



Environmental Appeal Board

Citation: *Deep Water Recovery Ltd. v. Director, Environmental Management Act*,
2026 BCEAB 10

Decision No.: EAB-EMA-25-A019(a)

Decision Date: 2026-02-24

Method of Hearing: Conducted by way of written submissions concluding September 5,
2025

Decision Type: Summary Dismissal under section 31(1)(b) of the *Administrative
Tribunals Act*, SBC 2004, c. 45

Panel: Carly Hicke, Case Manager

Appealed Under: *Environmental Management Act*, SBC 2003, c. 53

Between:

Deep Water Recovery Ltd.

Appellant

And:

Director, *Environmental Management Act*

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Graham Walker, Counsel

SUMMARY DISMISSAL DECISION

BACKGROUND

[1] On August 19, 2025, the Environmental Appeal Board (the “Board”) received a notice of appeal filed by Graham Walker on behalf of Deep Water Recovery Ltd. (the “Appellant”) via email.

[2] The Appellant is appealing the July 17, 2025, Determination of Administrative Penalty (the “Decision”) issued by Jason Bourgeois, Director, *Environmental Management Act*, (the “Respondent”) with the Ministry of Environment and Parks (the “Ministry”).

[3] In their notice of appeal, the Appellant states they received the Decision the day it was issued, on July 17, 2025.

[4] On August 28, 2025, after a preliminary review of the appeal materials, I wrote to the Appellant to advise that the Board was considering dismissing the appeal under section 31(1)(b) of the *Administrative Tribunals Act*, SBC 2004, c. 45, (the “ATA”) because it was not filed within the 30-day appeal period and the Board does not have the authority to extend this appeal period.

[5] In my August 28, 2025, letter, and pursuant to section 31(2) of the ATA, I provided the Appellant until September 5, 2025, to make a submission as to why the appeal should not be dismissed under section 31(1)(b) of the ATA.

[6] On August 29, 2025, the Appellant provided a written submission regarding why the appeal should not be dismissed under section 31(1)(b) of the ATA.

ISSUE(S)

[7] The issue I must decide is whether the appeal was filed within the applicable 30-day appeal period, or whether the appeal should be dismissed under section 31(1)(b) of the ATA because it was not filed within the applicable time limit.

RELEVANT LAW

[8] I have been delegated the authority¹ under section 26(9) of the ATA, to decide certain preliminary matters within appeals filed with the Board, such as whether to dismiss an appeal under section 31(1)(b) of the ATA.

¹ [Delegation Letter #1: Notices of Appeal](#)

[9] Section 101 of the *Environmental Management Act*, SBC 2003, c. 53, (the “*EMA*”) provides that the time limit for commencing an appeal is 30 days after notice of the decision is given.

[10] Section 93.1(1) of the *EMA* sets out the provisions of the *ATA* which apply to the Board. Notably, section 24 of the *ATA*, which gives the Board the authority to grant an extension of the appeal deadline, is not among the provisions of the *ATA* which apply to the Board. Consequently, the Board lacks the jurisdiction to extend the 30-day appeal period set for appealing decisions under the *EMA*.

[11] Further, section 133(4) of the *EMA* provides that, when service of a decision is made through electronic mail, the communication is “deemed to be received by the person to whom it was addressed on the third day after it is sent.”

SUBMISSIONS

[12] The Appellant submits that, because of the provision in section 133(4) of the *EMA*, the Decision was deemed to be served upon the Appellant on July 22, 2025. Along with their submissions, the Appellant attached a copy of a July 21, 2025, email from the Compliance and Environmental Enforcement Branch of the Ministry, indicating that the Appellant had not responded to the Ministry’s July 17, 2025, email attaching the Decision. The Appellant accordingly argues that, applying section 133(4) of the *EMA*, the deemed date by which the Decision was received was July 22, 2025. The Ministry’s July 21, 2025, email also asserted that the date the Decision was deemed to be served to the Appellant was July 22, 2025.

[13] In their submission, the Appellant does not dispute that the Decision was emailed to them on July 17, 2025. The Appellant submits that they did not “respond to or acknowledge” the July 17, 2025, email. However, in their notice of appeal, the Appellant states that the date the Decision was received was July 17, 2025.

