Court File No. VLC-S-S-262930

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the matter of Environment Appeal Board decision EAB-EMA-25-A019(a);
And in the matter of *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241;
And in the matter of the *Environmental Management Act,* S.B.C. 2003, c. 53

BETWEEN

DEEP WATER RECOVERY LTD.

PETITIONER

AND

ENVIRONMENTAL APPEAL BOARD and the MINISTRY OF ENVIRONMENT AND PARKS – COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

RESPONDENTS

PETITION TO THE COURT

THIS IS THE PETITION OF:

Deep Water Recovery Ltd.
c/o Guild Yule LLP
2100 -1075 West Georgia Street
Vancouver, BC V6E 3C9

ON NOTICE TO:

ENVIRONMENTAL APPEAL BOARD
747 Fort Street, 4th Floor
Victoria, BC V8W 3E9
Attention: Darrell Le Houillier
(as required by *JRPA* s. 15)

MINISTRY OF ENVIRONMENT AND PARKS
Environmental Protection Division

Compliance & Environmental Enforcement Branch
PO Box 9047 Stn Prov Gov
Victoria, BC V8W 9E2 (as required by *JRPA* s. 15)

THE ATTORNEY GENERAL FOR BRITISH COLUMBIA
Deputy Attorney General
Ministry of Attorney General
PO Box 9290 Stn Prov Govt
Victoria, BC V8V 9J7 (as required by *JRPA* s. 16)

The address of the registry is **800 Smithe Street, Vancouver, BC V6Z 2E1**

The petitioner(s) estimate(s) that the hearing on the petition will take 2 hours.

[X] This matter is an application for judicial review.

[ ] This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by

[X] the person(s) named as petitioner(s) in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
(b) serve on the petitioner
    (i) 2 copies of the filed response to petition, and
    (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

TIME FOR RESPONSE TO PETITION

A response to petition must be filed and served on the petitioner(s),

a) if you were served with the petition anywhere in Canada, within 21 days after that service,
b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
c) if you were served with the petition anywhere else, within 49 days after that service, or
d) if the time for response has been set by order of the court, within that time.

(1)	The ADDRESS FOR SERVICE of the Petitioner is: Fax Number: Email Service Address:	c/o Guild Yule LLP Suite 2100 – 1075 West Georgia Street Vancouver, BC V6E 3C9 604-688-1315 service@guildyule.com **(up to 30MB)**
(2)	The name and office address of the Petitioner's lawyer is:	Guild Yule LLP Suite 2100 – 1075 West Georgia Street Vancouver, BC V6E 3C9 **Attention: Dean J. Winterton and Joannie C. Fu / File No. 6799-452**

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. An order pursuant to sections 2 and 7 of the *Judicial Review Procedure Act*, RSBC 1996, c 241 [***JRPA***] setting aside the decision of the Environmental Appeal Board dated February 24, 2026 (the "**Decision**") and remitting the appeal of the Determination of Administrative Penalty back to the Environmental Appeal Board for a new hearing before a different panel of the Board.

2. In the alternative, an order pursuant to section 5 of the *JRPA*, setting aside the Decision and remitting the appeal back to the panel of the Environmental Appeal Board that made the Decision with a direction that it reconsider the Decision in light of this Court's reasons.

3. Costs.

4. Such further and other relief as this Court considers just and appropriate.

Part 2: FACTUAL BASIS

(I) Background

1. The Petitioner, Deep Water Recovery Ltd. ("**Deep Water**"), is a company incorporated pursuant to the laws of British Columbia. Deep Water operates a marine vessel maintenance and vessel resource recovery facility located in Union Bay, British Columbia.

2. On April 10, 2025, the British Columbia Ministry of Environment and Parks (the "**Ministry**") issued Deep Water a Notice Prior to Determination of Administrative Penalty (the "**Penalty**

Assessment") setting out Deep Water's alleged contravention of a Pollution Abatement Order.[1]

3. On June 19, 2025, Deep Water provided an Opportunity to be Heard submission, challenging the Penalty Assessment on procedural fairness and substantive grounds.[2]

4. On July 17, 2025, Jason Bourgeois, acting as a Director under the *Environmental Management Act*, within the Compliance & Environmental Enforcement Branch of the Ministry's Environmental Protection Division (the "**Director**"), issued a Determination of Administrative Penalty, file number 2024-76 (the "**Penalty**") pursuant to section 115 of the ***Environmental Management Act***, S.B.C. 2003, c. 53 [***EMA***] and the ***Administrative penalties (Environmental Management Act) Regulation***, B.C. Reg. 133/2014.[3]

5. Section 115 of the *EMA* provides that where the Ministry is satisfied that a person has failed to comply with an order made under the EMA, it "may serve the person with a determination requiring the person to pay an administrative penalty"

6. Section 133 of the *EMA* provides that the Director must serve the Penalty in one of the methods outlined by s.133, titled "service", which sets out how and when materials may be served under the *EMA*.

