



MINISTRY OF ENVIRONMENT AND PARKS  
COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

**DETERMINATION OF ADMINISTRATIVE PENALTY**

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July 17, 2025

File: 2024-76  
112057

Email: [mark@deepwaterrecovery.com](mailto:mark@deepwaterrecovery.com), [GWalker@blg.com](mailto:GWalker@blg.com), [MCollins@blg.com](mailto:MCollins@blg.com)

Deep Water Recovery Ltd.  
5084 Island Hwy S.,  
Union Bay, BC V0R 3B0

Deep Water Recovery Ltd.  
1420-400 Burrard Street  
Vancouver, BC V6C 3A6

Attention: Deep Water Recovery Ltd.

**RE: Determination of Administrative Penalty**

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Further to the Notice Prior to Determination of Administrative Penalty issued to you on April 10, 2025, and your opportunity to be heard respecting the alleged contraventions, I have now made a Determination in this matter.

After reviewing the information available to me, I have concluded that Deep Water Recovery Ltd. has failed to comply with Requirements 1 and 4 of Pollution Abatement Order 112057, in respect of which an administrative penalty is being imposed pursuant to Section 115 of the *Environmental Management Act* ("EMA") and the Administrative Penalties (EMA) Regulation. The amount of the penalty, reasons for my decision, payment, and appeal information are provided in the attached decision document.

If you have any questions with regards to this Determination, please contact me at 250-312-7179 or [Jason.Bourgeois@gov.bc.ca](mailto:Jason.Bourgeois@gov.bc.ca).

Sincerely,

Jason Bourgeois  
for Director, *Environmental Management Act*

Attachments:

2025-04-10 2024-76 Penalty Assessment Form

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

Kyle Lynch, Environmental Protection Officer  
[Kyle.Lynch@gov.bc.ca](mailto:Kyle.Lynch@gov.bc.ca)

Nadine Schwager, Environmental Protection Technician  
[Nadine.Schwager@gov.bc.ca](mailto:Nadine.Schwager@gov.bc.ca)

Brady Nelles, Executive Director, Compliance & Environmental Enforcement  
[Brady.Nelles@gov.bc.ca](mailto:Brady.Nelles@gov.bc.ca)

[COS Zone Mailbox](#)

## DETERMINATION OF ADMINISTRATIVE PENALTY

FILE: 2024-75

### Name of Party:

Deep Water Recovery Ltd.

### Contravention or Failure:

#### AMOUNT OF ADMINISTRATIVE PENALTY:

2024-75a: \$51,000

2024-75b: \$21,050

**TOTAL: \$72,050**

#### A. Failure to comply with Pollution Abatement Order 112057 Requirement 1:

Immediately cease the release or discharge of effluent with concentrations of copper, lead and zinc above [BC Water Quality Guideline] levels to the environment.

#### B. Failure to comply with Pollution Abatement Order 112057 Requirement 4:

Implement the approved [Effluent Sampling and Management Plan] on a date to be specified in writing by the Director.

### Date of Contravention or Failure:

A. Requirement 1: November 16, 2024, November 25, 2024 and December 28, 2024

#### B. Requirement 4:

- December 1, 2024 (month of November 2024) - 2024 Sampling Plan, inspections and sampling
- February 1, 2025 (month January 2025) - 2024 Sampling Plan, inspections and sampling
- March 1, 2025 (month of February 2025) - 2024 Sampling Plan, inspections and sampling
- December 16, 2024 to February 14, 2025 - 2024 Treatment Plan, water treatment system
- November 9, 2024 to February 28, 2025 - 2024 Treatment Plan, cover stockpile

### Directors Summary:

1. Deep Water Recovery Ltd. ("DWR") is a marine maintenance and recycling company registered in British Columbia ("BC"). Since 2019, DWR has operated a marine vessel dismantling and waste disposal facility at 5084 Island Highway South, Union Bay, BC ("Facility").
2. On March 15, 2024, the BC Ministry of Environment and Parks ("Ministry") issued Pollution Abatement Order 112057 ("PAO") to DWR, issued under the *Environmental Management Act*, S.B.C. 2003, c. 53 ("EMA").

3. Part of the grounds to issue the PAO stated:

*“The information provided as required by [Information Order] 111550 originally issued January 23, 2023, reported exceedances of [BC Water Quality Guidelines (BCWQG)] for turbidity, total suspended solids, total copper, total iron, total zinc, and/or benzo(a)pyrene in Sump discharge water at every sampling event completed to date. Further, 96-hour toxicity/lethality test results failed in January 2024. Concentrations of the above-noted parameters in samples collected upgradient of the Sumps and therefore, representative of the background concentrations, exceed only the BC WQG for total copper and were measured at lower concentrations than those consistently measured in the Sumps.*

*Based on the foregoing, I am satisfied on reasonable grounds that the above-described activities or operations are being performed in a manner that is causing “pollution” as defined by the EMA.”*

4. The PAO was amended on July 12, 2024 (“2024 PAO Amendment”). The 2024 PAO Amendment is the subject of this administrative penalty (“AMP”). The PAO was also subsequently amended on May 6, 2025; however, that amendment is not applicable to this AMP.
5. This AMP assessment is for November 9, 2024 to March 1, 2025, when DWR failed to comply with Requirements 1 and 4 of the 2024 PAO Amendment.
6. On December 5, 2024, January 14, 2025, February 28, 2025, and March 19, 2025 the Ministry conducted inspections of the Facility to verify compliance with the 2024 PAO Amendment. These inspections resulted in the Ministry issuing Inspection Report (“IR”) 236755, IR 238061, IR 238568 and IR 240675 to DWR and finding it out of compliance with Requirement 4. In IR 238061 and IR 238568, DWR was also found out of compliance with Requirement 1. The outcomes for IR 236755, IR 238061, IR 238568 and IR 240675 were determined to be Referrals for an AMP.
7. On April 10, 2025, the Ministry issued a Notice Prior to Determination of Administrative Penalty (“Notice”) and accompanying Penalty Assessment Form (“PAF”) to DWR via email. The Notice recommended two penalties:
  - 2024-75a: \$57,000 for failure to comply with Requirement 1 of the 2024 PAO Amendment on November 16, 2024, November 25, 2024, and December 28, 2024
  - 2024-75b: \$22,550 for failure to comply with Requirement 4 of the 2024 PAO Amendment between November 9, 2024 and March 1, 2025
8. In the Notice, DWR was offered an Opportunity to be Heard (“OTBH”) and given thirty (30) days to request an OTBH.
9. On June 19, 2025, DWR provided the OTBH submission (“OTBH Submission”) to the Ministry.

## Reasons for Decision:

10. In making this Determination of Administrative Penalty (“Determination”), I have considered all of the information available to me, including the OTBH Submission provided by DWR. In reaching this Determination, I have carefully considered all the arguments, relevant documents, evidence, and submissions before me, whether or not they are specifically referred to. My reasons for decision include a consideration of the failures as well as the matters listed in Section 7(1) of the Administrative Penalties (EMA) Regulation (“APR”), as applicable.
11. The “Ministry of Environment and Climate Change Strategy, Administrative Penalties Handbook – *Environmental Management Act* and *Integrated Pest Management Act*” (“AMP Handbook”) provides high level guidance to Ministry staff considering the assignment of administrative penalties. Statutory Decision Makers consider, and decisions are informed by, this document. I have considered the AMP Handbook in making this Determination.
12. Considering the AMP Handbook in making my Determination is consistent with the Environmental Appeal Board’s (“EAB”) findings in *United Concrete & Gravel Ltd. v Director, Environmental Management Act* (Decision No. EAB-EMA-21-A005(a), September 27, 2021)<sup>1</sup>, 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.”*

13. DWR disputes the issuance of a penalty in relation to the PAO. At pages 1-2 of the OTBH Submission, it stated:

*“DWR strenuously objects to the issuance of the Penalty in relation to the PAO. As the Ministry knows, DWR has appealed the initial PAO to the Environmental Appeal Board (the ‘EAB’) (EAB File: EAB-EMA-24-A014) (the ‘PAO Appeal’), the amendment to the PAO dated May 6, 2025 (EAB File: EAB-EMA-25-A014) and another Administrative Monetary Penalty issued in relation to an alleged contravention of the PAO, EAB-EMA-25-G001. It is unduly punitive for the Ministry to issue a penalty related to the PAO, when it is well aware that the PAO is under appeal and that DWR is taking every measure possible to comply with the PAO and cooperate with the Ministry on a without prejudice basis. Further, in the event that DWR is successful on appeal, any Administrative Monetary Penalties issued under the PAO should be cancelled, rendering the Penalty redundant and a waste of DWR and the Ministry’s resources.”*

14. I agree with DWR that it currently has an appeal before the EAB (EAB-EMA-24-A014) regarding the PAO. DWR applied for a stay of the PAO pending the outcome of EAB-EMA-24-A014. On June 7, 2024, the EAB denied the stay application and the appeal of the PAO is still in progress.

