is applied under this factor.

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

216. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **before** the failures to prevent the failures. If I am persuaded that Skookumchuck did take

measures to prevent the failures, this factor could decrease the penalty.

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

218. Skookumchuck submits that it took measures to prevent the failures. At paragraph 26(k) of the OTBH Submission it stated, *“Prior to the bypass events, the Mill took reasonable measures to prevent the noncompliance by successfully amending the Air Permit to allow for NCG venting for up to an hour.”*

219. While the 2025 Permit Amendment does reduce the incidents of non-compliance for venting for up to an hour, all of the included failures exceeded the one-hour limit according to data and NCRs submitted by Skookumchuck and would be failures under the 2025 Permit Amendment. Regardless, the failures stand against the requirements at the relevant time (i.e., prior to permit amendment); however, failures that would comply under a permit amendment will be considered below in Factor i).

220. After considering the relevant information above, I confirm no decrease is applied under this factor.

Factor h): Efforts to correct the contravention or failure

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

222. Skookumchuck made some efforts to correct the failures including clearing lines and strainers, flushing the NCG collection system, shutting down equipment, operational changes, reducing digester production rates, manually manipulating valves, restarting equipment and re-establishing solution flow.

223. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to prevent the correct the failures.

224. Skookumchuck submits that the decrease should be higher. At paragraph 26(l) of the OTBH Submission it stated, *“The Mill seeks more credit for the efforts it has made to correct the alleged failures. As noted above, a balanced approach to the various factors would result in it being afforded more credit for this factor as a result of the efforts and remedial actions outlined at subsection (h) and Table 3 of the Penalty Assessment Form.”*

225. The OTBH submission did not provide new information regarding efforts made to correct the failures.

226. After considering the relevant information above, I confirm a decrease of ten percent of the base penalty (- \$500) is applied for efforts to correct the failures.

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

227. I am guided by the AMP Handbook for this factor, to consider whether Skookumchuck has taken any action to prevent the failures happening again in the future. If I am persuaded that Skookumchuck has taken any action to prevent the failures happening again in the future, this factor could decrease the penalty.
228. Skookumchuck made some efforts to prevent reoccurrence of the failures including replacing equipment, alarm changes, and application for Permit amendment.
229. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to prevent reoccurrence of the failures.
230. Skookumchuck submits that the decrease should be higher. At paragraph 26(m) of the OTBH Submission it stated, *“In addition to the efforts outlined by the Director at ss. (h) and (j) of the Penalty Assessment Form, the Mill took further efforts to prevent reoccurrence by implementing a new procedure in 2024, which requires the chip system to be taken offline if chip bin venting is close to one hour. This new procedure has been successful in preventing the types of venting described in Table 3 of the Penalty Assessment Form that relate to chip bin venting. Further, the Mill has invested in further training of its operators to reduce operational issues and errors, reducing instances that require NCG venting. As a result, the number of NCG venting events have decreased significantly (a total of 9 NCG bypass events in 2023; 7 in 2024; and only 2 to date in 2025). Finally, the Mill successfully amended the Air Permit, reducing the likelihood that a NCG bypass event will constitute a non-compliance.”*
231. New information regarding additional efforts Skookumchuck made to prevent reoccurrence of the failures has been taken into consideration as well as the 2019 Permit Amendment request and the 2025 Permit Amendment.
232. After considering the relevant information above, I confirm a decrease of fifty percent of the base penalty (- \$2,500) is applied for efforts made to prevent reoccurrence of the failures.

Factor j): Other

233. 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.
234. On the following dates, Skooumchuck failed to provide immediate notification of NCG venting lasting one hour or longer in duration, as required by Section 2.4:
- June 8, 2022
 - August 17, 2022
 - August 9, 2023
 - August 17, 2023
 - October 6, 2023
235. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty (+ \$1,250) for the additional relevant factors.

236. Skookumchuck disputes the twenty-five percent increase. At paragraph 26(n) of the OTBH Submission it stated, *“The Mill respectfully requests that the Director consider the Mill’s efforts to prevent future reporting failures. Specifically, the Mill has updated its internal procedure and forms with respect to non-compliance reporting and investigations (enclosed).”*

237. I have reviewed the updated internal procedure and forms related to non-compliance reporting. While efforts at continuous improvement are noted, it is not apparent how these updates will improve immediate notification to the Ministry, of emergencies or conditions beyond Skookumchuck’s control. However, I note an inconsistent approach to the increase related to Factor j) in penalty 2024-37b and will adjust accordingly.

238. After considering the relevant information above, I confirm an increase of ten percent of the base penalty (+ \$500) is applied for additional relevant factors.

