



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

May 25, 2016

File: 292790 (2015-11)

Registered Mail

Yum! Brands, Inc.
(Kentucky Fried Chicken Canada Company, PH Canada Company, and TB Canada Company)
191 Creditview Road, Suite #100
Vaughan, ON
L4L 9T1

Dear: Mr. David Novack and Mr. Marco Pasquali

Re: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty dated April 28, 2016, I have now made a determination in this matter.

After reviewing the information available to me and having received information from Mr. Marco Pasquali during the *opportunity to be heard* on May 9, 2016, I have concluded that Yum! Brands, Inc. contravened Part 1, Section 2 of the Recycling Regulation (B.C. Reg. 449/2004) in respect of which an administrative penalty is being imposed pursuant to section 115 of the *Environmental Management Act* and the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014). The amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

If you have any questions with regard to this determination, please contact me at Gwenda.Laughland@gov.bc.ca or 250-387-9641.

Sincerely,

Gwenda Laughland
Director, Compliance Policy and Planning
British Columbia Ministry of Environment

Attachment: Determination of Administrative Penalty

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch
Nathan Voth, Fees Analyst, Business Services Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 292790 (2015-11)

NAME OF PARTY:

Yum! Brands, Inc.
(Kentucky Fried Chicken Canada Company, PH Canada Company, and TB Canada Company)

CONTRAVENTION:

Recycling Regulation (B.C. Reg. 449/2004)
Part 1, Section 2

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$ 36 000

DATE OF CONTRAVENTION:

May 23, 2014 and continuing (date that B.C. Reg. 449/2004 was amended by B.C. Reg 88/2014 which clarified the obligation of franchisors)

DIRECTORS SUMMARY:

The British Columbia Recycling Regulation (B.C. Recycling Regulation) requires producers (manufacturers, distributors and importers) of packaging and printed paper (PPP) products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the B.C. Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan. The agency with a currently approved Stewardship Plan for PPP material in British Columbia is Multi-Material BC (MMBC).

Yum! Brands, Inc. is a producer of packaging and printed paper in the Province of British Columbia. Yum! Brands, Inc. consists of three different companies (Kentucky Fried Chicken Canada Company, PH Canada Company, and TB Canada Company) that are operated out of the same head office in Ontario, Canada. There are 71 Kentucky Fried Chicken, 67 Pizza Hut and 21 Taco Bell locations in British Columbia. (Correction: the number of locations was incorrectly reported in the MMBC Producer Contact Information form included with the preliminary penalty package).

As the franchisor, Yum! Brands, Inc. must carry out the duty of a producer under the B.C. Recycling Regulation. PPP products associated with these operations include: cups, lids, straws, plates, plastic cutlery, various food containers and wrappers, pizza boxes, plastic bags, etc.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

As of May 23, 2014, Yum! Brands, Inc. needed to have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan to act on their behalf. Yum! Brands, Inc. had neither.

On January 19, 2015, the British Columbia Ministry of Environment (the Ministry) sent Yum! Brands, Inc. an Advisory Letter noting that the company was subject to obligations under the B.C. Recycling Regulation. After Yum! Brands, Inc. replied that they did not think they were obligated, Ministry staff sent additional information explaining the regulatory requirements. Yum! Brands, Inc. confirmed receipt of this clarification and committed to follow-up with MMBC.

On June 12, 2015, the Ministry served Yum! Brands, Inc. a Warning Letter, advising that they were still non-compliant and would be subject to escalating enforcement action, specifically an administrative penalty, if non-compliance continued.

On September 3 and 14, 2015, Ministry staff sent emails to Yum! Brands, Inc. offering to explain the regulatory requirements. On September 30, 2015, Ministry staff discussed the requirements with a Yum! Brands, Inc. representative who, on behalf of the company, again committed to contacting MMBC.

Yum! Brands, Inc., however, did not come into compliance with the regulation. Therefore, an administrative penalty was assessed against the company and finalized on April 28, 2016. On May 3, 2016, Yum! Brands, Inc. was served a Notice Prior to Determination of Administrative Penalty, outlining a penalty amount of \$39,000. In the intervening time, on May 2, 2016, Yum! Brands, Inc. came into compliance with the regulation.

Yum! Brands, Inc. did request an *opportunity to be heard* by the statutory decision maker as was their entitlement identified to them in the Notice Prior to Determination of Administrative Penalty. On May 9, 2016, the *opportunity to be heard* was conducted via telephone between myself, the statutory decision maker, and Mr. Pasquali, controller for Yum! Brands, Inc.

During the *opportunity to be heard*, Mr. Pasquali acknowledged that Yum! Brands, Inc. had been out of compliance, but the company had taken the necessary steps to comply. Mr. Pasquali commented that Yum! Brands, Inc. wanted to operate "above board" and pay their fees to support the recycling program in British Columbia. Mr. Pasquali also noted that he had not received the Warning Letter served on the company in June 2015. He did confirm that the Warning Letter was served to the correct address and that the Advisory Letter mailed to that same address in January 2015 had been received. Mr. Pasquali noted that Yum! Brands, Inc. obtained a copy of the Warning Letter from the CBC who had contacted them in preparation for an on-line media story about their non-compliance with the B.C. Recycling Regulations. Mr. Pasquali stated that the company prioritized the matter after receiving the Warning Letter via the CBC.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

REASONS FOR DECISION:

I have considered all of the information submitted to me. My evaluation has included a consideration of the matters listed in section 7(1) of the Administrative Penalties (*Environmental Management Act*) Regulation, as applicable. Based on this assessment, I offer the following comments:

Without an approved Product Stewardship Plan itself or an appointed agency with an approved Stewardship Plan, Yum! Brands, Inc. had been out of compliance with the B.C. Recycling Regulation since May 23, 2014.