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

15. I further agree with DWR that it currently has another appeal before the EAB (EAB-EMA-25-G001) regarding previous AMPs 2024-42 and 2024-43, both issued December 16, 2024. That appeal is still in progress.
16. I did not issue the PAO to DWR and cannot comment on that matter before the EAB. I do find that the Director was satisfied on reasonable grounds that DWR's activities at the Facility were causing pollution, and the PAO was issued in response. I find that a Pollution Abatement Order under Section 83 of EMA is one of the Ministry's most powerful tools to intervene in activities where waste poses a risk to the environment, human health or public safety.
17. Assessing compliance with a Pollution Abatement Order is a priority for the Ministry and any non-compliance will be addressed in a timely manner. DWR starting an appeal, with its incumbent lengthy process to hear and decide, does not operate to waive its obligations under the PAO or pause any appropriate Ministry compliance and enforcement response. I see no reason to defer this Determination pending the EAB's decision on the PAO appeal, especially within the context that the PAO is still active and DWR must meet additional current and future requirements.
18. The detailed reasons for decision are provided in the penalty calculation(s) below.

## **PENALTY CALCULATION**

**FILE: 2024-75a**

### **2024 PAO Amendment Requirement 1**

#### **The Contravention or Failure:**

19. I find that the Facility is a marine vessel dismantling and waste disposal operation where DWR commercially collects, handles, stores, destroys and/or disposes of vessels and barges in order to recycle waste solids. Activities at the Facility include storage of large amounts of waste materials.
20. Activities at the Facility fall within the scope of commercial waste management or waste disposal. Therefore, all waste discharges into the environment from the Facility must be authorized by the Ministry. DWR was never authorized, under EMA, to discharge any waste from the Facility to the environment.
21. There are two definitions in Section 1 of EMA that are key to this AMP assessment:
 

**“waste”** includes... *“(c) effluent”*; and,

**“effluent”** means *“a substance that is introduced into water or onto land and that*

...

*(b) injures or is capable of injuring property or any life form,*

...

*(f) damages or is capable of damaging the environment;”*
22. The surfaces at the Facility include a combination of open gravel, beach front, and asphalt. There are three unlined collection basins or “sumps” that collect surface run off and effluent. The asphalt area of the Facility is designed so it directs run off and effluent to

Sumps 1 and 3. The gravel area drains to Union Bay and Sump 2. At the time of the failures, there was no treatment system in place at the Facility.

23. On March 15, 2024, DWR was ordered with Requirement 1 of the PAO to *“Immediately cease the release or discharge of effluent with concentrations of Copper, Lead and Zinc above BCWQG levels to the environment.”* Requirement 1 was not changed when the 2024 PAO Amendment was issued on July 12, 2024.
24. On November 16, 2024, DWR failed to comply with Requirement 1 of the 2024 PAO Amendment by releasing or discharging effluent from the sumps at the Facility with concentrations of copper and zinc above BC Water Quality Guideline (“BC WQG”) levels to the environment. Copper exceedances ranged from 167% to 333% over the Short-term Acute BC WQG and 300% to 550% over the Long-term Chronic BC WQG. Zinc exceedances ranged from 351% over the Short-term Acute BC WQG at Sump 2 and 10% to 2,380% over the Long-term Chronic BC WQG.
25. On November 25, 2024, DWR failed to comply with Requirement 1 of the 2024 PAO Amendment by releasing or discharging effluent from the sumps at the Facility with concentrations of copper, lead and zinc above BC WQG levels to the environment. Copper exceedances ranged from 233% to 1,033% over the Short-term Acute BC WQG and 400% to 1,600% over the Long-term Chronic BC WQG. Zinc exceedances ranged from 35% to 411% over the Short-term Acute BC WQG and 80% to 2,710% over the Long-term Chronic BC WQG.
26. On December 28, 2024, DWR failed to comply with Requirement 1 of the 2024 PAO Amendment by releasing or discharging effluent from the sumps at the Facility with concentrations of copper, lead and zinc above BC WQG levels to the environment. Copper exceedances ranged from 367% to 533% over the Short-term Acute BC WQG and 600% to 850% over the Long-term Chronic BC WQG. Zinc exceedances ranged from 5% to 162% over the Short-term Acute BC WQG and 200% to 1,340% over the Long-term Chronic BC WQG.
27. DWR disputes that it is the source of exceedances of the BC WQGs. At page 2 of the OTBH Submission, it stated:

*“The Ministry says that DWR’s operations are the source of the observed exceedance. However, this finding is based on flawed testing. The Ministry’s reasoning for the PAO was founded in samples collected in the ‘background North Creek sample location’, forming the ‘background concentrations’ upon which the alleged exceedances are measured. This North Creek sample location is located off and to the north of the Property, a substantial distance from the Facility. The North Creek contains surface water runoff from the highway and areas north of the Property and does not flow or drain onto the Facility. For these reasons, the North Creek is not representative of actual surface water or groundwater conditions on the Property.*

*Tsolum & Tsable Occupational Health & Safety Ltd. (‘T&T OHS’) has recently installed a number of new monitoring wells at the Property, including at locations where surface runoff and groundwater first comes into contact with the wells before flowing to or under (in the case of groundwater) the Facility and eventually into the Sumps. DWR submits that the*

*results from these monitoring wells are true and accurate representative background baseline samples to which the results from the Sumps should be compared. The sampling results for March and May 2025 (with comparison to sampling results from the Sumps and North Creek) are attached to these submissions as **Schedule 'A'**. For the purposes of interpreting these results, 'PW' refers to surface samples and 'MW' refers to the new monitoring wells. Accordingly, the results show that the concentrations in surface water and ground water upgradient from the Facility are consistent with the water discharged from the Sumps.*

*The Ministry itself, as represented by [Environmental Protection Officers] (the '**Officers**'), has acknowledged that the North Creek is an inappropriate background sample. During a site visit on March 28, 2025, T&T OHS expressed concern about the North Creek as a background sample to the Officers. The Officers agreed with these concerns and the need to select a new background sampling area. The Ministry's failure to select an appropriate testing site from which to measure the background baseline levels of concentrations is a fundamental failure in the causal reasoning and premise for the Penalty. The Ministry's failure to select an appropriate testing site from which to measure the background levels of concentrations is a fundamental failure in the causal reasoning of the PAO and the Penalty, as it relates to Requirement 1. As a result of this failure, the Ministry's testing does not conclusively show that DWR is a source of any pollution, effluent or otherwise. Without this evidence, the validity of the PAO and the Penalty as it relates to Requirement 1 is impugned and should not be enforced against DWR."*

28. Based on the information provided by DWR in the OTBH Submission, I am unable to conclude which of the new monitoring wells it intends to rely on as indicative of background water quality at the Facility. Further, DWR has not provided any information on the depths below ground surface where the groundwater samples were collected (i.e., screened depth), and whether the "MW" sampling results from May 20 and 21, 2025 are representative of shallow or deeper groundwater. In contrast however, the "PW" samples were collected from surface water at the Facility on March 9, 2025 and do have concentrations of copper, lead and zinc above BC WQGs.
29. DWR submits that Ministry officers "agreed with...the need to select a new background sampling area" and that "North Creek is an inappropriate background sample." However, I have reviewed IR 241941, from the March 28, 2025 inspection. In the Details/Findings for Requirement 1, the Ministry stated "*North Creek is a reference sampling point for surface water discharges upslope of the Facility. It does not flow onto the Facility and is not the origin of water that discharges from the Facility.*" Based on the information before me, I find no indication in any of the subsequent reports that this is not an appropriate background location and the amended PAO still requires this as the location to be sampled.
30. At pages 2-3 of the OTBH Submission, DWR further stated:

*"Moreover, due to the long history of industrial activities in the Baines Sound/Union Bay region, the environment of Baines Sound is, as the Ministry is well aware, historically contaminated. The DWR property itself, again, as the Ministry is aware, is the location of a historic coal pile as well as a historic log sort waste pile. DWR refers the Ministry to the Union Bay coal pile sites (which the Ministry has been actively involved with over the years) and several supporting environmental reports prepared by third parties, including*

