



# Environmental Appeal Board

**Citation:** *Regional District of Bulkley-Nechako v. Director, Environmental Management Act*, 2026 BCEAB 30

**Appeal No.:** EAB-EMA-25-A004

**Decision Date:** 2026-07-22

**Method of Hearing:** Conducted by way of written submissions concluding on January 16, 2026

**Decision Type:** Final Decision

**Panel:** Jeffrey Hand, Panel Chair

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

**Between:**

Regional District of Bulkley-Nechako

**Appellant**

**And:**

Director, *Environmental Management Act*

**Respondent**

**Appearing on Behalf of the Parties:**

For the Appellant: Curtis Helgesen

For the Respondent: Micah Weintraub

# FINAL DECISION

## INTRODUCTION

[1] The Regional District of Bulkley-Nechako (the “RDBN”) brings this appeal in respect of a Determination of Administrative Penalty dated December 23, 2024 (the “Determination”), issued by statutory decision maker Kelly Mills under section 115 of the *Environmental Management Act*, S.B.C. 2003, c. 53 (the “EMA”).

[2] The Determination imposed an administrative penalty of \$13,500 on the RDBN for three instances of failing to comply with the requirements of its operational certificate for a landfill it operates.

[3] The RDBN does not dispute that the contraventions occurred. It seeks to set aside the administrative penalty on three grounds:

- 1) it did not receive proper notice prior to the penalty being imposed;
- 2) paying the penalty would give rise to financial hardship; and
- 3) the Determination did not adequately take into account the RDBN’s efforts to achieve compliance.

[4] The Respondent says it gave proper notice to the RDBN of the non-compliances before the penalty was issued and that the RDBN participated in an Opportunity to be Heard hearing before the Determination was made. It submits the RDBN has not provided sufficient evidence of financial hardship to support its request that the penalty be set aside. Lastly, it says the penalty amount accounted for the RDBN’s compliance efforts and was reasonable and appropriate.

[5] The Respondent asks that the appeal be dismissed and the penalty confirmed.

## BACKGROUND

[6] The RDBN is a statutory corporation providing services under the *Local Government Act*, R.S.B.C. 2015, c. 1. One of those services is to provide solid waste disposal for the towns of Smithers, Granisle, Burns Lake, and Fort St. James through its ownership and operation of a landfill facility which accepts construction, demolition, and commercial waste (the “Facility”). When the Facility is operating, leachate from the Facility is collected in a leachate lagoon before discharging into an ephemeral stream that leads to the Bulkley River.

[7] The RDBN is authorized to discharge waste from the Facility by Operational Certificate 8856 (the “Certificate”) granted by the Director of *Environmental Management Act* with the Ministry of Environment and Parks (the “Ministry”) and issued under section 14(1) of the *EMA*.

[8] The Certificate, amongst other things, requires that effluent quality that is discharged not exceed certain values for various parameters. The effluent must be periodically measured and tested by a qualified professional and the results of that testing are to be submitted to the Director of Waste Management for the Province of British Columbia on an annual basis.

[9] The Certificate also requires an electric fence to be maintained around the Facility, which is to be inspected weekly both for its integrity and for maintenance of its electrical charge.

[10] On June 10, 2015, the Ministry conducted an inspection at the Facility to verify the RDBN's compliance with the requirements in the Certificate. This inspection found that the effluent being discharged from the Facility had exceeded the maximum allowable limits for ammonia and Biochemical Oxygen Demand ("BOD") set out in the Certificate. The Ministry issued an Advisory of Non-compliance regarding these exceedances and sent this to the RDBN's then-Director of Environmental Service, Janine Dougall, on July 7, 2015. Ms. Dougall confirmed receipt of this notice. The cover email to this Advisory Notice required the RDBN to take corrective steps and to ensure weekly monitoring of discharge from then on.

