



MINISTRY OF ENVIRONMENT AND PARKS
COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

DETERMINATION OF ADMINISTRATIVE PENALTY

July 6, 2026

File: 2026-23
8182

Email: jenny.weir@fernie.ca; doug.mitchell@fernie.ca; bree.campbell@fernie.ca;
michael.boronowski@fernie.ca; liz.rhodes@fernie.ca

The Corporation of the City of Fernie
PO Box 190
501-3rd Avenue
Ferne, BC V0B 1M0

Attention: The Corporation of the City of Fernie

RE: Final Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty and accompanying Penalty Assessment Form ("PAF") issued to you on May 6, 2026, and your Opportunity to be Heard ("OTBH") respecting the alleged contraventions, I have now made a Determination of Administrative Penalty ("Determination") in this matter.

After reviewing the information available to me, I have concluded that The Corporation of the City of Fernie has failed to comply with Permit 8182 Sections 2.2 and 2.14, 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 ("APR").

The detailed reasons for my decision are provided in the attached PAF.

Final Penalty Assessment

- 2026-23a: \$8,000
- 2026-23b: \$5,395

TOTAL: \$13,395

Reasons for Decision

In making this Determination, I have considered all of the information available to me, including the OTBH Submission provided by The Corporation of the City of Fernie. In reaching this Determination, I have carefully considered all the arguments, relevant documents, evidence, and submissions before me, whether they are specifically referred to or not. My reasons for decision include a consideration of the failures as well as the matters listed in Section 7(1) of the APR, as applicable.

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.

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.”

Due Date & Payment

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this 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.

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

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 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:

- your name and contact information (including address, phone number, and email)
- the name and contact information (including address, phone number, and email) of anyone who will represent you in the appeal
- details of the decision (the date it was made – if known, who made it, and how and when you received the decision)
- the reasons(s) you think the decision is wrong
- what you would like the EAB to do about the decision you are appealing
- sign and complete all sections of the notice and submit it to the EAB via mail or email, including a \$25 appeal fee via cheque, money order, or bank draft payable to the Minister of Finance

The Notice of Appeal form is available online at <https://www.bceab.ca/resources/forms-and-templates>. It should be completed and sent by email to info@bceab.ca, or by registered mail to:

Environmental Appeal Board
1175 Douglas Street, Suite 200
Victoria, BC V8W 2E1

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/>

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

Sincerely,



Stephanie Little
Delegate of the Director, *Environmental Management Act*

Attachments:
2026-23 Final Penalty Assessment Form

cc: Kylie Adebar, Environmental Protection Officer
Kylie.Adebar@gov.bc.ca

Nazila Shamloo, Environmental Protection Technician
Nazila.Shamloo@gov.bc.ca

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

[COS Zone Mailbox](#)

Name of Party

The Corporation of the City of Fernie

Contravention or Failure**A. Failure to comply with Permit 8182 Section 2.2 (Bypasses):**

The discharge of effluent which has bypassed the designated treatment works is prohibited unless the approval of the Regional Waste Manager is obtained and confirmed in writing.

B. Failure to comply with Permit 8182 Section 2.14 (Flow Measurement)

Provide and maintain a suitable flow measuring device and record once per day the effluent volume discharged over a 24-hour period.

Date of Contravention**A. Section 2.2:**

- December 6 to 8, 2023
- December 11 to 13, 2025
- December 17 to 18, 2025

B. Section 2.14: May 15, 2023, to December 23, 2025 (continuous)**Background**

1. The Corporation of the City of Fernie (“CoF”) owns and operates a municipal sewerage system located in Fernie, British Columbia (“BC”).
2. Please refer to [the Summary of Relevant Facts](#) for further information related to this administrative penalty (“AMP”), including Contaminants of Concern and Receiving Environment information.

Authorization for Environmental Discharge – Permit 8182

3. The provincial regulatory authorization governing the discharge of effluent from the CoF sewerage system is Permit 8182 (“Permit”) issued pursuant to EMA.
4. The Permit was issued and is administered by the BC Ministry of Environment and Parks (“Ministry”).
5. The Permit authorizes the discharge of effluent to the ground and the Elk River from a municipal sewage collection and treatment plant system.

6. The Permit was first issued on May 9, 1989, and was most recently amended on December 12, 1994.
7. This AMP applies to the December 12, 1994, version of the Permit.

[1994-12-12 Permit 8182]

8. The CoF sought direction from the Ministry authorizations staff following the bypass events and was advised that bypasses for emergency events are not authorized under the Permit. While this clarification was provided after the December 2025 events, it reflects the structure of the regulatory framework under EMA. Under section 14 of the Act, authorization to discharge waste may only be issued subject to requirements necessary for the protection of the environment. As such, discharges of untreated sewage that are not environmentally protective would not be authorized through a permit or approval mechanism.
9. The absence of an authorization pathway does not render such discharges permissible, nor does it create an expectation that approval would be available in emergency circumstances. Rather, the Permit, including Section 2.1, places the obligation on the permittee to operate and maintain its work to prevent unauthorized discharges and take appropriate remedial action in the event of system capacity limitations.
10. I note that these events could have been assessed as an unauthorized discharge under Section 6 of EMA. In this case, the contraventions are assessed within the framework of the Permit, which does not diminish the CoF's responsibility to avoid discharges that are not authorized under the Permit.

PENALTY CALCULATION

2026-23a: Section 2.2 (Bypasses)

The Contravention or Failure – Findings:

11. Section 2.2 prohibits the discharge of effluent that has bypassed the designated treatment works (unless prior approval from the Regional Waste Manager has been obtained and confirmed in writing).
12. Between December 6, 2023, and December 8, 2023, 11,700,000 L of untreated and unscreened influent and stormwater was released to the Elk River from the Mt. McLean Drive Lift Station.
13. Between December 11, 2025, and December 13, 2025, approximately 66,834,200 L of untreated and unscreened influent and stormwater was released to the Elk River from three locations including the Mt. McLean Drive Lift Station, Eckersley Street Lift Station and Dogwood Park Boat Launch.

14. Between December 17, 2025, and December 18, 2025, approximately 16,982,000 L of untreated and unscreened effluent was released to the Elk River from the Mt. McLean Drive Lift Station.
15. On the following three periods, totaling eight days, the CoF failed to comply with Section 2.2 when it bypassed the designated treatment works and discharged untreated and unscreened effluent to the Elk River:
 - December 6 to 8, 2023
 - December 11 to 13, 2025
 - December 17 to 18, 2025
16. Based on the information above, an AMP was being considered for failure to comply with Section 2.2 between December 6, 2023, and December 18, 2025.
17. In the OTBH Submission, the CoF disputes that between December 11, 2025, and December 13, 2025, approximately 66,834,200 L of untreated and unscreened influent and stormwater was released. At page 1 of the OTBH Submission, it stated:

“As submitted in our End of Spill reporting to Environmental Compliance, the vast majority of that flow, 58,875,000L (~88%) was from the Old Wastewater Treatment Plant Outfall, which is the permitted outfall in Permit 8182. That portion of the reported ‘bypass’ was screened and treated using all treatment steps required in Permit 8182, before being discharged from the RI basins to the Elk River. The City called it partially treated, and reported it as part of the spill, as it didn’t go through the treatment steps that were added in the 2015 upgrades to the wastewater treatment plant (phosphorus treatment cells and disinfection). The sampling data indicate that the RI effluent quality was aligned with the expectations for treated wastewater, and therefore is not a bypass of the permitted treatment. Therefore, although the volume of effluent discharged at the Old Outfall exceeded the permit limits, it was treated and had a negligible short term impact to the Elk River. The released volume of unscreened influent and stormwater from the 3 locations was therefore not 66,834,200L but was 7,959,200L.”
18. While I accept that the volume of untreated and unscreened discharge may have been lower than originally characterized, I find that effluent bypassed the designated treatment works and was discharged without authorization. Accordingly, the requirements of Section 2.2 were not met.
19. Based on the information provided above, I find that the CoF failed to comply with Section 2.2 between December 6, 2023, and December 18, 2025.
20. The maximum penalty allowable under the APR for each failure to comply with Section 2.2 is \$40,000.