*those by Seacor Environmental Inc., which analyses the property to the south of DWR which describe the historical contamination. The historic contamination means that regardless of DWR's operations, the rainwater runoff from the property will contain contaminants. Sample results from the sumps reveal exceedances of certain British Columbia Water Quality Guidelines (the 'BCWQG') even when DWR has not conducted operations for many months. The indisputable fact is that sample results would exceed some BCWQG parameters for certain substances even if DWR were to cease operations entirely. DWR should not be penalized for the pre-existing condition of its property (caused by third parties) when its operations are clearly not the source of substances entering the environment. This submission is further supported by the sworn affidavit testimony of Darryl Stowe of Envirochem Services Inc., made and submitted with respect to DWR's above-noted PAO Appeal.*

*DWR must additionally formally object to the Ministry's focus solely on the DWR property in light of the widespread, historic contamination in the larger Union Bay region which is apparently not garnering any attention or action from the Ministry. The contribution of any contamination to the environment from the DWR property as a result of surface water runoff is miniscule relative to the contribution from the adjacent lands and is overly punitive in that regard."*

31. DWR alleges that there is "widespread, historic contamination in the larger Union Bay region" and contamination of the environment from the Facility "is miniscule relative to the contribution from the adjacent lands".
32. I find that DWR has failed to provide any specific evidence to support these assertions that it is not discharging waste effluent into the environment, and I attribute little weight to them. The potential impacts of the waste effluent discharges from the Facility will be considered below in Factor b).
33. Further, any alleged contamination from adjacent lands in the area is not before me and not relevant to this Determination. This Determination is limited to the release or discharge of effluent with concentrations of copper, lead and zinc above BC WQG levels from the Facility into the environment, that occurred on November 16, November 25, and December 28, 2024. While Baynes Sound may be historically or currently impacted by other activities, the samples collected by the Ministry were not from Baynes Sound but from the effluent at the Facility that discharges to Baynes Sound.
34. On November 16, 2024, DWR failed to cease the release or discharge of effluent with concentrations of copper and zinc above BC WQG levels from the Facility into the environment. On November 25, 2024, DWR failed to cease the release or discharge of effluent with concentrations of copper, lead and zinc above BC WQG levels from the Facility into the environment. On December 28, 2024, DWR failed to cease the release or discharge of effluent with concentrations of copper, lead and zinc above BC WQG levels from the Facility into the environment. Further, I don't need to find that these discharges caused all the contamination in Baynes Sound, only that it contributed.
35. DWR disputes that it is conducting a prescribed industry. At pages 3-4 of the OTBH Submission, it stated:

*“As an overarching objection, the issue of whether DWR’s activities are a ‘prescribed industry’ under the Environmental Management Act, S.B.C. 2003, c. 53 (the ‘EMA’) is at issue to be decided in DWR’s ongoing appeals at the EAB. Accordingly, any determination on whether DWR is engaged in a prescribed industry, and is therefore capable of committing an unauthorized discharge, should be deferred pending the EAB’s determination of the issue.*

*DWR strongly disputes the Ministry’s characterization of its operations as a ‘prescribed industry’. The Ministry says at section 5 of the Penalty Assessment Form that the ‘commercial waste management or waste disposal industry’ is a prescribed industry under Waste Discharge Regulation, B.C. Reg. 320/2004 (the ‘WDR’). Further, at section 72 of the Penalty Assessment Form the Ministry concluded that activities conducted by DWR ‘fall within the scope of commercial waste management or waste disposal’.*

*DWR has consistently and repeatedly disagreed with and challenged the Ministry’s characterization of its operations and takes the position that its activities do not constitute commercial waste management or disposal and are, as such, not regulated under the WDR. Commercial waste management and waste disposal is defined in the WDR as ‘establishments primarily engaged in the commercial collection, handling, storage, treatment, destruction or disposal of waste soil, solids or liquids’ (emphasis added). While DWR does engage in vessel recycling, this is not the primary focus of its work. DWR instead primarily engages in vessel maintenance work, which is not defined as a prescribed industry in the WDR.*

*Further, to the extent that DWR’s operations focus on the disassembling of marine vessels (mostly unpowered barges) for the eventual sale of the steel materials, there is no legal authority to suggest that these activities fall within the definition of commercial waste management and waste disposal. DWR does not dispose of waste soil, solids, or liquids. It does not dispose of anything. From time to time, DWR recycles valuable steel. As explained above, DWR has not engaged in frequent vessel recycling since 2024, and instead has primarily conducted vessel maintenance.*

*As it is not engaged in a prescribed industry, DWR has not contravened Requirement 1, regardless of any exceedance the Ministry may have observed. Because DWR has not breached Requirement 1, it should not be subject to the first portion of the Penalty, totalling \$57,000. This is obviously a fundamental and threshold issue which DWR expects the Ministry to acknowledge.”*

36. I agree with DWR that it currently has appeal EAB-EMA-24-A014 before the EAB regarding the Facility. However, that appeal is limited to the PAO and does not focus on whether the Facility is part of the “commercial waste management or waste disposal industry” and thus a prescribed industry under Schedule 1 of the Waste Discharge Regulation (“WDR”). I find that in DWR’s Notice of Appeal of the PAO, dated April 12, 2024, it only once briefly mentions a “disagreement” on the issue at para. 17:

*“Despite a disagreement between Deep Water and the Ministry regarding whether Deep Water’s activities are a regulated industry under the EMA, and Deep Water’s position that no effluent or waste is created as a result of his activities at the Facility, Deep Water agreed*

*to cooperate with the Ministry by submitting sampling results pursuant to Information Order No. 111550...”*

37. Further, DWR applied for a stay of the PAO pending the outcome of EAB-EMA-24-A014. On June 7, 2024, the EAB denied the stay application and the appeal of the PAO is still in progress. I find that DWR’s appeal on the PAO is not relevant to AMP 2024-75, the stay was denied, and I see no reason to defer this Determination pending the EAB’s decision on the PAO appeal.

38. DWR submits that if I persist in an *“erroneous classification of DWR’s operations, an appeal may be unavoidable.”* I do not consider my classification erroneous, and I find it aligns with the conclusion of several other Ministry Officers and Directors that has been previously shared with DWR. For example, in the December 5, 2023 letter where DWR’s application for a waste discharge authorization under EMA was refused on the basis of insufficient information, the Director stated:

*“Although the current application has been refused, you are encouraged to reapply should your operations continue to be prescribed under the Waste Discharge Regulation. Please note that commercial waste management activities require authorization to discharge effluent into the environment per section 6(2) of EMA. This includes stormwater discharges and discharges from intermittent operations.”*

39. I find that DWR simply does not agree with the Ministry’s clearly articulated position on how its activities at the Facility are regulated under EMA. DWR has every right to appeal any Ministry decision to the EAB should it desire.

40. DWR disputes that it discharges waste or effluent. At page 4 of the OTBH Submission, it stated:

*“Additionally, DWR takes issue with the Ministry’s contention at sections 79 to 81 of the Penalty Assessment Form that it allows or causes ‘waste’ or ‘effluent’ to be introduced into the environment. Under the EMA, ‘waste’ is defined, amongst other things, as ‘effluent’, which is further defined as a ‘substance that is introduced into water or onto land and that injures, or is capable of injuring, the environment’. This definition implies some form of active discharge of material, which is simply not the case with respect to DWR’s operations. The alleged ‘effluent’ at DWR’s property consists of rainwater and surface water runoff, which DWR has no active role in creating. The fact that stormwater and surface runoff water come into contact with the materials present at the Site does not fulfill this active requirement. As such, the surface runoff should not be characterized as ‘effluent’ and should not contravene the EMA.”*

41. I disagree with DWR that the definition of effluent in EMA necessarily *“implies some form of active discharge of material”*. I find that *“a substance that is introduced into water or onto land”*, could mean either active introduction from point sources, or passive introduction from non-point sources.

42. I find that stormwater and surface water runoff at the Facility is impacted (i.e., contact water) by DWR’s commercial waste management activities, including marine vessel dismantling, waste materials storage, barge maintenance and recycling. I find that the

definitions of “waste” and “effluent” in EMA are broad enough to include this contact water.