[11] On May 23, 2018, the Ministry conducted another inspection at the Facility. Rory McKenzie, an employee of the RDBN, attended this inspection, though the information before me does not disclose what role Mr. McKenzie held with the RDBN. Effluent testing performed during the inspection found an exceedance of the allowable levels of ammonia as well as a missed weekly wetland sampling activity. A written Advisory of Non-compliance was sent to Mr. McKenzie by email on June 14, 2018, with a request that the Facility be brought into compliance with the Certificate requirements.

[12] On October 6, 2021, the Ministry conducted a further inspection at the Facility. Present during the inspection was the RDBN's then-Director of Environmental Services, Alex Eriksen. The inspection found the following non-compliances:

- failure to report annual landfill quantities
- failure to perform electric fence monitoring
- waste discharge exceedances for ammonia and phosphorous.

[13] While the previous notices were advisory in nature, this inspection resulted in a warning of non-compliance which was sent by email to Mr. Eriksen on May 17, 2022 (the "2022 Warning Letter"). He confirmed receipt on June 2, 2022.

[14] The 2022 Warning Letter contained the following statements:

Failure to comply with the requirements set out in the Operational Certificate is an offence. The applicable offence section(s) of the Environmental Management Act (EMA) and/or its regulations state(s) as follows:

EMA 120 (11) A municipality that

(a) fails to submit to the minister a waste management plan as requested or directed by the minister under section 24 (2) or (3) [waste management plans], or

(b) contravenes a waste management plan that has been approved by the minister

commits an offence and is liable on conviction to a fine not exceeding \$300 000.

As an alternative to prosecution of the offence referenced above, the Ministry may initiate action to impose an administrative penalty against the RDBN. The Administrative Penalties Regulation (EMA) (B.C. Reg. 133/2014) (APR) was brought into force in 2014. The APR describes the prescribed provisions of EMA as well as that of specified regulations under which administrative penalties can be assigned. The applicable section(s) of the APR state(s) as follows:

12 (1) A person who contravenes section 6 (2), (3) or (4), 7, 8, 9 (1) or (4), 11, 25 (2), 40 (1), (2), (6) or (7), 40.1(2), 48 (8), (10) or (15), 55 (1), 72 (1) or (2), 76.2, 91.11 (1) (a) or (4), 91.2 (2) or 91.41 (4) of the Act is liable to an administrative penalty not exceeding \$75 000.

The Ministry requests that the RDBN immediately implement the necessary changes or modifications to correct the noncompliance listed below. Further, the Ministry requests that the RDBN notify this office in writing, by email or letter within 30 days of the receipt of this letter, advising what corrective measures have been taken, and what else is being done, to prevent similar non-compliances in the future.

Finally, if you fail to take the necessary actions to restore compliance, you may be subject to escalating enforcement action. This Warning Letter and the alleged violations and circumstances to which it refers, will form part of the compliance history of the RDBN and will be taken into account in the event of future violations.

[15] In the Fall of 2021, the RDBN commissioned the design of an aeration system intended to improve effluent quality. The design and implementation of the aeration system was completed in 2024 at a cost of \$425,000. However, the system was not successful in ensuring effluent discharge from the Facility was within the allowable limits of the Certificate.

[16] On October 25, 2023, the Ministry conducted a further inspection which found the non-compliances that were the subject of the 2022 Warning Letter remained uncorrected. On May 6, 2024, the Ministry issued inspection reports 224388 and 220452 relating to the

October 25, 2023, inspection and sent these by email to Mr. Eriksen. He confirmed receipt of these. The reports noted numerous non-compliances, but most notably:

- failure to report landfill waste data for the period of January 1, 2022 – April 20, 2023;
- failure to conduct weekly electric fence inspections in 2022 through 2024;
- effluent exceedances for ammonia and phosphorous;
- failure to submit annual reports.

[17] The May 6, 2024, email also advised Mr. Eriksen that the non-compliances were being referred to be considered for an administrative monetary penalty (“AMP”).

[18] On July 25, 2024, the Ministry delivered a Notice Prior to Determination of Administrative Penalty to Mr. Eriksen by email advising the RDBN that a monetary penalty was under consideration and offering the RDBN an opportunity to be heard before a final determination of the penalty was made.