Having heard from Yum! Brands, Inc. through the *opportunity to be heard*, I do have additional information to bring to bear on the assessment of my preliminary penalty amount. In adjudicating the final amount of the penalty, I give some weight to the fact that Yum! Brands, Inc. has now complied with the B.C. Recycling Regulation. I give no weight to the comments that Yum! Brands, Inc. did not receive the Warning Letter. This letter was delivered by a process server to the same address as the Advisory Letter which had been received.

As the regulator, the Ministry of Environment has a responsibility to ensure compliance with regulatory requirements through awareness and education prior to pursuing escalating enforcement action. And, as noted in my preliminary assessment, Yum! Brands, Inc. has a responsibility to understand and comply with the regulatory requirements that apply to them within the jurisdiction where they are conducting business. In summary, Yum! Brands, Inc. was out of compliance for almost two years. During this time, I feel Ministry of Environment staff were more than diligent at trying to bring the company into compliance through formal enforcement letters, as well as additional outreach to company representatives.

I have reduced the penalty by an amount of \$3,000, resulting in a final penalty amount of \$36,000.

DUE DATE AND PAYMENT:

Payment of this administrative penalty is due within thirty (30) days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Business Services Branch, Attn: Fees Analyst, Ministry of Environment, PO Box 9377 Stn Prov Govt, Victoria B.C., V8W 9M1. 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) 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.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

RIGHT TO APPEAL:

If you disagree with this determination, Division 2 of Part 8 of the *Environmental Management Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the Act and with the Environmental Appeal Board Procedures Regulation, the EAB must receive notice of the appeal no later than 30 days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form, available online at <http://www.eab.gov.bc.ca/forms.htm>, should be completed, and must be filed by registered mail or by leaving a copy of it at the Board office during normal business hours (8:30 am – 4:30 pm, Monday through Friday, excluding public holidays). Notice may also be sent by email or fax, provided the original notice of appeal and the appeal fee follows by mail. The mailing address of the EAB is: PO Box 9425 Stn Prov Govt, Victoria B.C., V8W 9V1. The street address is: 4th Floor, 747 Fort Street, Victoria, B.C.

For further information, please consult the EAB website at <http://www.eab.gov.bc.ca>.

If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 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 days after a new Determination of Administrative Penalty is served.

Dated this 25th day of May, 2016.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

September 6, 2016

File: 289934 (2015-07)

Process Server

Blenz The Canadian Coffee Company Ltd.
Suite 250, 2285 Clark Drive
Vancouver, BC V5N 3G9

Dear: Mark West

Re: Notice Prior to Determination of Administrative Penalty

I am satisfied on the basis of the information presented to me by Ministry of Environment staff (enclosed) that Blenz the Canadian Coffee Company Ltd. (Blenz) has contravened the British Columbia Recycling Regulation (BC Reg 449/2004) and I am considering the imposition of an administrative penalty pursuant to section 115 of the *Environmental Management Act*.

The British Columbia Recycling Regulation requires producers (manufacturers, distributors and importers) of packaging and printed paper products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the British Columbia Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

It is my understanding that Blenz is a producer of packaging and printed paper in the Province of British Columbia. Furthermore, it is my understanding that Blenz does not have an approved stewardship plan and has not appointed Multi-Material BC, the only agency in the Province with an approved plan, to act on its behalf. Accordingly, it appears that Blenz is not in compliance with the British Columbia Recycling Regulation and subject to escalating enforcement action by the Ministry.

Preliminary Penalty Assessment

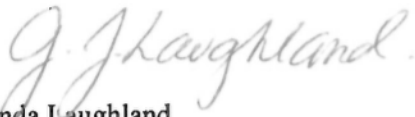
A preliminary penalty assessment of \$39,000 has been calculated in accordance with the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014) which governs the assessment of administrative penalties. The regulation prescribes the maximum penalty that can be applied to this contravention (\$40,000) and the factors that I must consider when calculating the penalty. I have attached the Administrative Penalty Assessment Form that I used to make this preliminary assessment, as well as additional information I have taken into consideration.

Opportunity to be Heard

Before I make a final decision, I am offering you an opportunity to be heard. This is your chance to provide additional information that you think I may not be aware of or have not considered in this notice related to the alleged contravention, the preliminary penalty assessment or both. Any new relevant information you present will be considered prior to my final decision. Please review the enclosed material and confirm in writing within 30 days of receipt of this notice if you would like this opportunity. At that time we will discuss the timing, format and content of your submission. If I do not hear from you within 30 days, I will assume you do not wish to avail yourself of this opportunity and I will proceed to make a decision and notify you accordingly.

If you have any questions with regard to this notice, please contact me at: Gwenda.Laughland@gov.bc.ca, or 250 387-9641.

Sincerely,



Gwenda Laughland
Director
BC Ministry of Environment

Administrative Penalty Assessment Form
Ministry of Environment Warning Letter
Ministry of Environment Advisory Letter
Ministry of Environment and Blenz email correspondence
Reporting and Payment Graphic: Packaging and Printed Paper Program
Producer Profile and Contact Information (including Ministry and Blenz email correspondence)
Administrative Penalties Fact Sheet

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

September 6, 2016

File: 292787 (2015-09)

Process Server

Fresh is Best Salsa & Co.
1425 Cariboo Place, Unit 12
Kamloops, BC V2C 5Z3

Dear: Mr. Colin McGaffin

Re: Notice Prior to Determination of Administrative Penalty

I am satisfied on the basis of the information presented to me by Ministry of Environment staff (enclosed) that Fresh is Best Salsa & Co. has contravened the British Columbia Recycling Regulation (BC Reg 449/2004) and I am considering the imposition of an administrative penalty pursuant to section 115 of the *Environmental Management Act*.