43. My reasons for decision will address each factor individually. My considerations under Section 7(1) of the APR are as follows:

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

44. The PAF shared at Notice proposed that the failures were major.
45. DWR disputes the characterization of the failure as major. At page 6 of the OTBH Submission, it stated:

*“DWR says that any contravention is ‘minor’ when objectively considering all the facts and circumstances. On page 24, section a), the Ministry characterizes DWR’s alleged contravention as ‘major’. It describes the criteria for a major contravention as where there is an actual or very significant threat to the environment caused by the discharge. However, at section b), the Ministry states that the risk for an adverse effect is ‘medium’. Characterizing the contravention as ‘major’, yet the risk as ‘medium’ is inconsistent with the criteria set out in the Ministry’s Administrative Monetary Penalty Handbook and the Penalty must be lowered to reflect the lowered risk.*

*Moreover, Administrative Monetary Penalties are intended to be proportionate to the nature of the offence and the harm caused, and as such the characterization of the contravention as ‘major’ is not appropriate given the impossibility of prevention. As explained above, the alleged contraventions were not caused by DWR (they are not the result of anything DWR did or did not do), but rather the fact that the entire Union Bay region is historically contaminated. Even with warning, DWR could not have reasonably prevented the surface water runoff from accruing and discharging into the environment. Due to DWR’s lack of culpability, the contravention should be characterized as minor.”*

46. I have considered the AMP Handbook which describes a major nature of failure as “*the most serious compliance issues that by their nature can result in an actual significant impact or very serious threat to the environment or to human health or where non-compliance undermines the basic integrity of the overarching regulatory regime and significantly interferes with the Ministry’s capacity to regulate.*” Examples of “major” contraventions in the AMP Handbook, include “*an unauthorized discharge*” and “*exceeding a discharge limit by a significant magnitude (50-100%+)*”.
47. I have also considered the AMP Handbook which describes a minor nature of failure as “*generally, refers to non-compliance with administrative requirements such as not providing reports within legislated timeframes; not supplying information at the request of the Ministry; keeping inadequate records.*”
48. DWR failed to immediately cease the release or discharge of effluent with concentrations of copper, lead and zinc above the BC WQGs to the environment, as required by Requirement 1. I find that this non-compliance undermines the basic integrity of the overarching regulatory regime and significantly interferes with the Ministry’s capacity to regulate.

49. The nature of the failure, assessed at Notice as major, should not be confused with the actual or potential adverse effects, assessed at Notice as medium. While these two factors are somewhat linked, they represent two different assessments. Factor a) here deals with the nature of the failure, or as stated in the AMP Handbook, the “*regulatory importance of compliance for the protection of the environment and/or human health*”.
50. The discharge of effluent impacted by high concentrations of copper, lead and zinc from the Facility into the environment, including Baynes Sound, can result in a very serious threat to the environment.
51. The characteristics of the unauthorized discharges further supports my finding of a major contravention. Characteristics of leachate discharged from the Facility may be compared to BC WQGs and can indicate the potential for adverse impacts to the environment as a result of the introduction of this waste. Copper exceedances ranged from 167% to 1,033% over the Short-term Acute BC WQG and 300% to 1,600% over the Long-term Chronic BC WQG. Zinc exceedances ranged from 5% to 411% over the Short-term Acute BC WQG and 10% to 2,710% over the Long-term Chronic BC WQG. The risk of harm to the environment will be considered in more detail below in Factor b).
52. After considering the relevant information above, I confirm the failure is major.

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

53. 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.
54. The PAF shared at Notice proposed that the failures were medium.
55. DWR disputes the use of BC WQGs. At pages 5-6 of the OTBH Submission, it stated:  
  
*“At section 11, the Ministry references the BCWQG, which it says, ‘represent safe levels of substances that protect different water uses’. Despite the Ministry’s use of the BCWQG to guide its operations, the BCWQG are not legally enforceable. The BCWQG represent guidelines which are not responsive to the full historical context of sites and can not, at law, be used to determine contraventions of the EMA. Furthermore, there is absolutely no actual scientific evidence of any harm or impact to the environment as a result of DWR’s operations [emphasis added]. With respect, it is not sufficient to simply imply that there is harm as the basis for issuing a significant Penalty.”*
56. While I agree with DWR that BC WQGs are not legally enforceable on their own, I find that they can indicate the potential for adverse impacts to the environment as a result of the release or discharge of waste effluent from the Facility into the environment. Exceedances in the effluent samples from the Facility ranged from 5% to 2,710% over the BC WQGs including copper, lead and zinc. Copper produces lethal effects as well as disruptions to development, growth, egg production, feeding, respiration, and longevity. Lead can result in reduced growth and photosynthetic and respiration disruption in marine algae and can also lead to acute toxicity in marine invertebrates. Oysters are among the most sensitive marine

invertebrate species to zinc. Zinc can affect embryo development, shell development, and growth.

57. The Facility lies in Baynes Sound, a significant ecological area. Baynes Sound has been designated as an “Ecologically and Biologically Significant Area” and an “Important Bird Area.” In addition, Baynes Sound is an important herring spawning ground, a provincially-significant shellfish production area, and at least one salmon-bearing creek reaches Baynes Sound.
58. I find that the discharge of effluent impacted by high concentrations of copper, lead and zinc from the Facility into the environment, including Baynes Sound, can result in a very serious threat to the environment.
59. A Ministry Senior Environmental Impact Assessment (“EIA”) Biologist prepared a memorandum (“EIA Biologist Memorandum”) that concluded that the effluent discharged from the Facility has the potential to adversely affect the aquatic environment and is likely to affect one or more significant shellfish areas and salmon returning to at least one salmon-bearing creek. The EIA Biologist Memorandum recommended a potential adverse effect of medium to medium-high. Due to the ongoing nature of the discharge, the actual or potential for adverse effects have been assessed as medium-high.
60. DWR also reminds me that it has “*received substantial support from the DFO, and from other ministries such as ECCC.*” I find that all forms of recycling, including large scale marine vessels, are greatly beneficial to society and are encouraged at all levels of government. However, all recyclers must also comply with applicable legislation that may be in force and ensure that all activities are performed in a manner that is protective of the environment. DWR should be no different.
61. I have considered the AMP Handbook, which describes a medium actual or potential adverse effect as “*the contravention interferes with the Ministry’s capacity to protect the environment or human health, or has the potential to do so, but does not result in 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.*”
62. I have also considered the AMP Handbook which describes a low to none actual or potential adverse effect as “*the contravention does not result in an immediate adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.*”
63. Before I make this Determination, I must consider whether there is any evidence of real adverse effects on the environment. Under the AMP Handbook, I am guided to consider whether the real or potential adverse effects have a low to none, medium, or high classification. The AMP Handbook provides guidance that potential effects are an important consideration to factor into the gravity of the contravention although they may not be given the same weight as actual adverse effects. The Ministry's mandate is to prevent harm to the environment and human health, not wait to act until something bad has happened.
64. Evidence of actual effects is not necessary to assess Factor b). The assessment includes both actual or potential adverse effects. While the magnitude of the exceedances with the BC

WQGs is significant, the effect is still considered likely to be medium, as opposed to high. While there is a high potential for adverse effects on the environment, there is no evidence of actual adverse effects.

- 65. After considering the relevant information above, I confirm the failure is medium.
- 66. The base penalty is therefore confirmed at \$20,000.
- 67. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failure, and the OTBH Submission from DWR.

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

- 68. I am guided by the AMP Handbook for this factor, to consider DWR's compliance history. This factor could increase or decrease the penalty.
- 69. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$4,000) for DWR's previous contraventions and failures.
- 70. This factor was not disputed in the OTBH Submission.
- 71. On January 23, 2023, the Ministry issued Information Order 111550 ("IO") to DWR, which was cancelled on March 15, 2024. The IO will not be considered under this factor.
- 72. On October 11, 2023, DWR was issued AMP 2023-31 for \$500 for failure to comply with the IO. This AMP is currently under appeal to the EAB (EAB-EMA-23-A025) and will not be considered under this factor.
- 73. On March 15, 2024, the Ministry issued the PAO to DWR. This PAO is currently under appeal to the EAB (EAB-EMA-24-A014(a)) and will not be considered under this factor.
- 74. On December 12, 2024, the Ministry issued AMP 2024-43 to DWR for \$19,450 for failure to comply with Requirement 1 of the PAO on June 26, 2024. AMP 2024-43 is currently under appeal to the EAB (EAB-EMA-25-G001) and will not be considered under this factor.
- 75. On December 12, 2024, the Ministry issued AMP 2024-42 to DWR for \$26,700 for contraventions of Section 6(2) of EMA during the period of September 29, 2023 to February 1, 2024. AMP 2024-42 is currently under appeal to the EAB (EAB-EMA-25-G001) and will not be considered under this factor.
- 76. On May 6, 2025, the Ministry issued another amendment to the PAO. This amendment is currently under appeal to the EAB (EAB-EMA-25-A014) and will not be considered under this factor.
- 77. However, in the five years prior to the inspection period for IR 236755, DWR was issued a total of 12 Warning and AMP Referral IRs, which are considered previous contraventions and failures under this factor.