7. Specifically, the Director must serve Deep Water in accordance with s. 133(2) of the *EMA*, which provides how service may be effected on corporations as follows:

> (2) Anything that under this Act must be given or served on a corporation may be given or served
>
> (a) by **leaving it with any director**, senior officer, liquidator or receiver manager of the corporation,
>
> (b) by **sending it by registered mail**
>
> …
>
> (c)by **sending it by electronic mail** to the last known electronic mail address
>
> …

8. The Director served the Penalty on Deep Water by sending it by electronic mail on Thursday, July 17, 2025.

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[1] Affidavit #1 of Gloria Park, Exhibit A, p. 6 [para. 7].
[2] Affidavit #1 of Gloria Park, Exhibit A, p. 6 [para. 9].
[3] Affidavit #1 of Gloria Park, Exhibit A, p. 3.

9. Deep Water did not acknowledge receipt of the Penalty or reply to the email.

10. By sending the Penalty by email, s.133(4) of the *EMA* was automatically triggered, which provides as follows:

> (4) **Anything sent by electronic mail** for the purposes of this Act **is deemed to be received** by the person to whom it is addressed on the third day after it is sent.

11. On Monday, July 21, 2025, Deep Water received an email from Nicole Pidskalney, Environmental Enforcement Coordinator/Analyst with the Ministry, advising on behalf of the Director, that, due to the operation of s.133(4) of the *EMA*, the Penalty will have been deemed to be served upon Deep Water as of **July 22, 2025**.[4]

12. Deep Water understood this to mean that it was deemed to have been served the Penalty on July 22, 2025 by the Director and relied upon this representation by Ms. Pidskalney.[5]

13. Section 101 of the *EMA* provides that the time limit for commencing an appeal is 30 days after notice of the decision is given. By operation of s.133(4) of the *EMA*, this would have made the deadline for filing an appeal **August 19, 2025**. That said, Deep Water was led into error by the Ministry and relied on the representation by Ms. Pidskalney.

14. On August 19, 2025, Deep Water submitted their Notice of Appeal (the "**Appeal**") to the Environmental Appeal Board (the "**Board**").[6]

15. On August 28, 2025, Carly Hicke, Case Manager at the Board wrote to Deep Water advising that the Board was considering dismissing the Appeal under section 31(1)(b) of the ***Administrative Tribunals Act***, S.B.C 2004, c. 45 [***ATA***], because the Appeal was not filed within the 30-day appeal period and the Board does not have the authority to extend appeal periods.[7]

16. Ms. Hicke provided Deep Water until September 5, 2025 to make submissions on why the Appeal should not be dismissed.[8]

17. On August 29, 2025, Deep Water provided the Board with their written submissions and took the position that due to the operation of s.133(4) of the *EMA* as well as the representations of

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[4] Affidavit #1 of Gloria Park, Exhibit D, p. 51.
[5] Affidavit #1 of Gloria Park, Exhibit D, p. 49 [para.5].
[6] Affidavit #1 of Gloria Park, Exhibit B, p. 35.
[7] Affidavit #1 of Gloria Park, Exhibit B, p. 46.
[8] Affidavit #1 of Gloria Park, Exhibit B, p. 46.

the Ministry, Deep Water was deemed to have been served on July 22, 2025, which made the filing deadline August 21, 2025. Since they filed their Appeal on August 19, 2025, this was within the 30 days prescribed by s.101 of the *EMA*.[9]

(II) The February 2026 Decision

18. On February 24, 2026, the Board issued Decision No. EAB-EMA-25-A019(a) (the **"Decision**"), finding that the Appeal was not filed within the 30 days as required, and dismissed the Appeal on the basis of lack of jurisdiction.[10]

19. The crux of the Decision centered on whether, and in what circumstances, s.133(4) of the *EMA* applied.

20. The Board determined that s.133(4) of the *EMA* created a "rebuttable presumption". Specifically, the Board's view was that s. 133(4) of the *EMA* only operates when there was uncertainty as to when the appeal period began.[11]

21. The Board determined, without evidence to support its conclusion, that there was no uncertainty as to when Deep Water received the Penalty, and at para. 20 found:

