



MINISTRY OF ENVIRONMENT AND PARKS
COMPLIANCE AND ENVIRONMENTAL ENFORCEMENT BRANCH

DETERMINATION OF ADMINISTRATIVE PENALTY

June 10, 2026

File: 2025-32
112057

Email: mark@deepwaterrecovery.com; gwalker@blg.com; 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
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Attention: Deep Water Recovery Ltd.

RE: Final Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty and accompanying Penalty Assessment Form (“PAF”) issued to you on March 25, 2026, and your Opportunity to be Heard (“OTBH”) respecting the alleged contraventions, I have now made a Determination of Administrative Penalty (“Determination”) in this matter.

After reviewing the information available to me, I have concluded that 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 (“APR”).

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

Final Penalty Assessment

- 2025-32a: \$58,000
- 2025-32b: \$17,500
- 2025-32c: \$17,000

TOTAL: \$ 92,500

Reasons for Decision

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

The “Administrative Penalty Handbook: Version 2 – Ministry of Environment and Parks – *Environmental Management Act* and *Integrated Pest Management Act*” (“AMP Handbook”) provides high level guidance to Ministry staff considering the assignment of administrative penalties. Statutory Decision Makers consider, and decisions are informed by, this document. I have considered the AMP Handbook in making this Determination.

Considering the AMP Handbook in making my Determination is consistent with the Environmental Appeal Board’s (“EAB”) findings in *United Concrete & Gravel Ltd. v Director, Environmental Management Act* (Decision No. EAB-EMA-21-A005(a), September 27, 2021)¹, at para. 72:

“Throughout my reasons, I have referred to the Handbook. After having reviewed the Handbook, I find it to be a reasonable guide for determining the appropriate quantum of an administrative penalty under the Act. It fosters consistency and predictability in decision-making. No other resources or authorities were provided to me. For these reasons, I have found the Handbook persuasive in my reasoning.”

Due Date & Payment

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

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

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

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

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

Right to Appeal

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

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

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

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

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

Publication

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

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

Sincerely,



Jason Bourgeois
Delegate of the Director, *Environmental Management Act*

Attachments:
2025-32 Final Penalty Assessment Form

cc: Jurgén Deagle, Environmental Protection Officer
Jurgén.Deagle@gov.bc.ca

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

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

[COS Zone Mailbox](#)

PENALTY ASSESSMENT FORM

FILE: 2025-32

Name of Party

Deep Water Recovery Ltd. (“DWR”)

Contravention or Failure

A. Failure to comply with Pollution Abatement Order 112057 Amendment, dated July 12, 2024, 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 Amendment, dated July 12, 2024, Requirement 4:

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

C. Failure to comply with Pollution Abatement Order 112057 Amendment, dated May 6, 2025, Requirement 4:

Item	Required Action	Required by midnight on:
B.	Increase the berm height at the north and south ends of the oil/water separator by a minimum of 10 cm (4 inches), as detailed in Section 2.0 and Figure 1 (Appendix A) of the Plan.	May 31, 2025
C.	Install an additional 6 meters of asphalt berm (of equivalent combined height) along southern asphalt surface perimeter near the foreshore, as detailed in Section 2.0 and Figure 1 (Appendix A) of the Plan.	May 31, 2025
D.	Excavate and install three French Drains in the Sump 2 catchment area, as detailed in Sections 3.1 and 3.2 and Figure 1 (Appendix A) of the Plan.	May 31, 2025
E.	Grade the unpaved area of the Sump 2 catchment area from north to south, as detailed in Section 3.1 and Figure 1 (Appendix A) of the Plan.	May 31, 2025
F.	Install and operate a 1,300L oil/water separator at the north end of French Drain #3, as detailed in Section 3.2, Figure 1 (Appendix A), and Appendix B of the Plan.	May 31, 2025

G.	Following completion of items D to F, decommission Sump 2. The decommissioning process must include: i) removing vegetation and sedimentation from Sump 2; ii) sampling and laboratory analysis of the material removed from the sump; iii) disposal of the material removed from the sump at an authorized waste disposal facility; and iv) providing the Director with documentation of the disposal of the material removed and the completion of the decommission process.	May 31, 2025
H.	Install a four-inch asphalt berm along the northern perimeter of the existing asphalt surface area, as detailed in Section 4.2 and Figure 1 (Appendix A) of the Plan.	May 31, 2025
I.	Fully cover the relocated berm soil stockpiles with impermeable cover to protect from precipitation and prevent the generation of leachate, as detailed in Section 4.2 of the Plan.	May 31, 2025
J.	Decommission Sump 3. The decommissioning process must include: i) removing vegetation and sedimentation from Sump 3; ii) sampling and laboratory analysis of the material removed from the sump; iii) disposal of the material removed from the sump at an authorized waste disposal facility; and iv) providing the Director with documentation of the disposal of the material removed and the completion of the decommission process.	May 31, 2025
K.	Redirect discharge from Sump 3 to the catchment area of Sump 1, as detailed in Section 4.2 and Figure 1 (Appendix A) of the Plan.	May 31, 2025
L.	Install, commission and operate the water treatment system design as detailed in Section 5.0 (including subsections 5.1 through 5.5), Appendix C, and Appendix D of the Plan.	May 31, 2025

Date of Contravention

- A. **Requirement 1:** March 11 and 28, 2025
- B. **Requirement 4:** March 1 to April 30, 2025 (61 days)
- C. **Requirement 4:** June 1 to June 30, 2025 (30 days)

Background

1. 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”).

[2025-04-10 BCOL Company Summary]
[[LinkedIn - Deep Water Recovery](#)]

2. 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 Baynes Sound and Sump 2. A water treatment system was

installed by February 15, 2025 but was never fully commissioned and was subsequently removed.

3. Please refer to [the Summary of Relevant Facts](#) for further information related to this administrative penalty (“AMP”), including Contaminants of Concern and Receiving Environment information.

Unauthorized Discharge

4. An unauthorized discharge occurs when waste is introduced into the environment while conducting an industry, trade, or business that is prescribed under the Waste Discharge Regulation (“WDR”) of EMA, and the discharge is not authorized by the Ministry.
5. The “commercial waste management or waste disposal industry” is a prescribed industry under Schedule 1 of the WDR and means “establishments primarily engaged in the commercial collection, handling, storage, treatment, destruction or disposal of waste soil, solids or liquids”. All waste discharges to the environment from prescribed industries must be authorized by the Ministry. Activities at the Facility fall within the scope of commercial waste management or waste disposal. Therefore, all waste discharges to the environment from the Facility must be authorized by the Ministry.

[[Waste Discharge Regulation](#)]

6. DWR is not currently authorized, under EMA, to discharge any waste from the Facility to the environment.
7. 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;”

Pollution Abatement Order 112057

8. On March 15, 2024, the Ministry issued Pollution Abatement Order 112057 (“PAO”) to DWR.

[2024-03-15 PAO 112057]

9. The PAO was amended on July 12, 2024 (“2024 PAO Amendment”) and May 6, 2025 (“2025 PAO Amendment”).

[2024-07-12 PAO 112057 Amendment]

[2025-05-06 PAO 112057 Amendment]

10. The 2024 PAO Amendment and 2025 PAO Amendment did not change Requirement 1, which has remained the same since March 15, 2024.
11. The 2025 PAO Amendment changed Requirement 4, including the addition of a May 31, 2025 deadline for a number of specific required actions. Please refer to [the Summary of Relevant Facts](#) for more details of the history of the PAO.
12. The non-compliances in this AMP assessment are with the 2024 PAO Amendment and the 2025 PAO Amendment. Throughout this AMP assessment, I will simply refer to “the PAO” whenever possible. I will only distinguish between the various amendments when necessary.
13. This AMP assessment is a continuation of AMP 2024-75, issued to DWR on July 17, 2025 (“[2025 Determination](#)”), for subsequent dates of contravention. DWR appealed the 2025 Determination to the Environmental Appeal Board (“EAB”) (EAB-EMA-25-A019). On February 24, 2026, the EAB dismissed appeal EAB-EMA-25-A019 for not being filed within 30 days of receipt of the 2025 Determination; DWR has applied to the Supreme Court of British Columbia for judicial review.

Preliminary Issue 1: the relevance of the 2025 Determination

14. Before considering the various factors which I am required to consider under Section 7(1) of the APR, I want to address the issue of the extent to which this AMP assessment should or must be consistent with the previous 2025 Determination, where I note I was also the statutory decision maker. While predictability and consistency in administrative decisions are valued, I am not bound by *stare decisis* (i.e., the doctrine of precedent), nor should I follow a past decision where information suggests a different outcome. I am guided by the “Administrative Penalty Handbook: Version 2 – Ministry of Environment and Parks – *Environmental Management Act* and *Integrated Pest Management Act*” (“AMP Handbook”), here which states:

“It is a principle of administrative law that each decision must be made on its own merits. This is different than a court of law where higher court decisions may be binding on lower courts. While previous AMP determinations may be relevant and informative – and in general like files should be treated consistently – it is the SDM’s duty to make a decision based on the unique facts of each case and all relevant factors. Further, while previous EAB decisions may inform the SDM as to the potential outcome of a decision if it is appealed, prior EAB decisions are also not binding on the SDM.”¹

15. I have considered the 2025 Determination and, while I find it relevant and informative, this AMP assessment is based on all relevant factors, which include for example, an ever-increasing history of non-compliance for DWR, a major update of the AMP Handbook in May 2025, and more recent relevant EAB decisions. Based on the information before me, some of my findings below will differ from those in the 2025 Determination.

Preliminary Issue 2: the relevance of the current appeal

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

¹ AMP Handbook, at p. 24.

“DWR strenuously objects to the issuance of the Proposed Penalty in relation to the PAO. As the Ministry knows, DWR has appealed the initial PAO itself 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 all other Administrative Monetary Penalties issued in relation to the alleged contraventions of the PAO. On April 23, 2026, DWR filed a Petition with the British Columbia Supreme Court seeking Judicial Review of the February 24, 2026 decision of the EAB (EAB-EMA-25-A019(a)) dismissing on a summary basis the appeal by DWR of the July 17, 2025 Administrative Monetary Penalty (AMP 2024-75). The Judicial Review proceedings are extant. No weight or consideration should be given to the July 17, 2025 AMP by the Ministry given the outstanding Judicial Review proceedings.

It is unduly punitive for the Ministry to consider issuing another penalty related to the PAO, when the Ministry is well aware that the entire PAO is under appeal and that, pending the hearing of the appeal, DWR is undertaking very limited work at the property. No work involves the use, cutting or handling of copper, zinc or lead, and DWR is taking reasonable measures 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 Proposed Penalty redundant and a meaningless use of Ministry and public resources.”