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

239. After determining a base penalty of \$5,000 for these failures and applying the mitigating and aggravating factors (+ \$3,000) discussed above, the penalty is established at \$8,000.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	low to none	low to none
Base Penalty:	\$5,000	\$5,000
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	+ \$500	+ \$500
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	- \$500	- \$500
i) Efforts to prevent reoccurrence of the contravention or failure	- \$500	- \$2,500
j) Additional relevant factors	+ \$1,250	+ \$500

<i>(add factors (c) to (j))</i> Total Penalty Adjustments:	+ \$5,750	+ \$3,000
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$10,750	\$8,000
Application of multiplier: No	N/A	N/A
Final Penalty:	\$10,750	\$8,000

PENALTY CALCULATION

FILE: 2024-37d

Section 3.2.2 (Ambient TRS Control Regime)

The Contravention or Failure:

241. Under Section 3.2.2, the TRS emissions from the Facility are to be controlled so that 90% of all measured 1- hour average values in any calendar month are less than or equal to 5 ppb_v (7 µg/m³) and no 1-hour average exceeds 20 ppb_v (28 µg/m³) at the ambient station. In addition, in the event of an hourly TRS average exceedance, Skookumchuk must immediately notify the Ministry and include the duration, magnitude, possible reason and steps taken to resolve the exceedance, location, meteorological conditions, date, and time of such an occurrence.

242. In the following nine months, Skookumchuck failed to control TRS emissions from the Facility so that 90% of all measured 1- hour average values in any calendar month were less than or equal to 5 ppb_v (7 µg/m³), as required by Section 3.2.2:

- July 2022
- October 2022
- May 2023
- June 2023
- July 2023
- August 2023
- September 2023
- October 2023
- December 2023

243. On the following 42 dates, representing 186 exceedances, Skookumchuck failed to control TRS emissions from the Facility so that no 1-hour average exceeded 20 ppb_v (28 µg/m³) at the ambient station, as required by Section 3.2.2:

- October 15, 2022 (2)
- October 16, 2022 (8)
- May 3, 2023
- June 7, 2023 (5)
- June 8, 2023 (7)
- June 9, 2023 (6)
- July 2, 2023
- July 3, 2023
- July 4, 2023 (2)
- July 5, 2023 (2)
- July 6, 2023 (10)
- July 7, 2023 (4)
- July 30, 2023 (8)
- July 31, 2023 (8)
- August 1, 2023 (8)
- August 2, 2023 (6)
- August 3, 2023 (6)
- August 4, 2023 (2)
- August 7, 2023 (6)
- August 8, 2023 (6)
- August 11, 2023 (4)
- August 12, 2023
- August 13, 2023
- August 14, 2023 (9)
- August 15, 2023 (2)
- August 16, 2023 (11)
- August 17, 2023 (9)
- August 27, 2023 (2)
- August 28, 2023 (10)
- August 29, 2023 (12)
- September 8, 2023 (2)
- September 14, 2023
- September 15, 2023
- October 3, 2023 (2)
- November 7, 2023
- November 18, 2023
- November 19, 2023
- November 20, 2023 (3)
- December 6, 2023
- December 27, 2023 (4)
- December 28, 2023 (7)
- December 29, 2023 (2)

(#) number of exceedances on that date

244. 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

245. The PAF shared at Notice proposed that the failures were moderate. In the AMP Handbook, a "moderate" contravention or failure includes "*Moderate exceedance of a discharge limit (for example, 50% or less of the authorized limit) with no sustained impact to the environment or human health*". In the AMP Handbook, a "major" contravention or failure includes "*exceeding a discharge limit by a significant magnitude (51-100% or more)*".

246. The exceedances of the 1-hour average limit ranged from 5% to 515%. However, given that TRS is generally associated with nuisance rather than a risk of significant adverse health effects, these failures are characterized as moderate.

247. Skookumchuck submits that the nature of the failures should be minor. At paragraph 29 of the OTBH Submission it stated, "*The Mill requests the Director consider that the Mill's ambient station is on the Mill property whereas ambient stations for other mills are well outside the mill fence lines; therefore measuring ambient TRS where emission levels are likely lower. Further, a review of provincial air permits indicates that only one other mill in BC (Mercer Celgar) has strict ambient limits similar to Skookumchuck, yet that mill's monitors are all more than 5,000 m from the site (much farther than Skookumchuck's ambient station). The Mill agrees with the Director that TRS is not generally associated with a risk of significant adverse health effects. The AMP Handbook describes 'minor' contraventions as including 'operational requirements that relate to low-risk activities or wastes'. Based on the low-risk nature of the exceedances and above considerations, the Mill submits the contravention is 'minor'.*"

248. Exceedance of TRS limits on 186 occasions during the inspection period (127 occasions were greater than 50%), and sometimes by a significant magnitude, does not meet the AMP Handbook guidelines for "minor" failures.

249. After considering the relevant information above, I confirm the failures are moderate.

Factor b): Real or Potential Adverse Effects

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

251. The PAF shared at Notice proposed that the failures were low to none. The real or potential adverse effect from the TRS Permit limit exceedances is low to none which aligns with the AMP Handbook description "*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.*"

252. Some research concludes that long term low exposure to TRS can affect eye and respiratory symptoms, nasal symptoms, cough, headaches or migraines or other psychologically based responses to the perception of unpleasant odours; however, low level exposure to TRS is generally associated with nuisance rather than a risk of significant adverse health effects.

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

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

255. The base penalty is therefore confirmed at \$5,000 as proposed at Notice.

256. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from Skookumchuck.

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

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

258. In the five years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck seven Warning IRs. In the ten years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck eight AMPs. Each time, Skookumchuck was given the opportunity to respond to these 15 compliance and enforcement measures.