> [20] The Appellant's notice of appeal clearly states, in the section requiring the information as to the date the decision under appeal was received, that the Decision was received on July 17, 2025**.** Further, the Appellant sets out, in the notice of appeal, that "[o]n July 17, 2025, [the Respondent] issued a determination of administrative monetary penalty…". The Appellant's submissions do not contradict or otherwise suggest that they did not receive the Decision on July 17. I find that the Appellant received the Decision on July 17, 2025.
>
> (emphasis added)

24. The Board found that the date of July 22, 2025, which both the Ministry and the Appellant arrived at, was incorrect and that the Board was both unable and unwilling to rely upon the calculations of time undertaken by any party and is instead bound to follow the requirements of the relevant legislation, including the *Interpretation Act*.[12]

25. Further, the Board held that since Deep Water received the Penalty on July 17, 2025, section 133(4) was non-operational, as the legal fiction of the deeming provision was rebutted by the

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[9] Affidavit #1 of Gloria Park, Exhibit D, p. 48.
[10] *Deep Water Recovery Ltd. v. Director, Environmental Management Act,* 2026 BCEAB 10 [***EAB Decision***]
[11] *EAB Decision* at paras. 27-28.
[12] *EAB Decision* at para. 22.

presence of the acknowledged delivery of the Penalty. Accordingly, the 30-day deadline to file an appeal had already expired when Deep Water filed their Appeal on August 19, 2025.[13]

Part 3: LEGAL BASIS

(I) Grounds for Review

1. The petitioner applies to this Court to consider the following grounds for review:

A. Breaches of Natural Justice and Procedural Fairness

2. Breached the principles of natural justice and procedural fairness in its assessment of the evidence in the Decision:

    a. not giving due consideration to the fact that a Ministry employee, acting on behalf of the Director, had led Deep Water into error as to the date of deemed service.

B. Unreasonable Findings

3. In addition, Deep Water asserts that the Board was unreasonable in:

    a. Misinterpreting s. 133(4) of the *EMA* when there can only be one reasonable conclusion given the purview and rationale of the statute;

    b. Finding that that the Petitioner did not file within the requisite timeline as outlined under the *EMA*;

    c. Adopting an interpretation of. 133(4) that is taken in isolation from other provisions of the *EMA* and which does not accord with a construction of the *EMA* as a whole;

    d. Adopting an interpretation of s. 133(4) of the *EMA* which is not in keeping with the fundamental purposes of *EMA*;

    e. Failing to adopt an interpretation of s. 133(4) of the *EMA* which is fair, large and liberal and best attains the purposes of the *EMA* as required by the *Interpretation Act*, RSBC 1996, c. 238; and

    f. Such further and other grounds as counsel may advise.

(II) Analysis- Standard of Review and Application

[13] *EAB Decision* at para. 29

A. Procedural Fairness and Natural Justice-Correctness Standard of Review and Application

4. With respect to issues of procedural fairness, the standard of review is correctness. When it is alleged a decision-maker's process was procedurally unfair, the question for the court is "whether the rules of procedural fairness or natural justice have been adhered to".[14]

5. Deep Water submits that the Board erred by failing to give adequate consideration of the fact that a Ministry representative had informed Deep Water that the deemed date of service was July 22, 2025. While the Board acknowledged that the Ministry had erred in this communication, the Board did not adequately address or consider how this error significantly prejudiced Deep Water such that Deep Water relied on this representation and filed their Notice of Appeal with the expectation that it was within the statutory appeal period given the deemed date of service.

6. In fact, the Board expressly stated in its Decision that it was "unable, and **unwilling**, to rely upon the calculations undertaken by any party and is instead bound to follow the requirements of the relevant legislation."[15] [**emphasis added**.]

7. As Deep Water submitted to the Board, the Ministry's Administrative Penalties Handbook (the "**Handbook**") affirms that the time to file an appeal of an administrative monetary penalty begins when service is effected, rather than when the determination is first sent by the Ministry.[16]

8. It is procedurally unfair for one branch of government, the Ministry, to provide a specific deadline calculation only for the Board, another branch of government to summarily dismiss an appeal and penalize a party for relying on that information. Deep Water was essentially led into error by the Ministry and the Board's "unwillingness" to rely on that constitutes a breach of procedural fairness and natural justice.

9. The Board appears to undermine and downplay the significance of the government body enforcing the *EMA* being unable to calculate the date themselves and leading Deep Water into error.

10. Deep Water submits that the doctrine of officially induced error applies to the circumstances of this case given that Deep Water had relied on the advice of the Ministry with respect to the

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[14] *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 at para. 3.
[15] *EAB Decision* at para. 22.
[16] Affidavit #1 of Gloria Park, Exhibit E, p. 190.