[19] The Notice Prior to Determination set out a preliminary penalty assessment that totaled \$22,000, made up of:

- \$6,500 for discharge exceedances in 2022;
- \$6,500 for failure to perform weekly electric fencing inspections between 2022 and 2024;
- \$9,000 for failure to provide annual reporting on February 1, 2022, February 1, 2023, and September 1, 2023.

[20] On August 16, 2024, Mr. Eriksen requested an Opportunity to be Heard (“OTBH”), which was subsequently conducted by way of written submissions. In its submissions during the OTBH, the RDBN said it had been taking steps to bring the Facility into compliance with the Certificate beginning in 2021. Those steps were said to include:

- creating a new position of Environmental Technician to assist with compliance;
- increasing staffing levels for maintenance staff, technical staff, supervisors, and administrative staff—equating to approximately \$560,000 in annual salaries;
- a significant investment in active leachate treatment (aeration);
- endeavoring, since 2024, to inspect fencing weekly and to maintain a record of those inspections; and
- working to complete the outstanding annual reports for the years 2021, 2022, and 2023.

[21] The decision maker asked the RDBN to submit supporting records for the steps it said it had taken towards compliance. She granted the RDBN an extension of time until November 1, 2024, to submit these documents.

[22] On November 1, 2024, the RDBN provided the decision maker with the following:

- a summary of its staffing levels;
- resumes for the technical experts hired by the RDBN related to the facility;
- a capital expenditure summary for the work done to design and install an aeration system to treat effluent; and
- the 2023 Annual Report.

[23] While actual invoices for the leachate treatment were not submitted, the RDBN informed the decision maker she could attend at the RDBN offices in Burns Lake to view invoices should she wish to do so.

[24] The Determination was issued on December 23, 2024. The decision maker reduced the penalty of \$22,000 to \$13,500 on account of:

- actions taken by the RDBN to prevent re-occurrences in the future;
- the RDBN establishing protocols for fence inspections and annual reporting going forward; and
- challenges the RDBN had faced in hiring and keeping Facility staff.

[25] On January 22, 2025, the RDBN appealed the Determination. This appeal was heard by way of written submissions.

[26] The Environmental Appeal Board's (the "Board") powers in relation to appeals is set out section 103 of the *EMA*:

On an appeal under this Division, the appeal board may

- (a) send the matter back to the person who made the decision, with directions,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

## ISSUES

- 1) Did the director provide notice to the RDBN prior to making the Determination?
- 2) Has the RDBN shown it will suffer financial hardship in paying the penalty and if so, is that a reason to set it aside the Determination or reduce the penalty?
- 3) Is there evidence of the RDBN's efforts to achieve compliance and if so, are those efforts a reason to eliminate or reduce the penalty?

## ANALYSIS

### Overview of the statutory scheme

[27] Under section 115(1)(c) of the *EMA*, a director may issue an administrative penalty to a person who fails to comply with a requirement of a permit.

[28] The *Administrative Penalties (Environmental Management Act) Regulation*, B.C. Reg. 133/2014 (the "*Regulation*") governs the determination of administrative penalties under section 115(1) of the *EMA*.

[29] Section 7(1) of the *Regulation* lists the following factors that the director, in this case the decision maker, must consider, if applicable, in establishing the amount of an administrative penalty:

- (a) the nature of the contravention or failure;
- (b) the real or potential adverse effect of the contravention or failure;
- (c) any previous contraventions or failures by, administrative penalties imposed on, or orders issued to the following:
  - (i) the person who is the subject of the determination;
  - (ii) if the person is an individual, a corporation for which the individual is or was a director, officer or agent;
  - (iii) if the person is a corporation, an individual who is or was a director, officer or agent of the corporation;
- (d) whether the contravention or failure was repeated or continuous;
- (e) whether the contravention or failure was deliberate;
- (f) any economic benefit derived by the person from the contravention or failure;
- (g) whether the person exercised due diligence to prevent the contravention or failure;
- (h) the person's efforts to correct the contravention or failure;
- (i) the person's efforts to prevent recurrence of the contravention or failure;
- (j) any other factors that, in the opinion of the director, are relevant.