The British Columbia Recycling Regulation requires producers (manufacturers, distributors and importers) of packaging and printed paper products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the British Columbia Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

It is my understanding that Fresh is Best Salsa & Co. is a producer of packaging and printed paper in the Province of British Columbia. Furthermore, it is my understanding that Fresh is Best Salsa & Co. does not have an approved stewardship plan and has not appointed Multi-Material BC, the only agency in the Province with an approved plan, to act on its behalf. Accordingly, it appears that Fresh is Best Salsa & Co. is not in compliance with the British Columbia Recycling Regulation and subject to escalating enforcement action by the Ministry.

Preliminary Penalty Assessment

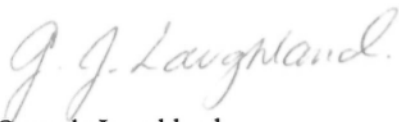
A preliminary penalty assessment of \$39 000 has been calculated in accordance with the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014) which governs the assessment of administrative penalties. The regulation prescribes the maximum penalty that can be applied to this contravention (\$40,000), and the factors that I must consider when calculating the penalty. I have attached the Administrative Penalty Assessment Form that I used to make this preliminary assessment, as well as additional information I have taken into consideration.

Opportunity to be Heard

Before I make a final decision, I am offering you an opportunity to be heard. This is your chance to provide additional information that you think I may not be aware of or have not considered in this notice related to the alleged contravention, the preliminary penalty assessment or both. Any new relevant information you present will be considered prior to my final decision. Please review the enclosed material and confirm in writing within 30 days of receipt of this notice if you would like this opportunity. At that time we will discuss the timing, format and content of your submission. If I do not hear from you within 30 days I will assume you do not wish to avail yourself of this opportunity and I will proceed to make a decision and notify you accordingly.

If you have any questions with regard to this notice, please contact me at: Gwenda.Laughland@gov.bc.ca or 250-387-9641.

Sincerely,



Gwenda Laughland
Director, Compliance Policy and Planning
BC Ministry of Environment

Administrative Penalty Assessment Form
Ministry of Environment Warning Letter
Ministry of Environment Advisory Letter
Ministry of Environment and Fresh is Best email correspondence
Reporting and Payment Graphic: Packaging and Printed Paper Program
MMBC Producer Profile and Contact Information
Administrative Penalties Fact Sheet

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

October 31, 2016

File: 289934 (2015-07)

Registered Mail

Blenz The Canadian Coffee Company Ltd.
Suite 250, 2285 Clark Drive
Vancouver, BC V5N 3G9

Dear Mr. Mark West:

Re: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty dated September 6, 2016, I have now made a determination in this matter.

After reviewing the information available to me and having received information from you during the *opportunity to be heard* on October 3, 2016, I have concluded that Blenz The Canadian Coffee Company Ltd. (Blenz) contravened Part 1, Section 2 of the Recycling Regulation (B.C. Reg. 449/2004) in respect of which an administrative penalty is being imposed pursuant to section 115 of the *Environmental Management Act* and the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014). The amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

If you have any questions with regard to this determination, please contact me at Gwenda.Laughland@gov.bc.ca or 250-387-9641.

Sincerely,

Gwenda Laughland
Director, Compliance Policy and Planning
British Columbia Ministry of Environment

Attachment: Determination of Administrative Penalty

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch
Nathan Voth, Fees Analyst, Business Services Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 289934 (2015-07)

NAME OF PARTY:

Blenz The Canadian Coffee Company Ltd. (Blenz)

CONTRAVENTION:

Recycling Regulation (B.C. Reg. 449/2004)
Part 1, Section 2

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$ 19 500

DATE OF CONTRAVENTION:

May 23, 2014 and continuing (date that B.C. Reg. 449/2004 was amended by B.C. Reg. 88/2014 which clarified the obligation of franchisors)

DIRECTORS SUMMARY:

The British Columbia Recycling Regulation (B.C. Recycling Regulation) requires producers (manufacturers, distributors and importers) of packaging and printed paper (PPP) products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the B.C. Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

Blenz is a producer of packaging and printed paper in the Province of British Columbia. Among other materials, it produces plastic cups, paper cups, trays and bags. Blenz does not meet the criteria for a "small producer" exemption as defined in Section 1(1) of the B.C. Recycling Regulation. Blenz is not a charitable organization, it has a gross revenue in excess of \$1 000 000, it produces more than one tonne of packaging and printed paper and it has more than one point of retail sale in British Columbia.

Without an approved Product Stewardship Plan itself or an appointed agency with an approved Stewardship Plan, Blenz has been out of compliance with the B.C. Recycling Regulation since May 23, 2014.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

REASONS FOR DECISION:

I have considered all of the information submitted to me. My evaluation has included a consideration of the matters listed in Section 7(1) of the Administrative Penalties (*Environmental Management Act*) Regulation, as applicable. Based on this assessment, I offer the following comments:

Having heard from Blenz through the opportunity to be heard, I do have additional information to bring to bear on the assessment of my preliminary penalty amount. In adjudicating the final amount of the penalty, I give some weight to the fact that Blenz has now complied with the B.C. Recycling Regulation. It is unfortunate that, while I believe that the company had good intentions of complying, the company did not follow through with their commitments and comply in a timelier manner. There had been correspondence between Blenz, the Ministry and MMBC since November 2014 to advise them of their obligation, including an Advisory Letter from the Ministry in November 2014 and a Warning Letter in February 2015. On March 3, 2015 Blenz indicated their interest in complying with the regulation.