Factors to be Considered in Penalty Calculation:

BASE PENALTY

The base penalty reflects the seriousness of the contravention or failure, based on the following two factors:

Factor a): Nature of the Contravention or Failure

21. **Moderate.** In the “Administrative Penalty Handbook: Version 2 – Ministry of Environment and Parks – *Environmental Management Act* and *Integrated Pest Management Act*” (“AMP Handbook”), a "moderate" contravention or failure includes “failure to perform required tasks or actions such as obtaining approval prior to a bypass”.
22. The CoF failed to comply with Section 2.2 when it allowed effluent to bypass the designated treatment works. Emergency releases of effluent from the Mt. McLean Drive Lift Station to the Elk River occurred and are considered bypasses of the designated treatment works.
23. In response to the bypasses, the CoF collected influent and receiving environment samples. The water quality results indicate that the bypasses and emergency releases negatively affected the Elk River, as shown by increases in microbiological indicators such as fecal coliforms and *Escherichia Coli* (*E. coli*). Influent sampling results further indicated that Total Suspended Solids (“TSS”) exceeded the permit limit.
24. The risk of harm to the environment and human health will be considered in more detail below in Factor b).
25. The nature of the failures was proposed as moderate.
26. This factor was not disputed in the OTBH Submission.
27. After considering the relevant information above, I confirm the failures are moderate.

Factor b): Real or Potential Adverse Effect

28. **Medium.** In the AMP Handbook, a "medium" real or potential adverse effect includes “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.”
29. 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.
30. The purpose of the authorized works is to ensure that the discharge of effluent into the receiving environment, in this case, the Elk River, is done in such a way that the Ministry’s goal of protecting human health and the environment is met. The bypassing of the designated treatment works resulted in untreated effluent being discharged at locations where it may have a higher potential for adverse effects on the receiving environment.
31. In response to bypass events, the CoF carried out influent and receiving environment monitoring to assess the impacts on the receiving environment. The monitoring included influent and surface water sampling in the Elk River at upstream and downstream locations relative to the discharge point. The results of the influent sampling showed that TSS exceeded the permit limit. The surface water sampling also showed elevated fecal coliforms and *E. coli*, that exceeded the Livestock-Use BC Water Quality Guideline (“BC WQG”). The Elk River is adjacent to agricultural land, is accessible to animals, and could reasonably

be used as a livestock water source. Primary-contact activities may occur; therefore, the *E. coli* exceedances represent a potential human health risk to downstream recreational users.

32. Many species have been identified in the Elk River, including blue-listed Bull Trout and Cutthroat Trout (i.e., a species of concern), in the discharge area.
33. The discharge of untreated sewage to Elk River poses a risk to the environment and human health. Untreated sewage may contain pollutants, nutrients, and pathogens that can negatively affect aquatic life and water quality.
34. The real or potential adverse effect of the failures was proposed as medium.
35. The CoF disputes the characterization of the real or potential adverse effect of failures as medium. At page 2 of the OTBH Submission, it stated:

“The City believes that the actions taken to bypass treatment were in line with the Ministry’s desire to protect the environment and human health. If these actions had not been taken, the impact to both agencies would have been more severe, in the form of raw sewage running down public roads, backing up into public facilities and homes – directly exposing individuals to substances causing potential health problems. The City’s pump stations would have been severely damaged, increasing the duration of the City’s inability to treat wastewater, and potentially requiring evacuation of the town, with significant impacts to human health.

Based on the significantly reduced volume of untreated effluent & unscreened effluent released, as described in the above section, the City requests the SDM review the reduced potential for harm to the receiving environment.”

36. I have considered the CoF's submission that the volume of untreated and unscreened discharge was lower than originally characterized and that the bypasses were undertaken to avoid more significant consequences, including sewage backups into homes, public facilities and municipal infrastructure.
37. I accept that the City's actions were intended to reduce broader risks to public health and infrastructure. However, untreated and unscreened sewage was discharged to the Elk River, and monitoring results identified elevated fecal coliform and *E. coli* concentrations in the receiving environment. The discharge therefore presented a real or potential risk to aquatic life, livestock, and downstream recreational users. While the volume of untreated discharge may have been less than originally estimated, I am not persuaded that this changes the severity of the adverse-effect factor. The effects and potential effects remained localized, short-term, and capable of being mitigated within a reasonable timeframe, which is consistent with a medium rating.
38. After considering the relevant information above, I confirm that the failures are medium.
39. The base penalty is therefore confirmed at \$10,000 as proposed at Notice Prior to Determination of Administrative Penalty (“Notice”).

APPLICATION OF PENALTY ADJUSTMENT FACTORS

The following factors reflect the unique circumstances of this file, including what happened before, during, and after the failures.

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

- 40. I am guided by the AMP Handbook for this factor, to consider the CoF's compliance history. This factor could increase the penalty.
- 41. In the five years prior to Inspection Report ("IR") 252743, the Ministry issued the CoF two Warning IRs. The CoF was given the opportunity to respond to these failures.

[2026-23 Compliance History]

- 42. An increase of 10% of the base penalty (+ \$1,000) was proposed for the previous failures.
- 43. While the CoF made submission for Factor c), this information is more appropriately considered under Factors g) and h).
- 44. After considering the relevant information above, I confirm an increase of 10% of the base penalty (+ \$1,000) is applied for the previous failures.

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

- 45. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence of the repeated or continuing nature of the failures. If I am persuaded that the failures were repeated or continuous, this factor could increase the penalty.
- 46. The failure to comply with Section 2.2 was repeated during three periods, totaling eight days.
- 47. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between December 6, 2023, and December 18, 2025; however, for this AMP only, these failures will be treated as repeated.
- 48. An increase of 20% of the base penalty (+ \$2,000) was proposed to account for the repeated nature of the failures.
- 49. This factor was not disputed in the OTBH Submission.
- 50. After considering the relevant information above, I confirm an increase of 20% of the base penalty (+ \$2,000) is applied for the repeated nature of the failures.

Factor e): Whether contravention or failure was deliberate (+):

- 51. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the CoF deliberately bypassed designated treatment works. If I am persuaded that the CoF deliberately bypassed designated treatment works, this factor could increase the penalty.
- 52. On December 1, 2020, the Ministry issued a warning to the CoF for non-compliance with Section 2.2 and reminded the CoF to ensure that effluent may not bypass the designated treatment works unless the approval of director (Regional Waste Manager) has been obtained and confirmed in writing.

53. On March 8, 2023, the Ministry issued a warning to the CoF for non-compliances with a number of requirements. Although IR 201155 assessed compliance with Section 2.2 as “not applicable”, it did identify that three bypass events occurred during that inspection period.
54. The CoF has been aware of the requirements of Section 2.2 of the Permit since at least 2020. Despite this, the CoF has continued to fail to ensure that no waste is discharged without being processed through the designated treatment works. While the CoF may not have taken direct action to cause the failures, indirect actions or inactions may have contributed to the failures.
55. On May 4, 2022, the CoF submitted an application for registration under the MWR for the upgrade of the current treatment plant. On October 31, 2025, the CoF submitted the Final Application package to the Ministry. On February 19, 2026, the Ministry issued a Screening Phase letter to the CoF determining that the application was incomplete and set a new deadline of February 27, 2026. After submission of further information, the application is currently in the screening phase.
56. While the CoF underperformed the expected standard of care, there is no evidence that the CoF intended to fail to meet the requirements and the events surrounding the failures may have been challenging to predict.
57. Based on the information above, and considering the guiding concepts of standard of care, intent, source of the failures, and predictability outlined in the AMP Handbook, I find that the CoF exhibited a low level of deliberateness.
58. No adjustment was proposed for this factor.
59. The CoF disputes that the failures were deliberate. At page 4 of the OTBH Submission, it stated:

“The City feels that this is an incomplete set of information and wishes to provide some more pertinent details summarizing the efforts through that period that further demonstrate these were not deliberate contraventions.

The City’s qualified professionals met every delivery date they committed to during the screening phase. When Ministry deadlines did not allow sufficient time to complete defensible engineering work—notably the February 19–27, 2026 period—the City advised the Ministry promptly, followed its direction, and proposed realistic revised timelines with supporting rationale. The Final Application Package has been before the Ministry since October 31, 2025, and the City has continued to provide additional screening information since that time. The City respectfully submits that this conduct demonstrates an active, good-faith effort to achieve compliance and is inconsistent with a finding of deliberate or ongoing non-compliance arising from the prior Inspection Report Warnings.

...

The City has proactively continued to advance the design and construction planning for the proposed upgrades in advance of receiving Ministry approval, to meet the three-year construction timeline understood to be a requirement of the Ministry of Environment. Ongoing works include refinement of design and procurement planning to be prepared to begin construction within the 2027 Construction season.”