[30] The Ministry uses the *Administrative Penalties Handbook*, dated June 1, 2020, (the "Handbook") as guidance for setting the amount of an AMP. The Handbook recommends determining a "base penalty" that reflects the seriousness of the contravention considering the nature of the contravention and any real or potential adverse effects (factors 7(1)(a) and (b) of the *Regulation*). The Handbook offers non-binding suggestions for assessing how to categorize the nature or type of contravention (major, moderate, or

minor), how serious its real or potential impacts are (high, medium, low, or none), and how these two factors can be combined to establish a reasonable starting point for the base penalty. The Handbook also contains non-binding suggested base penalty tables which consider the nature of the contravention or failure and the seriousness of the real or potential adverse effects for each of the contraventions, before providing a base penalty based on the maximum amount of penalty specified in the *EMA*.

[31] The base penalty is added to, or deducted from, by considering each of the factors 7(1)(c) through (j) of the *Regulation*. The Handbook states that considering these mitigating and aggravating factors provides the statutory decision maker flexibility to consider more than simply what happened. The decision maker may also consider why the contravention happened, whether it has happened before, and the person's past and current actions and attitude. However, use of this discretion requires the consideration of all the relevant factors and requires the provision of reasons for any adjustments (or lack of adjustments) to the base penalty.

[32] The Handbook provides that a Notice Prior to Determination and the final determination itself are to be served on the permit holder.

[33] The Board discussed the use of the Handbook at paragraph 12 of *G.T. Farms v Director, Environmental Management Act*, 2024 BCEAB 43 (CanLII):

The use of the Handbook in setting administrative penalties has been accepted by the Board as “a reasonable guide for determining the appropriate quantum of an administrative penalty under the [EMA],” and it has been determined that the Handbook “fosters consistency and predictability in decision-making” (see *United Concrete & Gravel Ltd. v. Director, Environmental Management Act*, 2021 BCEAB 21 (CanLII), (“*United Concrete*”) at para 72). Similarly in *93 Land Company v. Director, Environmental Management Act*, 2022 BCEAB 37, at para 107, the panel determined that “an important principle of administrative fairness is that administrative penalties should be assessed on a consistent and transparent basis,” and I find use of the Handbook in assessing administrative penalties fosters that important principle.

[34] Like the Board in that decision, I find the Handbook to be a useful guide in assessing administrative penalties, bearing in mind that the Board is not bound to follow this non-binding guidance. Similarly, the Handbook is guidance only for the Director who retains discretion to decide whether to impose an AMP and to determine its amount.

## Did the director provide notice to the RDBN prior to making the Determination?

### Positions of the parties

#### *The RDBN*

[35] The RDBN says that its Chief Administrative Officer, Curtis Helgesen, was not aware of the 2022 Warning Letter, or that escalating enforcement was possible following the earlier advisory notices received by the RDBN. He says the board of the RDBN was only generally aware of ongoing compliance issues involving the Facility. Mr. Helgesen says that he and the RDBN board first learned of the potential for an AMP to be issued when it received the Notice Prior to Determination that had been sent to Mr. Eriksen in July 2024.

[36] The RDBN submits it was a reasonable expectation that the Ministry would contact either Mr. Helgesen, as the Chief Administrative Officer, or the board of the RDBN directly, before it proceeded with escalated enforcement by way of the issuance of a penalty.

[37] The RDBN submits that when the Certificate was first issued in 2003 it was sent to the Chief Administrative Officer. It says subsequent amendments to the Certificate were sent by registered mail to the RDBN board. It submits these are examples of proper notice, while emails relating to the earlier advisories and the 2022 Warning Letter sent to its Director for Environment Services are not sufficient notice to the RDBN.

[38] The RDBN says legislation other than the *EMA* provides examples of how a regional district is to be served. For example, the *Local Government Act* provides for service on a corporate officer for any notice required to be given to a local government, which, under that legislation, includes the board of a regional district.