Ministry's position that the deemed date of service was July 22, 2025 and therefore, the Board should have found that it had jurisdiction to hear the appeal.[17]

11. In criminal law and regulatory proceedings, a defence of officially induced error can apply to prevent a prosecution of the person who relied upon that erroneous advice.[18] The counterpart of officially induced error is estoppel.

12. The doctrine of officially induced error has six elements. In the context of criminal proceedings, the accused must prove all the elements:

    a. that an error of law or of mixed law and fact was made;
    b. that the person who committed the act considered the legal consequences of his or her actions;
    c. that the advice obtained came from an appropriate official;
    d. that the advice was reasonable;
    e. that the advice was erroneous; and
    f. that the person relied on the advice in committing the act.

13. All the elements were met in this case:

    a. an error of law was made by the Ministry in providing Deep Water with the incorrect date of deemed service (July 22, 2025);
    b. Deep Water considered the legal consequences of its actions, by then relying on said date;
    c. the advice came from an appropriate official (the Ministry representative);
    d. the advice was reasonable (Deep Water had no reason to doubt Ministry's position on the date of deemed service);
    e. the advice was erroneous (per the deeming provision of s. 133(4) of the *EMA*); and
    f. Deep Water ultimately relied on this advice in filing their Notice of Appeal with the date of July 22, 2026 in mind as the date of "deemed service".

14. This doctrine, as well as the basic principles of natural justice and procedural fairness, work together to prevent the invocation of a limitation period. In *JBC (Re),* 2015 ABTSB 372 a decision by an administrative board in Alberta, the board held that because the applicant thought he could submit his application after the 30 day period prescribed by legislation based on advice he received from board staff, the board had jurisdiction to hear the appeal as the late application was the result of officially induced error.[19]

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[17] *JBC (Re),* 2015 ABTSB 372 at para. 15; *JBC (Re),* 2015 ABTSB 372 at para. 15.
[18] *Regina v. Cancoil Thermal Corporation and Parkinson*, 1986 CanLII 154 (ON CA).
[19] *JBC (Re),* 2015 ABTSB 372 at para. 15.

15. Likewise, the rules of natural justice and the duty to act fairly apply to the proceedings of the Board. The dismissal of Deep Water's filing of the notice of appeal as being expired would, given the fact of the representation previously made to him by the Ministry, be a breach of the Board's duty of procedural fairness and a breach of the rule of natural justice. The Decision cannot stand because of this breach.

B. Statutory Interpretation- Reasonableness Standard of Review and Application

16. The Decision was also substantively unreasonable. Deep Water submits that the Decision cannot stand because it exhibits two of the flaws set out in *Vavilov*:

    a. The Board fundamentally misapprehended the facts and evidence before it; and
    b. The Board's statutory interpretation fails to comply with the purview and rationale of the statute in front of it.[20]

17. Each instance of unreasonableness is itself central to the conclusion reached by the Board and without each of these unreasonable instances, the Board would have been compelled to reach the opposite conclusion. There was only one reasonable conclusion given the purview and rationale and rationale of the statute: the Decision did not arrive at this conclusion.

18. In *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 [***Vavilov***], the Supreme Court of Canada established a new framework for the standard of review in administrative law cases. Reasonableness is the presumed standard of review, however, the presumption of reasonableness can be rebutted in two circumstances:

    a. The first circumstance is where the legislature has explicitly prescribed a different standard in a statute. This will be the case where it has explicitly prescribed the applicable standard of review. Any framework rooted in legislative intent must respect clear statutory language. The legislature may also direct that derogation from the presumption is appropriate by providing for a statutory appeal mechanism from an administrative decision to a court, thereby signaling legislature's intent that appellate standards apply when a court reviews the decision.[21]

    b. The second circumstance is where a correctness review is required for specific categories of legal questions, namely, constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies.[22]

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[20] *Vavilov* at para. 108.
[21] *Vavilov* at para. 17.
[22] *Vavilov* at para. 17.

19. In this case, reasonableness is the appropriate standard of review because there is no statutory appeal mechanism to the court from decisions made by the Board, and none of the instances in the second circumstance for rebutting this presumption are present.

20. That said, to be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside.[23]

21. As further elucidated in *Vavilov,* the "even where the reasonableness standard is applied in reviewing a decision maker's interpretation of its authority, precise or narrow statutory language will necessarily limit the number of reasonable interpretations open to the decision maker -perhaps limiting it to one".[24]

22. Finally, a decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it.[25]

(i) The Board Fundamentally Misapprehended or Failed to Account for the Evidence Before it Leading to an Unreasonable Decision

23. Firstly, the Board's interpretation was unreasonable because it has fundamentally misapprehended the evidence before it, which justifies judicial intervention.[26] As outlined in *Vavilov*, as decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his or her conclusions were not based on the evidence that was actually before him or her.[27]

24. The Board based its decision on what was contained in the notice of appeal,[28] which is not "evidence" that was actually before the Board or should have considered in making their decision. The only "evidence" available to the Board was the delivery date for the email that was sent on July 17, 2025. The delivery date of the email established nothing more than the starting point from which a deemed service date was to be calculated, being July 20, 2025.