60. I have considered the CoF's submission regarding its ongoing efforts to advance wastewater treatment upgrades and obtain authorization under the Municipal Wastewater Regulation. The information provided is consistent with my finding that, although the CoF failed to comply with Section 2.2, there is insufficient evidence that the failures were intentional or deliberate. Accordingly, I maintain my finding that the CoF exhibited a low level of deliberateness.
61. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

62. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the CoF obtained an economic benefit from the failures. If I am persuaded that the CoF obtained an economic benefit from the failures, this could increase the penalty.
63. The CoF likely derived some economic benefit from failing to prevent the release of untreated effluent during bypass events, as required in Section 2.2. This specific economic benefit has been considered but will not be pursued in this AMP assessment.
64. No adjustment was proposed for this factor.
65. This factor was not disputed in the OTBH Submission.
66. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

67. I am guided by the AMP Handbook for this factor, to consider what the CoF did **before** the failures to prevent the failures. If I am persuaded that the CoF did take measures to prevent the failures, this factor could decrease the penalty.
68. On May 4, 2022, the CoF submitted an application for registration under the MWR for the upgrade of the current treatment plant. On February 19, 2026, the Ministry issued a Screening Phase letter to the CoF determining that the application was incomplete and set a new deadline of February 27, 2026. After submission of further information, the application is currently in the screening phase.
69. The submission of an application under the MWR demonstrates that the CoF had identified the need to address the current treatment plant limitations and initiated longer-term planning to improve system performance.
70. Participation in a long-term regulatory process, on its own, does not establish that all reasonable preventative measures were taken prior to the contraventions.
71. No adjustment was proposed for this factor.
72. The CoF submitted that measures were taken to prevent the failures. At page 2 of the OTBH Submission, it stated:

“The City has demonstrated a long history of effort to respond to the known permit non-compliances. The City initiated and proactively followed up with the Ministry in 2014 before, during and after the upgrades to the Wastewater Treatment Plant that were associated with the Liquid Waste Management Plan, for an authorization which would recognize works and allow increased discharge of flows to the Elk River.

The City also connected again with the Ministry in late 2020, and early 2021 regarding the authorization and received direction from Trevor Hamelin on what was needed to apply for an operational certificate. The City submitted an application for an operational certificate in March 2021 in response to Trevor’s direction.

Following additional discussions with the Ministry, direction was received that instead, a Municipal Wastewater Regulation (MWR) registration application was needed. The Initial Application was submitted on May 4, 2022, with a Ministry Issues Tracking number received on June 28, 2022, and a Pre-Application Meeting November 17, 2022. This 6.5 month timeline was completely outside of the City’s control.”

73. The CoF also submits that further measures were taken to prevent the failures. At page 6 of the OTBH Submission, it stated:

“The City has been working to get a new permit to operate from the Ministry of with efforts from current and past staff and Council’s extending back more than fifteen years – with two significant multi-year regulatory processes undertaken during that timeframe.

Initially, between 2010 -2014 the City progressed through a regulatory process called a Liquid Waste Management Plan (LWMP). The LWMP would’ve formed a new permit (i.e. an operational certificate) and allowed an increase in flows up to the typical volumes Fernie sees today.

...

Following the completion of the LWMP, the City constructed a number of upgrades to its Wastewater Treatment Plant in 2015, with permission of Ministry staff, understanding that Ministerial sign off was coming for the new permit. Examples of this correspondence were provided in response to IR252743. Following a couple years of regulatory uncertainty and changes in staff and regulations, despite many follow up attempts with the MoE - the plan was not signed off or an updated permit received. This resulted in the treatment infrastructure and processes at the Plant today not matching the treatment infrastructure listed in the permit.

...

As part of the LWMP Update and 2011 I&I study the City opted to make improvements to their treatment system to Accommodate I&I while replacing Asbestos Cement and Vitrified Clay Tile pipe and service connections at a financially sustainable rate. In June of 2022 the City applied to the Canada Community-Building Fund In British Columbia Strategic Priorities Fund to complete infrastructure improvements to the South Maintown neighbourhood. Within this application the Ask was for \$955,600 of sewer utility replacements that included brick manholes that are a known I&I source as well as approximately 400 linear meters of sewer upgrades. Ultimately the City was not successful in this receiving this grant.

...

These efforts demonstrate a consistent, resource intensive and multi-pronged approach to prevent contraventions of the permit, particularly the need to bypass treatment.”

74. I have considered the CoF's submission regarding the measures taken prior to the contraventions. While participation in the MWR authorization process does not itself constitute due diligence, I accept that the CoF undertook planning, engineering, and infrastructure initiatives aimed at addressing wastewater system limitations and reducing the likelihood of bypass events. Although these measures did not prevent the contraventions from occurring, I am satisfied that some effort was made to address the underlying causes of the failures.
75. After considering the relevant information above, I confirm a decrease of 10% of the base penalty (- \$1,000) is applied for measures to prevent the failures.

Factor h): Efforts to correct the contravention or failure (-):

76. I am guided by the AMP Handbook for this factor, to consider what the CoF did **during or immediately surrounding** the failures to restore compliance or reverse or mitigate the impacts. If I am persuaded that the CoF did take actions after the failures to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
77. The CoF completed influent and receiving environment sampling in response to the bypasses. While this work assisted in characterizing the nature and extent of the discharge and demonstrated a degree of responsiveness and transparency, sampling is primarily a data collection activity, that does not in itself, reduce the volume duration or impact of the discharge. As such, limited weight is given to this action.
78. A decrease of 5% of the base penalty (- \$500) was proposed for efforts made to correct the failures.
79. The CoF submitted that efforts were taken to correct the failures. At page 2 and 6 of the OTBH Submission, it stated:
- “In the last three years, the City has spent over \$1.1M on the MWR registration project through our engineering consultants, ISL Engineering Ltd. (ISL) and their subconsultants. For a municipality of our size with annual revenues of only \$12M, that represents a very significant investment. Additionally, approximately half of a full-time staff position has been dedicated to advancing this work.
- ...
- “In 2024, the City invested \$90,000 to redesign the Riverside Lift Station to address the pumping and pressure issue and to add screening, so that all influent reaching the plant would be screened. The design was completed in early 2025. The City then applied for grant funding to replace the Riverside Lift Station through the Investing in Canada Infrastructure grant program. While the application was ultimately unsuccessful, the replacement is planned as part of the upgrades associated with MWR registration, and will continue to be prioritized as that project advances.”
80. The CoF also submits that further efforts were taken to correct the failures. At page 10 of the OTBH Submission, it stated:

“When the rain started falling, we implemented overnight monitoring of our system by our qualified operators. The operators worked long hours trying to address high level alarms, adjusting pumps, monitoring how close to the residences the sanitary lines were backed up. We called all the Vacuum truck operators in our region and hired as many as were available (approximately 6 at a time) in an effort to alleviate the flows reaching our pumping stations and find an alternative method to convey the wastewater to the treatment plant. The Vacuum trucks worked through the night to transport untreated effluent to the Wastewater Treatment Plant but could not keep up with the intensity of the flows. In order to prevent catastrophic failure of the Riverside Lift Station, the trucks were temporarily diverted to dump at the Dogwood Boat Launch as it allowed for much faster turnaround of the trucks back to the area of concern, as opposed to driving the 30-minute return trip to the Wastewater Treatment Plant, any other location in the conveyance system would’ve further exacerbated the issues at the Main Sewage Pumping Station. Additionally, during the heavy rainfall we temporarily lost access to our Wastewater Treatment Plant, as the access road was flooded to a depth higher than would allow vehicle and Vacuum Truck traffic. We utilized large scale pumps in attempt to lower the water and make access passable. We made every possible effort to contain the flows in our conveyance and treatment systems as long as we could.

The CoF hired [R.P.Bio.] to recommend a post incident sampling program and to analyze the results and potential impacts. Based on the outcomes of the analysis, additional monitoring was recommended and has since been completed. The only actionable recommendation was to remove litter and non-biodegradable plastics from the area if present.”

81. I have considered the CoF's submission regarding the actions taken during and immediately following the bypass events. I accept that CoF staff actively monitored the wastewater system, responded to alarms, utilized vacuum trucks to reduce flows reaching critical infrastructure, adjusted operations in an effort to prevent system failures, and undertook post-incident environmental monitoring and assessment. While these actions did not prevent the unauthorized discharges from occurring, they were directed at reducing the duration, extent, and potential impacts of the bypass events. I am satisfied that the CoF made meaningful efforts to mitigate the impacts of the failures and that a reduction remains appropriate under this factor.
82. After considering the relevant information above, I confirm a decrease of 20% of the base penalty (- \$2,000) is applied for efforts made to correct the failures.