[39] Further, it says an administrative warning the RDBN received from WorkSafe BC was mailed to the RDBN board Chair.

[40] The RDBN submits these are examples of service that should apply to the warning sent in this appeal and, absent such notice, the AMP should be set aside.

#### *The Respondent*

[41] The Respondent says that section 133 of the *EMA* permits service of documents that require service under the *EMA* by a number of means, including by email to an employee of the RDBN. Further, it says Alex Eriksen was not only an employee of the RDBN, he was the employee in charge of environmental services for the RDBN. The Respondent also relies on the fact that Mr. Eriksen acknowledged receipt of communications from the Ministry in 2022 and 2024 and it was he who initiated the OTBH process on behalf of the RDBN.

[42] The Respondent also submits the RDBN received notice before the AMP was assessed and it was given an opportunity to make submissions at the OTBH. Mr. Helgesen acknowledges he and the RDBN's board were aware of the Notice Prior to Determination and of the pending penalty determination.

[43] The Respondent submits the service requirements under the *Local Government Act* and the practices followed by WorkSafe BC are not applicable to this appeal. It submits that the *Local Government Act* does not establish an exclusive or mandatory means of delivering a notice to a regional district. The Respondent says the *EMA* is specific to the subject matter of the appeal and that email to an employee is a permitted form of service under the *EMA*.

### Panel Analysis and Findings

[44] Section 133(2) of the *EMA* sets out permissible methods of service. That subsection provides:

Anything that under this Act must be given or served on a corporation  
may be given or served

- (a) by leaving it with any director, senior officer, liquidator or receiver manager of the corporation,
- (b) by sending it by registered mail as follows:
  - (i) if the corporation is a company within the meaning of the Business Corporations Act, to the mailing address shown for the registered office of the corporation in the corporate register;
  - (ii) if the corporation is an extra provincial company within the meaning of the Business Corporations Act,
    - (A) to the mailing address shown in the corporate register for the head office of the corporation if the head office is in British Columbia, or
    - (B) to the mailing address shown in the corporate register for any attorney of the corporation;
  - (iii) in all other cases, to the head office of the corporation, or
- (c) by sending it by electronic mail to the last known electronic mail address
  - (i) of the corporation or of a director, officer or employee of the corporation, and
  - (ii) used in relation to a registration, permit, approval, order, waste management plan Inspection or investigation under this Act.

(emphasis added)

[45] Service on the RDBN could have been affected through any one of the means set out above, including by sending an email to an employee of the RDBN.

[46] I reject the submission that service could only be affected by using those means available under the *Local Government Act*. I also reject the submission that service methods used by WorkSafe BC have any application to this appeal.

[47] The advisories and warning were sent to, and acknowledged by, the then-Directors of Environmental Services, Ms. Dougall in 2016 and Mr. Ericksen in 2022. Receipt was acknowledged by these individuals, thereby confirming that the RDBN received notice of the potential for escalating enforcement, including an administrative penalty.

[48] Mr. Erikson attended the site visit with Ministry officials who found the non-compliances in 2021 that resulted in the warning letter. Mr. Eriksen corresponded with the Ministry on matters related to the Facility and requested the OTBH. Thereafter, the RDBN fully participated in the OTBH and had the opportunity to make submissions before a penalty was finalized.

[49] Further, formal service of the 2022 Warning Letter or the earlier advisories is not required. The RDBN has not referred me to any provision in the *EMA* or the Handbook that requires service of warnings in advance of the imposition of an AMP. Section 115 of the *EMA* provides for service of the Notice Prior to Determination. This is also reflected in the Handbook. Mr. Helgesen acknowledges he and the RDBN board received the Notice Prior to Determination. The RDBN's complaint is that the RDBN board was not aware of the potential for escalating enforcement measures, including an AMP, before they received the Notice Prior to Determination. In effect, the RDBN says the warning received by Mr. Eriksen ought to have been sent to Mr. Helgesen or the RDBN board directly. However, I have not been referred to any provision that would require this to be done.