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[23] *Vavilov* at para. 102.
[24] *Vavilov* at para. 68.
[25] *Vavilov* at para. 126.
[26] *Vavilov* at paras. 125-126.
[27] *Vavilov* at para. 126.
[28] *EAB Decision* at para. 13.

25. It was unreasonable for the Board to rely on a proforma notice of appeal form to ground its reasoning that a deemed service provision had been rebutted. A notice of appeal is a form that must be filled out for a party to begin an appeal to the Environmental Appeal Board. Although it may contain information that can be considered by the Board, content in a Notice of Appeal is not evidence,[29] and submissions by counsel are also not evidence.[30] Specifically, a notice of appeal is lacking in the following manner for the Board to properly rely on it as evidence:

    a. It is not a sworn or affirmed document;
    b. It is not a witnessed document;
    c. There is no warning on the document that the information contained in it could be prejudicial if it is not accurate;
    d. In the box of the notice of appeal form where it states "date decision was received" there is no disclaimer or explanation that the entered information should reflect the deemed date rather than the date electronic mail was sent; and
    e. There is no request for information on the form specifically for electronic mail and whether the appellant read the email on the same date the appellant received it, and if not, on what date the appellant read the email.

26. The lack of clarity on the notice of appeal form and the Board's subsequent reliance on it as evidence is unreasonable.

27. In *White v. The Roxy Cabaret Ltd.*, 2011 BCSC 374, the Human Rights Tribunal relied on the submissions of counsel to determine the central evidentiary issue, and the Court quashed the Tribunal's decision to dismiss a complaint on the basis that the reasons failed to address a key evidentiary issue and the Tribunal had relied on legal submissions of counsel rather than actual evidence.

28. In comparison, the Board's Decision not only fails to grapple with a key evidentiary issue, but it also fundamentally misapprehended a key evidentiary issue by treating information in a Notice of Appeal as "evidence", it refused to consider additional factual matrix, such as the "error" of the Ministry, and it summarily dismissed Deep Water's appeal. Therefore, the Board's Decision was unreasonable and must be set aside on this ground alone.

(ii) The Board's Interpretation of Section 133(4) of the EMA was Unreasonable

29. The Board's determination that s. 133(4) of the *EMA* creates a rebuttable presumption is demonstrably unreasonable due to two flaws, each of which was central to the outcome:

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[29] *R v Hope*, 1999 CanLII 6779 (NWT SC) at para. 16.
[30] *White v. The Roxy Cabaret Ltd.*, 2011 BCSC 374 at para. 24; *Trosin v. Sikora*, 2002 ABQB 132 at para. 26; *R. v. G.S.*, 2022 NSSC 173 at para. 16; *Liu v. Canada (Citizenship and Immigration)*, 2022 FC 1793 at para. 8

a. The Board misinterpreted the applicable statutory scheme; and

b. The Board made a finding of fact that was not available on the evidence before it, nor was it available due to the legal constraints provided under the *EMA*.

30. These flaws compounded one another and led to an unreasonable decision by the Board. Further, the Decision is not justified in light of the legal and factual constraints that bear on the decision.[31]

31. It is a fundamental principle of statutory interpretation that the legislature does not intend absurd consequences. An interpretation may be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment.[32] The ensuing consequences of the Decision, namely, Deep Water's inability to appeal the Penalty Assessment is an absurd consequence.

32. Under the *EMA*, an individual or corporation may be served personally, by registered mail, or by electronic mail.[33]

33. It is an undeniable fact that the majority of emails are received the moment they are sent. The Court may also infer that when the legislature drafted s. 133(4) of the *EMA*, the legislature was also aware of this fact.

34. The reason why this deemed service provision exists is to provide legal certainty for individuals that the *EMA* affects. It is a matter of natural justice and procedural fairness for individuals to be able to reasonably rely on this deeming provision of the *EMA* concerning service by email.

35. In considering the *EMA* as a whole, and specifically, s. 133 of the *EMA*, it is clear the legislature did not intend for s.133(4) of the *EMA* to create a rebuttable legal presumption. On the contrary, there is a strong inference to be drawn that the legislature intended for 133(4) to be a conclusive provision and applied consistently and automatically to materials served by email.