Factor i): Efforts to prevent recurrence of the contravention or failure (-):

83. I am guided by the AMP Handbook for this factor, to consider whether the CoF has taken any action **after** to avoid the failures happening again in the future. If I am persuaded that the CoF has taken any action to avoid the failures happening again in the future, this factor could decrease the penalty.
84. No adjustment was proposed for this factor.
85. On October 31, 2025, the CoF submitted the Final Application package to the Ministry. On February 19, 2026, the Ministry issued a Screening Phase letter to the CoF determining that the application was incomplete and set a new deadline of February 27, 2026. After

submission of further information, the application is currently in the screening phase. The majority of this action is considered in factor g) above.

86. On April 10, 2026, the CoF reported that qualified engineering consultants were retained to navigate the regulatory process and meet the deadline.
87. The CoF submits that efforts were taken to prevent recurrence of the failures. At page 11 of the OTBH Submission, it stated:

“New information from the December recent 2025 bypass events has taught us that Riverside Lift Station pump sizing isn’t the only infrastructure necessitating bypass, as the Main Sewage Lift Station was not able to pump the incoming flows regardless of the Riverside Lift Station downstream issue. As a result, the City is now also evaluating potential upgrades to the Main Sewage Lift Station, informed by a newly calibrated wastewater model (completed spring 2026). This updated modelling has revealed that peak wet weather flows are higher than previously understood and that I&I is more significant than originally assessed. Accordingly, the City is reviewing and adjusting its improvement priorities to incorporate additional I&I reduction as a key strategy for reducing overflows. This information is actively being used to inform upgrades to both the Riverside Lift Station and the Main Sewage Lift Station. This work program was initiated immediately following the recent bypass events, at a cost of \$57,000. It is ongoing and is expected to be completed by summer 2026.

...

The cross-connection discovery program will encourage residents to report known cross-connections such as sump pumps connected to the sanitary sewer, so the City can provide guidance on options to deal with stormwater and ground water responsibly. The City will develop policy and bylaws to govern and enforce cross-connection disconnection. This is a high value exercise if there is public cooperation, as it will address the known issue of homeowners pumping stormwater and groundwater into our sanitary system. This project has a \$15,000 budget and is underway, expected to be completed by Fall 2026.

...

CoF Staff then investigated manhole repair options and are presenting to City Council on June 18, 2026 to secure the budget (\$81,250) to contract repair services. The repairs will focus on limiting stormwater entering the system through manholes in the worst offender neighborhoods as identified by our ongoing manhole inspections and aligned with the updated sanitary system model study recommendations. The budget is to repair 10 manholes this year. This will provide staff with an opportunity to assess the sealant application and effectiveness before applying it at a larger scale. The plan is to have the contractor teach our staff how to apply the sealant.

These efforts demonstrate a consistent, resource intensive and multi-pronged approach to prevent re-occurring contraventions of the permit, particularly the need to bypass treatment.”

88. I have considered the CoF's submission regarding actions taken following the bypass events. The information demonstrates that the CoF undertook additional modelling to better understand peak wet weather flows, initiated reviews of infrastructure upgrades at the Main Sewage Lift Station and Riverside Lift Station, and began developing inflow and infiltration reduction measures including cross-connection investigations and manhole rehabilitation. While many of these initiatives remain in the planning or implementation stages, they are

directed at addressing the underlying causes of the bypass events and reducing the likelihood of recurrence. I am therefore satisfied that some efforts have been undertaken to prevent similar failures in the future..

89. After considering the relevant information above, I confirm a decrease of 20% of the base penalty (- \$2,000) is applied for efforts made to prevent recurrence of the failures.

Factor j): Any other relevant factors (+/-):

90. 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.
91. I am not aware of additional relevant factors.
92. No adjustment was proposed for this factor.
93. This factor was not disputed in the OTBH Submission.
94. After considering the relevant information above, I confirm no adjustment is applied under this factor.

Penalty Calculation Table:

Factors to be considered in penalty calculation:	Notice	Final Determination
Gravity Penalty		
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	+ \$1,000	+ \$1,000
d) Whether contravention or failure was repeated or continuous	+ \$2,000	+ \$2,000
e) Whether contravention or failure was deliberate	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	- \$1,000
h) Efforts to correct the contravention or failure	- \$500	- \$2,000
i) Efforts to prevent recurrence of the contravention or failure	\$0	- \$2,000
j) Additional relevant factors	\$0	\$0
Total Gravity Penalty	\$12,500	\$8,000
Application of multiplier: No	N/A	N/A

Economic Benefit Penalty		
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
Gravity Penalty + Economic Penalty	\$12,500	\$8,000
Total Penalty:	\$12,500	\$8,000

Total Penalty:

95. After determining a gravity penalty of \$8,000 for these failures, the penalty is established at \$8,000.

PENALTY CALCULATION

2026-23b: Section 2.14 (Flow Measurement)

The Contravention or Failure – Findings:

96. Section 2.14 requires the CoF to provide and maintain a suitable flow measuring device and record, once per day, the effluent volume discharged over a 24-hour period.
97. Between May 15, 2023, and December 23, 2025, the CoF failed to comply with Section 2.14 by not installing a flow meter to record effluent discharged to the infiltration basins (site reference number E210154).
98. Based on the information provided above, an administrative penalty was considered for failure to comply with Section 2.14 between May 15, 2023, and December 23, 2025.
99. The CoF disputes that a suitable flow measuring device was not in place and provides additional information on the current flow measurement system. At page 12 and 13 of the OTBH Submission, it stated:

“Influent volumes are collected from two flow meters

1. the Riverside Lift Station and
2. the Main Sewage Lift Station (MSLS)

Recorded in five-minute increments and stored on the City's SCADA system. The combined readings from these two meters represent the total flow into the sewage lagoons, which is used to determine the average flow under Permit 8182.

Flow monitoring and reporting is applied under the following operational scenarios:

Rapid Infiltration (RI) Basin Operation: When flow is directed to the existing RI Basins, the combined MSLS and Riverside flow meter readings represent the total treatment flow. Data is captured in five-minute increments via SCADA and translated into an annual average in accordance with Permit 8182. This provides a high level of accuracy on what the total flows were to the Rapid Infiltration Basins, although there may be some variation in the length of time the flow stays in the treatment basins, the average annual daily flow reported will be highly accurate.

River Discharge via P-Cells and UV Treatment: When treated effluent is discharged to the Elk River through the P-Cells and UV Treatment system, the dedicated flow meter at

the UV building captures real-time flow rates for discharge reporting purposes. During this mode of operation, discharge to the RI Basins does not occur concurrently. As a result, RI Basin inflow data (derived from the combined MSLS and Riverside readings) is not required for reporting; however, it is continuously logged to SCADA and remains available for reference as needed. These scenarios align with our Qualified Professional's judgment that the existing flow monitoring procedures provide a high level of accuracy, and the potential adverse effect of the required change in monitoring methodology is low to none as indicated.

Under the proposed design upgrades, influent flows will continue to be measured through the existing flow meters at the Main Sewage Lift Station and Riverside Lift Station. In addition, a new dedicated flow meter is being installed in advance of the effluent discharge point to record real-time effluent flows to the Elk River in accordance with the monitoring requirements of the MWR. This meter will also allow for real time monitoring of the flow per 24hrs to the RI Basins, while they remain in service, until the planned upgrades occur.”

100. While the CoF has asserted that wastewater flows were monitored through lift station meters and SCADA records, those measurements provided an estimate of flows to the RI Basins rather than a direct measurement of the discharge. Section 2.14 requires the installation and maintenance of a suitable flow measuring device for the RI Basin discharge. I find that the CoF's reliance on upstream flow measurements and calculated volumes did not satisfy that requirement.
101. Based on the information provided above, I find that the CoF failed to comply with Section 2.14 between May 15, 2023, and December 23, 2025.
102. The maximum penalty allowable under the APR for each failure to comply with Section 2.14 is \$40,000.

Factors to be Considered in Penalty Calculation:

BASE PENALTY

The base penalty reflects the seriousness of the contravention or failure, based on the following two factors:

Factor a): Nature of the Contravention or Failure

103. **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...; failure to undertake required monitoring”.
104. The CoF failed to comply with Section 2.14 by not installing a flow meter to record effluent discharged to the infiltration basins. The failure to meet operational requirements, including installing flow meters and conducting required monitoring under the Permit, posed a risk to the environment and to human health and safety.
105. The risk of harm to the environment and human health will be considered in more detail below in Factor b).