78. After considering the relevant information above, I confirm an increase of twenty percent of the base penalty (+ \$4,000) is applied for DWR's previous contraventions and failures.

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

79. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted DWR to the failures and the need to take action. If I am persuaded that DWR failed to take action, this factor could increase the penalty.
80. The PAF shared at Notice proposed no adjustment for this factor. Instead, a multiplier was proposed to account for the repeated nature of the three separate contraventions that occurred on November 16, November 25, and December 28, 2024.
81. This factor was not disputed in the OTBH Submission.
82. I find that the repeated nature of the three separate contraventions should have alerted DWR to the contraventions and DWR failed to take action. I find that a higher penalty is justified, and the use of a multiplier will be discussed below in the Multiplier Application section of this Determination.
83. After considering the relevant information above, I confirm that no increase is applied under this aggravating factor.

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

84. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that DWR deliberately failed to comply with PAO Requirement 1. If I am persuaded that DWR deliberately failed to comply with PAO Requirement 1, this factor could increase the penalty.
85. The PAF shared at Notice proposed no adjustment for this factor.
86. This factor was not disputed in the OTBH Submission.
87. DWR was aware that it was not authorized to discharge effluent with concentrations of copper, lead and zinc above BC WQG levels to the environment. On March 15, 2024, the Ministry issued the PAO and in June 2024, DWR was previously found out of compliance with Requirement 1.
88. As discussed below in Factor g), I will consider DWR's efforts that failed to ensure that it did not discharge effluent with concentrations of copper, lead and zinc above BC WQG levels to the environment. However, this does not rise to the level of being deliberate failures to comply.
89. After considering the relevant information above, I confirm no increase is applied under this factor.

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

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

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

94. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence that DWR took reasonable measures to prevent the failures. If I am persuaded that DWR took some reasonable measures to prevent the failures, this factor could decrease the penalty.
95. The PAF shared at Notice proposed no adjustment for this factor.
96. DWR submits that there should be a reduction for due diligence. At page 6 of the OTBH Submission, it stated:

*“At page 27, section g), the Ministry concludes that DWR has not exercised due diligence to prevent the contravention or failure. Accordingly, the Ministry has not made any reduction to the Requirement 1 Penalty. DWR strongly disputes this conclusion and says that the Requirement 1 Penalty should be significantly reduced, based on the efforts DWR has made to prevent exceedances at the Sumps. As described above, DWR is not the cause of the exceedances. Despite this, DWR has undertaken the time-intensive and costly exercise of developing and implement the Treatment Plan, which is now operations. As such, the Requirement 1 Penalty should reflect these efforts and be significantly reduced at section g).”*

97. In order to establish due diligence, DWR would have been expected to cease dismantling marine vessels and discharging waste effluent into the environment after it was warned in April 2022 (IR 184988). Despite that, in September 2022 (IR 193589) and December 2022 (IR 199271), it was warned and reminded again to reminded to cease the waste discharges until getting an active authorization in place for the Facility. On November 7, 2024, the 2024 Treatment Plan was approved. DWR was expected to implement the 2024 Treatment Plan immediately. Facility upgrades necessary to fully implement the 2024 Treatment Plan have not been completed and stockpiled materials have not yet been tarped to prevent leachate generation.
98. I have considered the AMP Handbook which states, *“the SDM must consider due diligence in deliberations on the quantum of the penalty and reduce the penalty if the person provides persuasive testimony or evidence that they exercised due diligence. The extent of the*

*reduction would depend on how compelling their evidence is and its weight relative to other factors the SDM must consider...*<sup>2</sup> [original emphasis]

99. For the purposes of considering due diligence in this Determination, I will only consider measures taken by DWR prior to November 16, 2024, when the failures to comply began. I note that in the OTBH Submission, DWR has provided much more detailed evidence on its efforts to prevent reoccurrence of the failures, which I will consider below in Factor i). These are efforts made by DWR after November 16, 2024, and after the failures began.
100. At the time of the Notice, I was not aware of any specific reasonable measures that DWR took to prevent the failures. Since then, in the OTBH Submission, DWR has provided additional evidence that it took some reasonable measures to prevent the failures.
101. I find that on October 31, 2024, DWR submitted the 2024 Treatment Plan. I further find that the purpose of 2024 Treatment Plan was to “*present a surface water diversion and treatment plan to direct point source discharges of stormwater from the [Facility], toward one discharge point so it can be readily treated to reduce Total Suspended Solids (TSS) and total and dissolved copper, lead, and zinc concentrations in water from that discharge point to satisfy the required criteria set-out in [the PAO] and to meet the [BCWQG] (Aquatic Life – Marine) for discharge to a marine environment.*”
102. However, as will be considered in greater detail further below in AMP 2024-75b, I find that DWR failed to fully implement the 2024 Treatment Plan, as required by Requirement 4.
103. After considering the relevant information above, including the OTBH Submission, I confirm a decrease of ten percent of the base penalty (- \$2,000) is an appropriate reduction for DWR’s efforts to prevent the failures to comply with Requirement 1.

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

104. I am guided by the AMP Handbook for this factor, to consider what DWR did **after** the failures to restore compliance or reverse or mitigate the impacts. If I am persuaded that DWR did take actions after the failures to restore compliance or reverse or mitigate the impacts, this factor could decrease the penalty.
105. The PAF shared at Notice proposed no adjustment for this factor.
106. This factor was not disputed in the OTBH Submission.
107. After considering the relevant information above, I confirm no decrease is applied under this factor.

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

108. I am guided by the AMP Handbook for this factor, to consider whether DWR has taken any action to avoid the failures happening again in the future. If I am persuaded that DWR has

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<sup>2</sup> AMP Handbook, p. 66

taken any action to avoid the failures happening again in the future, this factor could decrease the penalty.

109. The PAF shared at Notice proposed a decrease of twenty-five percent of the base penalty (- \$5,000) for efforts made to prevent the reoccurrence of the failures.

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

111. The water treatment system was installed late, by February 15, 2025. Despite the failures to comply with the 2024 PAO Amendment considered in this AMP assessment, DWR does continue to work with its Qualified Professionals and implement the Plan. However, Facility upgrades necessary to fully implement the 2024 Treatment Plan have not been completed. Stockpiled materials have not yet been tarped to prevent leachate generation.

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

**Factor j): Other**

113. 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.

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

115. DWR submits that additional relevant factors exist. At pages 6-7 of the OTBH Submission, it stated:

*“Furthermore, the Administrative Monetary Penalty Handbook states that where a party has been cooperative in providing evidence and allowing investigations, this ought to be rewarded with the reduction of a penalty. Despite taking issue with the Ministry’s characterization of DWR’s activities, DWR has provided years of sampling data to the Ministry, at considerable expense to DWR, and cooperated with Ministry investigations. DWR submits that in the circumstances, it has been cooperative with the Ministry, thus justifying a reduction in the amount of the Requirement 1 Penalty.”*

116. I disagree with DWR’s submissions on its level of cooperation. I find that DWR was warned and reminded three times in 2022 to cease the waste discharges until getting an active authorization in place for the Facility. In 2022, DWR submitted the 2022 Permit Application for a new authorization under EMA to discharge from the Facility. In 2023, the Ministry refused the application because DWR failed to provide sufficient information in a Final Application by the deadline provided.

117. Further, I find that the Ministry issued the IO to DWR in 2023. In 2023, DWR failed to comply with the IO and the Ministry issued AMP 2023-31 for \$500 for failure to comply. DWR appealed the \$500 AMP 2023-31 to the EAB. That appeal is currently in progress.

The Ministry issued the PAO to DWR in 2024. In 2024, DWR appealed the PAO to the EAB in a second appeal. In 2024, DWR unsuccessfully applied to the EAB to stay the PAO.

