



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

DETERMINATION OF ADMINISTRATIVE PENALTY

October 11, 2023

File: 2023-31
111550

Email: mark@deepwaterrecovery.com

Deep Water Recovery Ltd.
5804 Island Hwy S.,
Union Bay, BC V0R 3B0

Deep Water Recovery Ltd.
1500-570 Granville Street
Vancouver, BC V6C 3P1

Attention: Deep Water Recovery Ltd.

RE: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty issued to you on May 1, 2023, and your opportunity to be heard respecting the alleged contraventions, I have now made a Determination in this matter.

After reviewing the information available to me, I have concluded Deep Water Recovery Ltd. has failed to comply with Item 4 of Information Order 111550 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 778-622-6908 or Stephanie.Little@gov.bc.ca.

Sincerely,

Stephanie Little
for Director, *Environmental Management Act*

cc: Matt Beckett, Senior Environmental Protection Officer
Matt.Beckett@gov.bc.ca

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

COS.North.Island.Zone@gov.bc.ca



DETERMINATION OF ADMINISTRATIVE PENALTY

File: 2023-31

Name of Party:

Deep Water Recovery Ltd. (DWR)

AMOUNT OF ADMINISTRATIVE PENALTY:

\$500

Reasons for Decision:

I have considered all of the information submitted to me, including the written submission provided by DWR. My evaluation has included a consideration of the matters listed in Section 7(1) of the Administrative Penalties (EMA) Regulation, as applicable. Based on this assessment, I offer the following comments:

1. On January 23, 2023, the Ministry of Environment and Climate Change Strategy (Ministry) issued Information Order 111550 (Order) to DWR to determine if there were reasonable grounds for making a Pollution Prevention Order or Pollution Abatement Order related to the marine vessel dismantling and waste disposal operation being conducted by DWR at 5084 Island Highway South, Union Bay (Facility). An order under EMA is a tool used to manage risk to the environment, human health, or public safety when a response is required to quickly identify, prevent or stop those potential impacts. As such, the timely compliance with order requirements is crucial.
2. I note that prior to the issuance of the Order, DWR was inspected by Ministry staff on April 5, 2022 (Inspection Report (IR) 184988), August 17, 2022 (IR 193589) and October 27, 2022 (IR 199271). In all three inspections, the Ministry found DWR out of compliance with Section 6(2) of EMA for allowing waste to be introduced into the environment in the course of conducting a prescribed industry, trade or business. The outcome of these three inspections were Warnings of non-compliance.
3. Item 4 of the Order states:

“By April 15th, 2023, and by the 15th of each month thereafter a written report must be submitted to the Director which includes

- *All analytical results including both field and lab QAQC data;*
- *A summary of the monitoring results*
- *Precipitation data and summary for the month.*

The monthly reports must include an assessment of the results including a statement by a suitably qualified professional as to the environmental status of the effluent discharge and

any potential impacts that the effluent discharge may have or had on the receiving environment, including comparison to relevant standard and objectives.”

4. On April 28, 2023, the Ministry conducted a file review inspection of DWR’s ship breaking facility (Facility) located in Union Bay, BC (Facility) to assess compliance with the requirements of the Order. On April 28, 2023, the Ministry issued IR 205501, a Referral for an Administrative Penalty (AMP). DWR failed to meet the deadline for its first monthly monitoring and assessment report submission and/or failed to request an extension prior to the deadline. The timely submission of these monthly assessments is critical to the Ministry to determine whether it needs to further intervene at the Facility to prevent or abate pollution, and as such, is considered a significant administrative requirement.
5. On May 1, 2023, the Ministry issued a Notice Prior to Determination of Administrative Penalty (Notice) to DWR via email. In the Notice, DWR was offered an Opportunity to be Heard (OTBH) and given thirty (30) days to request an OTBH.
6. On May 2, 2023, DWR confirmed receipt of the Notice via email.
7. On May 19, 2023, the Ministry emailed DWR a courtesy reminder of the upcoming due date (June 1, 2023) to request an OTBH.
8. On May 19, 2023, DWR requested an OTBH.
9. On May 25, 2023, the Ministry acknowledged DWR’s request for an OTBH and confirmed the OTBH would be by written submission and set a due date of June 26, 2023.
10. On June 19, 2023, the Ministry emailed DWR a courtesy reminder of the upcoming due date (June 26, 2023) to submit their OTBH.
11. On June 23, 2023, DWR submitted their OTBH to the Ministry.
12. On June 23, 2023, the Ministry gave an extension and set a new due of July 24, 2023.
13. On July 17, 2023, the Ministry emailed DWR a courtesy reminder of the upcoming due date (July 24, 2023) to submit their OTBH.
14. On July 24, 2023, DWR submitted their updated OTBH to the Ministry.
15. In the OTBH submission, DWR did not refute that the failure to comply with Item 4 occurred. DWR asserted that the submission was late as *“there had been a lack of rain preventing the testing to be performed”* and acknowledged that an extension should have been requested.
16. DWR requested in the OTBH that this penalty be withdrawn, citing *“MoE policy”* that a warning should be issued first and *“particularly in circumstances where the matter is not serious or impactful”*.