106. The nature of the failure was proposed as moderate.

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

108. After considering the relevant information above, I confirm the failure is moderate.

Factor b): Real or Potential Adverse Effect

109. **Low to none.** In the AMP Handbook, a "low to none" real or potential adverse effect includes "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".

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

111. Many species have been identified in the Elk River, including blue-listed Bull Trout and Cutthroat Trout (i.e., a species of concern), in the discharge area.

112. Although the failure to comply with Section 2.14 poses a risk to the receiving environment, it is unknown whether actual effects have occurred.

113. The real or potential adverse effect of the failure was proposed as low to none.

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

115. After considering the relevant information above, I confirm that the contravention is low to none.

116. The base penalty is therefore confirmed at \$5,000, as proposed at Notice Prior to Determination of Administrative Penalty ("Notice").

APPLICATION OF PENALTY ADJUSTMENT FACTORS

The following factors reflect the unique circumstances of this file, including what happened before, during, and after the failure.

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

117. I am guided by the AMP Handbook for this factor, to consider the CoF's compliance history. This factor could increase the penalty.

118. In the five years prior to IR 252743, the Ministry issued the CoF two Warning IRs. The CoF was given the opportunity to respond to these failures.

[2026-23 Compliance History]

119. An increase of 10% of the base penalty (+ \$500) was proposed for the previous failures.

120. While the CoF made submission for Factor c), this information is more appropriately considered under Factor e).

121. After considering the relevant information above, I confirm an increase of 10% of the base penalty (+ \$500) is applied for the previous failures.

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

122. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence of the repeated or continuing nature of the failure. If I am persuaded that the failure was repeated or continuous, this factor could increase the penalty.

123. The failure to comply with Section 2.14 was continuous between May 15, 2023, and December 23, 2025 (954 days).

124. Separate penalties for each day described in this administrative penalty are possible since there was a continuous failure between May 1, 2023, and December 23, 2025; however, for this AMP only, this failure will be treated as continuous.

125. An increase of 20% of the base penalty (+ \$1,000) was proposed to account for the continuous nature of the failure.

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

127. After considering the relevant information above, I confirm an increase of 20% of the base penalty (+ \$1,000) is applied for the continuous nature of the failure.

Factor e): Whether contravention or failure was deliberate (+):

128. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the CoF deliberately failure to install a flow meter to record effluent discharged to the infiltration basins. If I am persuaded that the CoF deliberately failure to install a flow meter to record effluent discharged to the infiltration basins, this factor could increase the penalty.

129. On December 1, 2020, the Ministry issued a warning to the CoF for non-compliance with Section 2.14 and reminded the CoF to ensure that a flow measuring device is installed that measures the effluent volume discharged to the infiltration basins over a 24 hour period.

130. In the CoF's Response letter dated December 14, 2020 to IR160560, regarding Section 2.14, the CoF stated:

"There is no flow measurement to the infiltration basins. The City has retained Urban Systems to complete an engineering review to determine approaches and costs for monitoring of flows to the RI basins."

131. On March 8, 2023, the Ministry issued a warning to the CoF for non-compliance with Section 2.14.

132. The CoF underperformed the expected standard of care by failing to comply with the requirement to ensure that a suitable flow measuring device is installed and record effluent discharged to the infiltration basins. While the CoF may not have taken direct action to

cause the failures, indirect actions or inactions contributed to the failures and the source of the contravention was clear.

133. The CoF has failed to meet the expected standard of care by not installing the required flow meter despite clear and repeated regulatory direction. After advising the Ministry in December of 2020 that an engineering consultant was retained to address this issue, no device has been installed. This ongoing failure occurred despite the CoF's awareness of the requirement, which remained fully within their control, and resulted in a non-compliance that was readily predictable.
134. Based on the information above, and considering the guiding concepts of standard of care, intent, source of the failures, and predictability outlined in the AMP Handbook, I find that the CoF exhibited a medium level of deliberateness.
135. An increase of 35% of the base penalty (+ \$1,750) was proposed for the deliberate nature of the failure.
136. The CoF submits that it responded to previous non-compliances. At page 14 of the OTBH Submission, it stated:
- “As described in earlier sections of this response, the City has been deliberating undertaking the resulting actions from our most recent compliance assessment prior to this one (2023), specifically focusing on working with Authorizations. The City believes there has been a shift in the compliance approach, and that to be penalized for a direct shift in recommendations from the Compliance Officers, without being given an opportunity to react accordingly is not a fair assessment of our intention as deliberately contravening the regulation. See the two varied requirements below.
- 2023 IR Actions to be taken section 2.14: “Continue to work with the Ministry's liquid waste authorizations to obtain an Operational Certificate or Municipal Wastewater Regulation”
 - 2026 IR Actions to be taken: “Ensure that a suitable flow meter has been installed to measure and record daily effluent volume discharged over 24-hour period for site reference numbers E210154 and E210155 (Effluent discharged to the Elk River and infiltration basins).”
137. I have considered the CoF's submission that it responded to previous inspections and that Ministry compliance direction focused primarily on obtaining authorization under the Municipal Wastewater Regulation. I also note that while the Ministry repeatedly advised the CoF that a suitable flow measuring device was required, the Ministry did not provide specific direction regarding the type of device or methodology necessary to satisfy section 2.14, nor was the CoF directed to the technical guidance contained in the BC Field Sampling Manual when determining an appropriate flow measurement solution.
138. The evidence demonstrates that the CoF was aware of the requirement and failed to achieve compliance for an extended period. However, the evidence does not demonstrate that the CoF intentionally chose to remain non-compliant or deliberately avoided installing a suitable flow measuring device. Rather, the information before me indicates that the CoF pursued engineering review, relied on flow information obtained through lift station meters and SCADA systems, and continued developing a long-term monitoring approach that it

believed would address the requirement. While these efforts did not satisfy Section 2.14, they are inconsistent with a finding that the contravention was deliberate

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

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 there is any evidence indicating that the CoF obtained an economic benefit from the failure. If I am persuaded that the CoF obtained an economic benefit from the failure, this could increase the penalty.

141. The CoF derived an economic benefit from the delay in installing a flow monitoring device.

142. A flow monitoring device is expected to cost no less than \$4,300. The time span used for the economic benefit interest is from May 15, 2023, to December 23, 2025 (954 days).

Assessment

Item Description	True or Estimated Value	Value (\$)	Avoided or Delayed	Timespan ¹	Interest Rate ²	Total ³ (\$)
Flow Monitoring Device	Estimated	\$4,300	Delayed	954 days	3.37%	\$395
TOTAL	\$395					
<i>1. Time period of the avoided or delayed cost, for calculation of interest.</i>						
<i>2. For time spans including and over one year, the average of 3-year benchmark bond yield rates over the time span is used as the interest rate. For time spans under one year, the average of 6-month treasury bill yield rates over the time span is used as the interest rate.</i>						
<i>3. Total economic benefit for avoided costs is the value with interest compounded annually, calculated over the time span of the dates of contravention (partial year interest included). Total economic benefit for delayed costs is the interest only compounded annually, calculated over the time span of the dates of contravention (partial year interest included).</i>						

143. Based on the above information, I estimate that the CoF has delayed costs of not less than \$395. Therefore, \$395 was added to this penalty calculation to account for the economic benefit of the delayed costs.

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

145. After considering the relevant information above, I confirm \$395 is applied for to account for the economic benefit of the delayed costs.

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

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

147. I am not aware of any measures to prevent the failures.

148. No adjustment was proposed for this factor.

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

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

Factor h): Efforts to correct the contravention or failure (-):

151. I am guided by the AMP Handbook for this factor, to consider what the CoF did **during or immediately surrounding** the failure to restore compliance or reverse or mitigate the impacts. If I am persuaded that the CoF did take actions after the failure to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
152. I am not aware of any efforts to correct the contravention.
153. No adjustment was proposed for this factor.
154. This factor was not disputed in the OTBH Submission.
155. After considering the relevant information above, I confirm no adjustment is applied under this factor.