[14] The Appellant submits that “notice of a decision is only made when service is affected” and further submits that the Ministry’s Administrative Penalties Handbook (the “Handbook”) affirms that the time to file an appeal of an administrative monetary penalty begins when service is affected, rather than when the determination is first sent by the Ministry.

[15] The Appellant submits that because of the provision in section 133(4) of the *EMA* and the information in the Handbook, their appeal was filed within the applicable appeal period.

[16] The Respondent was not invited to provide a submission on this issue because the Board initiated this preliminary matter as a first step in assessing whether to accept the appeal. The Respondent had not yet been involved in the appeal.

DISCUSSION AND ANALYSIS

[17] The decision before me in this preliminary matter rests on the interpretation and application of section 133(4) of the *EMA*. If, as argued by the Appellant, section 133(4) means that the date the Appellant received the Decision can **only** be three days after it was sent, then the date the Appellant received the Decision was, by operation of law, July 20, 2025. This is so due to the application of section 25 of the *Interpretation Act*, RSBC 1996, c. 238.

[18] The Decision was sent to the Appellant via email, as evidenced by the Appellant's submissions. Therefore, section 133(4) of the *EMA* must be considered, as it stipulates that anything sent via email is deemed to be received "on the third day after it is sent." July 17, 2025, fell on a Thursday, and, applying the *Interpretation Act*, the third day after Thursday, July 17, 2025, was Sunday, July 20, 2025. Therefore, if the Appellant is correct in their interpretation of section 133(4) of the *EMA*, the Decision was deemed to have been delivered on July 20, 2025.

[19] The Board does not have the authority to extend the time in which a decision under the *EMA* may be appealed. Section 24(1) of the *ATA* sets out that an appeal "must be filed within 30 days of the decision being appeal, **unless the tribunal's enabling Act provides otherwise**" (emphasis added). Section 101 of the *EMA*, the Board's enabling act, states that the time limit for commencing an appeal is "30 days after **notice of the decision is given**" (emphasis added).

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

[21] This finding, however, does not end my analysis, as the Appellant's argument is not that they did not receive the Decision on July 17, 2025, but that the date the decision is deemed to be received was July 22, 2025. As such, the Appellant's argument rests entirely upon the statutory interpretation of section 133(4) of the *EMA*.

[22] As set out above, the application of the *Interpretation Act* to the relevant provisions of the *EMA* results in the date the Appellant received the Decision being, if section 133(4) of the *EMA* applies in these circumstances, July 20, 2025. This is notable for two reasons. First, as the Appellant's notice of appeal was filed on August 19, 2025, if section 133(4) applies to the Decision, this brings the appeal within the 30-day appeal period set out in the relevant legislation. Second, this date of July 22, 2025, arrived at by both the Ministry and the Appellant, is incorrect. The Board is unable, and unwilling, to rely upon the calculations of

time undertaken by any party and is instead bound to follow the requirements of the relevant legislation, including the *Interpretation Act*. While having no effect on the circumstances of this case, any reliance by any party on the calculations of time other than those derived from the application of the relevant legislation is to be avoided.

[23] The remaining question to be answered is whether section 133(4) of the *EMA* applies to the Decision.

[24] A deeming provision, such as the one found within section 133(4) of the *EMA*, is a legal fiction which decrees that something is, at least legally, other than it would be without this fiction: *R. v. Verrette*, 1978 CanLII 208 (SCC). In the circumstances of this appeal, the legal fiction created is that a decision is legally determined to have been delivered on a day that it, possibly, was not delivered.

[25] Not all legal fictions are created equal, however, as some may be conclusive and others, rebuttable: see, for example, *Atchison v. British Columbia (Residential Tenancy Act, Dispute Resolution Officers)*, 2008 BCSC 1015 (CanLII). In order to determine the effect of a deeming provision, the modern principles of statutory interpretation, as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), must be applied. The application of these principles requires, among other factors, a plain reading of the *EMA* within its context.