As the regulator, the Ministry of Environment has a responsibility to ensure compliance with regulatory requirements through awareness and education prior to pursuing escalating enforcement action. Blenz has a responsibility to understand and comply with the regulatory requirements that apply to them within the jurisdiction where they are conducting business. In summary, Blenz was out of compliance for more than two years. During this time, I feel Ministry of Environment staff were diligent at trying to bring the company into compliance through formal enforcement letters, as well as additional outreach to company representatives.

I have reduced the penalty by half, resulting in a final penalty amount of \$19 500.

DUE DATE AND PAYMENT:

Payment of this administrative penalty is due within thirty (30) days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Business Services Branch, Attn: Fees Analyst, Ministry of Environment, PO Box 9377 Stn Prov Govt, Victoria B.C., V8W 9M1. 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) 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.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

RIGHT TO APPEAL:

If you disagree with this determination, Division 2 of Part 8 of the *Environmental Management Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the Act and with the Environmental Appeal Board Procedures Regulation, the EAB must receive notice of the appeal no later than 30 days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form, available online at <http://www.eab.gov.bc.ca/forms.htm>, should be completed, and must be filed by registered mail or by leaving a copy of it at the Board office during normal business hours (8:30 am – 4:30 pm, Monday through Friday, excluding public holidays). Notice may also be sent by email or fax, provided the original notice of appeal and the appeal fee follows by mail. The mailing address of the EAB is: PO Box 9425 Stn Prov Govt, Victoria B.C., V8W 9V1. The street address is: 4th Floor, 747 Fort Street, Victoria, B.C.

For further information, please consult the EAB website at <http://www.eab.gov.bc.ca>.

If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 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 days after a new Determination of Administrative Penalty is served.

Dated this 31st day of October, 2016.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

October 31, 2016

File: 292787 (2015-09)

Registered Mail

Fresh is Best Salsa & Co.
1425 Cariboo Place, Unit 12
Kamloops, BC V2C 5Z3

Dear Mr. Colin McGaffin:

Re: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty dated September 6, 2016, I have now made a determination in this matter.

After reviewing the information available to me and having received information from Mr. Patrick O'Sullivan, Operations Director during the *opportunity to be heard* on October 5, 2016 and via email correspondence dated September 27, 2016, October 17, 2016 and October 18, 2016, I have concluded that Fresh is Best Salsa & Co. (Fresh is Best) contravened Part 1, Section 2 of the Recycling Regulation (B.C. Reg. 449/2004) in respect of which an administrative penalty is being imposed pursuant to section 115 of the *Environmental Management Act* and the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014). The amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

If you have any questions with regard to this determination, please contact me at Gwenda.Laughland@gov.bc.ca or 250-387-9641.

Sincerely,

Gwenda Laughland
Director, Compliance Policy and Planning
British Columbia Ministry of Environment

Attachment: Determination of Administrative Penalty

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch
Nathan Voth, Fees Analyst, Business Services Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 292787 (2015-09)

NAME OF PARTY:

Fresh is Best Salsa & Co. (Fresh is Best)

CONTRAVENTION:

Recycling Regulation (B.C. Reg. 449/2004)
Part 1, Section 2

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$ 13 000

DATE OF CONTRAVENTION:

May 19, 2014 and continuing

DIRECTORS SUMMARY:

The British Columbia Recycling Regulation (B.C. Recycling Regulation) requires producers (manufacturers, distributors and importers) of packaging and printed paper (PPP) products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the B.C. Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

Fresh is Best is a producer of packaging and printed paper in the Province of British Columbia. Among other materials, it produces plastic food containers and plastic chip bags. Fresh is Best does not meet the criteria for a "small producer" exemption as defined in Section 1(1) of the B.C. Recycling Regulation. Fresh is Best is not a charitable organization, it has a gross revenue in excess of \$1 000 000, it produces more than one tonne of packaging and printed paper and it has more than one point of retail sale in British Columbia.

Without an approved Product Stewardship Plan itself or an appointed agency with an approved Stewardship Plan, Fresh is Best has been out of compliance with the B.C. Recycling Regulation since May 19, 2014.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

REASONS FOR DECISION:

I have considered all of the information submitted to me. My evaluation has included a consideration of the matters listed in section 7(1) of the Administrative Penalties (*Environmental Management Act*) Regulation (Administrative Penalties Regulation), as applicable. Based on this assessment, I offer the following comments:

Having heard from Fresh is Best through the *opportunity to be heard* as well as through email correspondence dated September 27, 2016, October 17, 2016 and October 18, 2016, I do have additional information to bring to bear on the assessment of my preliminary penalty amount.

I note that much information has been provided to me by Mr. O'Sullivan since the Notice Prior to Determination of Administrative Penalty was sent to Fresh is Best on September 6, 2016. In determining my final penalty amount, I reminded Mr. O'Sullivan during the Opportunity to be Heard and via email correspondence (October 18, 2016) that I am bound by the regulation as to the factors that I must consider in the penalty calculation, specifically Section 7 (Assessment of administrative penalty) of the Administrative Penalties Regulation. These are the items detailed in part two of the Notice Prior to Determination of Administrative Penalty dated September 6, 2016. I mentioned this because some of the information provided via the emails and the *opportunity to be heard* meeting, while interesting and commendable on the part of Fresh is Best, is unfortunately not relevant to the decision that I am tasked with making. Specifically, I reference the operating capacity of the plant, the location of the plant, the cleanliness of the operation and the phase of the company's development.