259. The PAF shared at Notice proposed an increase of seventy-five percent of the base penalty (+ \$3,750) for the previous failures.

260. Skookumchuck disputes the seventy-five percent increase. At paragraph 31(a) of the OTBH Submission it stated, "*A 75% increase is not warranted for previous contraventions and no basis for such a sizeable increase is provided in the Penalty Assessment Form. Of the prior AMPs, only one relates to failure to comply with section 3.2.2 of the Air Permit.*"

261. The proposed seventy-five percent increase is based on Skookumchuck's general history of non-compliance, not related to any specific failures. However, I note an inconsistent approach to the increase related to Factor c) in penalties 2024-37a, 2024-37b, and 2024-37c, and will adjust accordingly.

262. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$2,500) is applied for the previous failures.

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

263. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Skookumchuck to the failures and the need to take action. If I am persuaded that Skookumchuck failed to take action, this factor could increase the penalty.

264. The failure to comply with the monthly average limit was repeated for nine months. The failure to comply with the hourly average limit was repeated 186 times on 42 dates.
265. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between July 2022 and December 2023; however, for this administrative penalty, these failures will be treated as repeated.
266. The PAF shared at Notice proposed an increase of seventy-five percent of the base penalty (+ \$3,750) to account for the repeated nature of the failures.
267. Skookumchuck disputes the seventy-five percent increase. At paragraph 31(a) of the OTBH Submission it stated, *“Skookumchuck respectfully requests the Director consider that the repeated nature of this alleged non-compliance is related to the Mill’s unique requirement in having strict ambient limits with a monitor in close proximity to the Mill.”*
268. The failures stand against the Permit requirements.
269. After considering the relevant information above, I confirm an increase of seventy-five percent of the base penalty (+ \$3,750) is applied for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate

270. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Skookumchuck deliberately failed to control TRS emissions from the Facility so that ambient TRS would meet Section 3.2.2 limits. If I am persuaded that Skookumchuck deliberately failed to control TRS emissions from the Facility so that ambient TRS would meet Section 3.2.2 limits, this factor could increase the penalty.
271. In 2019, 2021 and 2022, Skookumchuck was found out of compliance with Section 3.2.2 for ambient TRS exceedances. In 2019 and 2021, Skookumchuck was reminded to operate the Facility in a way that ensures that ambient TRS emission limits are not exceeded. In 2022, Skookumchuck was reminded to provide immediate notification of ambient TRS exceedances.
272. In 2022, the Ministry issued AMP 2019-63 for \$6,500 to Skookumchuck for failure to comply with Section 3.2.2 in 2018 and 2019.
273. While Skookumchuck may have performed at least some preventative measures, the failures suggest that some key elements of preventative maintenance may have been missed. As these are ambient TRS exceedances, the predictability of them may not be clear and there is no evidence that specific choices increased the likelihood of the failures. Skookumchuck made efforts to identify the source of failures and to prevent, address and mitigate the failures.
274. Based on the information above, Skookumchuck demonstrated no to low deliberateness.
275. The PAF shared at Notice proposed no adjustment for this factor.

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

277. After considering the relevant information above, I confirm no increase is applied under this factor.

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

278. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that Skookumchuck obtained an economic benefit from the failures. If I am persuaded that Skookumchuck obtained an economic benefit from the failures, this could increase the penalty.

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

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

281. After considering the relevant information above, I confirm no increase is applied under this factor.

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

282. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **before** the failures to prevent the failures. If I am persuaded that Skookumchuck did take measures to prevent the failures, this factor could decrease the penalty.

283. Skookumchuck made some efforts to prevent the failures by installing a new oxygen analyzer in 2019 to attempt to minimize venting and incinerator trips but were found out of compliance with Section 3.2.2 again in 2021 and 2022.

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

285. Efforts that Skookumchuck identified at paragraph 31(e) of the OTBH Submission are considered below under Factor i).

286. After considering the relevant information above, I confirm no decrease is applied under this factor.

Factor h): Efforts to correct the contravention or failure

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

288. Skookumchuck made efforts to determine the cause of ambient TRS exceedances which included pH fluctuations at the inlet of the Effluent Treatment Plant, recovery boiler TRS in higher range of the Permit limit, low pH streams mixed with liquor streams in sealed sewer, Green Liquor Clarifier leak, high soda loss, Chemical Ash Mix Tank overflow, high

recovery boiler sump conductivity, recaust area maintenance leading to lime slurry tank not available for pH control, lower pH at the NCG scrubber system during the incinerator trips, and weather conditions (i.e., temperature, and wind speed at the time of an incident).

289. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to correct the failures.
290. Skookumchuck submits that the decrease should be higher. At paragraph 31(f) of the OTBH Submission it stated, *“As noted above, a balanced approach to the various factors would result in it being afforded more credit for this factor as a result of the efforts and remedial actions outlined in para. (e) above and at subsection (h) of the Penalty Assessment Form.”*
291. Efforts that Skookumchuck identified at paragraph 31(e) of the OTBH Submission are considered next under Factor i).
292. After considering the relevant information above, I confirm a decrease of ten percent of the base penalty (- \$500) is applied for efforts to correct the failures.