17. 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.
18. 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.
19. I further agree with DWR that it currently has applied to the Supreme Court of British Columbia for judicial review of the EAB’s summary dismissal of the appeal of the 2025 Determination. That application has not been heard to date.
20. 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.
21. Assessing compliance with a Pollution Abatement Order is a priority for the Ministry and any non-compliance will be addressed in a timely manner. While DWR started an appeal, with its incumbent lengthy process to hear and decide, that 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.

PENALTY CALCULATION

2025-32a: PAO Requirement 1

The Contravention or Failure – Findings:

22. While the “environment” under EMA includes air, land, and water, the specific environment for the purposes of this AMP assessment is the ground at the Facility, the foreshore and Baynes Sound.
23. The commercial waste management or waste disposal industry is a prescribed industry under Schedule 1 of the WDR. All waste discharges to the environment from prescribed industries must be authorized by the Ministry.
24. The Facility is a marine vessel dismantling and waste disposal operation which engages in the commercial collection, handling, storage, and treatment of waste solids. 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.
25. 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 Baynes Sound and Sump 2. A water treatment system was installed by February 15, 2025 but was never fully commissioned and was subsequently removed, as reported in March 2026.
26. DWR is not currently authorized, under EMA, to discharge any waste into the environment at any location.
27. 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 BC WQG [British Columbia Water Quality Guidelines] levels to the environment.” Requirement 1 has not changed in subsequent amendments.
28. On March 11, 2025, DWR failed to comply with Requirement 1 by releasing or discharging effluent from the sumps at the Facility with concentrations of copper and zinc above BC WQG levels to the environment. The copper exceedance was 723% over the short-term acute marine aquatic life BC WQG and 1,135% over the long-term chronic marine aquatic life BC WQG. The zinc exceedance was 8% over the short-term acute marine aquatic life BC WQG and 495% over the long-term chronic marine aquatic life BC WQG.
29. On March 28, 2025, DWR failed to comply with Requirement 1 by releasing or discharging effluent from the sumps and foreshore at the Facility with concentrations of copper and zinc above BC WQG levels to the environment. Copper exceedances ranged from 327% to 4,933% over the short-term acute marine aquatic life BC WQG and 540% to 7,450% over the long-term chronic marine aquatic life BC WQG. Zinc exceedances ranged from 87% to 1,710% over the long-term chronic marine aquatic life BC WQG and one exceedance was 229% over the short-term acute marine aquatic life BC WQG.

30. Based on the information provided above, an AMP was being considered for failure to comply with Requirement 1 on March 11 and 28, 2025.
31. For this AMP assessment, I have the discretion of determining a separate \$40,000 penalty for each of these two failures to comply with the PAO or consolidating into one penalty. I have decided to exercise my discretion to impose a separate penalty for each failure (i.e., each discharge of effluent with concentrations of copper and zinc above BC WQG to the environment). As both these failures have a very similar fact pattern, I will analyze them together.
32. DWR disputes that it is conducting a prescribed industry. In its OTBH Submission, DWR “adopts, repeats and relies upon” the June 19, 2025 OTBH Submission provided for AMP 2024-75 (“2024-75 OTBH Submission”). At pages 3-4 of the 2024-75 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.”

33. 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 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...”

34. I find the classification 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.”

35. 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.
36. 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.
37. DWR disputes that it is the cause of exceedances. At page 4 of the OTBH Submission, it stated, “DWR maintains that its threshold arguments that the operations were not the cause of any exceedance of the BCWQG observed on the dates of contravention, or any other time. DWR should not be penalized for discharge caused by the historical contamination of its property which it had no control over.”
38. 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).
39. 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 March 11 and 28, 2025. 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.

40. On March 11, 2025, 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 March 28, 2025, 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. I don't need to find that these discharges caused all the contamination in Baynes Sound, only that it contributed.
41. Based on the information provided above, I find that DWR failed to comply with Requirement 1 on March 11 and 28, 2025.
42. The maximum penalty allowable under the APR for each failure to comply with Requirement 1 is \$40,000.

Factors to be Considered in Penalty Calculation:

BASE PENALTY

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

Factor a): Nature of the Contravention or Failure

43. **Major.** In the AMP Handbook, a "major" contravention or failure includes "the most serious compliance issues that by their nature result in a threat to the integrity of the environment or to human health or where a contravention undermines the basic integrity of the overarching regulatory regime and significantly interferes with the Ministry's capacity to protect and conserve the natural environment." A major contravention includes "an unauthorized discharge".²
44. On March 11, 2025, the copper exceedance was 723% over the short-term acute marine aquatic life BC WQG and 1,135% over the long-term chronic marine aquatic life BC WQG. The zinc exceedance was 8% over the short-term acute marine aquatic life BC WQG and 495% over the long-term chronic marine aquatic life BC WQG.
45. On March 11, 2025, the copper exceedances ranged from 327% to 4,933% over the short-term acute marine aquatic life BC WQG and 540% to 7,450% over the long-term chronic marine aquatic life BC WQG. Zinc exceedances ranged from 87% to 1,710% over the long-term chronic marine aquatic life BC WQG and one exceedance was 229% over the short-term acute marine aquatic life BC WQG.
46. The discharge of effluent impacted by high concentrations of copper and zinc from the Facility into the environment, including Baynes Sound, can result in a very serious threat to the environment.

² AMP Handbook, at p. 42.

47. DWR has discharged waste into the environment from a prescribed industry under Schedule 1 of the WDR without authorization from the Ministry, and after being ordered to cease discharge of effluent with concentrations of copper and zinc above BC WQG levels. This undermines the basic integrity of the overarching regulatory regime and significantly interferes with the Ministry's capacity to regulate.
48. The nature of the two failures was proposed as major.
49. The risk of harm to the environment will be considered in more detail below in Factor b).
50. DWR submits that the failures should be classified as minor. At page 3 of the OTBH Submission, it stated:

“Factor a) and Factor b). DWR's position is that the alleged contraventions or failures are, at most, “minor” contraventions or failures. They certainly are not a “most serious compliance” issue or even of moderate concern given the widespread elevated levels of metals and other contaminants in the Baynes Sound region.”

51. I have considered the AMP Handbook which describes a minor nature of failure as “refers to non-compliance with administrative requirements such as not providing reports within legislated timeframes, not supplying information at the request of the Ministry, or keeping inadequate records.”
52. The nature of the failure, assessed at Notice Prior to Determination of Administrative Penalty (“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 with the requirement”.
53. After considering the relevant information above, I confirm the failures are major.

Factor b): Real or Potential Adverse Effect

54. **Medium.** In the AMP Handbook, a "medium" real or potential adverse effect includes “the contravention interferes with the Ministry's capacity to protect the environment or human health, or has the potential to do so, but does not result in an adverse effect or the potential to do so is moderate. Any effect is localized, short-term, and can be mitigated or damage repaired within a reasonable timeframe.”³
55. 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.
56. 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. In considering Factor b), I am guided by the AMP Handbook that a relevant question to ask is “How serious is the actual or potential harm or “adverse effect” to the environment or human health?”⁴

³ AMP Handbook, at p. 43.

⁴ AMP Handbook, at p. 42.

57. Copper exceedances ranged from 327% to 4,933% over the short-term acute marine aquatic life BC WQG and 540% to 7,450% over the long-term chronic marine aquatic life BC WQG. Zinc exceedances ranged from 8% to 229% over the short-term acute marine aquatic life BC WQG and 87% to 1,710% over the long-term chronic marine aquatic life BC WQG. 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.
58. The Ministry regulates discharges of waste from prescribed industries in order to ensure that impacts to the environment are managed, monitored and mitigated. Discharging waste without authorization undermines the basic integrity of the overarching regulatory regime and interferes with the Ministry's capacity to protect the environment or human health.
59. I am guided by the AMP Handbook that another relevant question to ask under this factor is "How sensitive is the environment in the location where the contravention occurred?"⁵
60. 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. A commercial shellfish tenure lies approximately 350 m south of the Facility on an extensive tidal flat. This tidal flat likely contains bivalves, including clam and scallop species harvestable by the public.
61. The Environmental Impact Assessment ("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. As actual adverse effects are not known, the actual or potential for adverse effects has been assessed as medium.
62. The real or potential adverse effect of the two failures was proposed as medium.
63. DWR submits that there is no evidence of any actual or real adverse effect. At page 3 of the OTBH Submission, it stated:

"Factor a) and Factor b). DWR's position is that the alleged contraventions or failures are, at most, "minor" contraventions or failures. They certainly are not a "most serious compliance" issue or even of moderate concern given the widespread elevated levels of metals and other contaminants in the Baynes Sound region. Similarly, there is no evidence available to the Ministry of any actual or real adverse effect. There is merely speculation that the reported concentrations may cause a potential adverse effect. The evidence is that Baynes Sound is a healthy ecosystem despite the significant industrial history of the region, coal processing operations on properties adjacent to DWR's property (and located much closer to the shellfish farms referred to by the Ministry in the Notice) and other known sources of contamination to the south of the DWR property. Furthermore, the fact is that any metal concentrations in the water discharged from the

⁵ AMP Handbook, at p. 43.

sump will be almost entirely diluted by the time the discharge actually reaches Baynes Sound.”

64. DWR submits additional information on copper and zinc concentrations. At pages 2-3 of the OTBH Submission, it stated:

“The March 11, 2025 copper concentrations at Sump 2 are faithfully transcribed from the TTOHS data. However, note that the result on that date (24.7 µg/L) represents the highest copper concentration at Sump 2 in the samples collected by TTOHS since 2024. All other copper results at Sump 2 are lower, with an overall median concentration of 10.4 µg/L. The highest value falls within the same range of statistical variation as the rest of the samples.

The median concentration at Sump 2 is consistent with the copper concentrations observed in groundwater during the groundwater investigation that TTOHS conducted in May 2025 (results and data have previously been provided to the Ministry on June 13, 2025, by TTOHS). In that study, as the Ministry will recall, the six sampled wells were upgradient and outside of the DWR operational area and had copper concentrations ranging from 1.75 µg/L to 41.6 µg/L (higher than in Sump 2). Three of the six wells had copper concentrations above the chronic BCWQG, with a median of 14 µg/L (also higher than at Sump 2). This establishes that groundwater, not DWR activities, is responsible for the elevated copper concentrations at Sump 2. We also attach for the record a report from TTOHS dated August 8, 2025, titled Site Investigation which confirms and updates these results.

Notably, concentrations of copper found in groundwater at the DWR property are very similar to samples obtained and provided to the Ministry from adjacent properties.

The situation with respect to the levels of zinc is similar: the highest concentration was observed in the March 11, 2025 Sump 2 sample (59.5 µg/L), while the median was 18 µg/L. In the May 2025 groundwater analysis, three of the six wells had zinc levels above the chronic BCWQG, at a median concentration of 26.6 µg/L (higher than at Sump 2). Once again, the data clearly demonstrates groundwater is responsible for the elevated levels of metals not DWR’s operations.