118. In 2024, DWR failed to comply with EMA and the Ministry issued AMP 2024-42 for \$26,700 for contravention of Section 6(2) of EMA. In 2024, DWR failed to comply with the PAO and the Ministry issued AMP 2024-43 for \$19,450 for failure to comply with Requirement 1. DWR appealed both AMPs 2024-42 and 2024-43 to the EAB. That appeal is currently in progress. Now, in 2025, DWR failed to comply with the 2024 PAO Amendment and I am making a Determination here on AMP 2024-75.

119. While I do not find that any of this warrants an increase in the penalty, I also find that it does not warrant any further decrease. In this Determination, I have considered DWR's efforts to "cooperate" and applied a twenty-five percent reduction in Factor i) efforts to prevent reoccurrence of the contravention or failure.

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

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

121. After determining a base penalty of \$20,000 for these failures and applying the mitigating and aggravating factors (- \$3,000) discussed above, the penalty is established at \$17,000, prior to determining the application of the daily multiplier.

**Multiplier Application:**

122. The PAF shared at Notice proposed the application of the multiplier for each failure.

123. The use of the multiplier was not disputed in the OTBH Submission.

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

<b>Factors to be considered in penalty calculation</b>	<b>Notice</b>	<b>Final Determination</b>
a) Nature of contravention or failure	major	major
b) Real or potential adverse effect	medium	medium
Base Penalty:	\$20,000	\$20,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$4,000	+ \$4,000
d) Whether contravention or failure was repeated or continuous	\$0	\$0
e) Whether contravention or failure was deliberate	\$0	\$0

f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
g) Exercise of due diligence to prevent the contravention or failure	\$0	- \$2,000
h) Efforts to correct the contravention or failure	\$0	\$0
i) Efforts to prevent reoccurrence of the contravention or failure	- \$5,000	- \$5,000
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j) Total Penalty Adjustments:</i>	- \$1,000	- \$3,000
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$19,000	\$17,000
Application of multiplier: Yes	3 x \$19,000	3 x \$17,000
<b>Final Penalty:</b>	\$57,000	\$51,000

## PENALTY CALCULATION

FILE: 2024-75b

### 2024 PAO Amendment Requirement 4

#### The Contravention or Failure:

125. On September 20, 2024, the Ministry approved the 2024 Sampling Plan part of the Plan and ordered DWR to implement it on October 1, 2024.

126. On November 7, 2024, the Ministry approved the 2024 Treatment Plan part of the Plan and ordered DWR to implement it on November 8, 2024.

127. On November 7, 2024, the Ministry ordered DWR to install the approved water treatment system by December 15, 2024.

128. On December 1, 2024, DWR failed to comply with Requirement 4, specifically by failing to fully implement the 2024 Sampling Plan, for the month of November 2024 by:

- failing to conduct twice weekly inspections Week 5 (8 missed)
- failing to conduct a foreshore inspection during the inspection Week 6 (1 missed)
- failing to conduct a second weekly inspection Week 6 (4 missed)
- failing to conduct foreshore inspections in Weeks 7 and 8 (4 missed)
- failing to analyze sufficient parameters and locations during the November 4, 2024 sampling event (Sump 2 and NC-HWY not sampled; Sump 1 and Sump 3 not analyzed for total suspended solids (“TSS”), light/heavy extractable petroleum hydrocarbons (“LEPH/HEPH”), polycyclic aromatic hydrocarbons (“PAHs”) or volatile organic compounds (“VOCs”)

129. On February 1, 2025, DWR failed to comply with Requirement 4, specifically by failing to fully implement the 2024 Sampling Plan, for the month of January 2025 by:

- failing to conduct a second weekly inspection Week 16 (4 missed); and,
- failing to conduct monthly sampling (4 missed).

130. On March 1, 2025, DWR failed to comply with Requirement 4, specifically by failing to fully implement the 2024 Sampling Plan, for the month of February 2025 by:

- failing to conduct a second weekly inspection Week 16 (4 missed); and,
- failing to conduct monthly sampling (4 missed).

131. Between December 16, 2024 and February 14, 2025, DWR failed to comply with Requirement 4, specifically by failing to fully implement the 2024 Treatment Plan and failing to install the approved water treatment system by December 15, 2024. The water treatment system was installed by February 15, 2025, followed by a two-week commissioning phase.

132. Between November 9, 2024 and February 28, 2025, DWR failed to comply with Requirement 4, specifically by failing to fully implement the 2024 Treatment Plan and failing to cover the stockpiled materials from the wood-waste berm.

133. My reasons for decision will address each factor individually. My considerations under Section 7(1) of the APR are as follows:

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

134. The PAF shared at Notice proposed that the failures were moderate.

135. DWR disputes the characterization of the failures as moderate. At page 7 of the OTBH Submission, it stated:

*“DWR says that any contravention is ‘minor’ when objectively considering all the facts and circumstances. On page 29, section a), the Ministry characterizes DWR’s alleged contravention as ‘moderate’. It describes the criteria for a moderate contravention as where there is a failure to perform required tasks or actions. For the reasons set out [in factor g], DWR disputes that it failed to carry out the Sampling Plan and that it made diligent efforts to implement the Plan by the prescribed deadline. As such, the alleged contravention should be characterized as ‘minor’, which is described in the Administrative Monetary Penalty Handbook as ‘non-compliance with administrative requirements’.”*

136. I have considered the AMP Handbook which describes a moderate nature of contravention as *“a failure to comply with operational requirements that at a minimum create risk of harm to the environment or human health and safety.”* Also included in the AMP Handbook description of a moderate nature of contravention are *“failure to perform required tasks or actions such as ... properly installing or maintaining equipment, constructing works or meeting operational standards or requirements; failure to conduct required sampling or studies; failure to undertake required monitoring; failure to develop or follow plans”*.

137. I have also considered the AMP Handbook which describes a minor nature of failure as *“generally, refers to non-compliance with administrative requirements such as not*

*providing reports within legislated timeframes; not supplying information at the request of the Ministry; keeping inadequate records.”*

138. The failure to conduct all required inspections and collect all required samples under the 2024 Sampling Plan impedes the Ministry’s capacity to regulate as the Ministry is unable to assess discharges against the 2024 PAO Amendment and EMA. The failure to fully implement the 2024 Treatment Plan has resulted in continued unauthorized discharge to the environment, that exceed the BC WQGs for copper, lead and zinc. DWR failed to install the water treatment system until February 15, 2025, approximately two months late. DWR failed to cover the stockpiled materials from the berm to prevent the generation of leachate. For these reasons, these operational requirement failures best meet the AMP Handbook’s definition of moderate.

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

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

140. 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.

141. The PAF shared at Notice proposed that the failures were medium.

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

143. The 2024 PAO Amendment requires implementation of both the 2024 Sampling Plan and 2024 Treatment Plan parts of the Plan to ensure that impacts to the environment are managed, monitored and mitigated. Not complying with this requirement undermines the basic integrity of the overarching regulatory regime and interferes with the Ministry’s capacity to protect the environment or human health.

144. The Facility lies in Baynes Sound, a significant ecological area. Baynes Sound has been designated as an “Ecologically and Biologically Significant Area” and an “Important Bird Area.” In addition, Baynes Sound is an important herring spawning ground, a provincially-significant shellfish production area and at least one salmon-bearing creek reaches Baynes Sound.

145. Sampled discharges over the same time period have shown concentrations of copper and zinc greater than BC WQGs. Copper produces lethal effects as well as disruptions to development, growth, egg production, feeding, respiration, and longevity. Oysters are among the most sensitive marine invertebrate species to zinc. Zinc can affect embryo development, shell development, and growth.

146. The EIA Biologist Memorandum concluded that the effluent discharged from the Facility has the potential to adversely affect the aquatic environment and is likely to affect one or more significant shellfish areas and salmon returning to at least one salmon-bearing creek. The EIA Biologist Memorandum recommended a potential adverse effect of medium to medium-high. While the quality of any unsampled discharges is unknown, the potential for adverse effects has been assessed as medium.