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

293. I am guided by the AMP Handbook for this factor, to consider whether Skookumchuck has taken any action to prevent the failures happening again in the future. If I am persuaded that Skookumchuck has taken any action to prevent the failures happening again in the future, this factor could decrease the penalty.
294. Skookumchuck made some efforts to prevent reoccurrence of the failures including sediment pond dredging, developing process area checklists, ensuring sumps are operating, repairing equipment, minimizing overflows, carrying out additional monitoring, and using chemical treatment to control the TRS emissions.
295. The PAF shared at Notice proposed a decrease of ten percent of the base penalty (- \$500) for efforts made to prevent reoccurrence of the failures.
296. Skookumchuck submits that it took additional efforts to prevent reoccurrence of the failures. At paragraph 31(e) of the OTBH Submission it stated, *“The Mill seeks credit for its exercise of due diligence to prevent the contravention and more credit for its efforts to prevent reoccurrence of the contravention, which would again reflect a more balanced application of the various penalty adjustment factors. In addition to the efforts set out in subsections (g) and (i) of the Penalty Assessment Form, the Mill took further reasonable measures to prevent the failures by: (1) implementing a TRS check sheet procedure to follow in instances of high ambient TRS (enclosed); (2) developing and implementing a TRS control plan; (3) retaining a qualified professional to develop a TRS Trigger Response Plan to facilitate timely responses that ensure TRS Permit limits are not exceeded; (4) developing a TRS Management Plan as an overall plan to manage and reduce TRS emissions; (5) retaining a qualified professional to conduct a TRS Management Effectiveness Evaluation annually; and (6) adding bioxide and enviroscrub to the sewer in order to control odour emissions from the ponds. As a result of these efforts, ambient TRS exceedances have decreased*

significantly from 2024 to 2025 (38 exceedances occurring in 2024 and 11 exceedances to date occurring in 2025)."

297. After considering the relevant information above, I confirm a decrease of twenty-five percent of the base penalty (- \$1,250) is applied for efforts made to prevent reoccurrence of the failures.

Factor j): Other

298. 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.

299. Due to submitted NCRs that lacked information on the duration or start and end of exceedances, it is unclear whether some NCRs were intended to report multiple non-consecutive ambient TRS exceedances. While it is likely that there are additional dates, at a minimum, on August 7, 12 and 14, 2023 and October 3, 2023, Skookumchuck failed to provide immediate notification of ambient TRS exceedances, as required by Section 3.2.2.

300. Every NCR submitted for Section 3.2.2 failed to include magnitude of the exceedances and the meteorological conditions occurring during the exceedances, as required by Section 3.2.2. Many NCRs submitted for Section 3.2.2 failed to include the duration of the exceedance.

301. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty (+ \$1,250) for the additional relevant factors.

302. Skookumchuck disputes the twenty-five percent increase. At paragraph 31(g) of the OTBH Submission it stated:

"The Director has already recommended a penalty for the Mill's failure to comply with sections 4(b) and 4(c) of the Permit which relate to these failures. The Mill submits it should not be penalized twice for the same failure. Further, the Mill has taken action to ensure NCRs are submitted appropriately, including the following:

- *The Mill has reviewed and revised its internal written procedures (enclosed) to ensure immediate notification of exceedances is provided to the Ministry, with the appropriate information on duration or start of exceedances, magnitude of exceedances and meteorological conditions; and*
- *The Mill has completed additional training of workers to ensure key personnel are aware of importance of immediately notifying Ministry and submitting NCRs with the appropriate information."*

303. The non-compliances considered in Factor j) are for failure to provide immediate notification and failure to include the required information in immediate notification. The failures considered in AMP 2024-37f for Sections 4.b and 4.c are for failures to include required information in monthly and annual reports.

304. After considering the relevant information above, I confirm an increase of twenty-five percent of the base penalty (+ \$1,250) is applied for additional relevant factors.

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

305. After determining a base penalty of \$5,000 for these failures and applying the mitigating and aggravating factors (+ \$5,750) discussed above, the penalty is established at \$10,750.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	low to none	low to none
Base Penalty:	\$5,000	\$5,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$3,750	+ \$2,500
d) Whether contravention or failure was repeated or continuous	+ \$3,750	+ \$3,750
e) Whether contravention or failure was deliberate	\$0	\$0
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	- \$500	- \$500
i) Efforts to prevent reoccurrence of the contravention or failure	- \$500	- \$1,250
j) Additional relevant factors	+ \$1,250	+ \$1,250
<i>(add factors (c) to (j) Total Penalty Adjustments:</i>	+ \$7,750	+ \$5,750
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$12,750	\$10,750
Application of multiplier: No	N/A	N/A
Final Penalty:	\$12,750	\$10,750

Section 3.3 (Monitoring Requirements)**The Contravention or Failure:**

307. Under Section 3.3, sampling should be conducted at “actual operating conditions” of the plant, defined as representing an operational level equal to or greater than the 90th percentile for the 90 days prior to the date the sample is to be taken.