[50] The Handbook says the following regarding AMPs being a tool to encourage compliance either used alone or as part of progressive enforcement:

AMPs are one of a number of enforcement responses that staff can use to encourage compliance and to deter future violations. AMPs can be used alone, in conjunction with an order or other administrative sanction (such as suspending or cancelling an authorization) or as part of a progressive enforcement strategy when other remedies (warnings, tickets, etc.) have been ineffective.

As one of a number of enforcement tools available to EP to respond to non-compliance, an AMP may be imposed as part of an escalating enforcement response, preceded by unsuccessful efforts by staff to compel compliance using other tools such as advisories, warnings or violation tickets. Or, an AMP may be an appropriate first response to non-compliance such as where a person has clearly fallen below the expected

standard of care and demonstrates questionable willingness or capacity to comply.

[51] I observe that if an AMP can be used a first response to non-compliance it follows that there is no expectation of service of warnings in advance of the AMP being considered. The Notice Prior to Determination, as a requirement of the AMP process, is to be served on the affected party, and that occurred in this instance.

[52] As noted above, there is no legal requirement that escalating enforcement be used prior to the imposition of an AMP.

[53] I find that the RDBN was properly served under the *EMA* and did receive notice before the penalty was issued, and the circumstances under which the RDBN was notified are not a reason to set aside the administrative penalty.

### **Should the penalty be eliminated or reduced because of financial hardship?**

#### Position of the parties

##### *The RDBN*

[54] The RDBN submits that it faces financial challenges in funding the operation of the Facility and achieving compliance with the Certificate as a result of being governed by the *Local Government Act*. Its ability to budget funds for waste management activities is capped by the Inspector of Municipalities, which establishes the maximum amount of taxation that can be requisitioned for providing the service. In 2023, that amount of taxation was set at \$4,375,000.

[55] The RDBN further submits it has faced additional costs related to the Facility in recent years due to the closure of Recycle BC Depots in the surrounding communities, the loss of a cardboard recycling facility in Smithers, and the added landfill input due to the LNG Canada and Coastal Gas Link Pipeline projects.

[56] The RDBN says that had it received earlier notice of the compliance issues at the Facility—that is, before receiving the Notice Prior to Determination—its Board of Directors could have made decisions about funding allocations and/or pursued advocacy with the Inspector of Municipalities for increased funding in a more timely fashion with a view to achieving compliance with the Certificate.

[57] All of the foregoing, it submits, demonstrates financial hardship.

##### *The Respondent*

[58] Firstly, the Respondent submits the RDBN has not provided financial statements to support the general submission that cost increases as compared to taxation revenues make it challenging to pay the penalty. In the absence of specific evidence of financial hardship, the Respondent says the Panel should not consider that financial hardship has been proven.

[59] Secondly, the Respondent argues that any evidence of financial challenges facing the RDBN in general has not been shown to relate to the non-compliances in issue.

[60] Thirdly, the Respondent further states the RDBN's submission that had it received earlier notice it could have made better efforts to comply with the Certificate is evidence that compliance could have been achieved with a different allocation of available resources. The Respondent says this demonstrates the RDBN's ability to allocate funds to achieve compliance had an effort been made to do so. If compliance was achievable within its budget, this undermines the RDBN's submission that it cannot pay the penalty.

[61] Fourthly, the Respondent submits the penalty amount was already reduced by the decision maker and that the penalty was not unduly onerous, was proportional to the goal of achieving compliance, and should not be further reduced.

### *Panel's Finding*

[62] Section 7 of the *Regulation* sets out a number of factors, (a)-(j), which must be considered in levying a penalty and in fixing its amount. The RDBN has only challenged factors (h), effort to correct the contravention, (i), efforts to prevent re-occurrence, and (j), any other factor. I consider the financial hardship suffered by the RDBN as a result of the AMP to fall within "any other factor" as discussed in that subsection of section 7. As such I will only deal with these factors.