What I do find relevant is that Fresh is Best has worked very diligently and quickly to come into compliance since September 6, 2016 and that the company has provided assurance that it will stay in compliance. The company has retained an operations director, Mr. O'Sullivan, whose responsibility it is now to ensure the company is operating in accordance with the regulatory requirements of the B.C. Recycling Regulation.

In adjudicating the final amount of the penalty, I give weight to the fact that Fresh is Best has now complied with the B.C. Recycling Regulation and to the fact that Fresh is Best has steadfastly provided assurance of its intentions to remain in compliance. It is unfortunate that the company did not follow through with their earlier commitments and comply in a timelier manner. In March 2014, Fresh is Best registered on the Multi-Materials BC reporting portal indicating their intentions to comply and again in March 2015, Mr. McGaffin assured ministry staff after receiving a warning letter that he would follow through on their obligations.

As the regulator, the Ministry of Environment has a responsibility to ensure compliance with regulatory requirements through awareness and education prior to pursuing escalating enforcement action. Fresh is Best has a responsibility to understand and comply with the regulatory requirements that apply to them within the jurisdiction where they are conducting business. In summary, Fresh is Best was out of compliance for more than two years. During this time, I feel Ministry of Environment staff were diligent in trying to bring the company into



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

compliance through formal enforcement letters, as well as additional outreach to company representatives.

I have reduced the penalty by an amount of \$26 000, resulting in a final penalty amount of \$13 000. This reduction of two-thirds from the original penalty amount is significant.

DUE DATE AND PAYMENT:

Payment of this administrative penalty is due within thirty (30) days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Business Services Branch, Attn: Fees Analyst, Ministry of Environment, PO Box 9377 Stn Prov Govt, Victoria B.C., V8W 9M1. 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) 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.

RIGHT TO APPEAL:

If you disagree with this determination, Division 2 of Part 8 of the *Environmental Management Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the Act and with the Environmental Appeal Board Procedures Regulation, the EAB must receive notice of the appeal no later than 30 days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form, available online at <http://www.eab.gov.bc.ca/forms.htm>, should be completed, and must be filed by registered mail or by leaving a copy of it at the Board office during normal business hours (8:30 am – 4:30 pm, Monday through Friday, excluding public holidays). Notice may also be sent by email or fax, provided the original notice of appeal and



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

the appeal fee follows by mail. The mailing address of the EAB is: PO Box 9425 Stn Prov Govt, Victoria B.C., V8W 9V1. The street address is: 4th Floor, 747 Fort Street, Victoria, B.C.

For further information, please consult the EAB website at <http://www.eab.gov.bc.ca>.

If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 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 days after a new Determination of Administrative Penalty is served.

Dated this 31st day of October, 2016.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

December 12, 2016

File: 305526 (2016-08)

Process Server

A. BOSA & Co. Ltd. (Bosa Foods Co. Ltd.)
1465 Kootenay Street
Vancouver, BC V5K 4Y3

Dear Bruno Benedet:

Re: Notice Prior to Determination of Administrative Penalty

I am satisfied on the basis of the enclosed information presented to me by Ministry of Environment staff that A. BOSA & Co. Ltd. (previously known as Bosa Foods Co. Ltd.) has contravened the British Columbia Recycling Regulation (BC Reg 449/2004) and I am considering the imposition of an administrative penalty pursuant to section 115 of the *Environmental Management Act*.

The British Columbia Recycling Regulation requires producers (manufacturers, distributors and importers) of packaging and printed paper products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the British Columbia Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

It is my understanding that A. BOSA & Co. Ltd. is a producer of packaging and printed paper in the Province of British Columbia. Furthermore, it is my understanding that A. BOSA & Co. Ltd. does not have an approved stewardship plan and has not appointed Multi-Material BC, the only agency in the Province with an approved, non-beer-related plan, to act on its behalf. Accordingly, it appears that A. BOSA & Co. Ltd. is not in compliance with the British Columbia Recycling Regulation and subject to escalating enforcement action by the Ministry.

Preliminary Penalty Assessment

A preliminary penalty assessment of \$37 000 has been calculated in accordance with the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014) which governs the assessment of administrative penalties. The regulation prescribes the maximum penalty that can be applied to this contravention (\$40,000) and the factors that I must consider when calculating the penalty. I have attached the Administrative Penalty Assessment Form that I used to make this preliminary assessment, as well as additional information I have taken into consideration.

Opportunity to be Heard

Before I make a final decision, I am offering you an opportunity to be heard. This is your chance to provide additional information that you think I may not be aware of or have not considered in this notice related to the alleged contravention, the preliminary penalty assessment or both. Any new relevant information you present will be considered prior to my final decision. Please review the enclosed material and confirm, in writing, within 30 days of receipt of this notice if you would like this opportunity. At that time we will discuss the timing, format and content of your submission. If I do not hear from you within 30 days, I will assume you do not wish to avail yourself of this opportunity and I will proceed to make a decision and notify you accordingly.

If you have any questions with regard to this notice, please contact me at: Gwenda.Laughland@gov.bc.ca, or 250 387-9641.

Sincerely,



Gwenda Laughland
Director
BC Ministry of Environment

Administrative Penalty Assessment Form
Ministry of Environment and Bosa Foods email correspondence
Ministry of Environment Notice of Intent to Impose an Administrative Penalty
Ministry of Environment Warning Letter
Ministry of Environment Advisory Letter
MMBC Producer Contact Information
Reporting and Payment Graphic: Packaging and Printed Paper Program
Administrative Penalties Fact Sheet

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch
Tom Hermez, Controller, Bosa Foods Co. Ltd.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

December 23, 2016

File: 303396 (2015-12)

Registered Mail

DAVIDsTEA Inc.
5430 Rue Ferrier
Mount-Royal, QC H4P 1M2

Dear Sylvain Toutant:

Re: Notice Prior to Determination of Administrative Penalty

I am satisfied on the basis of the enclosed information presented to me by Ministry of Environment staff that DAVIDsTEA Inc. (DAVIDsTEA) has contravened the British Columbia Recycling Regulation (BC Reg 449/2004) and I am considering the imposition of an administrative penalty pursuant to section 115 of the *Environmental Management Act*.