308. On the following 17 dates, representing 18 failures, Skookumchuck failed to comply with Section 3.3 when it sampled at an operational level less than the 90th percentile for the 90 days prior to the date the sample was taken:

- September 29, 2022
- September 30, 2022
- October 1, 2022 (2)
- October 2, 2022
- October 26, 2022
- December 5, 2022
- January 9, 2023
- February 22, 2023
- February 23, 2023
- March 9, 2023
- March 21, 2023
- March 23, 2023
- June 20, 2023
- September 21, 2023
- September 22, 2023
- October 17, 2023
- November 30, 2023

(2) *Two non-compliances on that date*

309. Skookumchuck submits that it should not be penalized. It details this in paragraphs 33 to 37 of the OTBH Submission and is summarized as follows:

- The 2025 Permit Amendment “*requires that stack sampling be conducted during Actual Operating Conditions (operating parameters’ levels equal to or greater than the 90th percentile for 90 days) ‘or as close to Actual Operating Conditions as practicable’.* Under the Amended Permit, the Mill ‘*must conduct sampling at no less than the 50th percentile of operating conditions for the 90 days of operation prior to the date of sampling’.*” [original emphasis]
- “*Notably, the test rates set out in Table 6 of the Penalty Assessment Form are just barely below the 90th percentile rate and all test rates are well within the 50th percentile requirement of the Amended Permit.*”

310. The 2025 Permit Amendment does use the wording “as close to Actual Operating Conditions as practicable” and states no less than the 50th percentile. The non-compliances included in this administrative penalty would all be well within the 50th percentile requirement of the 2025 Permit Amendment. This will be considered below in Factor i).

311. 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

312. The PAF shared at Notice proposed that the failures were moderate. In the AMP Handbook, a “moderate” contravention or failure includes “*failure to perform required tasks or actions*

such as ... meeting operational standards or requirements; ... failure to undertake required monitoring”.

313. Sampling at an operational level less than the 90th percentile for the 90 days prior to the date the sample was taken results in a non-representative sample and fails to comply with an operational requirement.
314. Skookumchuck submits that the nature of the failures should be minor. At paragraph 38 of the OTBH Submission it stated, *“Again, at all times the Mill strives to run at Actual Operating Conditions (it is in its business interests to do so). Further, the difference between the test average rates and 90th percentile rates are negligible and would comply with the Amended Permit. This contravention relates to ‘operational requirements that relate to low-risk activities’ and is therefore of a ‘minor’ nature.”*
315. Failure to meet monitoring requirements on 18 occasions during the inspection period clearly aligns with the AMP Handbook guidelines for “moderate” failures.
316. After considering the relevant information above, I confirm the failures are moderate.

Factor b): Real or Potential Adverse Effects

317. Section 7(1)(b) of the APR requires that I must consider the real **or potential** adverse effect of the failures. A finding of potential adverse effect of the failures is enough to apply this factor.
318. The PAF shared at Notice proposed that the failures were medium. Medium actual or potential adverse effects are described in the AMP Handbook. Included in the AMP Handbook’s description of “medium” is *“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. Any effect is localized, short-term and can be mitigated or damage repaired within a reasonable timeframe.”*
319. The failure to conduct stack tests at actual operating conditions means the Ministry is unaware of actual contaminant loading to the environment when the Facility is operating at the 90th percentile or greater. This interferes with the Ministry’s capacity to protect the environment or human health. The Ministry has not determined any discernable environmental or human health impact associated with the failure to conduct stack tests at actual operating conditions at the time of preparation of this document, but the potential for impact does exist.
320. Skookumchuck submits that the real or potential adverse effects of the failures should be none. At paragraph 39 of the OTBH Submission it stated, *“Such a conclusion is contradicted by the Ministry’s decision to issue the Amended Permit with a more flexible (and realistic) approach to stack test sampling. As set out above, all of the test average rates were as close to the 90th percentile as practicable and all were well above the 50th percentile, which are the new permit limits. Therefore, the Ministry cannot now claim the stack test rates in Table 6 interfere with its ‘capacity to protect the environment or human*

health'. Consequently, pursuant to the AMP Handbook, the actual or potential for adverse effects are 'none'."

321. The failures stand against the Permit requirement at the relevant time (i.e., prior to permit amendment); however, failures that would comply under a permit amendment will be considered below in Factor i).

322. After considering the relevant information above, I confirm that the failures are medium.

323. The base penalty is therefore confirmed at \$10,000 as proposed at Notice.

324. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from Skookumchuck.

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

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

326. In the five years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck seven Warning IRs. In the ten years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck eight AMPs. Each time, Skookumchuck was given the opportunity to respond to these 15 compliance and enforcement measures.

327. The PAF shared at Notice proposed an increase of seventy-five percent of the base penalty (+ \$7,500) for the previous failures.

328. Skookumchuck disputes the seventy-five percent increase. At paragraph 40(a) of the OTBH Submission it stated, *"Of the prior AMPs considered, only one related to a failure to comply with section 3.3 of the Permit. Further, as set out above, since at least 2019 the Mill has been working to achieve an Air Permit amendment (granted in 2025), which resulted in the removal of the strict requirement to conduct stack testing at the 90th percentile."*

329. The proposed seventy-five percent increase was based on Skookumchuck's general history of non-compliance, not related to specific failures. However, I note an inconsistent approach to the increase related to Factor c) in penalties 2024-37a, 2024-37b, 2024-37c, and 2024-37d, and will adjust accordingly.

330. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$5,000) is applied for the previous failures.