[63] The Handbook says AMPs should balance the need to deter non-compliance while not being overly punitive. It suggests penalties for individuals and small operators should be lower than for companies, presumably to ease the burden on those parties.

[64] The RDBN is not an individual, it is an incorporated municipality. I find it is closer in character to a company than to an individual. It manages a significant budget. The taxation cap for waste management is said to be in excess of \$4,000,000.

[65] The Respondent has referred to paragraph 59 of *Pacesetter Mills Ltd. v. Director, Environmental Management Act*, 2021 BCEAB 9 (CanLII), which I accept as an example of a party not meeting the onus to establish financial hardship:

The Appellant seeks a further reduction of the penalty based on the Appellant's alleged financial difficulties. However, the Appellant has provided insufficient evidence to support its assertion that it is experiencing financial difficulties. Further, even if the Appellant had provided such evidence, I find that a further reduction is not warranted, because the penalty has already been reduced to reflect the fact that the Appellant is a small operator.

[66] The Respondent also relies on paragraph 59 of *Nordstrom Enterprises Ltd. v. Director, Environmental Management Act*, 2022 BCEAB 8 (CanLII), where it was said:

Although the Appellant submitted that the penalty of \$6,500 is very difficult for its small business to pay, there is no evidence to support this

statement. The Board has previously found, and I agree, that where financial difficulties are asserted, at least some records should be submitted in evidence.

[67] While there is some evidence before me of increased expenditures related to the Facility in recent years, by way of staffing costs and increased pressures on the Facility to accept larger amounts of waste, there is insufficient evidence before me to establish the payment of the penalty will adversely affect the overall financial position of the RDBN in a significant way. I also observe that one of the purposes of AMPs, according to the Handbook, is to incentivize compliance. If the AMP did not have some financial impact, this stated purpose would not be achieved. Further, the submissions of the RDBN primarily argue that the cost of compliance with the Certificate was challenging rather than demonstrating that paying the penalty constitutes a hardship.

[68] I also agree with the Respondent's submission that the RDBN might have allocated its budget differently had the RDBN board been aware of the 2022 Warning Letter. Since I have found the RDBN was aware of the 2022 Warning Letter through notice to its Environmental Director, this argument fails to support the RDBN's request to set aside the penalty based on financial hardship.

[69] I find there is insufficient evidence to either reduce or set aside the penalty due to financial hardship.

**Is there evidence of the RDBN's efforts to achieve compliance with the Certificate and, if so, are those efforts a reason to eliminate or reduce the penalty?**

[70] Subparagraphs (h) and (i) of section 7(1) of the *Regulation* require consideration of the effort to correct the relevant failure or noncompliance with obligations and the attempts to avoid recurrences of the relevant failure or noncompliance with obligations, respectively. These efforts are considered in determining the amount of an AMP, expressed as adjustments to the base penalty, which suggests an AMP should still be imposed even where there have been efforts to comply.

[71] I also find that the need to ensure compliance with the important objectives of protecting the environment is sufficient reason to reject the submission that the penalty should be completely eliminated.

[72] As for reducing the penalty, the decision maker has already reduced the penalty on account of the RDBN's efforts to improve staffing so it can better manage and operate the Facility, improve the fence monitoring, and implement an aeration system, even if the aeration system has not been effective. The RDBN has not asserted any other efforts it made beyond those that were before the decision maker. I find there was adequate recognition in the amount of the penalty of the efforts made by the RDBN to achieve compliance with the Certificate.

[73] I also find that the size of the penalty does not appear to be disproportionate for a regional district that is managing a waste budget said to be in the order of \$4 million.

[74] For these reasons, I find the reductions were appropriate and I am not convinced that any further reductions are needed.

## DECISION

[75] In reaching my decision, I considered all of the submissions and relevant evidence provided by the parties, whether specifically referenced in my reasons or not.

[76] The Determination is confirmed and the appeal dismissed.

"Jeffrey Hand"

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Jeffrey Hand, Panel Chair  
Environmental Appeal Board