DWR will be calling expert evidence at the appeal of the PAO (and all related AMPs) to establish that concentrations of copper in the general region around the DWR property are responsible for the results reported. DWR will be calling expert evidence at the appeal of the PAO (and all related AMPs) to establish that the elevated levels of zinc are not from DWR’s operations.”

65. 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 adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.”
66. 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.

67. 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.
68. After considering the relevant information above, I confirm that the failures are medium.
69. The base penalty is therefore confirmed at \$20,000 as proposed at Notice.

APPLICATION OF PENALTY ADJUSTMENT FACTORS

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

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

70. I am guided by the AMP Handbook for this factor, to consider DWR's compliance history. This factor could increase the penalty.
71. I note that in the 2025 Determination, I applied a 20% increase for DWR's previous failures and contraventions. As I have found above, I am not bound by past decisions where new information suggests a different outcome.
72. In the ten years prior to Inspection Report ("IR") 241941, the Ministry issued DWR one AMP and two orders. In the five years prior to IR 241941, the Ministry issued DWR eight Warning IRs. DWR was given the opportunity to respond to these 11 failures and contraventions.

[2025-32 Compliance History]

73. Regarding the relevance of the previous contraventions and failures, I am guided by the AMP Handbook to consider "all compliance & enforcement (C&E) measures":

"Determine how many C&E measures have been issued to the regulated party under their current legal name and any prior names within the "consideration window" (see table below). Provide a summary of C&E measures by authorization number and by measure (including Notices of Compliance). This will include all authorizations associated with the regulated party as well as unauthorized discharges by the regulated party."⁶
74. I have considered a recent EAB decision, *Coeur Silvertip Holdings Ltd. v Director, Environmental Management Act* (Decision No. EAB-EMA-23-A021(a), February 26, 2025)⁷, where the EAB provided a fulsome analysis on what a Director can consider under this factor for "previous contraventions or failures, penalties imposed, or orders issued":

⁶ AMP Handbook, at p. 46.

⁷ [EAB-EMA-23-A021a.pdf](#)

“[206] In the above circumstances, I find that it was appropriate for the Delegate to take the 2020 and 2021 Warning Letters into account as previous contraventions or failures as an aggravating factor under Factor (c).”

75. An increase of 30% of the base penalty (+ \$6,000) was proposed for the previous failures and contraventions.

76. DWR disputes the proposed 30% increase. At page 3 of the OTBH Submission, it stated:

“In terms of the previous alleged contraventions, a 30% increase for AMP’s and warning letters issued by the MOE is entirely disproportionate to the gravity of the alleged contraventions. There should not be any adjustment for this factor.”

77. After considering the relevant information above, I confirm an increase of 30% of the base penalty (+ \$6,000) is applied for the previous failures and contraventions.

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

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

79. The failure was repeated on two dates: March 11, 2025 and March 28, 2025.

80. A separate penalty is considered for each failure in lieu of an increase of the penalty amount under this factor.

81. No adjustment was proposed for this factor.

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

83. After considering the relevant information above, I confirm no adjustment is applied under this 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 released or discharged effluent from the sumps and foreshore at the Facility with concentrations of copper and zinc above BC WQG levels to the environment. If I am persuaded that DWR deliberately released or discharged effluent from the sumps and foreshore at the Facility with concentrations of copper and zinc above BC WQG levels to the environment, this factor could increase the penalty.

85. I am guided by the AMP Handbook, which describes deliberateness as “a person’s awareness of their requirements and the control they had over the events that led to the contravention. For a contravention to be considered deliberate, the person must have been aware of their requirements and have had some degree of control over the events that constituted the contravention.”⁸

⁸ AMP Handbook, at p. 50.

86. Regarding the interpretation of the deliberateness factor, I have considered two recent EAB decisions, *Peace River Coal Inc. v. Director, Environmental Management Act* (Decision No. EAB-EMA-21-A008(c), August 27, 2025) (“PRC”)⁹ and *Pacific Coast Renewables Corp. (formerly Net Zero Waste Abbotsford Inc.) v. Director, Environmental Management Act* (EAB-EMA-22-A009(a), February 16, 2024) (“Pacific Coast”)¹⁰. The EAB in both *PRC* and *Pacific Coast* agreed with an earlier EAB decision, *Nordstrom Enterprises Ltd. v. Director, Environmental Management Act* (EAB-EMA-21-A009, March 31, 2022)¹¹, that knowledge and inaction is enough to show deliberateness:

“In the present case, the Appellant’s **inaction over a long period, knowing about the contravention, can be considered deliberate**. This supports an increase in the Base Penalty.” [emphasis added]

87. I find that only previous AMPs issued relative to when DWR could have possibly done something to avoid the current non-compliances are relevant for consideration under this factor. This is limited to previous AMPs where either the Notice or Determination were issued prior to March 11, 2025.
88. Based on these criteria, DWR was issued one previous AMP, for failure to comply with Requirement 1. On December 12, 2024, the Ministry issued AMP 2024-43 in the amount of \$19,450 to DWR for failure to comply with Requirement 1 on June 26, 2024. However, this AMP is currently under appeal to the EAB (EAB-EMA-25-G001) and will not be considered under this factor.
89. Based on the same criteria, DWR was not issued any other previous AMPs for failure to comply with Requirement 1. On July 17, 2025, the Ministry issued AMP 2024-75a in the amount of \$51,000 for failure to comply with Requirement 1 on three dates between November 16, 2024, and December 28, 2024. While AMP 2024-75a was issued after the dates of contravention considered in this AMP assessment, I find that AMP 2024-75a is somewhat relevant under this factor, in that the IRs giving rise to AMP 2024-75a were issued prior to March 11, 2025 (IRs 238061 and 238568, before all dates of contravention considered in this AMP assessment).
90. DWR underperformed the expected standard of care. As considered in further detail in AMP 2025-32b, DWR failed to perform many aspects of the “Effluent Quality Mitigation & Treatment Plan” (e.g., 2024 Treatment Plan). While DWR may not have taken direct action to cause the failures, indirect actions or inactions contributed to the failures.
91. Based on the information above, and considering the guiding concepts of standard of care, intent, source of the failures, and predictability outlined in the AMP Handbook, I find that DWR exhibited a medium level of deliberateness.
92. I note that in the 2025 Determination, I did not apply any increase for DWR’s deliberateness. As I have found above, I am not bound by past decisions where new information suggests a different outcome.

⁹ [EAB-EMA-21-A008c.pdf](#), at paras. 180-181.

¹⁰ [EAB-EMA-22-A009a.pdf](#), at paras. 50-53.

¹¹ [EAB-EMA-21-A009a.pdf](#), at para. 49.

93. An increase of 40% of the base penalty (+ \$8,000) was proposed for the deliberate nature of the failures.
94. DWR disputes the proposed 40% increase. At pages 3-4 of the OTBH Submission, it stated,
- “The finding that DWR deliberately released or discharged fluid from the sumps and **foreshore [our emphasis]**, is without any foundation. As the Ministry notes at paragraph 55 of the Notice, “awareness” and the “degree of control” is a relevant and necessary consideration. In this instance, there is no evidence and indeed no basis for asserting that DWR somehow had the ability to control either the discharge of water from the sump and particularly at the foreshore area where surface water and groundwater drain naturally into the marine environment. To suggest that DWR should or could have installed some form of barrier (or other prevention) system to prevent discharge of surface water from the DWR property is remarkable. DWR says that no adjustment should be made to the Proposed Penalty in respect of the alleged deliberate nature of the failures.”
95. After considering the relevant information above, I confirm an increase of 40% of the base penalty (+ \$8,000) is applied for the deliberate nature of the failures.

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

96. I am guided by the AMP Handbook for this factor, to consider whether there 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.
97. DWR has likely derived delayed economic benefit from not fully implementing the 2024 Treatment Plan. However, this economic benefit would be entirely speculative and not defensible. This specific economic benefit has been considered but will not be pursued in this AMP assessment.
98. No adjustment was proposed for this factor.
99. This factor was not disputed in the OTBH Submission.
100. After considering the relevant information above, I confirm no adjustment is applied under this factor.

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

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

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

101. I have decided to take an approach here that recognizes the overlap and similarities between Factors g), h), and i). All three factors can only decrease the penalty.
102. I find that the AMP Handbook describes some overlap regarding what ought to be considered under either Factor h) or Factor i). For example, Factor h) considers “what the regulated party did **during or immediately surrounding** the contravention to restore

compliance or reverse or mitigate the impacts”¹² whereas Factor i) considers “whether the regulated party took any action **after** the contravention to avoid it happening again in the **future**”.¹³ Thus, except to the extent that efforts to ameliorate impacts on the environment are considered in Factor h), there may not always be a practical difference between Factors h) and i).

103. In the AMP Handbook, Factor g) considers “the measures the regulated party took **before** the contravention took place to prevent the contravention or failure (e.g., preventative or proactive measures).”¹⁴

104. In the context of separate and repeated failures under the APR, where a separate penalty is imposed for each individual failure, and the failures span an extended period of time (e.g., a month), there may sometimes be overlap between due diligence under Factor g) and efforts to prevent recurrence under Factor i). In other words, the same efforts or activities by DWR to cease discharge might be considered due diligence regarding one non-compliance but be considered efforts to prevent recurrence for another subsequent non-compliance. For example, because I am imposing penalties for two failures in March 2025, any due diligence efforts that occurred in mid-March 2025, would count as due diligence in relation to the penalty imposed for the March 28, 2025 non-compliance, but they would also count as efforts to prevent recurrence in relation to the previous non-compliance that occurred for March 11, 2025.

105. I find that any due diligence efforts that DWR made prior to March 11, 2025, to prevent the failures clearly ought to be considered as mitigating under Factor g) in this Determination.

106. In summary, all three of these factors can be assessed together on a sliding scale based on the degree to which DWR exercised due diligence or tried to get back into compliance by ceasing discharge. For the sake of simplicity, I will consider mitigating Factors g), h), and i) together (the “Due Diligence Factors”) and apply a uniform adjustment (if applicable) to each failure in relation to each of these factors.

107. The February 2025 Monitoring Report stated that the water treatment system was installed by February 15, 2025, and was in the commissioning phase. The March 2025 Monitoring Report stated that the water treatment system was in place at Sump 1 and in the commissioning phase. The March 2026 Monitoring Report stated that the water treatment system was removed.

108. The March, April and May 2025 Monitoring Reports stated that, "The WTS holding tank did not reach such capacity that treating and discharging water was required during the month." The water treatment system had not been operated.

109. In May 2025, in response to the 2025 PAO Amendment, DWR noted that it had hired an additional Qualified Professional (“QP”) and a plan would be formulated for next steps.

110. The June 2025 Monitoring Report stated that the water treatment system was in the commissioning phase. In July 2025, DWR's QP stated that they were "following up with the supplier of the water treatment system regarding the status of the commissioning phase."