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

331. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Skookumchuck to the failures and the need to take action. If I am persuaded that Skookumchuck failed to take action, this factor could increase the penalty.

332. The failure was repeated 18 times on 17 dates.
333. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between September 2022 and November 2023; however, for this administrative penalty, these failures will be treated as repeated.
334. The PAF shared at Notice proposed an increase of seventy-five percent of the base penalty (+ \$7,500) to account for the repeated nature of the failures.
335. Skookumchuck disputes the seventy-five percent increase. At paragraph 40(b) of the OTBH Submission it stated, *“The Mill respectfully requests that the Director consider the successful pursuit of a permit amendment. The test rates set out in Table 6 of the Penalty Assessment Form would comply with the Amended Permit.”*
336. The failures stand against the Permit requirement at the relevant time (i.e., prior to permit amendment); however, failures that would comply under a permit amendment will be considered below in Factor i).
337. After considering the relevant information above, I confirm an increase of seventy-five percent of the base penalty (+ \$7,500) is applied for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate

338. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Skookumchuck deliberately failed to comply with Section 3.3. If I am persuaded that Skookumchuck deliberately failed to comply with Section 3.3, this factor could increase the penalty.
339. In 2019 and 2021, Skookumchuck was found out of compliance with Section 3.3 for sampling at an operational level less than the 90th percentile for the 90 days prior to the date the sample was taken. In 2019, Skookumchuck was reminded to ensure that sampling was conducted at “actual operating conditions”.
340. In 2022, the Ministry issued AMP 2021-51 for \$15,000 to Skookumchuck for failure to comply with Section 3.3 in 2019 and 2020.
341. While Skookumchuck may not have taken direct action to cause the failure, the choices made regarding when to conduct stack tests have increased the likelihood of failures and these failures should have been easy to predict as they have occurred before.
342. Based on the information above, Skookumchuck demonstrated medium deliberateness.
343. The PAF shared at Notice proposed an increase of seventy percent of the base penalty (+ \$7,000) for the deliberate nature of the failures.
344. Skookumchuck disputes the seventy percent increase. At paragraph 40(c) of the OTBH Submission it stated, *“As set out above, a finding of deliberateness requires evidence that*

the Mill continued the same conduct without any direct attempts to resolve the non-compliance. Here, the Ministry has clear evidence that: (1) the Mill did not take any deliberate actions to cause the contraventions; and (2) the Mill directly attempted to resolve the non-compliance prior to their occurrence by successfully applying to amend its Air Permit and modify the strict requirement to conduct testing at the 90th percentile when such testing is not practicable. There is no basis for concluding these contraventions ‘deliberate’ – to the contrary, the Ministry has evidence before it that the Mill consistently worked to resolve the non-compliance prior to, during, and after the non-compliances occurred, and that it was not reasonable or practical to impose such strict testing. On that basis, the penalty should not be increased by \$7,000 for any ‘deliberateness’, as proposed or at all.” [original emphasis]

345. As stated in the AMP Handbook, “*Deliberateness refers to a person’s awareness of their requirements and the control they had over the events that led to the contravention. For a contravention to be considered deliberate, the person must have been aware of their requirements and have had some degree of control over the events that constituted the contravention.*” Skookumchuck was aware of the requirements and had some degree of control. In accordance with AMP Handbook guidance (Table 3: Assessing deliberateness of non-compliance), I determine the level of deliberateness to be medium.

346. After considering the relevant information above, I confirm an increase of seventy percent of the base penalty (+ \$7,000) is applied for the deliberate nature of the failures.

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

347. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that Skookumchuck obtained an economic benefit from the failures. If I am persuaded that Skookumchuck obtained an economic benefit from the failures, this could increase the penalty.

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

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

350. After considering the relevant information above, I confirm no increase is applied under this factor.

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

351. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **before** the failures to prevent the failures. If I am persuaded that Skookumchuck did take measures to prevent the failures, this factor could decrease the penalty.

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

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

354. After considering the relevant information above, I confirm no decrease is applied under this factor.

Factor h): Efforts to correct the contravention or failure

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

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

357. While Skookumchuck made submissions that referenced efforts to correct and effort to prevent reoccurrence, the submission is considered next under Factor i).

358. After considering the relevant information above, I confirm no decrease is applied under this factor.

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

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

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

361. Skookumchuck submits that it made efforts to prevent reoccurrence of the failures. At paragraph 40(e) of the OTBH Submission it stated, *“As noted above, the Mill has pursued a lengthy and costly permit amendment, which has resulted in more reasonable conditions for sampling. The Mill requests a decrease of 70% to recognize the Mill’s success in preventing future reoccurrences of the non-compliance.”*

362. The 2025 Permit Amendment amended the requirement to allow testing at conditions as low as 50th percentile.

363. I acknowledge that the non-compliances included in this administrative penalty would all be well within the requirements of the 2025 Permit Amendment.

364. After considering the relevant information above, I confirm a decrease of fifty percent of the base penalty (- \$5,000) is applied for efforts made to prevent reoccurrence of the failures.

Factor j): Other

365. 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.