147. I have considered the AMP Handbook, which describes a medium actual or potential adverse effect as *“the contravention interferes with the Ministry’s capacity to protect the environment or human health, or has the potential to do so, but does not result in 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.”*
148. Before I make this Determination, I must consider whether there is any evidence of real adverse effects on the environment. Under the AMP Handbook, I am guided to consider whether the real or potential adverse effects have a low to none, medium, or high classification. The AMP Handbook provides guidance that potential effects are an important consideration to factor into the gravity of the contravention although they may not be given the same weight as actual adverse effects. The Ministry's mandate is to prevent harm to the environment and human health, not wait to act until something bad has happened.
149. Evidence of actual effects is not necessary to assess Factor b). The assessment includes both actual or potential adverse effects. While the magnitude of the exceedances with the BC WQGs is significant, the effect is still considered likely to be medium, as opposed to high. While there is a high potential for adverse effects on the environment, there is no evidence of actual adverse effects.
150. After considering the relevant information above, I confirm that the failures are medium.
151. The base penalty is therefore confirmed at \$10,000.
152. I will now address the application of the penalty adjustment factors that reflect the unique circumstances of this file, including what happened before, during, and after the failures, and the OTBH Submission from DWR.

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

153. I am guided by the AMP Handbook for this factor, to consider DWR’s compliance history. This factor could increase or decrease the penalty.
154. The PAF shared at Notice proposed an increase of twenty percent of the base penalty (+ \$2,000) for DWR’s previous contraventions and failures.
155. This factor was not disputed in the OTBH Submission.
156. On January 23, 2023, the Ministry issued the IO to DWR, which was cancelled on March 15, 2024. The IO will not be considered under this factor.
157. On October 11, 2023, DWR was issued AMP 2023-31 for \$500 for failure to comply with the IO. This AMP is currently under appeal to the EAB (EAB-EMA-23-A025) and will not be considered under this factor.
158. On March 15, 2024, the Ministry issued the PAO to DWR. This PAO is currently under appeal to the EAB (EAB-EMA-24-A014(a)) and will not be considered under this factor.

159. On December 12, 2024, the Ministry issued AMP 2024-43 to DWR for \$19,450 for failure to comply with Requirement 1 of the PAO on June 26, 2024. AMP 2024-43 is currently under appeal to the EAB (EAB-EMA-25-G001) and will not be considered under this factor.
160. On December 12, 2024, the Ministry issued AMP 2024-42 to DWR for \$26,700 for contraventions of Section 6(2) of EMA during the period of September 29, 2023 to February 1, 2024. AMP 2024-42 is currently under appeal to the EAB (EAB-EMA-25-G001) and will not be considered under this factor.
161. However, in the five years prior to the inspection period for IR 236755, DWR was issued a total of 12 Warning and AMP Referral IRs, which are considered previous contraventions and failures under this factor.
162. After considering the relevant information above, I confirm an increase of twenty percent of the base penalty (+ \$2,000) is applied for DWR's previous contraventions and failures.

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

163. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that the repeated or continuing nature of the failures should have alerted DWR to the failures and the need to take action. If I am persuaded that DWR failed to take action, this factor could increase the penalty.
164. The PAF shared at Notice proposed an increase of twenty-five percent of the base penalty (+ \$2,500) to account for the repeated and continuous nature of the failures.
165. DWR disputes the twenty-five percent increase. At page 7 of the OTBH Submission, it stated:
- “Additionally, the increase of 25% to the base penalty for alleged repeated contraventions is not appropriate due to the fact that DWR could not have feasibly carried out the Sampling Plan and Treatment Plan within the prescribed parameters.”*
166. The failure to implement the 2024 Sampling Plan was repeated in three months. The failure to implement the 2024 Treatment Plan regarding the water treatment system was continuous from December 16, 2024 to February 14, 2025 (61 days). The failure to implement the 2024 Treatment Plan regarding the stockpile covering was continuous from November 9, 2024 to February 28, 2025 (112 days). Despite DWR's submissions, there is no evidence before me why it could not have implemented the 2024 Sampling Plan and 2024 Treatment Plan, as required during the period of contraventions.
167. Separate penalties for each failure described in this administrative penalty are possible since there were multiple failures between November 2024 and March 2025; however, for this administrative penalty, the failures will be treated as repeated and continuous.
168. After considering the relevant information above, I confirm an increase of twenty-five percent of the base penalty (+ \$2,500) is applied to account for the repeated nature of the failures.

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

169. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that DWR deliberately failed to comply with Requirement 4. If I am persuaded that DWR deliberately failed to comply with Requirement 4, this factor could increase the penalty.
170. The PAF shared at Notice proposed no adjustment for this factor.
171. This factor was not disputed in the OTBH Submission.
172. DWR was aware that it needed to implement both the 2024 Sampling Plan and 2024 Treatment Plan parts of the Plan. In November 2024, DWR was previously found out of compliance with Requirement 4.
173. As discussed below in Factor g), I will consider DWR's efforts that failed to fully implement both the 2024 Sampling Plan and 2024 Treatment Plan parts of the Plan. However, I find that the failures to comply was not deliberate.
174. After considering the relevant information above, I confirm no increase is applied under this factor.

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

175. I am guided by the AMP Handbook for this factor, to consider whether is any evidence indicating that DWR obtained an economic benefit from the failures. If I am persuaded that DWR obtained an economic benefit from the failures, this could increase the penalty.
176. The PAF shared at Notice proposed an increase of \$10,550 for economic benefit from avoided costs associated with laboratory analysis of samples.
177. DWR disputes the economic benefit calculated. At page 7 of the OTBH Submission, it stated:
- “Moreover, the increase at page 32 section f) to the Requirement 4 Penalty of \$10,550 for an alleged economic benefit derived from failing to sample during the November 4, 2024, event sampling event is not appropriate, as DWR attempted to take samples but could not, due to insufficient output at the sampling locations. As DWR attempted to sample, it did not derive any economic benefit from the alleged contravention.”*
178. DWR has indicated that sampling was attempted. However, the economic benefit calculated is solely for laboratory analysis. Therefore, DWR derived this economic benefit by not having samples to submit.
179. After considering the relevant information above, I confirm an increase of \$10,550 is applied for economic benefit from avoided costs associated with laboratory analysis of samples.

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

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

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

182. DWR submits that it made diligent efforts to implement the 2024 Sampling Plan. At pages 4-5 of the OTBH Submission, it stated:

*“The Ministry determined at section 87 of the Penalty Assessment Form that in November 2024, DWR failed to conduct the required weekly inspections and failing to analyze sufficient parameters and locations during the November 4, 2024, sampling event. DWR says that it used the sampling results provided by Environment and Climate Change Canada (‘ECCC’) from the same time period and admits that it did not sample at Sump 2 and the North Creek background location due to a transition between its team of environmental consultants.*

*The Ministry further determined at section 88 of the Penalty Assessment Form that DWR failed to implement the 2024 Sampling Plan for the month of January 2025, as DWR only conducted one inspection during the week of January 19-25, 2025. DWR utilized its best efforts to conduct the inspections as required and conducted nine inspections in January. The fact that DWR missed one inspection has no material impact on the enforcement of the PAO and DWR should not be penalized for this omission.*

*The Ministry further determined that sampling was not conducted in January 2025, despite discharge being noted on January 2 and 4, 2025. DWR says that there was no major rainfall event in January and while there was discharge on these dates, it was only light discharge. DWR attempted to sample on these dates but was not successful in gathering a meaningful sample. As acknowledged by the Ministry, there were no significant rainfall events during January 2025. DWR attended the site later in January and attempted to collect samples after rainfall, but there was not enough rain to cause discharge. These efforts show that while DWR did not have any sampling to report from January 2025, this was not due a lack of effort of diligence from DWR. DWR made all possible efforts to collect samples but was unable to due to environmental conditions. As a result of these efforts, DWR should not be penalized.*

*The Ministry additionally determined at section 89 of the Penalty Assessment Form that sampling was not conducted in February 2025 and that DWR failed to conduct a second weekly inspection in the period between February 19 to 25, 2025. With respect to the sampling, DWR says that there was no discharge at the sampling locations in February 2025 and therefore DWR could not collect any samples. DWR should not be penalized for environmental factors outside of its control. Furthermore, DWR conducted eight inspections in February, on February 2, 4, 8, 10, 13, 15, 20, 27. The fact that DWR missed one inspection has no material impact on the enforcement of the PAO and DWR should not be penalized for this omission.”*

183. I find that DWR has taken some reasonable measures to prevent the failures with the 2024 Sampling Plan aspects of Requirement 4. I further find that DWR performed some, but not all, required inspections and sampling during November 2024, January 2025 and February 2025.