The British Columbia Recycling Regulation requires producers (manufacturers, distributors and importers) of packaging and printed paper products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the British Columbia Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

It is my understanding that DAVIDsTEA is a producer of packaging and printed paper in the Province of British Columbia. Furthermore, it is my understanding that DAVIDsTEA does not have an approved stewardship plan and has not appointed Multi-Material BC, the only agency in the Province with an approved plan, to act on its behalf. Accordingly, it appears that DAVIDsTEA is not in compliance with the British Columbia Recycling Regulation and subject to escalating enforcement action by the Ministry.

Preliminary Penalty Assessment

A preliminary penalty assessment of \$40,000 has been calculated in accordance with the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014) which governs the assessment of administrative penalties. The regulation prescribes the maximum penalty that can be applied to this contravention (\$40,000) and the factors that I must consider when calculating the penalty. I have attached the Administrative Penalty Assessment Form that I used to make this preliminary assessment, as well as additional information I have taken into consideration.

Opportunity to be Heard

Before I make a final decision, I am offering you an opportunity to be heard. This is your chance to provide additional information that you think I may not be aware of or have not considered in this notice related to the alleged contravention, the preliminary penalty assessment or both. Any new relevant information you present will be considered prior to my final decision. Please review the enclosed material and confirm in writing within 30 days of receipt of this notice if you would like this opportunity. At that time we will discuss the timing, format and content of your submission. If I do not hear from you within 30 days, I will assume you do not wish to avail yourself of this opportunity and I will proceed to make a decision and notify you accordingly.

If you have any questions with regard to this notice, please contact me at: Christine.Woodhouse@gov.bc.ca or 250 356-5274.

Sincerely,



Christine Woodhouse
Director
BC Ministry of Environment

Administrative Penalty Assessment Form
Ministry of Environment Notice of Intent to Impose an Administrative Penalty
Ministry of Environment Warning Letter
Ministry of Environment Advisory Letter
MMBC Producer Contact Information
Reporting and Payment Graphic: Packaging and Printed Paper Program
Administrative Penalties Fact Sheet

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

February 7, 2017

File: 305526 (2016-08)

Registered Mail

A. BOSA & Co. Ltd. (Bosa Foods Co. Ltd.)
1465 Kootenay Street
Vancouver, BC V5K 4Y3

Dear Bruno Benedet:

Re: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty dated December 12, 2016, I have now made a determination in this matter.

After reviewing the information available to me and having received information from your company representatives, Mr. Matthew Dale and Mr. Tom Hermez, during the *opportunity to be heard* on January 26, 2017, I have concluded that A. BOSA & Co. Ltd. contravened Part 1, Section 2 of the Recycling Regulation (B.C. Reg. 449/2004) in respect of which an administrative penalty is being imposed pursuant to section 115 of the *Environmental Management Act* and the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014). The amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

If you have any questions with regard to this determination, please contact me at Gwenda.Laughland@gov.bc.ca or 250-387-9641.

Sincerely,

Gwenda Laughland
Director, Compliance Policy and Planning
British Columbia Ministry of Environment

Attachment: Determination of Administrative Penalty

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch
Vicki Desaulnier, A/Fees Analyst, Business Services Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 305526 (2016-08)

NAME OF PARTY:

A. BOSA & Co. Ltd. (Bosa Foods)

CONTRAVENTION:

Recycling Regulation (B.C. Reg. 449/2004)
Part 1, Section 2

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$ 18 500

DATE OF CONTRAVENTION:

May 19, 2014 and continuing

DIRECTORS SUMMARY:

The British Columbia Recycling Regulation (B.C. Recycling Regulation) requires producers (manufacturers, distributors and importers) of packaging and printed paper (PPP) products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the B.C. Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

Bosa Foods is a producer of packaging and printed paper in the Province of British Columbia. Among other materials, it produces cartons, glass jars and bottles, plastic bottles, plastic and tin containers, paper laminates, plastic and paper bags, and other paper packaging. Bosa Foods does not meet the criteria for a "small producer" exemption as defined in Section 1(1) of the B.C. Recycling Regulation. Bosa Foods is not a charitable organization, it has a gross revenue in excess of \$1 000 000, it produces more than one tonne of packaging and printed paper and it has more than one point of retail sale in British Columbia.

Without an approved Product Stewardship Plan itself or an appointed agency with an approved Stewardship Plan, Bosa Foods has been out of compliance with the B.C. Recycling Regulation since May 19, 2014.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

REASONS FOR DECISION:

I have considered all of the information submitted to me. My evaluation has included a consideration of the matters listed in Section 7(1) of the Administrative Penalties (*Environmental Management Act*) Regulation, as applicable. Based on this assessment, I offer the following comments:

Having not received a request for an opportunity to be heard by Bosa Foods at the close of the 30 day period, I contacted the company to verify that they did not in fact want to avail themselves of the opportunity to provide me information regarding their non-compliance with the B.C. Recycling Regulation. On January 26, 2017, I held an opportunity to be heard meeting with Mr. Matthew Dale and Mr. Tom Hermez of Bosa Foods. After concluding that meeting and subsequently being notified that Bosa Foods has complied with the B.C. Recycling Regulation (effective February 2, 2017), I do have additional information to bring to bear on the assessment of my preliminary penalty amount.