36. The legislature's intention is further elucidated in section 133(3) of the *EMA* provides a "deemed service" date for materials sent by registered mail, which reads as follows:

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[31] *Vavilov* at para. 101.
[32] *R. v. Francisco*, 2023 BCCA 450, at para. 34; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 at para. 21.
[33] *EMA*, s. 133(1) and s. 133(2).

> (3)Anything sent by registered mail for the purposes of this Act is deemed to be received by the person to whom it is addressed on the 14th day after deposit with Canada Post**, unless the person received actual service before that day.**
>
> [**emphasis added**]

37. A plain reading of s.133(3) provides that anything served by registered mail will be deemed to be received by the individual or corporation when (1) fourteen days after mailing have passed, **or** (2) when the person is actually served with the registered mail.

38. In other words, a person or corporation will have "notice" of the material received by registered mail at the earlier of (1) deemed service or (2) actual service.

39. In comparison, s. 133(4) of the *EMA* provides the following:

> (4)Anything sent by electronic mail for the purposes of this Act is deemed to be received by the person to whom it is addressed on the third day after it is sent.

40. Crucially, the legislature **does not** include the caveat *"unless the person received actual service before that day"* in section 133(4) of the *EMA*, despite including it in s.133(3) of the *EMA*.

41. There is no "actual service" provision found in s.133(4), but only a "deemed service" provision. The implied exclusion rule provides that this was a deliberate exclusion, and the legislature did not intend for the Board to be able to rely on the earlier of (1) deemed receipt or (2) actual receipt.

42. This distinction can be partly explained by the fact that registered mail offers proof of receipt, as it requires the individual to provide their signature before they will be provided with the registered mail. This enables the sender to determine exactly when their materials were received.

43. The same cannot be said for electronic mail, which will almost always be received by the recipient's email inbox mere moments after it is sent, but may not be "received" in the sense that service was effected. Therefore, to create legal certainty, this provision provides a fixed deemed service date of 3 days after an email is sent with no restrictive caveat.

44. A reasonable interpretation of s. 133(4) of the *EMA* requires that the words of the provision be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the legislation, and the intention of the legislature.[34]

45. The doctrine of implied exclusion, or *expressio unius est exclusio alterius*, is a maxim of statutory interpretation which provides that whenever there is reason to believe that if the legislature had meant to include something within its legislation, it would have referred to that particular subject matter expressly. Because of this expectation, the legislature's failure to mention the "thing" becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied.[35]

46. Further, pursuant to s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, section 133(4) of the *EMA* must be construed as remedial and in a manner that "[…] best ensures the attainment of its objects".

47. Determining whether or not the use of the words "deemed" establishes a conclusive or a rebuttable presumption depends largely on the context in which they are used, bearing in mind the purpose to be served by the statute.[36]

48. The Board relies on *Atchison v. British Columbia (Residential Tenancy Act, Dispute Resolution Officers)*, 2008 BCSC 1015 [***Atchison***] for their proposition that s. 133(4) creates a rebuttable presumption, however, the facts can be distinguished from the within petition.

49. In *Atchison*, the Court agreed with the reasoning in *Hegeman v. Carter*, 2008 NWTSC 24. In that case, Justice Charbonneau considered the issue of a deeming provision, noting that she found it "difficult to accept that the Legislature could have intended the rules of natural justice to be followed by a Rental Officer during a hearing, while at the same time, potentially eliminating, through a conclusive presumption of notice, one of the most fundamental rules of natural justice namely, the right for all parties to be heard."[37] This can be contrasted with the Board's reasoning for the purposes of shortening the timeline to file, such that the interpretation would be at the prejudice of Deep Water and eliminating Deep Water's reasonable reliance on the deeming provision and their right to be heard. *Atchison* only further highlights the unreasonable nature of the Board's Decision.

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[34] *Obsidian Energy Ltd. v. Cordy Environmental Inc.*, 2024 BCCA 226, at para. 37; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 at para. 21.

[35] *Sullivan on the Construction of Statutes*, 5th ed., Markham: LexisNexis, 2008, at pp. 244, 248; *Li v. Rao*, 2019 BCCA 265, at para. 74.