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

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

368. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

369. After determining a base penalty of \$10,000 for these failures and applying the mitigating and aggravating factors (+ \$14,500) discussed above, the penalty is established at \$24,500.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	medium	medium
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$7,500	+ \$5,000
d) Whether contravention or failure was repeated or continuous	+ \$7,500	+ \$7,500
e) Whether contravention or failure was deliberate	+ \$7,000	+ \$7,000
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	\$0	\$0
i) Efforts to prevent reoccurrence of the contravention or failure	\$0	- \$5,000
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j)) Total Penalty Adjustments:</i>	+ \$22,000	+ \$14,500
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$32,000	\$24,500
Application of multiplier: No	N/A	N/A
Final Penalty:	\$32,000	\$24,500

Sections 4.b and 4.c (Reporting)

The Contravention or Failure:

371. Under Section 4.b, Skookumchuck must submit monthly data submissions that include the most probable causes and corrective and preventative actions taken for all non-compliances.

372. Under Section 4.c, Skookumchuck must submit annual reports that include a compilation and interpretation of all non-compliances with corrective and preventative action taken, a summary of emergency NCG venting periods, trend analysis for ambient air monitoring, and statistical significance of source monitoring trend lines.

373. On the following 19 dates, Skookumchuck failed to include in the monthly data submissions explanation of the most probable causes of all non-compliances and corresponding corrective and preventive actions:

- June 1, 2022 (Apr 2022)
- July 1, 2022 (May 2022)
- August 1, 2022 (Jun 2022)
- September 1, 2022 (Jul 2022)
- October 1, 2022 (Aug 2022)
- November 1, 2022 (Sep 2022)
- December 1, 2022 (Oct 2022)
- January 1, 2023 (Nov 2022)
- February 1, 2023 (Dec 2022)
- March 1, 2023 (Jan 2023)
- April 1, 2023 (Feb 2023)
- May 1, 2023 (Mar 2023)
- June 1, 2023 (Apr 2023)
- July 1, 2023 (May 2023)
- August 1, 2023 (Jun 2023)
- October 1, 2023 (Aug 2023)
- November 1, 2023 (Sep 2023)
- December 1, 2023 (Oct 2023)
- February 1, 2024 (Dec 2023)

(reporting period in brackets)

374. On April 1, 2023, and April 1, 2024, Skookumchuck failed to include in the 2022 and 2023 Annual Reports all non-compliances, corrective and preventive actions taken for some of the non-compliances, standard deviation of vector wind direction data, relative humidity or temperature data, recommendations regarding the ambient TRS and ambient PM, trend analysis for PM data, and statistical significance of the source data trend lines, as required by Section 4.c of the Permit.

375. 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

376. The PAF shared at Notice proposed that the failures were minor. In the AMP Handbook, a "minor" contravention or failure includes “*not supplying information at the request of the Ministry*”.

377. Skookumchuck failed to include in the monthly data submissions explanation of the most probable causes of all non-compliances and corresponding corrective and preventive actions. Skookumchuck failed to include in the 2022 and 2023 Annual Reports all non-compliances, corrective and preventive actions taken for some of the non-compliances, standard deviation of vector wind direction data, relative humidity or temperature data, recommendations regarding the ambient TRS and ambient PM, trend analysis for PM data, and statistical significance of the source data trend lines.

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

379. After considering the relevant information above, I confirm the failures are minor.

Factor b): Real or Potential Adverse Effects

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

381. The PAF shared at Notice proposed that the failures were low to none. Low to none actual or potential adverse effects are described in the AMP Handbook. Included in the AMP Handbook's description of "low to none" is "*does not result in an adverse effect or interfere with the Ministry's capacity to protect the environment or human health, or the potential to do so is low.*"

382. There was significant information in the annual report that would allow the Ministry to assess the Facility's performance and potential effects on human health and the environment, despite failure to meet all of the annual reporting requirements. The missing information is considered to have a low to none actual or potential adverse effect.

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

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

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

386. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from Skookumchuck.

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

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

388. In the five years prior to the inspection period for IR 214838, the Ministry issued Skookumchuck seven Warning IRs. In the ten years prior to the inspection period for IR

214838, the Ministry issued Skookumchuck eight AMPs. Each time, Skookumchuck was given the opportunity to respond to these 15 compliance and enforcement measures.

389. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$500) for the previous failures.

390. Skookumchuck disputes the fifty percent increase. At paragraph 44(a) of the OTBH Submission it stated, *“Of the AMPs issued prior to the inspection period for IR 214838, only one related to failure to comply with section 4(c) of the Permit.”*

391. The proposed fifty percent increase is based on Skookumchuck’s general history of non-compliance, not related to any specific failures.

392. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$500) is applied for the previous failures.

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

393. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted Skookumchuck to the failures and the need to take action. If I am persuaded that Skookumchuck failed to take action, this factor could increase the penalty.

394. The failure to comply with monthly data submission requirements was repeated on 19 dates. The failure to comply with annual data submission requirements was repeated on two dates.

395. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between June 2022 and April 2024; however, for this administrative penalty, these failures will be treated as repeated.

396. The PAF shared at Notice proposed an increase of fifty percent of the base penalty (+ \$500) to account for the repeated nature of the failures.