[26] The context of section 133(4), in situations involving delivery of documents which are appealable decisions, includes Part 8 of the *EMA* – Appeals. Part 8 of the *EMA* includes section 101, which, as set out above, states “[t]he time limit for commencing an appeal of a decision is 30 days after notice of the decision is given.” A plain reading of section 8 of the *EMA*, including section 101, demonstrates that there is a limited period of time in which an individual affected by a decision made under the *EMA* may appeal that decision, and that this period of time begins with the giving of the decision to the person affected by it. This is modified by section 133(4) to allow for certainty of when the decision is given to a person when the decision is sent by electronic mail. Section 133(3) provides a different deeming date for decisions which were sent by registered mail.

[27] In addition to sending a decision by way of registered or electronic mail, section 133(1)(a) allows for the delivery of a decision to an individual through the process of leaving it with that individual. There is no deeming provision pertaining to section 133(1)(a) of the *EMA*. Understood within their context, I find that sections 133 and 101 of the *EMA* operate to provide legal certainty as to when a decision was given to the person affected by it. In situations such as those found under section 133(1)(a), no uncertainty as to when the appeal period under section 101 exists, and therefore no deeming provision is required for decisions left with the individual affected by it.

[28] Similarly, in situations where there is no uncertainty as to when the appeal period begins, such as when the person affected by a decision acknowledges they were given the

decision on a specific date, the deeming provision found within section 133(4) is not required and does not operate.

[29] I find that section 133(4) of the *EMA* creates a rebuttable presumption and is not engaged in the circumstances of the case before me. I find the Appellant received the Decision on July 17, 2025. As the Decision was received on July 17, 2025, section 133(4) was non-operational, as the legal fiction of the deeming provision was rebutted by the presence of the acknowledged delivery of the Decision. Section 101 of the *EMA* directs that the applicable appeal period begins from the date that notice of the Decision was given: July 17, 2025. The legal fiction of the deeming provision within section 133(4) of the *EMA* can only be rebutted in circumstances like those present in this appeal: where there is acknowledgement of delivery of the decision before the date on which the deeming provision would take effect.

[30] Furthermore, in drafting the *EMA*, the Legislature created the deeming provision in section 133(4) with respect to the receipt of an email (in this case, one delivering the Decision). Section 101 of the *EMA* states the deadline to file an appeal is 30 days after notice of a decision “is given.” The Appellant’s submissions assume that these dates are the same and I have addressed that argument with the same assumption in mind, but those dates may not, in fact, be the same. While the Appellant argued that notice is given only when an administrative penalty is “served” and that service must coincide with receipt of the penalty, this at most correlates the date of service with the date of receipt. It does not establish that the date notice of the Decision was given was the same as the date the Decision and the associated email were received. On a plain reading of the *EMA*, those are different things.

[31] The use of these different terms further supports that the limitation period for a Decision must be assessed on the facts of the case, as I have done. Even if I am wrong and the deeming provision in section 133(4) is not rebuttable, it applies only to the date the email (and so the decision) was received and not to the date the notice of the Decision was given. The deemed date of receipt may, in some cases, limit factual findings about when the notice of the Decision was given (as it may be that notice of a decision must be given for the decision to have been received) but it does not stop the Board from properly deciding, based on the evidence, when notice of the Decision was given and when the 30-day time to file a notice of appeal began. I have done so and have found the date that notice of the Decision was given was July 17, 2025.

[32] The Board has not been granted the authority under section 24(2) of the *ATA* to extend the time to file a notice of appeal, even if the time to file has expired. Since the Board cannot extend the time to file a notice of appeal, and this appeal was filed after the 30 day deadline, the Board has no jurisdiction to hear the appeal.

DECISION

[33] I find that the Board does not have jurisdiction to hear this appeal because it was not filed within 30 days after it was received on July 17, 2025. I am hereby exercising my delegated authority to dismiss the appeal under section 31(1)(b) of the *ATA* because the appeal was not filed within the applicable time limit.

[34] In making my decision, I have considered all submissions of the Appellant, whether or not they are specifically referred to in the decision.

“Carly Hicke”

Carly Hicke, Case Manager
Environmental Appeal Board