[36] *Atchison v. British Columbia (Residential Tenancy Act, Dispute Resolution Officers)*, 2008 BCSC 1015 at paras. 13, 16; *St. Leon Village Consolidated School District v. Ronceray* (1960), 1960 CanLII 256 (MBCA), 23 D.L.R. (2d) 32 (Man. C.A.), at p. 37

[37] *Atchison*, at para. 16, citing *Hegeman v. Carter*, 2008 NWTSC 24

(iii) The Legislature's Purpose is Furthered by a Conclusive Interpretation of the Service by Email Provision

50. In March 2023, the legislature repealed and replaced the entirety of s.133 of the *EMA* with the *Miscellaneous Statutes (Modernization) Amendment Act*, SBC 2023, c. 10 [***Modernization Act***] coming into force.

51. The *Modernization Act* affected over 200 pieces of legislation and was primarily targeted at revising outdated gendered and binary language. It also had the concurrent goal of: "improv[ing] clarity by proposing minor amendments to various acts that will, for example, repeal outdated sections and reflect the way technology has changed the language especially as it relates to working and meeting virtually."[38] [emphasis added.]

52. The purpose of the *Modernization Act* as it relates to s.133 of the *EMA* was more expressly addressed by the legislature as follows, "[T]his bill also provides for updates such as allowing documents to be delivered by email and repeals obsolete provisions, ensuring the ongoing clarity and modernization of B.C.'s legal landscape."[39]

53. The Board's interpretation is unreasonable because it undermines the legislature's intent to provide a predictable and fixed timeline for service by email which reflects the contextual realities of modern society. A reasonable interpretation would support a conclusive interpretation of s. 133(4) of the *EMA*.

54. To provide further context, when the legislature repealed and replaced s.133 of the *EMA*, the legislature's intention was to update British Columbia's legislation to reflect the realities of modern communication and provide clarity on how and when materials may be delivered electronically.

55. When drafting s.133(4) of the *EMA*, the legislature was clearly alive to the fact that the transmission of emails occurs in a nearly instantaneous manner, and an email will almost always be "received" immediately after it is sent.

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[38] Affidavit #1 of Gloria Park, Exhibit G, p. 224 [British Columbia, Legislative Assembly, Official Reports of Debates (Hansard), 42nd Parliament, 4th Session, No. 290 (27 March 2023) at 9711].
[39] Affidavit #1 of Gloria Park, Exhibit G, p. 225 [British Columbia, Legislative Assembly, Official Reports of Debates (Hansard), 42nd Parliament, 4th Session, No. 290 (27 March 2023) at 9712].

56. Therefore, it can be inferred that the issue the legislature sought to address with the inclusion of s. 133(4) is not *when* an email is received, but rather when can it be safely assumed that the recipient became *aware* they received the email.

57. The implication to be drawn is that the legislature sought to provide clarity on when an individual will have "notice" of the email and its contents, as there are a multitude of situations where an email will be "received", but the individual who monitors the inbox may not see the email on the day that it arrived in that individual's email inbox.

58. The legislature solved this issue by providing a fixed period of 3 days before a recipient was deemed to have received, and therefore have notice, of the email.

59. The legislature deliberately excluded an "actual service" provision, like the one found in s.133(3) of the *EMA*, which would have enabled the Board to choose between the earlier of (1) deemed service and (2) actual service.

60. It can be inferred that the legislature drafted s.133(4) of the *EMA* with the goal of providing one objective date of service by email, and that date is three days after the email was sent.

61. This is the only reasonable interpretation of s. 133(4) of the *EMA* because it provides predictability, clarity and acknowledges the reality of modern communication.

(iv) There is only one reasonable conclusion and the Board's interpretation of s.133(4) was unreasonable

62. The Board had an unreasonable interpretation of s.133(4) of the *EMA* when it determined that the provision created a rebuttable legal presumption.

63. The Ministry sent the email confirming the Penalty on July 17, 2025, which, due to the instantaneous nature of email, was necessarily "received" and appeared in Deep Water's email inbox on the same day.

64. In filing their Notice of Appeal, Deep Water indicated that the email was received in Deep Water's email inbox on July 17, 2025. It would be a breach of the principles of natural justice and procedural fairness if simply because of this, s. 133(4) of the *EMA* becomes non-operational and a "legal fiction" that is "rebutted by the presence of acknowledged delivery of the Decision".[40]

[40] *EAB Decision* at para. 29.

65. If the Board is correct with their interpretation of s.133(4) of the *EMA*, and it is a rebuttable presumption whereby the date a party receives an email is the date that they are deemed to have "received notice" of the same, then s.133(4) of the *EMA* would rarely, if ever become triggered, and the provision would serve little to no purpose.

66. This is an illogical interpretation that is not reasonable or compatible with other provisions, and in particular, incompatible with s.133(3) of the *EMA* (the service by registered mail provision).

67. As such, the Board reached an unreasonable conclusion when it interpreted s.133(4) as if it read "anything served by email will be deemed to be received (1) three days after sending **or** (2) when the person actually receives the email.