397. Skookumchuck disputes the fifty percent increase. At paragraph 44(b) of the OTBH Submission it stated, *“A 50% increase for the repeated or continuous nature of the failures is not warranted.”*

398. Skookumchuck has not provided any rationale for why a fifty percent increase is not warranted. Given the repeated failure, I find an increase under this factor is warranted.

399. After considering the relevant information above, I confirm an increase of fifty percent of the base penalty (+ \$500) is applied to account for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate

400. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that Skookumchuck deliberately failed to include all required information. If I am persuaded that Skookumchuck deliberately failed to include all required information, this factor could increase the penalty.
401. In 2019, 2021 and 2022, Skookumchuck was found out of compliance with Section 4.b for not meeting all requirements of monthly data submissions. In 2019, 2021 and 2022, Skookumchuck was found out of compliance with Section 4.c for not meeting all requirements of annual reports.
402. In 2019 and 2021, Skookumchuck was reminded to ensure that all items required by Section 4.b were included in monthly data submissions. In 2019, 2021 and 2022, Skookumchuck was reminded to ensure that all items required by Section 4.c were included in annual reports.
403. In 2025, the Ministry issued AMP 2023-48c for \$1,000 to Skookumchuck for failure to comply with Section 4.c in 2022.
404. While Skookumchuck may not have taken direct action to cause the failure, its inaction caused the failures, and these failures should have been easy to predict as they have occurred before.
405. Based on the information above, Skookumchuck demonstrated medium deliberateness.
406. The PAF shared at Notice proposed an increase of seventy percent of the base penalty (+ \$700) for the deliberate nature of the failures.
407. Skookumchuck disputes the seventy percent increase. At paragraph 44(c) of the OTBH Submission it stated:

“The alleged non-compliance was not deliberate and the evidence does not support such a serious finding, nor does it support an increase in the base penalty for alleged ‘deliberateness’. As set out above, a finding of deliberateness requires the Mill to have continued the same contravention without any direct attempts to resolve the non-compliance. In this case: (1) the Mill did not take any deliberate actions to cause the contraventions; and (2) the Mill directly attempted to resolve the non-compliance prior to, during and after their occurrence by:

- *reviewing reporting requirements and updating internal procedures for investigations and remedial actions to ensure immediate notification of exceedances is provided to the Ministry and such notification includes the appropriate information (as set out in detail in Part 5, 31(g) of this submission above); and*
- *improving and increasing training of workers to ensure notification of exceedances is provided to the Ministry and the submission of NCRs include the appropriate information.” [original emphasis]*

408. As stated in the AMP Handbook, “*Deliberateness refers to a person’s awareness of their requirements and the control they had over the events that led to the contravention. For a contravention to be considered deliberate, the person must have been aware of their requirements and have had some degree of control over the events that constituted the contravention.*” Skookumchuck was aware of the requirements and had some degree of control. In accordance with AMP Handbook guidance (Table 3: Assessing deliberateness of non-compliance), I determine the level of deliberateness to be medium.

409. After considering the relevant information above, I confirm an increase of seventy percent of the base penalty (+ \$700) is applied for the deliberate nature of the failures.

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

410. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that Skookumchuck obtained an economic benefit from the failures. If I am persuaded that Skookumchuck obtained an economic benefit from the failures, this could increase the penalty.

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

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

413. After considering the relevant information above, I confirm no increase is applied under this factor.

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

414. I am guided by the AMP Handbook for this factor, to consider what Skookumchuck did **before** the failures to prevent the failures. If I am persuaded that Skookumchuck did take measures to prevent the failures, this factor could decrease the penalty.

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

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

417. After considering the relevant information above, I confirm no decrease is applied under this factor.

Factor h): Efforts to correct the contravention or failure

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

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

420. While Skookumchuck made submissions that referenced efforts to correct and effort to prevent reoccurrence, the submission is considered next under Factor i).

421. After considering the relevant information above, I confirm no decrease is applied under this factor.

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

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

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

424. Skookumchuck submits that it made efforts to prevent reoccurrence of the failures. At paragraph 44(d) of the OTBH Submission it stated, *“The Mill seeks credit for the efforts it has made to correct and prevent reoccurrence of the contravention, which efforts are described above in paras 31(g) and 44(c)of this submission.”*

425. The OTBH submission speaks to immediate notification to the Ministry, not the fulfillment of reporting requirements.

426. After considering the relevant information above, I confirm no decrease is applied under this factor.

Factor j): Other

427. 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.

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

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

430. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

431. After determining a base penalty of \$1,000 for these failures and applying the mitigating and aggravating factors (+ \$1,700) discussed above, the penalty is established at \$2,700.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	minor	minor
b) Real or potential adverse effect	low to none	low to none
Base Penalty:	\$1,000	\$1,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$500	+ \$500
d) Whether contravention or failure was repeated or continuous	+ \$500	+ \$500
e) Whether contravention or failure was deliberate	+ \$700	+ \$700
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	\$0
h) Efforts to correct the contravention or failure	\$0	\$0
i) Efforts to prevent reoccurrence of the contravention or failure	\$0	\$0
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j))</i> Total Penalty Adjustments:	+ \$1,700	+ \$1,700
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$2,700	\$1,700
Application of multiplier: No	N/A	N/A
Final Penalty:	\$2,700	\$2,700

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 15th day of October, 2025.