In adjudicating the final amount of the penalty, I give some weight to the fact that Bosa Foods has now complied with the B.C. Recycling Regulation. It is unfortunate that the company did not follow through with their commitments and comply in a timelier manner. There had been correspondence from the Ministry since November 2014 to advise them of their obligation, including an Advisory Letter from the Ministry in November 2014, a Warning Letter in February 2015, as well as a letter in July 2016 advising Bosa Foods of the Ministry's intent to impose an administrative penalty. On many occasions, Bosa Foods indicated their interest in complying with the regulation, but failed to follow through.

As the regulator, the Ministry of Environment has a responsibility to ensure compliance with regulatory requirements through awareness and education prior to pursuing escalating enforcement action. Bosa Foods has a responsibility to understand and comply with the regulatory requirements that apply to them within the jurisdiction where they are conducting business. In summary, Bosa Foods was out of compliance for more than two and a half years. During this time, I feel Ministry of Environment staff were diligent at trying to bring the company into compliance through formal enforcement letters, as well as additional outreach to company representatives.

I have reduced the penalty by half, resulting in a final penalty amount of \$18 500.

DUE DATE AND PAYMENT:

Payment of this administrative penalty is due within thirty (30) days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Business Services Branch, Attn: Fees Analyst, Ministry of Environment, PO Box 9377 Stn Prov Govt, Victoria B.C., V8W 9M1. Please do not mail cash. A \$30 service fee will be charged for dishonoured payments.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

If payment has not been received in the thirty (30) 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.

RIGHT TO APPEAL:

If you disagree with this determination, Division 2 of Part 8 of the *Environmental Management Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the Act and with the Environmental Appeal Board Procedures Regulation, the EAB must receive notice of the appeal no later than 30 days after the date you receive this Determination of Administrative Penalty. The notice must include:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form, available online at <http://www.eab.gov.bc.ca/forms.htm>, should be completed, and must be filed by registered mail or by leaving a copy of it at the Board office during normal business hours (8:30 am – 4:30 pm, Monday through Friday, excluding public holidays). Notice may also be sent by email or fax, provided the original notice of appeal and the appeal fee follows by mail. The mailing address of the EAB is: PO Box 9425 Stn Prov Govt, Victoria B.C., V8W 9V1. The street address is: 4th Floor, 747 Fort Street, Victoria, B.C.

For further information, please consult the EAB website at <http://www.eab.gov.bc.ca>.

If the administrative penalty is appealed to the EAB and the penalty is upheld, payment is due within 30 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 days after a new Determination of Administrative Penalty is served.

Dated this 7th day of February, 2017.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

April 20, 2017

File: 303396 (2015-12)

Registered Mail

DAVIDsTEA Inc.
5430 Rue Ferrier
Mont-Royal, QC H4P 1M2

Dear Sylvain Toutant:

Re: Determination of Administrative Penalty

Further to the Notice Prior to Determination of Administrative Penalty dated December 23, 2016 and your opportunity to be heard respecting the alleged contravention, I have now made a determination in this matter.

After reviewing the information available to me and having received information during the opportunity to be heard from your company representative, Ms. Nathalie Roland, on February 8 and 20, 2017, I have concluded that DAVIDsTEA Inc. has contravened Part 1, Section 2 of the Recycling Regulation (B.C. Reg. 449/2004) in respect of which an administrative penalty is being imposed pursuant to section 115 of the *Environmental Management Act* and the Administrative Penalties (*Environmental Management Act*) Regulation (B.C. Reg. 133/2014). The amount of the penalty, reasons for my decision, payment and appeal information are provided in the attached decision document.

If you have any questions with regard to this determination, please contact me at Christine.Woodhouse@gov.bc.ca, or 250-356-5274.

Sincerely,

Christine Woodhouse
Director
British Columbia Ministry of Environment

Attachment: Determination of Administrative Penalty

cc: Louise LeBoutillier, Compliance Officer, Environmental Standards Branch
Nathalie Rolland (n.rolland@davidstea.com)
Vicki Desaulnier, A/Fees Analyst, Business Services Branch



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

DETERMINATION OF ADMINISTRATIVE PENALTY

File: 303396 (2015-12)

NAME OF PARTY:

DAVIDsTEA Inc. (DAVIDsTEA)

**AMOUNT OF ADMINISTRATIVE
PENALTY:**

\$22,000

CONTRAVENTION:

Recycling Regulation (B.C. Reg. 449/2004)
Part 1, Section 2

DATE OF CONTRAVENTION:

May 19, 2014 and continuing

DIRECTOR'S SUMMARY:

The British Columbia Recycling Regulation (B.C. Recycling Regulation) requires producers (manufacturers, distributors and importers) of packaging and printed paper (PPP) products to take responsibility for the life-cycle management of their products. In accordance with Part 1, Section 2 of the B.C. Recycling Regulation, a producer must have an approved Product Stewardship Plan or have appointed an agency with an approved Stewardship Plan.

DAVIDsTEA is a producer of packaging and printed paper in the Province of British Columbia. Among other materials, it produces cups, lids, various cardboard, tin and plastic containers, plastic and paper wrappers and plastic bags. DAVIDsTEA does not meet the criteria for a "small producer" exemption as defined in Section 1(1) of the B.C. Recycling Regulation. DAVIDsTEA is not a charitable organization, it has a gross revenue in excess of \$1,000,000, it produces more than one tonne of packaging and printed paper and it has more than one point of retail sale in British Columbia.