¹² AMP Handbook, at p. 56.

¹³ AMP Handbook, at p. 56.

¹⁴ AMP Handbook, at p. 54.

111. In July 2025, DWR indicated that the 2024 Treatment Plan was under review and it expected to have a revised plan to the Ministry by August 15, 2025. DWR also identified that it had commissioned a groundwater quality study to assess the potential impact of groundwater on the water quality in the sumps, as it believes that local background conditions are a significant influencer of the levels of metals found in the sumps.
112. While the water treatment system was installed by February 15, 2025, I find that it was never fully commissioned and was subsequently removed.
113. I note that in AMP 2024-75a of the 2025 Determination, I applied a 35% decrease for DWR's efforts made to prevent the failures and recurrence of the failures. As I have found above, I am not bound by past decisions where new information suggests a different outcome.
114. A decrease of 20% of the base penalty (- \$4,000) was proposed for efforts in relation to Factors g), h), and i). As described above, I specifically find that this does not reflect full due diligence on DWR's part.
115. DWR submits it has taken additional actions to prevent recurrence of the failures. At page 3 of the OTBH Submission, it stated, "DWR has recently cleaned out Sump 1 and removed all residue from within the sump, thereby reducing the potential for the concentration of metals that may have been present in the residue to affect surface water runoff or groundwater that collects in the sump. DWR intends to conduct more frequent cleaning and maintenance of sump1 from in the future to limit the potential for residue in the sump to affect the quality of stormwater discharged from it."
116. At page 4 of the OTBH Submission, DWR further stated, "efforts continue to prepare a revised environmental mitigation plan consistent with the approach that the Ministry accepts for other recycling facilities."
117. After considering the relevant information above, I confirm a decrease of 25% of the base penalty (- \$5,000) is applied for efforts in relation to Factors g), h), and i).

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

118. 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 cost to government, cooperation, degree of remorse, ability to pay, and financial impact. These additional factors may increase or decrease the penalty.
119. I am not aware of any additional relevant factors.
120. No adjustment was proposed for this factor.
121. This factor was not disputed in the OTBH Submission.
122. After considering the relevant information above, I confirm no adjustment is applied under this factor.

Multiplier Application:

123. Separate penalties for each failure described in this AMP assessment are possible since there were multiple failures in March 2025.
124. The application of a multiplier on a daily basis is applied for 2 days: March 11, 2025 and March 28, 2025.
125. I find no practical or administrative fairness issues created by applying a multiplier for separate failures that are repeated. I find that both separate failures included in this AMP assessment have a high degree of similarity, specifically I find them all to be moderate and medium failures. In the result, using one common shared chronology of relevant facts (i.e., evidence) and Section 7 APR factor analysis organized into a coherent single package is an efficient and appropriate approach to adequately support each individual failure.
126. I find that this approach is consistent with the AMP Handbook which states, “If you are including multiple related contraventions or failures in a single package, provide sufficient evidence to support all asserted facts and address the factors in section 7 of the APR in relation to each contravention.”¹⁵
127. Because of the high degree of similarity between both failures in this AMP assessment, I find that it was not necessary to complete a separate Section 7 APR factor analysis in relation to each failure. One thorough and detailed analysis for each failure, as was provided here, is sufficient for both failures in this AMP assessment.
128. The application of the multiplier was not disputed in the OTBH Submission.
129. The final penalty calculations are summarized in the table below:

Penalty Calculation Table:

Factors to be considered in penalty calculation:	Notice	Final Determination
Gravity Penalty		
a) Nature of contravention or failure	major	major
b) Real or potential adverse effect	medium	medium
Base Penalty:		
c) Previous contraventions or failures, penalties imposed, or orders issued	+\$6,000	+\$6,000
d) Whether contravention or failure was repeated or continuous	\$0	\$0
e) Whether contravention or failure was deliberate	+\$8,000	+\$8,000

¹⁵ AMP Handbook, at p. 30.

g) Exercise of due diligence to prevent the contravention or failure		
h) Efforts to correct the contravention or failure	- \$4,000	- \$5,000
i) Efforts to prevent recurrence of the contravention or failure		
j) Additional relevant factors	\$0	\$0
Total Gravity Penalty	\$30,000	\$29,000
Application of multiplier: Yes	2	2
Economic Benefit Penalty		
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
Gravity Penalty + Economic Penalty	\$30,000 x 2 days	\$29,000 x 2 days
Total Penalty:	\$60,000	\$58,000

Total Penalty:

130. After determining a gravity penalty of \$29,000 for these failures, and applying the daily multiplier, the penalty is established at \$58,000.

PENALTY CALCULATION

2025-32b: 2024 PAO Amendment Requirement 4

The Contravention or Failure – Findings:

131. On March 15, 2024, DWR was ordered with Requirement 4 of the PAO to “Implement the approved Plan on a date to be specified in writing by the Director.” The “approved Plan” is specifically an “Effluent Sampling and Management Plan” (the “Plan”), consisting of two parts, or sub-plans.

132. The first part of the Plan is titled “Proposed Surface Water Sampling and Management Plan” (“2024 Sampling Plan”). The Ministry approved the 2024 Sampling Plan part of the Plan.

133. The second part of the Plan is titled “Effluent Quality Mitigation & Treatment Plan” to the Ministry (“2024 Treatment Plan”). 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. On November 7, 2024, the Ministry further ordered DWR to install the approved water treatment system by December 15, 2024.

134. This AMP assessment is for DWR’s failure to comply with the 2024 Treatment Plan part of the Plan only, and not the 2024 Sampling Plan.

135. Between March 1 and April 30, 2025, DWR failed to comply with Requirement 4 of the 2024 PAO Amendment by failing to fully implement the 2024 Treatment Plan, specifically the following components:

- Increasing berm height

- Installing additional asphalt berm (south)
- Installing French Drains
- Re-grading
- Oil-water separator installation
- Sump 2 decommissioning
- Installing additional asphalt berm (north)
- Fully covering stockpiles
- Sump 3 decommissioning / Redirect discharge from Sump 3 to Sump 1
- Install, commission and operate the water treatment system

136. Based on the information provided above, an AMP was being considered for failure to comply with Requirement 4 of the 2024 PAO Amendment between March 1 and April 30, 2025.

137. Based on the information provided above, I find that DWR failed to comply with Requirement 4 of the 2024 PAO Amendment between March 1 and April 30, 2025.

138. The maximum penalty allowable under the APR for each failure to comply with Requirement 4 is \$40,000.

Factors to be Considered in Penalty Calculation:

BASE PENALTY

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

Factor a): Nature of the Contravention or Failure

139. **Moderate.** In the AMP Handbook, a "moderate" contravention or failure includes “failure to perform required tasks or actions such as ... properly installing or maintaining equipment, constructing works or meeting operational standards or requirements; ... failure to develop or follow plans”.¹⁶

140. The purpose of 2024 Treatment Plan is 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 [BC WQG] (Aquatic Life – Marine) for discharge to a marine environment.”

141. The failure to fully implement the 2024 Treatment Plan has resulted in continued unauthorized discharge to the environment, that exceeds the BC WQGs for copper and zinc. DWR has failed to operate the water treatment system. DWR failed to perform the necessary operational requirements including increasing and installing berms, installing French Drains, re-grading, installing an oil-water separator, decommissioning sumps and covering stockpiles.

¹⁶ AMP Handbook, at p. 41.

142. The nature of the failures was proposed as moderate.
143. The risk of harm to the environment will be considered in more detail below in Factor b).
144. DWR submits that the failures should be classified as minor. At page 3 of the OTBH Submission, it stated:
- “Factor a) and Factor b). DWR’s position is that the alleged contraventions or failures are, at most, “minor” contraventions or failures. They certainly are not a “most serious compliance” issue or even of moderate concern given the widespread elevated levels of metals and other contaminants in the Baynes Sound region.”
145. I have considered the AMP Handbook which describes a minor nature of failure as “refers to non-compliance with administrative requirements such as not providing reports within legislated timeframes, not supplying information at the request of the Ministry, or keeping inadequate records.”
146. The nature of the failure, assessed at Notice as moderate, 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 with the requirement”.
147. After considering the relevant information above, I confirm the failures are moderate.

Factor b): Real or Potential Adverse Effect

148. **Medium.** In the AMP Handbook, a "medium" real or potential adverse effect includes “the contravention interferes with the Ministry’s capacity to protect the environment or human health, or has the potential to do so, but does not result in an adverse effect or the potential to do so is moderate. Any effect is localized, short-term, and can be mitigated or damage repaired within a reasonable timeframe.”¹⁷
149. 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.
150. 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. In considering Factor b), I am guided by the AMP Handbook that a relevant question to ask is “How serious is the actual or potential harm or “adverse effect” to the environment or human health?”¹⁸
151. Copper exceedances ranged from 327% to 4,933% over the short-term acute marine aquatic life BC WQG and 540% to 7,450% over the long-term chronic marine aquatic life BC WQG. Zinc exceedances ranged from 8% to 229% over the short-term acute marine aquatic life BC WQG and 87% to 1,710% over the long-term chronic marine aquatic life BC WQG. Copper produces lethal effects as well as disruptions to development, growth, egg production, feeding, respiration, and longevity. Oysters are among the most sensitive marine

¹⁷ AMP Handbook, at p. 43.

¹⁸ AMP Handbook, at p. 42.

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

152. I am guided by the AMP Handbook that another relevant question to ask under this factor is “How sensitive is the environment in the location where the contravention occurred?”¹⁹

153. I have considered the sensitivity of the environment in more detail above in AMP 2025-32a, at paragraphs 60 to 61 of this AMP assessment.

154. The real or potential adverse effect of the failures was proposed as medium.

155. DWR submits that there is no evidence of any actual or real adverse effect. At page 3 of the OTBH Submission, it stated:

“Factor a) and Factor b). DWR’s position is that the alleged contraventions or failures are, at most, “minor” contraventions or failures. They certainly are not a “most serious compliance” issue or even of moderate concern given the widespread elevated levels of metals and other contaminants in the Baynes Sound region. Similarly, there is no evidence available to the Ministry of any actual or real adverse effect. There is merely speculation that the reported concentrations may cause a potential adverse effect. The evidence is that Baynes Sound is a healthy ecosystem despite the significant industrial history of the region, coal processing operations on properties adjacent to DWR’s property (and located much closer to the shellfish farms referred to by the Ministry in the Notice) and other known sources of contamination to the south of the DWR property. Furthermore, the fact is that any metal concentrations in the water discharged from the sump will be almost entirely diluted by the time the discharge actually reaches Baynes Sound.”

156. 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 adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.”

157. 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.

158. 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.

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

¹⁹ AMP Handbook, at p. 43.

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

APPLICATION OF PENALTY ADJUSTMENT FACTORS

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

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

161. I am guided by the AMP Handbook for this factor, to consider DWR’s compliance history. This factor could increase the penalty.