Factor i): Efforts to prevent recurrence of the contravention or failure (-):

156. I am guided by the AMP Handbook for this factor, to consider whether the CoF has taken any action **after** to avoid the failure happening again in the future. If I am persuaded that the CoF has taken any action to avoid the failure happening again in the future, this factor could decrease the penalty.
157. On April 10, 2026, the CoF reported that the budget to install the flow meter has been approved, and the CoF will install it as soon as it is specified and procured.
158. No adjustment was proposed for this factor.
159. The CoF submits that efforts were taken to prevent recurrence of the failures. At page 14 of the OTBH Submission, it stated:
- “The CoF signed the Purchase Order to approve procurement of the meter, installation of the meter, the required accompanying sump pump to protect it from water damage, and the computer engineering for integration of the data in the City’s SCADA system on May 19, 2026. The meter was ordered on May 26th and is scheduled for delivery on June 26th. It will be installed and running approximately one week after delivery.”
160. I have considered the CoF's submission and supporting information regarding actions taken following the inspection. The evidence demonstrates that the CoF obtained budget approval for the flow meter, approved procurement, ordered the equipment, and commenced work to integrate the meter into its SCADA system. These actions were taken after the contravention was identified and are directed toward preventing recurrence of the failure to measure and record effluent flows discharged to the infiltration basins. While the meter had not yet been installed and commissioned at the time of the OTBH Submission, I am satisfied that the CoF had taken meaningful steps toward achieving compliance and reducing the likelihood of future non-compliance.
161. After considering the relevant information above, I confirm a decrease of 30% of the base penalty (- \$1,500) is applied for efforts made to prevent recurrence of the failures.

Factor j): Any other relevant factors (+/-):

162. 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.

163. No adjustment was proposed for this factor.

164. The CoF submits that additional relevant factors exist. At page 14 of the OTBH Submission, it stated:

“The City has quickly responded to the change in Compliance Enforcement direction by purchasing the required meter, even given the planned wastewater treatment plant upgrades will eliminate use of the RI Basins. The City is actively working to address its known non-compliance as quickly as possible and has remained cooperative and transparent with both the Ministry and the public. Staff have provided City Council with regular updates on the Wastewater Compliance Design project and have maintained public information on the Let’s Talk Fernie site. Funds used to pay this penalty would come from the same limited reserves needed to install the meter, address other non-compliance issues, and advance the planned upgrades.”

165. I have considered the CoF's submission that it responded promptly to the Ministry's compliance direction, has remained cooperative and transparent with the Ministry and the public, and faces competing financial demands associated with wastewater infrastructure upgrades and compliance activities. I accept that the CoF has generally cooperated with the Ministry throughout this matter. However, actions taken to procure and install the flow meter have been considered under other penalty factors relating to correction and prevention of recurrence. I am not satisfied that the remaining information demonstrates exceptional cooperation, financial hardship, inability to pay, or any other circumstance that would warrant a further adjustment under this factor.

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

Penalty Calculation Table:

Factors to be considered in penalty calculation:	Notice	Final Determination
Gravity Penalty		
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	+ \$500	+ \$500
d) Whether contravention or failure was repeated or continuous	+ \$1,000	+ \$1,000

e) Whether contravention or failure was deliberate	+ \$1,750	\$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 recurrence of the contravention or failure	\$0	- \$1,500
j) Additional relevant factors	\$0	\$0
Total Gravity Penalty	\$8,250	\$5,000
Application of multiplier: No	N/A	N/A
Economic Benefit Penalty		
f) Economic benefit derived by the party from the contravention or failure	+ \$395	+ \$395
Gravity Penalty + Economic Penalty	\$8,645	\$5,395
Total Penalty:	\$8,645	\$5,395

Total Penalty:

167. After determining a gravity penalty of \$5,000 for this contravention and applying the economic benefit penalty (+ \$395) discussed above, the penalty is established at \$5,395.

Summary of Relevant Facts

168. On November 17, 2020, the Ministry conducted an inspection to verify compliance with the Permit during the period of January 1, 2017, to November 17, 2020. On December 1, 2020, the Ministry issued IR 160560 and found the CoF out of compliance with a number of requirements, including Sections 2.2 and 2.14. The outcome of IR 160560 was determined to be a Warning of Non-Compliance.

[2020-12-01 IR160560 Warning]
[2020-12-01 IR160560 Delivery]

169. The “Details/Findings” in IR 160560 assessing compliance with Section 2.2 stated:

“[Chief Operator, City of Fernie] reported during the site inspection that in February of 2020, effluent was discharged directly from the Mt. McLean Drive location to the Elk River, prior to any screening or treatment, as a result of a heavy rain event. Due to the unplanned nature of this event, Ministry approval was not obtained.”

170. The “Actions to be taken” in IR 160560 assessing compliance with Section 2.2 stated, “Ensure that effluent does not bypass the designated treatment works unless the approval of director (Regional Waste Manager) has been obtained and confirmed in writing. The director can be contacted at Authorizations.South@gov.bc.ca”

171. The “Details/Findings” in IR 160560 assessing compliance with Section 2.14 stated:

“A continuous flow measuring device was observed in the UV shack, which measures the rate of discharge to the Elk River, however the results of this flow monitoring have not been reported to the Ministry. [Chief Operator, City of Fernie] reported during the site inspection that there is no device that measures the rate of discharge to the infiltration basins.”

172. The “Actions to be taken” in IR 160560 assessing compliance with Section 2.14 stated, “Ensure that a flow measuring device is installed that measures the effluent volume discharged to the infiltration basins over a 24 hour period. Ensure that results of flow monitoring for both the Elk River discharge and infiltration basins discharge are recorded and reported to the Ministry.”

173. On December 14, 2020, the CoF sent a response letter to the Ministry for IR 160560 (“IR 160560 Response”). In the IR 160560 Response to Section 2.2, the CoF stated:

“Procedures and templates for reporting of such compliance events will be prepared to allow reporting for future events, as indicated in the Section 2.1 actions above. In addition, the City has retained Urban Systems to complete a review of the location to assess alternative approaches which could minimize or move towards the elimination of future overflows.”

[2020-12-14 IR 160560 Response]

174. In the IR 160560 Response to Section 2.14, the CoF stated:

“There is no flow measurement to the infiltration basins. The City has retained Urban Systems to complete an engineering review to determine approaches and costs for monitoring of flows to the RI basins.”

175. On May 4, 2022, the CoF submitted an application for registration under the MWR (Authorization Management System (“AMS”) Job #415602) for the upgrade of the current treatment plant. On March 20, 2023, the Ministry issued a revised Application Instruction Document (“AID”).

[2022-05-04 Preliminary Application Submission]

[2023-03-20 Revised AID]

176. On January 23, 2023, the Ministry conducted an inspection to verify compliance with the Permit during the period of November 18, 2020, to January 23, 2023. On March 8, 2023, the Ministry issued IR 201155 and found the CoF out of compliance with a number of requirements, including Section 2.14. Although three bypass events occurred, IR 201155 assessed compliance with Section 2.2 as “not applicable”. The outcome of IR 201155 was determined to be a Warning of Non-Compliance. On March 16, 2023, the CoF confirmed receipt of IR 201155.

[2023-03-08 IR201155 Warning]

[2023-03-16 IR201155 Delivery]

[2023-03-16 IR201155 Delivery Confirmation]

177. The “Details/Findings” in IR 201155 assessing compliance with Section 2.14 stated:

“[the Officer] reviewed the submitted flow data discharged to the Elk River, and confirmed that the flow was not measured over a 24-hour period once per day as required on the following dates:

...

As previously reported in IR #160560 there is no device that measures the rate of discharge to the infiltration basins.”

178. On December 7, 2023, the CoF submitted Dangerous Goods Incident Report (“DGIR”) 234803 to the Ministry reporting a bypass of authorized works on December 6, 2023 resulting in the discharge of 6,000,000 L of untreated sewage and 11,700,000 L of inflow and infiltration into the Elk River. DGIR 234803 stated, “Due to high rainfall, the sewage system was overwhelmed. The indicated quantity of untreated sewage was for the first 24 hours only.” On December 13, 2023, in the End of Spill Report (“EOSR”), the CoF reported the volume as 11,700,000 L and the description of the source of the spill as “Untreated sanitary sewage combined with significant amounts of relatively clean water from the heavy rainfall during the atmospheric river.” The EOSR spill response actions included lift stations checks, water quality sampling and a review of flows.

[2023-12-07 DGIR 234803]

[2023-12-13 DGIR 234803 EOSR]

179. On October 31, 2025, the CoF submitted the Final Application package for the MWR registration (AMS Job #415602) to the Ministry. On February 19, 2026, the Ministry issued a Screening Phase letter to the CoF determining that the application was incomplete and set a new deadline of February 27, 2026. After submission of further information, the application is currently in the screening phase.