17. Although the “MoE Policy” was not specifically named, or a reference to their rationale provided, I have considered the [Ministry of Environment & Climate Change Strategy Compliance & Enforcement Policy and Procedure](#) (C&E Policy) in making this Final Determination. This policy is used by officers when conducting inspections and determining which tool to use to address non-compliance. Officers apply the Non-Compliance Decision Matrix (NCDM) (Chapter 4) to guide this decision.
18. I note that in IR 205501, the inspecting officer assessed DWR as a Level 2, Category B on the NCDM. This aligns with a level description of “significant administrative non-compliance” and a category description of “Few previous occurrences of non-compliance; and/or Questionable awareness of and/or capacity to meet regulatory requirement”. An NCDM assessment of 2/B gives the officer a choice of a warning or AMP. When preparing the Notice, the IR, NCDM assessment, and supporting evidence (late submission of the report) was reviewed. I concur with the 2/B assessment and find that a non-compliance with the Order requirement is a significant administrative non-compliance. I also concur that DWR demonstrated questionable awareness of the requirement and has previous occurrences of non-compliance.
19. The C&E policy does not require that a Warning must be issued prior to administrative penalty. The NCDM Level and Category assessment provides options available. I further note that the C&E policy does not restrict an officer to only consider non-compliances with the exact same requirement when assessing the category, and as such, DWR has a history that includes three previous warnings.
20. Although not provided by DWR in the OTBH, during the preparation of this Final Determination I became aware of subsequent inspections of the same requirement on June 30, 2023, July 17, 2023, August 16, 2023, and September 18, 2023. All of these inspections found DWR in compliance (or not applicable) with Item 4, demonstrating that DWR has undertaken efforts to prevent reoccurrence of this non-compliance. This is recognized with a reduction under factor i) as detailed in the table below.
21. Given all the information presented to me, the Final Penalty Assessment has been updated from the Notice Prior to Determination in the ways listed in the following table.

Contravention or Failure:	<p>Failure to comply with Item 4. of Information Order 111550</p> <p>By April 15th, 2023, and by the 15th of each month thereafter a written report must be submitted to the Director which includes</p> <ul style="list-style-type: none"> • All analytical results including both field and lab QAQC data; • A summary of the monitoring results • Precipitation data and summary for the month. <p>The monthly reports must include an assessment of the results including a statement by a suitably qualified</p>
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	professional as to the environmental status of the effluent discharge and any potential impacts that the effluent discharge may have or had on the receiving environment, including comparison to relevant standard and objectives.	
Date of Contravention:	April 16, 2023	
Final Penalty Assessment:	\$500	
Factor	Consideration	Amount
(a) Nature of contravention or failure	Minor	\$1,000
(b) Actual or potential for adverse effect	Low to None	
(c) Previous contraventions or failures, AP's imposed, or orders issued	No additional considerations	\$0
(d) Whether contravention or failure was repeated or continuous	No additional considerations	\$0
(e) Whether contravention or failure was deliberate	No additional considerations	\$0
(f) Economic benefit derived by the party from the contravention or failure	No additional considerations	\$0
(g) Exercise of due diligence to prevent the contravention or failure	No additional considerations	\$0
(h) Efforts to correct the contravention or failure	IR 205501 acknowledges the late receipt of the required data on April 27, 2023. A ten percent reduction from the base penalty is applied for this effort to correct the failure	- \$100
(i) Efforts to prevent reoccurrence of the contravention or failure	A forty percent reduction from the base penalty is applied for future instances of compliance determined in IRs dated June 30, 2023, July 17, 2023, August 16, 2023, and September 18, 2023.	- \$400
(j) Any additional factors that are relevant	No additional considerations	\$0

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:

Attn: Fees Analyst
Ministry of Environment and Climate Change Strategy
PO Box 9377 Stn Prov Govt
Victoria, BC V8W 9M6

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://nrcead.gov.bc.ca/>

Dated this 11th day of October, 2023.