Without an approved Product Stewardship Plan itself or an appointed agency with an approved Stewardship Plan, DAVIDsTEA was out of compliance with the B.C. Recycling Regulation beginning May 19, 2014.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

REASONS FOR DECISION:

I have considered all of the information submitted to me, including the written submission provided by Ms. Nathalie Rolland. My evaluation has included a consideration of the matters listed in section 7(1) of the Administrative Penalties (*Environmental Management Act*) Regulation, as applicable. Based on this assessment, I offer the following comments:

On January 24, 2017, I called DAVIDsTEA to confirm they understood their opportunity to be heard. (The deadline to notify me that they would like to provide additional information was January 30.) I received an email from DAVIDsTEA on January 27 acknowledging receipt of the December 23, 2016 Notice Prior to Determination of Administrative Penalty and stating that Ms. Nathalie Rolland would communicate with me on January 30. DAVIDsTEA clarified on January 30 that they would like to take advantage of the opportunity to be heard. I spoke with Ms. Rolland on February 7 and asked her to summarize in an email the information she provided. On February 8, I received the summary email. I requested clarification on certain points on February 9 and received this clarification on February 20.

In the information DAVIDsTEA provided, it states:

- They have been working with Stewardship Ontario (similar function to MMBC's) since May, 2015 and were told that Stewardship Ontario would inform other provinces of their initiatives.
- They understood that their work in Ontario would suspend all other national initiatives.
- They are working to comply with Stewardship Ontario obligations.
- They contacted MMBC after receiving the December 23, 2016 Notice and agreed to sign a membership agreement by February 21, 2017.

DAVIDsTEA states that the above shows: DAVIDsTEA did not avoid and did not want to avoid its obligations, does not undermine the PPP Program in B.C., has shown good faith in addressing its obligations, has not been in continuous or repeated contravention, did not intend to contravene stewardship obligations, did not benefit, did not refuse to comply and was proactive. They wish to collaborate with the Ministry of Environment to resolve this matter.

For these reasons, DAVIDsTEA argues that an administrative penalty should not be imposed. They propose agreeing to a timeline to complete the assessment with MMBC if the penalty is cancelled. I understand that DAVIDsTEA signed a membership agreement with MMBC on February 22, 2017, thereby coming into compliance with the B.C. Recycling Regulation.

Despite their assertions, I continue to find that DAVIDsTEA contravened the Recycling Regulation and that the contravention was continuous between May 19, 2014 and February 22, 2017.



MINISTRY OF ENVIRONMENT
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DAVIDsTEA has provided information they say demonstrates their failure to comply was not deliberate. They state they understood that by working with Stewardship Ontario, which they began to do in May 2015, requirements in other provinces would be suspended. This is despite receiving contradictory information after they began working with Stewardship Ontario: DAVIDsTEA heard from CSSA that they had been escalated for compliance action in B.C. (September 24, 2015), received the CSSA guidebook that includes obligation criteria for MMBC (April 28, 2016) and received a letter from the Ministry of Environment advising of the intent to impose an administrative penalty (June 27, 2016). I would expect a company that claims they were being proactive to have followed up with the Ministry of Environment after receiving information that contradicted their understanding of suspended obligations in B.C. However, in this case I will give DAVIDsTEA the benefit of the doubt that the contravention was not deliberate and reduce the corresponding penalty adjustment factor by \$3,000.

I continue to find that DAVIDsTEA gained economic benefit from the contravention.

I do not find that the additional information DAVIDsTEA provided demonstrates due diligence to prevent the contravention. DAVIDsTEA failed to respond to correspondence about their obligations in B.C. prior to working with Stewardship Ontario. They also chose not to confirm their belief that their efforts in Ontario would suspend requirements in B.C. after receiving conflicting information. This does not demonstrate due diligence.

I continue to find that there is no evidence to indicate that DAVIDsTEA tried to correct the contravention before being notified of the administrative penalty in December, 2016.

As an additional factor, I recognize that DAVIDsTEA came into compliance on February 22, 2017, and have therefore reduced the base penalty amount by half, or \$15,000.

DUE DATE AND PAYMENT:

Payment of this administrative penalty is due within thirty (30) calendar days after the date of service of this Determination of Administrative Penalty. Payment via cheque or money order, made payable to the Minister of Finance, can be mailed to Business Services, Attn: Fees Analyst, Ministry of Environment, PO Box 9377 Stn Prov Govt, Victoria BC, V8W 9M1. 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.



MINISTRY OF ENVIRONMENT
ENVIRONMENTAL PROTECTION DIVISION

RIGHT TO APPEAL:

If you disagree with this determination, Division 2 of Part 8 of the *Environmental Management Act* provides for appeal of my decision to the Environmental Appeal Board (EAB). In accordance with the Act and with the Environmental Appeal Board 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:

- a. Your name and address and the name of the person, if any, making the request on your behalf;
- b. The address for serving a document to you or the person acting on your behalf;
- c. The grounds for appeal;
- d. A statement of the nature of the order requested; and
- e. The notice of appeal shall be signed by you, or your counsel or agent if any, and be accompanied by a fee of \$25, payable to the Minister for Finance by cheque, money order or bank draft.

The Notice of Appeal form, available online at <http://www.eab.gov.bc.ca/forms.htm>, should be completed, and must be filed by registered mail or by leaving a copy of it at the Board office during normal business hours (8:30 am – 4:30 pm, Monday through Friday, excluding public holidays). Notice may also be sent by email or fax, provided the original notice of appeal and the appeal fee follows by mail. The mailing address of the EAB is: PO Box 9425 Stn Prov Govt, Victoria BC, V8W 9V1. The street address is: 4th Floor, 747 Fort Street, Victoria, BC.

For further information, please consult the EAB website at <http://www.eab.gov.bc.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.

Dated this 20th day of April, 2017.