[2025-10-31 Final Application Form]

[2026-02-19 Screening Phase Letter]

180. On November 24, 2025, the Ministry conducted an inspection to verify compliance with the Permit during the period of February 1, 2023, to December 23, 2025. On March 11, 2026, the Ministry issued IR 252743 and found the CoF out of compliance with a number of requirements, including Sections 2.2 and 2.14 (see Table 1 and Table 2 below). The outcome of IR 252743 was determined to be a Referral for an AMP. On April 16, 2026, the Ministry issued an amended IR 252743 with no changes to Sections 2.2 and 2.14.

[2026-03-11 IR252743 AMP]

[2026-03-11 IR252743 Delivery]

[2026-04-16 IR252743 AMP Amended]

181. The “Details/Findings” in IR 252743 assessing compliance with Section 2.2 stated:

“As documented in Section 2.1, emergency releases of effluent from the Mt. McLean Drive Lift Station to the Elk River occurred during the Inspection Period, and are considered bypasses of the lift station, forcemain, and treatment works. Due to the unplanned nature of these events, Ministry approval was not obtained.

Three bypass events occurred during the Inspection Period and include:

December 6, 2023, to December 8, 2023 (3 days):

On December 15, 2023, the CoF reported that approximately 11,700 m³ of untreated and unscreened influent and stormwater was released to the Elk River from the Mt. McLean Drive Lift Station between December 6, 2023, and December 8, 2023 (NCR 2023-12-15; NCR 2023-12-22 (Lift Station); **DGIR 234803**).

In response to the bypass and emergency release, the CoF collected influent samples and additional samples 100 metres upstream and downstream from the discharge location at the Mt. McLean Drive Lift Station (see DGIR 234803 ...). Three sets of samples were taken between December 6, 2023, and December 8, 2023. The sampling locations ... located as indicated by the December 2025 Sampling Locations Map attached to this IR, as confirmed by the CoF's Wastewater Foreperson.

December 11, 2025, to December 13, 2025 (3 days):

On December 19, 2025, the CoF reported that approximately 7,959 m³ of untreated and unscreened influent and stormwater was released to the Elk River from three locations including the Mt. McLean Drive Lift Station, Eckersley Street Lift Station and Dogwood Park Boat Launch, between December 11, 2025, and December 13, 2025 (NCR 2025-12-19; NCR 2025-01-09; **DGIR 254778**).

The CoF collected eleven influent and receiving environment samples between December 11, 2025, and December 16, 2025 (see DGIR 254778 ...). The receiving environment samples were collected in the Elk River at locations nearby to the Mt. McLean Drive Lift Station, Dogwood Park Boat Launch, and the CoF's Facility.

...

December 11, 2025:

Five vacuum trucks loads containing untreated influent and stormwater from the Mt. McLean Lift Station were also discharged directly to the Elk River on December 11, 2025 (**DGIR 254778**).

December 17, 2025, to December 18, 2025 (2 days):

On December 19, 2025, the CoF reported that approximately 16,982 m³ of untreated and unscreened effluent was released to the Elk River from the Mt. McLean Drive Lift Station between December 17, 2025, and December 18, 2025 (NCR 2026-01-09; DGIR 254890). Five influent and receiving environment samples were collected at various locations at the Mt. McLean Drive Lift Station between December 17, 2025, and December 19, 2025 (see DGIR 254890 ...).

Additional sampling was completed on January 13, 2026, at the request of the Environmental Emergency Branch of the Provincial Emergency Program (for DGIR 25778 and DGIR 254890) and is not included in the assessment of this section as it is outside the Inspection Period.

The water quality results ... show that the bypasses and emergency releases negatively affected the Elk River, as shown by increases in microbiological indicators (fecal coliforms and E. coli) between upstream and downstream sampling sites from the location of discharge. The single-sample limit of 200 CFU/100 mL for fecal coliforms (Livestock-Use BC Water Quality Guideline (BC WQG)) was exceeded... This BC WQG is applicable because the Elk River is adjacent to and upstream of agricultural land, is

physically accessible to animals, and could reasonably be used as a livestock water source.

The single-sample limit of 400 E. coli/100 mL was also exceeded multiple times in December 2023 and December 2025 (highlighted red ...). This BC WQG is applied to primary-contact recreation. Even in winter, primary-contact activities (e.g., swimming) can occur, presenting a reasonable expectation of exposure. Therefore, the E. coli exceedances that occurred represent a potential human-health risk for recreational users downstream.

The water quality parameter of TSS measured from the influent and released to the Elk River at the Mt. McLean Drive Lift Station on December 6, 2023, December 8, 2023, and December 17, 2025, exceeded the 60 mg/L Permit limit required by section 1.1.2...

...

The recurrent nature of the bypasses at this Facility confirms that the CoF is not able to manage the influent volumes, resulting in wastewater bypassing the treatment works and being discharged to the environment. Effluent that bypasses the designated treatment works and discharges to the environment is prohibited, regardless of whether the bypass is planned or unplanned; therefore, the CoF has failed to obtain written approval from the Director for bypasses between December 6, 2023, and December 18, 2025, as described above.

...

Therefore, this non-compliance is being referred for an Administrative Penalty.”

182. The “Details/Findings” in IR 252743 assessing compliance with Section 2.14 stated:

“Infiltration Basin Effluent:

Under section 1.1, the CoF is authorized to discharge effluent to the infiltration basins.

During the on-site inspection, the Wastewater Foreperson informed [the Officer] that the CoF does not have a flow meter to record effluent discharged to the infiltration basins on site (site reference number E210154). Therefore, the CoF is out of compliance with section 2.14.

...

The non-compliance associated with discharge to the infiltration basins (site reference E210154) under section 2.14 of the Permit, specifically the failure to provide and maintain a suitable flow measuring device and to record effluent measurements once per day, has been identified for the continuous period of February 1, 2023, to December 23, 2025.

The non-compliances associated with site reference E210154 of section 2.14 of the Permit are being referred for an Administrative Penalty.”

183. On December 11, 2025, the CoF submitted DGIR 254778 to the Ministry reporting a bypass of authorized works resulting in the discharge of 66,834,200 L of untreated influent. DGIR 254778 reported that the bypass occurred due to high rainfall and influent volumes exceeding the lift station’s design capacity. On January 9, 2026, in the EOSR, the CoF reported that “Snowmelt and heavy rainfall during an atmospheric river event inundated the

Main Lift Station in the collection system. In addition, the rapid infiltration basins and new outfall at the wastewater plant were unable to keep up with the incoming flow.” The EOSR spill response actions reported emergency overflow and pumping from lift stations and infiltration basins to the Elk River to prevent damage to wastewater system infrastructure.

[2025-12-11 DGIR 254778]

[2026-01-09 DGIR 254778 EOSR]

184. On December 17, 2025, the CoF submitted DGIR 254890 to the Ministry reporting a bypass of authorized works that resulted in the discharge of 16,982,000 L of untreated influent. The bypass occurred due to high rainfall and influent volumes exceeding the lift station’s design capacity. On January 9, 2026, in the EOSR, the CoF reported that “Heavy rainfall during a second atmospheric river event inundated the Main Lift Station in the collection system.” The EOSR spill response actions reported emergency overflow and pumping from lift stations to the Elk River to prevent damage to wastewater system infrastructure.

[2025-12-17 DGIR 254890]

[2026-01-09 DGIR 254890 EOSR]

185. On April 10, 2026, the CoF sent a response letter to the Ministry for IR 252743 (“IR 252743 Response). In the IR 252743 Response to Section 2.2, CoF stated:

“The Compliance Officer assessed the ongoing work for registration under the MWR [Municipal Wastewater Regulation] and concluded that ‘the CoF’s repeated delays confirm ongoing difficulty in completing the required regulatory actions.’ The CoF has retained qualified, reputable and experienced engineering consultants to navigate this regulatory process, engaged multiple other local governments for context and advice on our application and worked diligently as possible to meet the timelines required by ENV Authorizations. Our professional consultants’ inability to meet the deadlines is not reflective of our willingness and ability to comply, it is reflective that proper engineering due-diligence takes more time than was provided. We are capable and actively working to get the City into compliance.

The City continues to strive to comply with the permit conditions and direction set by ENV. The City also continues to be open and transparent regarding the wastewater treatment operations and approaches to reporting events and compliance concerns.

