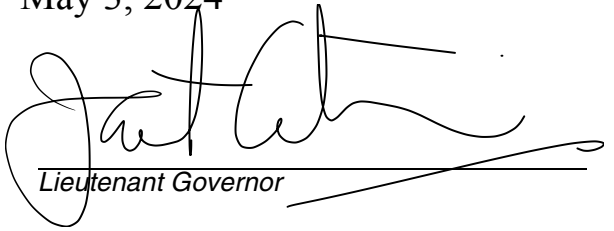


PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 222

, Approved and Ordered May 3, 2024



Lieutenant Governor

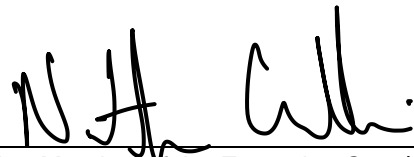
**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) sections 3 to 5 and 10 of the *Miscellaneous Statutes Amendment Act, 2023*, S.B.C. 2023, c. 2, are brought into force, and
- (b) the attached Administrative Penalties (*Ecological Reserve Act*) Regulation is made.



Minister of Environment and Climate Change Strategy



Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: *Miscellaneous Statutes Amendment Act*, S.B.C. 2023, c. 2, s. 17  
*Ecological Reserve Act*, R.S.B.C. 1996, c. 103, s. 7.01

Other:

R10703211

# ADMINISTRATIVE PENALTIES (ECOLOGICAL RESERVE ACT) REGULATION

## Definitions

**1** In this regulation:

“**Act**” means the *Ecological Reserve Act*;

“**contravention or failure**” means

- (a) a contravention of a prescribed provision of the regulations, or
- (b) a failure to comply with a term or condition of a permit issued under the Act.

## Notice of intent to impose administrative penalty

**2** (1) If the minister intends to impose an administrative penalty in respect of an alleged contravention or failure by a person, the minister must, before imposing the administrative penalty, give notice in writing to the person.

(2) The notice under subsection (1) must

- (a) include
  - (i) the name of the person who is the subject of the notice,
  - (ii) a description of the circumstances that gave rise to the alleged contravention or failure,
  - (iii) information respecting the right to be heard under section 3, and
  - (iv) a preliminary assessment of the amount of the administrative penalty that may be imposed, and
- (b) identify
  - (i) the prescribed provision of the regulations the person is alleged to have contravened, or
  - (ii) the term or condition of the permit the person is alleged to have failed to comply with.

## Opportunity to be heard

**3** (1) A person wishing to be heard in accordance with section 6.2 (1) of the Act must make a request, in writing, to the minister within 30 days after the date the person receives the notice under section 2.

(2) Subject to subsection (3), if a person requests an opportunity to be heard in accordance with subsection (1), the minister

- (a) must conduct a written, electronic or oral hearing, or any combination of them, as the minister considers appropriate, and
- (b) may
  - (i) determine the circumstances and place in which, and the process by which, the hearing is to be conducted, and
  - (ii) specify the form and content of materials to be provided for the hearing and when the materials must be provided.

- (3) If a person does not provide materials to the minister in accordance with subsection (2) (b) (ii), the minister is not required to conduct a hearing.
- (4) If, after giving an opportunity to be heard, the minister decides not to impose an administrative penalty, the minister must give the person written notice of that decision.

#### **Notice of administrative penalty**

- 4** A notice in respect of the imposition of an administrative penalty under section 6.2 (1) of the Act must set out the following:
  - (a) the reasons for the decision;
  - (b) the name of the person who is liable for the administrative penalty;
  - (c) the contravention or failure in relation to which the administrative penalty is imposed;
  - (d) the amount of the administrative penalty;
  - (e) when the administrative penalty must be paid;
  - (f) the person's right to an appeal under section 6.5 of the Act;
  - (g) the address of the appeal board.

#### **Correction of notice of administrative penalty**

- 5** (1) Within 15 days after giving a person a notice of administrative penalty under section 4, the minister may amend the notice to
  - (a) correct a typographical, an arithmetical or another similar error, and
  - (b) correct an obvious error or omission.
- (2) The discretion given to the minister under subsection (1) is exercisable with or without a hearing and
  - (a) on the initiative of the minister, or
  - (b) at the request of the person who is the subject of the notice.
- (3) If the minister corrects a notice under subsection (1),
  - (a) the minister must give notice in writing to the person who is the subject of the notice, and
  - (b) the correction does not take effect until the date the person receives notice of the correction under paragraph (a).

#### **Assessment of administrative penalty**

- 6** (1) In establishing the amount of an administrative penalty in a particular case, the minister must consider the following matters, if applicable:
  - (a) the nature of the contravention or failure;
  - (b) the real or potential adverse effect of the contravention or failure;
  - (c) the history of compliance with the Act, the regulations under the Act and other environmental legislation of the following:
    - (i) the person who is liable for the administrative penalty;

- (ii) if the person who is liable for the administrative penalty is an individual, a corporation for which the individual is or was a director, officer or agent;
  - (iii) if the person who is liable for the administrative penalty is a corporation, any 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 cooperativeness and 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 minister, are relevant.
- (2) If a contravention or failure continues for more than one day, separate administrative penalties, each not exceeding the applicable maximum administrative penalty, may be imposed for each day the contravention or failure continues.

**Date administrative penalty must be paid**

- 7** A person who is given a notice of administrative penalty under section 4 must pay the administrative penalty within 30 days after the later of the following:
- (a) the date the notice of administrative penalty is given to the person;
  - (b) if, under section 5 of this regulation, the notice of administrative penalty was corrected, the date the person receives notice of the correction;
  - (c) if, under section 6.5 of the Act, the person appeals the imposition of an administrative penalty,
    - (i) the date the person receives a copy of the order or decision of the appeal board, if the appeal board confirms or varies the administrative penalty, or
    - (ii) the date a new notice of administrative penalty is served on the person, if the appeal board sends the matter back, with directions, to the minister.

**Enforcement of administrative penalty**

- 8** If a person fails to pay an administrative penalty as required under section 7, the person is not eligible to apply for a permit, or to amend a permit, until the penalty is paid in full.

**Limitation period**

- 9** A notice of intent to impose an administrative penalty under section 2 must not be given more than 3 years after the date evidence of the alleged contravention or failure first came to the knowledge of the minister.

**Prescribed provisions of Ecological Reserve Regulation**

- 10** (1) A person who contravenes section 2 (1) or (4) or 6 (2) (a), (b), (i), (j), (k), (l), (m) or (p) of the Ecological Reserve Regulation is liable to an administrative penalty not exceeding \$25 000.
- (2) A person who contravenes section 6 (1) (a) or (b) or 6 (2) (c), (d), (e), (f), (g), (h), (o) or (q) of the Ecological Reserve Regulation is liable to an administrative penalty not exceeding \$75 000.
- (3) A person who contravenes section 6 (2) (n) of the Ecological Reserve Regulation is liable to an administrative penalty not exceeding \$500 000.

**Cancellation of administrative penalty not required**

- 11** The minister is not required to cancel an administrative penalty even if the person on whom it was imposed demonstrates to the satisfaction of the minister that the person exercised due diligence to prevent the contravention or failure.