162. I note that in the 2025 Determination, I applied a 20% increase for DWR’s previous failures and contraventions. As I have found above, I am not bound by past decisions where new information suggests a different outcome.

163. In the ten years prior to IR 241941, the Ministry issued DWR one AMP and two orders. In the five years prior to IR 241941, the Ministry issued DWR eight Warning IRs. DWR was given the opportunity to respond to these 11 failures and contraventions.

[2025-32 Compliance History]

164. I have described my approach to previous contraventions or failures, penalties imposed, or orders issued in more detail above in AMP 2025-32a, at paragraphs 71 to 74 of this AMP assessment.

165. An increase of 30% of the base penalty (+ \$3,000) was proposed for the previous failures and contraventions.

166. DWR disputes the proposed 30% increase. At page 3 of the OTBH Submission, it stated,

“In terms of the previous alleged contraventions, a 30% increase for AMP’s and warning letters issued by the MOE is entirely disproportionate to the gravity of the alleged contraventions. There should not be any adjustment for this factor.”

167. After considering the relevant information above, I confirm an increase of 30% of the base penalty (+ \$3,000) is applied for the previous failures and contraventions.

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

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

169. The failure was repeated and continuous during the period of March 1 to April 30, 2025 (61 days).

170. Separate penalties for each failure described in this AMP are possible since there were multiple failures between March 1 and April 30, 2025; however, for this AMP, these failures will be treated as repeated and continuous.

171. An increase of 25% of the base penalty (+ \$2,500) was proposed to account for the repeated and continuous nature of the failures.
172. This factor was not disputed in the OTBH Submission.
173. After considering the relevant information above, I confirm an increase of 25% of the base penalty (+ \$2,500) is applied for the repeated and continuous nature of the failures.

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

174. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that DWR deliberately failed to implement the 2024 Treatment Plan. If I am persuaded that DWR deliberately failed to implement the 2024 Treatment Plan, this factor could increase the penalty.
175. I note that in the 2025 Determination, I did not apply any increase for DWR's deliberateness. As I have found above, I am not bound by past decisions where new information suggests a different outcome.
176. I have described my approach to deliberateness in more detail above in AMP 2025-32a, at paragraphs 85 to 87 of this AMP assessment.
177. Based on these criteria, DWR was not issued any previous AMPs for failure to comply with Requirement 4. On July 17, 2025, the Ministry issued AMP 2024-75b in the amount of \$21,050 for failure to comply with Requirement 4 between November 9, 2024 and March 1, 2024. While AMP 2024-75b was issued after the dates of contravention considered in this AMP assessment, I find that AMP 2024-75b is somewhat relevant under this factor, in that the majority of the IRs giving rise to AMP 2024-75b were issued prior to March 1, 2025 (IRs 236755, 238061 and 238568, before all dates of contravention considered in this AMP assessment), and March 25, 2025 (IR 240675, partway through the dates of contravention considered in this AMP assessment).
178. DWR underperformed the expected standard of care. DWR failed to perform many aspects of the 2024 Treatment Plan, to the extent that the Ministry issued the 2025 PAO Amendment to provide explicit actions to be undertaken. While DWR may not have taken direct action to cause the failures, indirect actions or inactions contributed to the failures.
179. Based on the information above, and considering the guiding concepts of standard of care, intent, source of the failures, and predictability outlined in the AMP Handbook, I find that DWR exhibited a medium level of deliberateness.
180. An increase of 40% of the base penalty (+ \$4,000) was proposed for the deliberate nature of the failures.
181. This factor was not disputed in the OTBH Submission.
182. After considering the relevant information above, I confirm an increase of 40% of the base penalty (+ \$4,000) is applied for the deliberate nature of the failures.

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

183. I am guided by the AMP Handbook for this factor, to consider whether there 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.

184. DWR has likely derived delayed economic benefit from not fully implementing the 2024 Treatment Plan. However, this economic benefit would be entirely speculative and not defensible. This specific economic benefit has been considered but will not be pursued in this AMP assessment.

185. No adjustment was proposed for this factor.

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

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

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

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

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

188. I have decided to take an approach here that recognizes the overlap and similarities between Factors g), h), and i). All three factors can only decrease the penalty.

189. I have described my approach to the Due Diligence Factors in more detail above in AMP 2025-32a, at paragraphs 101 to 112 of this AMP assessment.

190. I note that in AMP 2024-75b of the 2025 Determination, I applied a 40% decrease for DWR's efforts made to prevent the failures and recurrence of the failures. As I have found above, I am not bound by past decisions where new information suggests a different outcome.

191. A decrease of 20% of the base penalty (- \$2,000) was proposed for efforts in relation to Factors g), h), and i). As described above, I specifically find that this does not reflect full due diligence on DWR's part.

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

193. After considering the relevant information above, I confirm a decrease of 20% of the base penalty (- \$2,000) is applied for efforts in relation to Factors g), h), and i).

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

194. 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 cost to government, cooperation, degree of remorse, ability to pay, and financial impact. These additional factors may increase or decrease the penalty.

195. I am not aware of any additional relevant factors.

196. No adjustment was proposed for this factor.

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

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

Penalty Calculation Table:

Factors to be considered in penalty calculation:	Notice	Final Determination
Gravity Penalty		
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	medium	medium
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$3,000	+ \$3,000
d) Whether contravention or failure was repeated or continuous	+ \$2,500	+ \$2,500
e) Whether contravention or failure was deliberate	+ \$4,000	+ \$4,000
g) Exercise of due diligence to prevent the contravention or failure		
h) Efforts to correct the contravention or failure	- \$2,000	- \$2,000
i) Efforts to prevent recurrence of the contravention or failure		
j) Additional relevant factors	\$0	\$0
Total Gravity Penalty	\$17,500	\$17,500
Application of multiplier: No	N/A	N/A
Economic Benefit Penalty		
f) Economic benefit derived by the party from the contravention or failure	\$0	\$0
Gravity Penalty + Economic Penalty	\$17,500	\$17,500
Total Penalty:	\$17,500	\$17,500

Total Penalty:

199. After determining a gravity penalty of \$17,500 for these failures, the penalty is established at \$17,500.

PENALTY CALCULATION

2025-32c: 2025 PAO Amendment Requirement 4

The Contravention or Failure – Findings:

200. On May 6, 2025, the Ministry issued the 2025 PAO Amendment to DWR. The 2025 PAO Amendment stated, “At present, key components of the Plan have not been implemented, and the water treatment system is not fully operational.” In the 2025 PAO Amendment, Requirement 4 was amended to provide individual deadlines of May 31, 2025 for specific actions from the 2024 Treatment Plan and labelled them B through L.

201. Between June 1 and 30, 2025, DWR failed to comply with Requirement 4 by failing to fully implement the 2024 Treatment Plan, specifically the following components:

- 4(B) Increasing berm height
- 4(C) Installing additional asphalt berm (south)
- 4(D) Installing French Drains
- 4(E) Re-grading
- 4(F) Oil-water separator installation
- 4(G) Sump 2 decommissioning
- 4(H) Installing additional asphalt berm (north)
- 4(I) Fully covering stockpiles
- 4(J) Sump 3 decommissioning
- 4(L) Install, commission and operate the water treatment system

202. Based on the information provided above, an AMP was being considered for failure to comply with Requirement 4 of the 2025 PAO Amendment between June 1 and 30, 2025.

203. Based on the information provided above, I find that DWR failed to comply with Requirement 4 of the 2025 PAO Amendment between June 1 and 30, 2025.

204. The maximum penalty allowable under the APR for each failure to comply with Requirement 4 is \$40,000.

Factors to be Considered in Penalty Calculation:

BASE PENALTY

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

Factor a): Nature of the Contravention or Failure

205. **Moderate.** In the AMP Handbook, a "moderate" contravention or failure includes “failure to perform required tasks or actions such as ... properly installing or maintaining equipment, constructing works or meeting operational standards or requirements; ... failure to develop or follow plans”.²⁰

²⁰ AMP Handbook, at p. 41.

206. The purpose of 2024 Treatment Plan is 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 [BC WQG] (Aquatic Life – Marine) for discharge to a marine environment.”

207. The failure to fully implement the 2024 Treatment Plan has resulted in continued unauthorized discharge to the environment, that exceeds the BC WQGs for copper and zinc. DWR has failed to operate the water treatment system. DWR failed to perform the necessary operational requirements including increasing and installing berms, installing French Drains, re-grading, installing an oil-water separator, decommissioning sumps and covering stockpiles.

208. The nature of the failures was proposed as moderate.

209. The risk of harm to the environment will be considered in more detail below in Factor b).

210. DWR submits that the failures should be classified as minor. At page 3 of the OTBH Submission, it stated:

“Factor a) and Factor b). DWR’s position is that the alleged contraventions or failures are, at most, “minor” contraventions or failures. They certainly are not a “most serious compliance” issue or even of moderate concern given the widespread elevated levels of metals and other contaminants in the Baynes Sound region.”

211. I have considered the AMP Handbook which describes a minor nature of failure as “refers to non-compliance with administrative requirements such as not providing reports within legislated timeframes, not supplying information at the request of the Ministry, or keeping inadequate records.”

212. The nature of the failure, assessed at Notice as moderate, 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 with the requirement”.

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

Factor b): Real or Potential Adverse Effect

214. **Medium.** In the AMP Handbook, a "medium" real or potential adverse effect includes “the contravention interferes with the Ministry’s capacity to protect the environment or human health, or has the potential to do so, but does not result in an adverse effect or the potential to do so is moderate. Any effect is localized, short-term, and can be mitigated or damage repaired within a reasonable timeframe.”²¹

²¹ AMP Handbook, at p. 43.

215. 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.
216. 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. In considering Factor b), I am guided by the AMP Handbook that a relevant question to ask is “How serious is the actual or potential harm or “adverse effect” to the environment or human health?”²²
217. Copper exceedances ranged from 327% to 4,933% over the short-term acute marine aquatic life BC WQG and 540% to 7,450% over the long-term chronic marine aquatic life BC WQG. Zinc exceedances ranged from 8% to 229% over the short-term acute marine aquatic life BC WQG and 87% to 1,710% over the long-term chronic marine aquatic life BC WQG. 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.
218. I am guided by the AMP Handbook that another relevant question to ask under this factor is “How sensitive is the environment in the location where the contravention occurred?”²³
219. I have considered the sensitivity of the environment in more detail above in AMP 2025-32a, at paragraphs 60 to 61 of this AMP assessment.
220. The real or potential adverse effect of the failures was proposed as medium.
221. DWR submits that there is no evidence of any actual or real adverse effect. At page 3 of the OTBH Submission, it stated:
- “Factor a) and Factor b). DWR’s position is that the alleged contraventions or failures are, at most, “minor” contraventions or failures. They certainly are not a “most serious compliance” issue or even of moderate concern given the widespread elevated levels of metals and other contaminants in the Baynes Sound region. Similarly, there is no evidence available to the Ministry of any actual or real adverse effect. There is merely speculation that the reported concentrations may cause a potential adverse effect. The evidence is that Baynes Sound is a healthy ecosystem despite the significant industrial history of the region, coal processing operations on properties adjacent to DWR’s property (and located much closer to the shellfish farms referred to by the Ministry in the Notice) and other known sources of contamination to the south of the DWR property. Furthermore, the fact is that any metal concentrations in the water discharged from the sump will be almost entirely diluted by the time the discharge actually reaches Baynes Sound.”
222. 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 adverse effect or interfere with the Ministry’s capacity to protect the environment or human health, or the potential to do so is low.”