As directed by [the Officer], the City reached out to ENV for an approval to by-pass as a result of increased flows during the March 2026 atmospheric river event. The following response was received from ENV:

Thank you for your message. Based on the information you've provided, I understand the City of Fernie may need to bypass some or all authorized treatment works to prevent damage to infrastructure, resulting in a discharge of untreated sewage directly to the Elk River during the current heavy rainfall event.

The Ministry does not authorize the bypass of works due to emergency events. Section 2.1 of Permit 8182 outlines the required emergency procedures:

The permittee shall inspect the pollution control works regularly and maintain them in good working order. In the event of an emergency or condition beyond control of the permittee which prevents the continuing operation of the approved method of pollution

control, the permittee shall immediately notify the Regional Waste Manager and take appropriate remedial action.

The City should take all reasonable measures to protect public health and minimize environmental impacts. Should a bypass occur, you must report the discharge as a non-compliance of the permit, following the instructions on the compliance webpage here. The instructions are located under the Report a Non-Compliance heading. Please include the bypass duration, known or estimated volumes of discharge and any sample results collected during the event.

Based on this direction and as per previous City actions, the City will continue to take all reasonable measures to protect public health and minimise environmental impacts but we understand that contrary to direction by [the Officer], ENV will not authorise a by-pass under the conditions indicated in the report.”

[2026-04-10 IR252743 Response Letter]

186. In the IR 252743 Response to Section 1.1.1 (relating to Section 2.14 and installation of a new flow meter), the CoF stated:

“Item #1 – Lack of suitable flow meter to measure flow for RI discharge.
The CoF has initiated procurement of a suitable meter. The City’s Engineering Consultant was on site on March 17, 2026 to assess the requirements and is working on the process engineering to advise on device selection. The budget has been approved to install the meter, and the City will install it as soon as it can be specified and procured.”

187. On May 6, 2026, the Ministry issued a Notice and accompanying PAF to CoF via email. The Notice recommended two penalties:

- 2026-23a: \$12,500 for failure to comply with Section 2.2 between December 6, 2023, and December 18, 2025
- 2026-23b: \$8,645 for failure to comply with Section 2.14 between May 15, 2023, and December 23, 2025

188. In the Notice, CoF was offered an OTBH and given thirty (30) days to request an OTBH.

189. On May 6, 2026, CoF confirmed receipt of the Notice and PAF via email.

190. On May 12, 2026, CoF requested an OTBH.

191. On May 12, 2026, the Ministry acknowledged CoF’s request for an OTBH, confirmed the OTBH would be by written submission, and set a due date of June 11, 2026.

192. On June 11, 2026, CoF provided the OTBH Submission to the Ministry.

Contaminants of Concern

193. Untreated sewage poses a risk to the environment and human health and safety. Sewage contains pollutants and pathogens (disease causing bacteria or viruses) that can be harmful and/or toxic to aquatic and terrestrial life. Environment and Climate Change Canada state:

“Some examples of pollutants that can be found in wastewater and the potentially harmful effects these substances can have on ecosystems and human health include:

- a. decaying organic matter and debris can use up the dissolved oxygen in a lake so fish and other aquatic biota cannot survive;
- b. excessive nutrients, such as phosphorus and nitrogen (including ammonia), can cause eutrophication, or over-fertilization of receiving waters, which can be toxic to aquatic organisms, promote excessive plant growth, reduce available oxygen, harm spawning grounds, alter habitat and lead to a decline in certain species;
- c. chlorine compounds and inorganic chloramines can be toxic to aquatic invertebrates, algae and fish;
- d. bacteria, viruses and disease-causing pathogens can pollute beaches and contaminate shellfish populations, leading to restrictions on human recreation, drinking water consumption and shellfish consumption;
- e. metals, such as mercury, lead, cadmium, chromium and arsenic can have acute and chronic toxic effects on species.
- f. other substances such as some pharmaceutical and personal care products, primarily entering the environment in wastewater effluents, may also pose threats to human health, aquatic life and wildlife.”

[[Wastewater pollution - Canada.ca](#)]

194. Fecal Coliforms indicate the presence of fecal matter, which may also include other pathogens. The BC Ministry of Health states, “Because of the large number of diseases and parasites which are spread in animal and human feces, no amount of fecal bacteria are acceptable.” Health Canada identifies that there are numerous studies which have shown an association between gastrointestinal symptoms and fecal indicator bacteria in waters impacted by human sewage.

[[Safe Water Supply: Vital to Your Health \(gov.bc.ca\)](#)]

[[Canadian recreational water quality guidelines - Indicators of fecal contamination: Epidemiological studies for primary contact activities - Canada.ca](#)]

195. *Escherichia Coli* is an indicator used to detect the presence of fecal matter, which may also include other pathogens. Untreated fecal material increases the organic material in a water body, reducing oxygen levels which can affect aquatic life. Health Canada states, “The presence of *E. coli* in water indicates the potential for the presence of fecal pathogens that could result in an increased health risk to swimmers.” The Public Health Agency of Canada states, “Some people may get seriously ill and need to be hospitalized. In rare cases, you may develop life-threatening symptoms, including:

- stroke
- kidney failure
- seizures (severe and uncontrollable shaking of the body)

While most people recover completely, others may suffer permanent health effects, like kidney damage.”

[[Canadian recreational water quality guidelines - Indicators of fecal contamination: E. coli and enterococci in recreational waters - Canada.ca](#)]

[[Risks of E. coli \(Escherichia coli\) infection - Canada.ca](#)]

196. Total Suspended Solids is a parameter of concern when discharged to the environment. High TSS concentrations signify suspended sediment which can absorb heat and block light required for the survival of photosynthetic vegetation, and decay of this vegetation can lead to depletion of oxygen levels in the receiving environment. High levels of suspended sediment can also affect aquatic life through physical abrasion, clogging of gills, interference with underwater navigation, and smothering of eggs and life at the bottom of a water body.

[[2010-07-13 Biological Effects of Sediment](#)]
[[Ambient Water Quality Guidelines \(criteria\) for Turbidity and Suspended and Benthic Sediments](#)]

Receiving Environment

197. Many species have been identified in the Elk River, including the blue-listed Bull Trout and Cutthroat Trout (i.e., a species of concern), in the discharge area. The Elk River is adjacent to agricultural land, is accessible to animals, and could reasonably be used as a livestock water source.

[[Habitat Wizard](#)]
[[Elk River Streams Report](#)]
[[BC Species and Ecosystems Explorer](#)]

Tables

Table 1: Summary of bypass events from December 6, 2023, to December 18, 2025

Date	Volume (L)	Discharged to	DGIR
December 6 to 8, 2023	11,700,000	Elk River	234803
December 11 to 13, 2025	66,834,200	Elk River	254778
December 17 to 18, 2025	16,982,000	Elk River	254890

Table 2: Water quality results from untreated influent and the Elk River (upstream and downstream), from December 6, 2023, to December 19, 2025

Parameter	December 6, 2023			December 7, 2023			December 8, 2023			December 11, 2025 (10:10-10:20)		December 11, 2025 (09:15-9:40)			December 11, 2025 (15:45)	December 17, 2025 (11:05-11:30)			December 19, 2025 (8:55-09:10)	
										Dogwood Boat Launch		Mt. McLean Drive Lift Station			Facility Emergency Outfall					
	Influent	Up-stream	Down-stream	Influent	Up-stream	Down-stream	Influent	Up-stream	Down-stream	Up-stream	Down-stream	Influent	Up-stream	Down-stream	Up-stream	Influent	Up-stream	Down-stream	Influent (Marsh Area)	Down-stream
TSS (mg/L)	60.5	71.7	160	29.3	22.3	60.5	66.5	6.3	13.3	25.0	34.0	32.6	92.2	79.0	-	86.5	259.0	70.7	13.9	8.19
Fecal Coliforms (CFU/100 mL)	>200,000	85	600	407,000	16	1,800	>200,000	4	1,200	73	122	490,000	260	880	700	>200,000	62	3,400	11,000	1,700
E.coli (MPN/100 mL)	>242,000	102	649	-	-	-	-	-	-	59	71	242,000	114	613	190	>242,000	34	2,310	9,080	548

Bold > TSS Permit limit (60 mg/L) only applied to Influent samples
Red > Livestock-Use BC Water Quality Guideline (BC WQG), Fecal Coliforms: 200 CFU/100 mL; *E. coli*: 400 CFU/100 mL, only applied to Upstream and Downstream samples

Dated this 6th day of July, 2026.