184. DWR submits that it made diligent efforts to implement the 2024 Treatment Plan. At page 5 of the OTBH Submission, it stated:

*“The Ministry concludes at section 90 of the Penalty Assessment Form that DWR failed to comply with Requirement 4 by failing to implement the 2024 Treatment Plan by December 15, 2024. While DWR concedes that the water treatment system was not operational by December 15, 2024, its diligent efforts to implement the 2024 Treatment Plan should be taken into account by the Ministry. As the Ministry is aware, the installation and commissioning of these types of water treatments are highly dependant on environmental conditions. In retrospect, DWR acknowledges that the deadline of December 15, 2024, was too ambitious given the numerous constraints on DWR and DWR ought to have requested an extension prior to the deadline.*

*The water treatment system was assembled in February 2025 and commissioning remains ongoing. To ensure that the water treatment system was operational as soon as possible, DWR expended a considerable amount of time and resources. Due to these efforts, and the fact that the water treatment system has now been implemented, DWR submits that it would be unduly punitive for the Ministry to impose the Penalty in this regard.”*

185. I find that any due diligence efforts that DWR made prior to December 16, 2024 to prevent the failure clearly ought to be considered as mitigating under Factor g) in this Determination. I contrast that with DWR’s due diligence efforts made after December 16, 2024, which could be considered as mitigating under Factors g) and/or h) in this Determination. This is because the APR allows a separate penalty to be imposed for each day a failure continues.

186. In the context of continuing contraventions under the APR, I recognize that there may sometimes be overlap between due diligence under Factor g) and efforts to correct under Factor h). In other words, the same activity by DWR to get the water treatment system operating might be considered due diligence or efforts to correct, or both.

187. While I recognize the potential overlap between due diligence under Factor g) and efforts to correct under Factor h), I find that some of DWR’s due diligence efforts ought to be considered here under Factor g). However, DWR does acknowledge that the December 15, 2024 date was simply “too ambitious” and it does not refer me to any specific due diligence efforts it made to prevent the failure to operate the water treatment system by December 15, 2024.

188. DWR submits that it made diligent efforts to cover the stockpiled waste. At page 5 of the OTBH Submission, it stated:

*“The Ministry concludes at section 91 of the Penalty Assessment Form that DWR failed to comply with Requirement 4 by failing to cover the stockpiled materials from the wood-waste berm. DWR has prioritized the efforts of its small work crew on the implementation of the water treatment system, rather than the wood-waste berm. As a result, DWR admits that it*

*has not covered the stockpiled material but submits that it has made diligent efforts to mitigate the alleged effects of the wood-waste berm by removing a significant amount of the stockpiled materials. DWR's efforts in this regard should be considered in the assessment of the Penalty."*

189. In order to establish due diligence, DWR would have been expected to fully implement the 2024 Sampling Plan that it submitted each month after its approval in September 2024. DWR would have also been expected to expedite the implementation of the 2024 Treatment Plan to meet the December 15, 2024 deadline for the water treatment system. Facility upgrades necessary to fully implement the 2024 Treatment Plan have not been completed and stockpiled materials have not yet been tarped to prevent leachate generation.

190. DWR submits that it exercised due diligence. At page 7 of the OTBH Submission, it stated:

*"This is not a reasonable definition of due diligence, as it expects perfect compliance with Requirement 4. As stated in the Administrative Monetary Penalty Handbook, due diligence can be demonstrated where a person took 'all reasonable steps to avoid the particular event, based on what a prudent person would have known or done' (emphasis added). In these circumstances, DWR took all reasonable steps to achieve the commissioning of the water treatment system by the prescribed deadline. Accordingly, the Requirement 4 Penalty should be reduced to reflect these efforts."*

191. I find that DWR did not take all reasonable measures to prevent the failures to comply with Requirement 4. However, I find that DWR took some measures that ought to be considered here under Factor g).

192. After considering the relevant information above, including the OTBH Submission, I confirm a decrease of fifteen percent of the base penalty (- \$1,500) is an appropriate reduction for some of DWR's efforts to prevent the failures to comply with Requirement 4. However, as described above, I specifically find that this does not reflect full due diligence on DWR's part.

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

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

194. Since November 2024, DWR has completed foreshore inspections as required and has also completed the majority of twice weekly inspections, as required by the 2024 Sampling Plan. The water treatment system has been installed but is still in the commissioning phase and is not actively treating effluent.

195. The PAF shared at Notice proposed a decrease of twenty-five percent of the base penalty (- \$2,500) for efforts made to correct the failures.

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

197. After considering the relevant information above, I confirm a decrease of twenty-five percent of the base penalty (- \$2,500) is applied for efforts made to correct the failures.

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

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

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

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

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

**Factor j): Other**

202. 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.

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

204. DWR submits that additional relevant factors exist. At page 7 of the OTBH Submission, it stated:

*“Furthermore, as stated above, the Administrative Monetary Penalty Handbook states that where a party has been cooperative in providing evidence and allowing investigations, this ought to be rewarded with the reduction of a penalty. For the same reasons as described above, DWR’s cooperation with the Ministry ought to be reflected in a reduction of the Requirement 4 Penalty.”*

205. This was considered above in 2024-75a. While I do not find that any of this warrants an increase in the penalty, I also find that it does not warrant any further decrease. In this Determination, I have considered DWR’s efforts to “cooperate” and applied a twenty-five percent reduction in Factor h) efforts to correct the contravention or failure.

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

206. After determining a base penalty of \$10,000 for these failures and applying the mitigating and aggravating factors (+ \$11,050) discussed above, the penalty is established at \$21,050.

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

Factors to be considered in penalty calculation	Notice	Final Determination
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	medium	medium
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$2,000	+ \$2,000
d) Whether contravention or failure was repeated or continuous	+ \$2,500	+ \$2,500
e) Whether contravention or failure was deliberate	\$0	\$0
f) Economic benefit derived by the party from the contravention or failure	+ \$10,550	+ \$10,550
g) Exercise of due diligence to prevent the contravention or failure	\$0	- \$1,500
h) Efforts to correct the contravention or failure	- \$2,500	- \$2,500
i) Efforts to prevent reoccurrence of the contravention or failure	\$0	\$0
j) Additional relevant factors	\$0	\$0
<i>(add factors (c) to (j))</i> Total Penalty Adjustments:	+ \$12,550	+ \$11,050
Penalty after considering all factors: <i>(base penalty plus penalty adjustments)</i>	\$22,550	<b>\$21,050</b>
Application of multiplier: No	N/A	N/A
<b>Final Penalty:</b>	\$22,550	<b>\$21,050</b>

## **DUE DATE AND PAYMENT**

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this Determination of Administrative Penalty (Determination). You will be sent an invoice, to be paid via cheque or money order made **payable to the Minister of Finance**. Payment can be mailed to Business Services at:

Financial Services Branch  
Corporate Services for the Natural Resource Ministries  
Ministry of Water, Land and Resource Stewardship  
PO Box 9356 Stn Prov Govt  
Victoria, BC V8W 9M2

Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.

If payment has not been received in the thirty (30) calendar day period, interest will be charged on overdue payments at a rate of 3% + the prime lending rate of the principal banker to the Province per month and the amount payable is recoverable as a debt due to the government. In the event of non-payment you will be ineligible for a permit or approval, or to amend a permit or approval, until the penalty is paid in full. Further, I am authorized by Section 18 of EMA to cancel or suspend your current authorization in the event of non-payment and if I decide to do so, you will be notified accordingly.

## **RIGHT TO APPEAL**

If you disagree with this Determination, Division 2 of Part 8 of EMA provides information for how to appeal my decision to the Environmental Appeal Board ("EAB"). In accordance with EMA and with the EAB Procedures Regulation, the EAB must receive Notice of the Appeal no later than 30 calendar days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form is available online at <https://www.bceab.ca/resources/forms-and-templates>. It should be completed and filed by registered mail or by leaving a copy at the EAB office during normal business hours. The street address is 4th Floor, 747 Fort Street, Victoria, BC, and the office is open from 8:30 am – 4:30 pm Monday through Friday, excluding public holidays.

Notice may also be sent by email or fax, provided the original Notice of Appeal and the appeal fee follows by mail. The mailing address of the EAB is:

Environmental Appeal Board  
PO Box 9425 Stn Prov Govt  
Victoria, BC V8W 9M6

For further information, please consult the EAB website at <https://www.bceab.ca>. If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 calendar days after receiving a copy of the order or decision of the appeal board, or, if the EAB has sent the matter back to the decision maker, within 30 calendar days after a new Determination of Administrative Penalty is served.

## **PUBLICATION**

Seven days after the date of service, this Determination will be published on the Natural Resource Compliance and Enforcement Database ("NRCED") Website: <https://nrced.gov.bc.ca/>

Dated this 17<sup>th</sup> day of July, 2025.