²² AMP Handbook, at p. 42.

²³ AMP Handbook, at p. 43.

223. 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.

224. 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.

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

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

APPLICATION OF PENALTY ADJUSTMENT FACTORS

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

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

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

228. I note that in the 2025 Determination, I applied a 20% increase for DWR's previous failures and contraventions. As I have found above, I am not bound by past decisions where new information suggests a different outcome.

229. In the ten years prior to IR 241941, the Ministry issued DWR one AMP and two orders. In the five years prior to IR 241941, the Ministry issued DWR eight Warning IRs. DWR was given the opportunity to respond to these 11 failures and contraventions.

[2025-32 Compliance History]

230. I have described my approach to previous contraventions or failures, penalties imposed, or orders issued in more detail above in AMP 2025-32a, at paragraphs 71 to 74 of this AMP assessment.

231. An increase of 30% of the base penalty (+ \$3,000) was proposed for the previous failures and contraventions.

232. DWR disputes the proposed 30% increase. At page 3 of the OTBH Submission, it stated:

“In terms of the previous alleged contraventions, a 30% increase for AMP's and warning letters issued by the MOE is entirely disproportionate to the gravity of the alleged contraventions. There should not be any adjustment for this factor.”

233. After considering the relevant information above, I confirm an increase of 30% of the base penalty (+ \$3,000) is applied for the previous failures and contraventions.

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

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

235. The failure was repeated and continuous during the period of June 1 to 30, 2025 (30 days).

236. Separate penalties for each failure described in this AMP are possible since there were multiple failures between June 1 to 30, 2025; however, for this AMP, these failures will be treated as repeated and continuous.

237. DWR failed to implement the 2024 Treatment Plan from May 1 to 31, 2025. However, due to the issuance of the 2025 PAO Amendment, this period is excluded from this AMP assessment.

238. An increase of 20% of the base penalty (+ \$2,000) was proposed to account for the repeated and continuous nature of the failures.

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

240. After considering the relevant information above, I confirm an increase of 20% of the base penalty (+ \$2,000) is applied for the repeated and continuous nature of the failures.

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

241. I am guided by the AMP Handbook for this factor, to consider whether there is any evidence indicating that DWR deliberately failed to implement the 2024 Treatment Plan. If I am persuaded that DWR deliberately failed to implement the 2024 Treatment Plan, this factor could increase the penalty.

242. I note that in the 2025 Determination, I did not apply any increase for DWR's deliberateness. As I have found above, I am not bound by past decisions where new information suggests a different outcome.

243. I have described my approach to deliberateness in more detail above in AMP 2025-32a, at paragraphs 85 to 87, and in AMP 2025-32b, at paragraph 177, of this AMP assessment.

244. DWR underperformed the expected standard of care. DWR failed to perform many aspects of the 2024 Treatment Plan, to the extent that the Ministry issued the 2025 PAO Amendment to provide explicit actions to be undertaken. While DWR may not have taken direct action to cause the failures, indirect actions or inactions contributed to the failures.

245. Based on the information above, and considering the guiding concepts of standard of care, intent, source of the failures, and predictability outlined in the AMP Handbook, I find that DWR exhibited a medium level of deliberateness.

246. An increase of 40% of the base penalty (+ \$4,000) was proposed for the deliberate nature of the failures.

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

248. After considering the relevant information above, I confirm an increase of 40% of the base penalty (+ \$4,000) is applied for the deliberate nature of the failures.

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

249. I am guided by the AMP Handbook for this factor, to consider whether there 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.

250. DWR has likely derived delayed economic benefit from not fully implementing the 2024 Treatment Plan. However, this economic benefit would be entirely speculative and not defensible. This specific economic benefit has been considered but will not be pursued in this AMP assessment.

251. No adjustment was proposed for this factor.

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

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

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

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

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

254. I have decided to take an approach here that recognizes the overlap and similarities between Factors g), h), and i). All three factors can only decrease the penalty.

255. I have described my approach to the Due Diligence Factors in more detail above in AMP 2025-32a, at paragraphs 101 to 112 of this AMP assessment.

256. I note that in AMP 2024-75b of the 2025 Determination, I applied a 40% decrease for DWR's efforts made to prevent the failures and recurrence of the failures. As I have found above, I am not bound by past decisions where new information suggests a different outcome.

257. A decrease of 20% of the base penalty (- \$2,000) was proposed for efforts in relation to Factors g), h), and i). As described above, I specifically find that this does not reflect full due diligence on DWR's part.

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

259. After considering the relevant information above, I confirm a decrease of 20% of the base penalty (- \$2,000) is applied for efforts in relation to Factors g), h), and i).

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

260. 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.

261. I am not aware of any additional relevant factors.

262. No adjustment was proposed for this factor.

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

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

Penalty Calculation Table:

Factors to be considered in penalty calculation:	Notice	Final Determination
Gravity Penalty		
a) Nature of contravention or failure	moderate	moderate
b) Real or potential adverse effect	medium	medium
Base Penalty:	\$10,000	\$10,000
c) Previous contraventions or failures, penalties imposed, or orders issued	+ \$3,000	+ \$3,000
d) Whether contravention or failure was repeated or continuous	+ \$2,000	+ \$2,000
e) Whether contravention or failure was deliberate	+ \$4,000	+ \$4,000
k) Exercise of due diligence to prevent the contravention or failure		
l) Efforts to correct the contravention or failure	- \$2,000	- \$2,000
m) Efforts to prevent recurrence of the contravention or failure		
n) Additional relevant factors	\$0	\$0
Total Gravity Penalty	\$17,000	\$17,000
Application of multiplier: No	N/A	N/A
Economic Benefit Penalty		
g) Economic benefit derived by the party from the contravention or failure	\$0	\$0
Gravity Penalty + Economic Penalty	\$17,000	\$17,000
Total Penalty:	\$17,000	\$17,000

Total Penalty:

265. After determining a gravity penalty of \$17,000 for these failures, the penalty is established at \$17,000.

Summary of Relevant Facts

Current AMPs

266. On March 28, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of March 1 to 31, 2025. On May 6, 2025, the Ministry issued IR 241941 and found DWR out of compliance with a number of requirements, including Requirements 1 and 4. The outcome for IR 241941 was determined to be a Referral for an AMP. The Ministry did not receive a response to IR 241941 and, pursuant to Section 133 of EMA, it was deemed received on May 9, 2025.

[2025-05-06 IR241941 AMP]
[2025-05-06 IR241941 Delivery]

267. The “Details/Findings” in IR 241941 assessing compliance with Requirement 1 stated:

“Discharge samples were collected by DWR on March 11, 2025, and by the Ministry on March 28, 2025, from discharge points with sufficient flow for sampling.

The March 2025 Monitoring Report includes results for discharge samples collected on March 11, 2025, from Sump 2, North Creek and MW1. According to the March 2025 Monitoring Report, discharge on March 11, 2025, from Sump 2 exceeded the BC WQG Short Term (Acute) limit for copper by 723% and for zinc by 8% (*See Table 1*).

...

On March 28, 2025, [the Officer] collected discharge samples from Sump 2, Sump 3 and the gravel pad / Foreshore area, as well as a reference sample from the North Creek culvert.

- The discharge sample collected from Sump 2 on March 28, 2025, exceeded the BC WQG Short Term (Acute) limit for copper by 330%.
- The discharge sample collected from Sump 3 on March 28, 2025, exceeded the BC WQG Short Term (Acute) limit for copper by 327%.
- The discharge sample collected from the Foreshore area on March 28, 2025, exceeded the BC WQG Short Term (Acute) limit for copper by 4933% and exceeded BC WQG Short Term (Acute) limit for zinc by 229%

(*See Result Summary in Table 1 and laboratory certificates of analysis in Appendix 4*).

By releasing or discharging effluent with concentrations of copper and zinc above BC WQG levels to the environment on March 11 and March 28, 2025, DWR is out of compliance with Order Requirement 1.

This non-compliance is being referred for an Administrative Penalty.”

268. Regarding the 2024 Treatment Plan, the “Details/Findings” in IR 241941 assessing compliance with Requirement 4 stated:

“The February 2025 Monitoring Report states that the water treatment system was installed by February 15, 2025, and was in the commissioning phase. The March 2025 Monitoring Report states the water treatment system is in place at Sump 1 and is in the commissioning phase.

According to the March 2025 Monitoring Report, the water treatment system holding tank has not reached capacity and has not discharged since it was installed February 15, 2025. The water treatment system was not discharging during the March 28, 2025, site inspection. There has been over 250 mm of rainfall reported in the Facility area since February 15, 2025.

...

The January, February or March 2025 Monitoring Reports did not report site re-grading, french drain installation, oil-water separator installation or asphalt berm extension.

During the March 28, 2025 on-site inspection, Officers observed that Facility modifications listed in the 2024 Treatment Plan had not been completed. There was no 6 meter asphalt berm along the south side of the asphalt pad; the three French drains had not been installed in the gravel pad; no oil-water interceptor was installed; the gravel pad had not been re-graded to slope north-south; Sump 2 was not decommissioned; the wood waste berm was not fully removed; the stockpiled wood waste berm material south of the gravel pad was not tarped to prevent the generation of leachate; no asphalt berm was installed along the northern edge of the asphalt pad and Sump 3 was not decommissioned.

The November 7, 2024, approval required that the 2024 Treatment Plan be implemented by November 8, 2024, and the water treatment system be installed by December 15, 2024. Based on the DWR March 2025 Monitoring Report and the March 28, 2025, site inspection, the water treatment system is installed, but is not yet operational and the site drainage modifications have not been completed. The 2024 Treatment Plan has not been fully implemented, therefore, DWR is out of compliance with Order Requirement 4.

DWR's failure to implement the approved 2024 Treatment Plan for the period of March 1, 2025 to March 31, 2025, is being referred for an Administrative Penalty.”

269. On May 22, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of April 1 to 30, 2025. On June 4, 2025, the Ministry issued IR 243398 and found DWR out of compliance with Requirement 4. The outcome for IR 243398 was determined to be a Referral for an AMP.