68. If the legislature wanted service by email to be completed upon the *actual receipt* of the email, they could have included language to that effect as they did with s.133(3). They did not, and it was an unreasonable interpretation that produces absurd results. In this case, it has prejudiced Deep Water's ability to appeal a decision by the Director.

69. The only reasonable interpretation of s.133(4) is that the Penalty was deemed to be received by Deep Water on July 20, 2025, and it is at this point the 30-day deadline to file an appeal began. As the Appeal was filed on August 19, 2025 and within the 30-day appeal period, the Board's decision was unreasonable.

(v) The Board's Alternative Interpretation was also Unreasonable and Untenable

54. The Board also makes a technical distinction between section 101 of the *EMA*, which provides that the deadline to file an appeal is 30 days after notice of a decision "is given", and section 133(4) of the *EMA*, which deems when an email is "received".[41]

55. The Board essentially asserts that even if the deeming provision for "receipt" by email service does not create a rebuttable presumption, it still does not prevent the Board from determining when notice was "given".[42]

56. This is logically inconsistent with the Board's own acknowledgement that s. 133(4) of the *EMA* is intended to allow for certainty of when the decision is given to a person when the decision is sent by electronic mail.[43]

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[41] *EAB Decision* at para. 30.
[42] *EAB Decision* at para 31.
[43] *EAB Decision at* para. 26.

57. In other words, the Board determined that s. 101 of the *EMA* provides the Board with the discretion to decide when notice was given to Deep Water, and that even if s. 133(4) of the *EMA* is a non-rebuttable deeming provision, this does not bar the Board from deciding when notice was actually given.

58. This distinction between the date a party "received" a decision under s. 133(4) and when a party is "given notice" of a decision for the purposes of s. 101 is absurd, illogical, and undermines the legislature's purpose in providing clarity to how and when materials may be served by email. It also undermines and creates legal uncertainty about a party's rights under the *EMA*.

59. For the same reasons as above, the Board erred in interpreting s. 101 of the *EMA* as allowing the Board to make a factual assessment and finding of when notice was given for the purpose of determining when the 30-day time to file a notice of appeal began.

60. This interpretation raises the same questions as to if s.133(4) would ever become triggered, since emails are always received shortly after they are sent and therefore, a party would almost always be "given notice" of a decision on the day the email was delivered. Deep Water submits that the Board's interpretation results in uncertainty and is therefore unreasonable.

61. Deep Water submits that the only reasonable interpretation is that the date a party is given notice of a decision for the purpose of s. 101 is the same date as when they are deemed to have received the decision under s. 133.

62. Deep Water maintains that by operation of the deeming provision of s.133(4) of the *EMA*, they received the Penalty on July 20, 2025. By filing the Appeal on August 19, 2025, they were within the 30-day deadline imposed by s. 101 of the *EMA* and the Board was unreasonable in dismissing the Appeal.

63. In the alternative, Deep Water submits there was insufficient evidence before the Board to rebut the presumption.

64. The Board based their finding that Deep Water had received notice of the Decision on the fact that, in their Notice of Appeal, Deep Water acknowledged that the email was sent to them on July 17, 2025.

65. As set out above, Deep Water had no other option but to say that they received the email on July 17, 2025, as that was the day the Decision entered their email inbox.

66. There was no evidence before the Board that they opened the email, responded to the email, or was aware of the Decision. The intention of the legislature in drafting s. 133(4) of the *EMA* was to provide legal certainty, and the Board's unreasonable interpretation of the statutory provision creates the opposite effect.

67. Deep Water pleads and relies upon:

    a. the *Supreme Court Civil Rules,* B.C. Reg. 168/2009
    b. the *Judicial Review Procedure Act,* R.S.B.C. 1996, c. 241
    c. the *Interpretation Act,* R.S.B.C. 1996, c. 238
    d. the *Environmental Management Act,* S.B.C. 2003, c. 53
    e. the *Administrative Penalties (Environmental Management Act) Regulation,* B.C. Reg. 133/2014;
    f. the *Administrative Tribunals Act,* S.B.C 2004, c. 45;
    g. the inherent jurisdiction of this Honourable Court; and,
    h. such further and other authorities as counsel may advise.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Gloria Park; and
2. Such further and other material as counsel may advise and this Court may allow.

The petitioner estimates that the hearing of the petition will take 2 hours.

Dated at the City of Vancouver, in the Province of British Columbia, this 23rd day of April, 2026

Signature of Lawyer for the Petitioner(s)
Dean J. Winterton and Joannie C. Fu

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application

☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Associate Judge