[2025-06-04 IR243398 AMP]
[2025-06-04 IR243398 Delivery]

270. The “Details/Findings” in IR 243398 assessing compliance with Requirement 4 stated:

“During a March 28, 2025 on-site inspection, Officers observed that the Facility modifications listed in the 2024 Treatment Plan had not been completed. There was no 6 meter asphalt berm along the south side of the asphalt pad; the three French drains had not been installed in the gravel pad; no new oil-water interceptor was installed; the gravel pad had not been re-graded to slope north-south; Sump 2 was not decommissioned; the wood waste berm was not fully removed; the stockpiled wood waste berm material south

of the gravel pad was not tarped to prevent the generation of leachate; no asphalt berm was installed along the northern edge of the asphalt pad and Sump 3 discharge was not pumped to Sump 1. None of these activities are visible in the April 2025 Drone Videos.

Order Requirement 5 requires that monthly reports include a “Description of all effluent management activities.” The April Monitoring Report, Section 5.0 lists the pollution management actions completed in April. It states that, “*The water treatment system, as outlined in the Mitigation Plan, has been installed and is in the commissioning phase.*” No other effluent management actions are listed. DWR has not implemented the 2024 Treatment Plan and is out of compliance with Order Requirement 4.

This non-compliance is being referred for an Administrative Penalty.”

271. On May 22, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of May 16, 2025 to June 5, 2025. On June 20, 2025, the Ministry issued IR 244510 and found DWR out of compliance with a number of requirements, including Requirements 4(B) through 4(J). The outcome for IR 244510 was determined to be a Referral for an AMP.

[2025-06-20 IR244510 AMP]
[2025-06-20 IR244510 Delivery]

272. On July 7, 2025, DWR responded to IR 243398 and IR 244510. In the response, DWR stated:

- “***Required Action 4(A), 4(L)** – [Northwin Environmental Ltd.], supplier of the onsite treatment system, has provided the following information:
...
 - ***Commissioning Status**
 - *The system is currently in the final stages of commissioning. Initial water quality sampling was completed by T & T Environmental and compared against applicable regulatory standards. The first round of sampling indicated that treated water did not fully meet the discharge criteria.
 - *In response, operational adjustments were made to optimize system performance. These included reducing the pH slightly below the original target of 9.5 and increasing the coagulant dosage to enhance metals precipitation and floc formation. A second round of sampling has since been completed, and the results are currently pending.
 - *Once the second set of results has been evaluated to determine compliance with the required standards, the overall efficiency of the system will be better understood. If the results indicate that further improvements are necessary, additional operational adjustments will be made, followed by another round of sampling. If the results demonstrate compliance, it will be assumed that commissioning is complete.
- ***Required Actions 4(B), 4(C), 4(D), 4(E), 4(F), 4(G), 4(H), 4(I), 4(J), 4(K)** - The Effluent Quality Mitigation & Treatment Plan approved by ENV is under review by SLR to assess where it may be revised to meet current DWR operational requirements and involve further infrastructure improvements, while satisfying the intent of the

currently approved plan. We anticipate having a revised plan that addresses these required actions available for ENV review by August 15, 2025.

In addition to taking steps to address these required actions, DWR has commissioned a groundwater quality study to assess the potential impact of groundwater on the water quality in the sumps, which may lead to further recommendations for the approved sampling plan. Based on other groundwater and surface water data that SLR has collected in the vicinity of the site and previously submitted for ministry review, we believe that local background conditions are a significant influencer of the levels of metals found in the sumps. We anticipate the results of the onsite groundwater study to be available within 30 days.”

[2025-07-07 IR243398 Response]

273. On July 17, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of June 1 to 30, 2025. On August 11, 2025, the Ministry issued IR 244785 and found DWR out of compliance with a number of requirements, including Requirements 4(B) through 4(J) and 4(L). The outcome for IR 244785 was determined to be a Referral for an AMP. The Ministry did not receive a response to IR 244785 and, pursuant to Section 133 of EMA, it was deemed received on August 14, 2025.

[2025-08-11 IR244785 AMP]
[2025-08-11 IR244785 Delivery]

274. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(B) stated:

“The June 2025 Monitoring Report does not report that berm height has been increased. Some of the bi-weekly monitoring photos of Sump 1 in that report, dated June 5 through June 25, 2025, show the asphalt berm adjacent the oil/water separator. Those photos do not show any change in berm height.

DWR is out of compliance with Order Requirement 4(B) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

275. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(C) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that additional berm has been installed. No berm along the southern asphalt surface perimeter is visible in the June 30 Drone Video.

DWR is out of compliance with Order Requirement 4(C) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

276. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(D) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that French drains have been installed.

DWR is out of compliance with Order Requirement 4(D) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

277. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(E) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that the Sump 2 catchment area has been re-graded. No re-grading is visible in the June 30 Drone Video.

DWR is out of compliance with Order Requirement 4(E) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

278. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(F) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that a new oil/water separator has been installed. No new oil/water separator is visible in the June 30 Drone Video.

DWR is out of compliance with Order Requirement 4(F) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

279. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(G) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that Sump 2 has been decommissioned. Sump 2 remains visible in the June 30 Drone Video and had not been decommissioned.

DWR is out of compliance with Order Requirement 4(G) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

280. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(H) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report installation of a new berm along the northern perimeter of the asphalt surface. No new berm is visible in the June 30 Drone Video.

DWR is out of compliance with Order Requirement 4(H) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

281. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(I) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that the soil stockpile has been covered. The uncovered soil stockpile is visible in the June 21 and 30 Drone Videos.

DWR is out of compliance with Order Requirement 4(I) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

282. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(J) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, does not report that Sump 3 has been decommissioned.

DWR is out of compliance with Order Requirement 4(J) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

283. The “Details/Findings” in IR 244785 assessing compliance with Requirement 4(L) stated:

“The June 2025 Monitoring Report, Section 5.0 Management Activities, states that the water treatment system is in the commissioning phase. In the July Information Request Response, DWR's Qualified Professional states that they are "following up with the supplier of the water treatment system regarding the status of the commissioning phase."

The March, April and May 2025 Monitoring Reports state that, "The WTS holding tank did not reach such capacity that treating and discharging water was required during the month." The water treatment system has not been operated.

As DWR has not completed commissioning or operated the water treatment system, it is out of compliance with Order Requirement 4(L) from June 1 to 30, 2025.

This non-compliance is being referred for an Administrative Penalty.”

284. On March 25, 2026, the Ministry issued a Notice and accompanying PAF to DWR via email. The Notice was subsequently sent to DWR via registered mail delivery on April 8, 2026. The Notice recommended three penalties:

- 2025-32a: \$60,000 for failure to comply with Requirement 1 on March 11 and 28, 2025
- 2025-32b: \$17,500 for failure to comply with Requirement 4 of the 2024 PAO Amendment between March 1 and April 30, 2025
- 2025-32c: \$17,000 for failure to comply with Requirement 4 of the 2025 PAO Amendment between June 1 and 30, 2025

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

286. On April 17, 2026, DWR confirmed receipt of the registered mail delivery.

287. On April 17, 2026, DWR requested an OTBH.

288. On April 20, 2026, the Ministry acknowledged DWR’s request for an OTBH, confirmed the OTBH would be by written submission, and set a due date of May 22, 2026.

289. On May 21, 2026, DWR provided the OTBH Submission to the Ministry.

Previous AMPs

Previous AMP 2024-43

290. On December 12, 2024, the Ministry issued AMP 2024-43 for \$19,450 to DWR for failure to comply with Requirement 1 on June 26, 2024. This AMP is currently under appeal to the EAB (EAB-EMA-25-G001).

[2024-12-12 2024-43 Final Determination]

Previous AMP 2024-75

291. On December 5, 2024, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of November 1 to 30, 2024. On December 13, 2024, the Ministry emailed IR 236755 to DWR and found it out of compliance with Requirement 4. The outcome for IR 236755 was determined to be a Referral for an AMP.

[2024-12-13 IR236755 AMP]

292. On January 14, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of November 1, 2024 to December 31, 2024. On January 22, 2025, the Ministry emailed IR 238061 to DWR and found it out of compliance with Requirements 1 and 4. The outcome for IR 238061 was determined to be a Referral for an AMP regarding the non-compliances with Requirement 1 only.

[2025-01-22 IR238061 AMP]

293. On February 28, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of December 28, 2024 to January 31, 2025. On February 28, 2025, the Ministry emailed IR 238568 to DWR and found it out of compliance with Requirements 1 and 4. The outcome for IR 238568 was determined to be a Referral for an AMP.

[2025-02-28 IR238568 AMP]

294. On March 19, 2025, the Ministry conducted an inspection of the Facility to verify compliance with the PAO during the period of February 1 to 28, 2025. On March 25, 2025, the Ministry emailed IR 240675 to DWR and found it out of compliance with Requirement 4. The outcome for IR 240675 was determined to be a Referral for an AMP.

[2025-03-25 IR240675 AMP]

295. The “Actions to be taken” in IR 238061 and IR 238568 assessing compliance with Requirement 1 stated, “Immediately cease the release or discharge of effluent with concentrations of copper, lead and zinc above BCWQG levels.”

296. The “Actions to be taken” in IR 236755, IR 238061, IR 238568 and IR 240675 assessing compliance with Requirement 4 reminded DWR to implement the 2024 Treatment Plan.”

297. On July 17, 2025, the Ministry issued AMP 2024-75 (i.e., the 2025 Determination) for \$72,050 to DWR which included the following penalties:

- 2024-75a: \$51,000 for failure to comply with Requirement 1 on three dates between November 16, 2024, and December 28, 2024
- 2024-75b: \$21,050 for failure to comply with Requirement 4 between November 9, 2024 and March 1, 2024

[2025-07-17 2024-75 Final Determination]

298. On August 19, 2025, DWR appealed AMP 2024-75 to the EAB (EAB-EMA-25-A019). On February 24, 2026, the EAB dismissed the appeal for not being filed within 30 days of receipt of AMP 2024-75; DWR has applied to the Supreme Court of British Columbia for judicial review but the matter has not been heard to date.

[2026-02-24 EAB-EMA-25-A019(a) Summary Dismissal Decision]

PAO History

299. On March 15, 2024, the Ministry issued the PAO to DWR. 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.”

[2024-03-15 PAO 112057]

300. On April 12, 2024, DWR appealed the PAO to the EAB (EAB-EMA-24-A014). DWR applied for a stay of the PAO pending the outcome of the appeal. On June 7, 2024, the EAB denied the stay application. The appeal of the PAO is in progress.

[2024-04-24 LT Parties Ack NoA & Stay Application]

[2024-06-07 LT Parties re Decision on Stay Application]

301. In the PAO, Requirement 4 states, “Implement the approved Plan on a date to be specified in writing by the Director.” The “approved Plan” was in reference to Requirement 3 of the PAO, which required DWR and its QP to complete an Effluent Sampling and Management Plan (i.e., the Plan). The Plan was required to be completed and submitted for approval by April 15, 2024.

302. On July 12, 2024, the Ministry issued the 2024 PAO Amendment to DWR. The amendments relevant to this AMP are as follows:

“2. Item 3(d) of the [PAO] is amended by adding the following:

- a. **By July 26, 2024, submit to the Director for approval, an effluent quality mitigation and treatment plan** to eliminate the discharge of Total and Dissolved Copper, Lead and Zinc in concentrations greater than BCWQG levels to the environment developed and implemented under the direction of a Qualified Professional.” [emphasis added]

[2024-07-12 PAO 112057 Amendment]

303. On October 31, 2024, DWR submitted the 2024 Treatment Plan, titled “Effluent Quality Mitigation & Treatment Plan” to the Ministry. Along with a previously submitted 2024 Sampling Plan, these are considered the “Plan” referred to in Requirement 4. At page 1 of the 2024 Treatment Plan, it stated that it “was developed to fulfill Item 3(d) of [the 2024 PAO Amendment]”.

[2024-10-31 DWR 2024 Treatment Plan]

304. The purpose of 2024 Treatment Plan is 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.”

305. Regarding Requirement 4, the 2024 Treatment Plan required the following by DWR:

- Section 2.0 at page 1 of the 2024 Treatment Plan describes DWR’s Sump 1 catchment area upgrades, “**An additional 6 metres of asphalt berm (of equivalent combined height) along the southern asphalt surface perimeter near the foreshore is also be added. All water collected in the OWS is to be directed to an on-site water treatment system to be designed by a qualified professional and installed by a qualified environmental contractor.**”
- page 3.1 at page 2 of the 2024 Treatment Plan describes DWR’s Sump 2 catchment area upgrades, “**Three French Drains are to be excavated to an approximate depth of 1 metre and 1 metre in width and lined with a low-density polyethylene (LDPE) liner. The existing collection ditch will be re-routed to join at the south end of French Drain #3, which in turn is pumped to the water treatment system. In addition, the unpaved area will be graded to slope from north to south. Two additional French Drains (French Drains #1 and #2) are to be installed to collect any stormwater and direct it to the perimeter ditch. Sump 2 is to then be decommissioned and filled in.**”
- Action Plan 4.2 at page 4 of the 2024 Treatment Plan describes DWR’s Sump 3 catchment area upgrades, “As of October, DWR has excavated approximately 85% of the berm. The material has been relocated to southern part of the site in the area where Phase 2 of the former wood waste landfill is located. **The stockpile will be tarped to prevent the generation of leachate.** This area is south of the Sump 2 catchment area. **Once the wood waste berm is completely removed, a four-inch asphalt berm is intended to be placed along the northern perimeter of the existing asphalt surface** to ensure only “non-effluent” stormwater from the asphalt catchment area is collected at Sump 3. Currently, Sump 3 is a small pond, heavily overgrown with blackberry bushes and bulrushes preventing easy access. Vegetation around the sump will be removed. The sump will be excavated to clean out vegetation and sedimentation, enlarged, lined and

partially filled with rock. . . **The discharge from Sump 3 will be pumped by submersible pump to the catchment area of Sump 1.**” [emphasis added]

306. On November 7, 2024, the Ministry approved the 2024 Treatment Plan part of the Plan and stated:

“As the Director, I approve the [2024 Treatment Plan] which includes the water treatment system design submitted by Envirochem Services Inc. on October 31, 2024.

In accordance with Requirement 4 of the [PAO], **the approved Plan must be implemented on November 8, 2024** and, in accordance with Requirement 3 of the Order, **the approved water treatment system must be installed by December 15, 2024.**” [emphasis added]

[2024-11-07 Approval of DWR 2024 Treatment Plan]

307. On May 6, 2025, the Ministry issued the 2025 PAO Amendment to DWR. The 2025 PAO Amendment identified that the draft amendment had been sent on April 28, 2025 and stated, “At present, key components of the Plan have not been implemented, and the water treatment system is not fully operational.” In the 2025 PAO Amendment, Requirement 4 of the PAO was amended to provide individual deadlines for 13 action items from the 2024 Treatment Plan.

[2025-05-06 PAO 112057 Amendment]

308. On May 30, 2025, DWR submitted an extension request. The extension request stated in part:

- “DWR has recently added, in addition to Tsolum & Tsable (Gillian Helpard), another consulting firm and the historic file is being reviewed by a CSAP QP. A site visit was conducted on Saturday, May 24th and the new consultant (SLR) is requesting 60 days to review all of the data and produce a modified plan with the new data from the recently installed water monitoring wells. They are very aware from other projects they are involved with, that the entire surrounding area has similar results to those that DWR has experienced on its property with regards to elevated levels of dissolved metals in the ground water. DWR’s positions, as you know, is that the results are typical of this area and that they may exceed the BCWQG for marine life, but they would not exceed the regulations for upland WQG. Results from the sampling of recently installed wells will confirm this.

...

- Item A requires that the water treatment system be commissioned by a Qualified Professional. This has been done, however it appears the results are not significantly changed. Further calibration of the system has recently been undertaken. DWR is waiting for new lab results.
- The remaining items B through M will not be addressed until the new CSAP Qualified Professional understands the issues and has had time to formulate proposed next steps.”

[2025-05-30 PAO 112057 DWR timeline extension request]

309. On May 30, 2025, the Ministry denied DWR’s extension request and stated, “Given that more than six months have passed since the deadlines for implementation of the Plan and installation of the water treatment system and there is no evidence of progress made on fulfillment of the requirements, the second request for a deadline extension is denied.”

[2025-05-30 PAO 112057 ENV timeline extension denied]

Contaminants of Concern

310. The BC WQG “represent safe levels of substances that protect different water uses”. For marine aquatic life there are both long-term chronic and short-term acute BC WQGs. Long-term chronic BC WQGs “are intended to protect the most sensitive species and life stage against sub-lethal and lethal effects for indefinite exposures.” Short-term acute BC WQG “are set to protect against severe effects such as lethality (e.g. LC50) or other equivalent measures (e.g., EC50) to the most sensitive species and life stage over a defined short-term exposure period (e.g., 96 hours).” Effluent characteristics are compared to these guidelines in order to understand the potential for adverse impacts to the environment as a result of the introduction of waste.

[\[BC Approved WQG: Aquatic Life, Wildlife & Agriculture\]](#)

311. Copper is an essential metal for all organisms; however, elevated concentrations can negatively affect aquatic life. In marine aquatic ecosystems, BC WQGs identify that, “marine invertebrates are the least tolerant to [copper] during development stages”. In addition to lethal effects, “copper has been shown to cause sublethal effects on behaviour, development, growth, metabolism, fecundity (egg production rate), feeding, respiratory rates, and longevity.”

[\[BC Copper WQG for the Protection of Marine and Estuarine Aquatic Life\]](#)

312. Zinc is an essential element in biological functions. In marine aquatic ecosystems, BC WQGs identify that “The available data show that the toxicity of [zinc] varied greatly in the marine species” and “Among invertebrates, oysters (*Crassostrea virginica* and *Crassostrea gigas*) and bryozoan (*Bugula neritina*) appeared to be the most sensitive species”. In addition to lethal effects, exposure to zinc can affect embryo development, shell development, and growth.

[\[BC Zinc WQG - Marine Aquatic Life, Livestock Watering, and Irrigation\]](#)

Receiving Environment

313. A Ministry Senior EIA Biologist prepared the EIA Biologist Memorandum, titled “Deep Water Recovery Ltd.: Assessment of potential impact of unauthorized discharge”, dated August 1, 2024. The EIA Biologist Memorandum described the receiving environment, including Baynes Sound.

[2024-08-01 DWR EIA Memo]

314. At page 4, the EIA Biologist Memorandum describes the significance of Baynes Sound to the K’ómoks First Nation:

“Baynes Sound lies within unceded traditional territory of the K’ómoks First Nation, the traditional keepers since time immemorial. The K’ómoks First Nation relies on the natural environment of Baynes Sound for food, social, and ceremonial purposes (K’ómoks First Nation 2014).”

315. The EIA Biologist Memorandum, at page 5, describes the importance of Baynes Sound generally as important habitat to birds and fish:

“Baynes Sound has been designated as an ‘Ecologically and Biologically Significant Area’ by Fisheries and Oceans Canada and an ‘Important Bird Area’ by BirdLife International. Extensive tidal flats and the bay’s sheltered estuarine conditions provide important staging, breeding, and overwintering sites for local and migratory birds (Booth 2001, Carswell et al. 2006). Baynes Sound supports Pacific salmon at various stages of their life histories, supports 60% of all herring spawning in the Strait of Georgia (Schweigert and Herborg 2024), provides important shrimp habitat (Levesque and Jamieson 2015), and accounts for a significant proportion of shellfish aquaculture production in British Columbia (Guyondet et al. 2022).”

316. At page 5, the EIA Biologist Memorandum further describes the receiving environment adjacent to the Facility:

“A commercial shellfish tenure lies approximate 350 m south of the DWR facility on an extensive tidal flat. This flat likely contains bivalves, including clam and scallop species harvestable by the public. The tidal flats in this area of Bayne Sound are subject to periodic conditional closures of shellfish harvesting, including as recently as June 2024 (for biotoxin). However, a small area centered on the DWR property has been closed to all shellfish harvest since 2017 (PSN 2017-446, sanitary closure). Hart Creek (approximately one km south of DWR) is salmon-bearing, with coho (*Oncorhynchus kisutch*) and chum (*O. keta*) salmon, steelhead (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*) having been observed, some within the past 5 years (BC Habitat Wizard, accessed July 30, 2024). Coastal areas north of Union Point have been identified as Pacific Herring (*Clupea pallasii*) spawning habitat (ADMIS 2019). The flats around Union Point are heavily used by Black-bellied Plovers (*Pluvialis squatarola*) and Black Turnstones (*Arenaria melanocephala*). Baynes Sound is globally significant for Black Turnstones and provides habitat for approximately 4% of the global population (Booth 2001).”

Tables

Table 1: March 11 and 28, 2025 select sample results compared to BC WQG

Location	Copper	Lead	Zinc
2025-03-11			
Sump 2	24.7	1.74	59.5
% > Acute / Chronic	723%/1,135%	--	8%/495%
2025-03-28			
Sump 2	12.9	0.765	18.7
% > Acute / Chronic	330%/545%	--	--/87%
Sump 3	12.8	0.328	42.7
% > Acute / Chronic	327%/540%	--	--/327%
Foreshore	151	17.4	181
% > Acute / Chronic	4,933%/7,450%	--	229%/1,710%
Marine Aquatic Life BC WQG			
Short-term Acute	3	140	55
Long-term Chronic	2	2	10

All results in µg/L, all results for total metals

Bold > BC WQG short-term acute

Red > BC WQG long-term chronic

Dated this 10th day of June, 2026.