



March 15, 2024

Via email: mark@deepwaterrecovery.com

Deep Water Recovery Ltd.
5084 Island Hwy S,
Union Bay, BC
V0R 3B0

Dear Mark Jurisich, Deep Water Recovery Ltd.:

Thank you for your Opportunity to Be Heard Submission dated March 11, 2024 in regards to Pollution Abatement Order 112057. I have taken into consideration the points raised in your submission and have made revisions to the draft Pollution Abatement Order. Specifically, I have provided reasoning for my determination that pollution is occurring on or about the lands occupied by Deep Water Recovery Ltd., based on the information submitted as required by Information Order 111550 issued January 23, 2023.

Enclosed is the final Pollution Abatement Order being issued under section 85 of the *Environmental Management Act*.

Yours truly,

A handwritten signature in black ink, appearing to read "Jennifer Mayberry", with a horizontal line underneath.

Jennifer Mayberry
for Director, *Environmental Management Act*
Director Operations, Compliance

Attachments:

Pollution Abatement Order dated March 15, 2024



March 15, 2024

Order Number: 112057

Via email: mark@deepwaterrecovery.com

Deep Water Recovery Ltd.
5084 Island Hwy S,
Union Bay, BC
V0R 3B0

Attention: Mark Jurisich, Deep Water Recovery Ltd.,

Pollution Abatement Order

This Order is being issued under Section 83 of the *Environmental Management Act (EMA)*, SBC 2003, C. 53. I am satisfied on reasonable grounds that a substance is causing pollution on or about lands occupied by Deep Water Recovery Ltd. (hereinafter DWR) at 5084 Island Highway South, Union Bay. The subject lands are more particularly known and described as:

PARCEL A (D.D. 27784N) OF LOT 11, NELSON DISTRICT, EXCEPT PARTS OUTLINED IN RED ON PLANS 397 R.W. AND 1414R, AND EXCEPT THOSE PARTS IN PLANS 7190, 8906, 21511, 22414, 28338, 29341, AND 29342

and

Part of District Lot 2020, Nanaimo District
(collectively referred to herein as the “Facility”)

Ministry staff conducted an onsite inspection of the Facility on April 5, 2022 (IR 184988) and observed that it was composed of a mix of open gravel, beach front and asphalt pad. The asphalt area of the Facility is designed in such a way as it directs effluent from the facility to three unlined collection basins (“Sumps”). No treatment systems were observed connected to Sumps which drain directly to the marine environment.

Ministry staff conducted a second onsite inspection of the Facility on August 17, 2022 (IR 193589) and observed that the wastes onsite included wood debris; steel scrap; unusable rusted material; septic system discharge; recreational vehicle effluent and surface water effluent. It was also confirmed at this time that there were no treatment systems connected to the Sumps, which are designed to discharge directly to the marine environment when full.

Ministry staff conducted a further onsite inspection of the Facility on October 27, 2022 (IR 199271), during a significant precipitation event in excess of 20 mm. Ministry staff observed an active discharge of effluent overflowing from two of the Sumps into the tidal foreshore and marine environment. Ministry staff collected samples of the effluent discharging into the environment, which exceeded BC Water Quality Guidelines Aquatic Life - Marine (BCWQG) for total Copper, Lead, Zinc and Cadmium.

On January 23, 2023 Information Order 111550 (IO) was issued under the authority of section 77 of the *EMA* in order to determine whether there were reasonable grounds to issue an order under sections 81 (Pollution Prevention) or 83 (Pollution Abatement) of the *EMA*. The IO was amended on December 20, 2023 at the request of DWR. The IO requires regular monitoring and sampling of discharges from the three Sumps, which are designed to discharge to marine waters when full. The monitoring and sampling is required to be completed under the direction of a Qualified Professional, and monthly reports are required to be submitted to the Director.

The information provided as required by IO111550 originally issued January 23, 2023, reported exceedances of BCWQG for turbidity, total suspended solids, total copper, total iron, total zinc, and/or benzo(a)pyrene in Sump discharge water at every sampling event completed to date. Further, 96-hour toxicity/lethality test results failed in January 2024. Concentrations of the above-noted parameters in samples collected upgradient of the Sumps and therefore, representative of the background concentrations, exceed only the BCWQG for total copper and were measured at lower concentrations than those consistently measured in the Sumps.

Based on the foregoing, I am satisfied on reasonable grounds that the above-described activities or operations are being performed in a manner that is causing “pollution” as defined by the *EMA*.

ORDER

Pursuant to Section 83 of the *Environmental Management Act* [SBC 2003] Chapter 53, DWR is hereby ordered to comply with the required actions listed in column 2 of the table below on or before the date and time in column 3.

Column 1	Column 2	Column 3
Item	Required Action	Required by midnight on:
1.	Immediately cease the release or discharge of effluent with concentrations of Copper, Lead and Zinc above BCWQG levels to the environment.	Immediately
2.	Cause a Qualified Professional to complete a Site Activity and Discharge Identification Update Report (Report) and submit it to the Director. This Report must include:	March 29, 2024

	<p>a) In addition to the Sumps, identification of each location where there is effluent discharged from the Facility on a detailed site plan;</p> <p>b) A description of the activities occurring on the Facility that could be contributing to the discharge of Contaminants of Potential Concern (COPC) from any location on the Facility; and,</p> <p>c) Identification of all COPC in effluent for each site activity identified, including but not limited to metals, petroleum hydrocarbons, PAHs, VOCs, TSS, antifouling agents, and pH.</p>	
3.	<p>Cause a Qualified Professional to complete an Effluent Sampling and Management Plan (Plan) and submit it to the Director for approval. This Plan must include:</p> <p>a) Ongoing inspection at least twice per week, of discharge status at each discharge location identified in the Report, with written records and photographs, and inspection of Facility to identify any other discharges that may arise, under the supervision of a Qualified Professional;</p> <p>b) Ongoing sampling at least once per calendar month and during or within 72 hours of a Significant Rainfall Event of Sump 1, Sump 2, Sump 3, background location NC-HWY, and any additional discharge locations identified by the Qualified Professional in the Report for laboratory analysis of:</p> <ul style="list-style-type: none"> • Total Suspended Solids • pH • Total and Dissolved Metals • Any additional COPC identified in the Report; <p>c) Ongoing sampling and analysis at least once per calendar month and during or within 72 hours of a Significant Rainfall Event, of each Sump location for Rainbow Trout Toxicity 96 hr LC50 in 100% effluent. “96 hr LC50 100%” means that, in a static bioassay on rainbow trout, at least 50% of the test fish must survive 96 hours in 100% effluent; and</p> <p>d) Actions proposed to eliminate the discharge of Total and Dissolved Copper, Lead and Zinc in concentrations greater than BCWQG levels to the environment.</p>	April 15, 2024
4.	Implement the approved Plan on a date to be specified in writing by the Director.	To be determined
5.	Cause a Qualified Professional to submit to the Director a monthly report of Plan activities completed in the previous calendar month. These monthly reports must include actions taken towards complying	On the first day of every month on a date to be

	<p>with requirements 1 through 5 of this Order, including but not limited to:</p> <ul style="list-style-type: none"> a) Provision of written discharge inspections and photographs; b) Copies of all laboratory analytical reports and detailed acute toxicity test results; c) Description of all effluent management activities, including any onsite treatment or offsite disposal, with supporting records; d) Summary of the inspection and sampling results; e) Interpretation of the laboratory analytical results by a Qualified Professional; and f) Precipitation data and summary for the month. <p>All monthly reports must include a comparison in tabular format, showing each sampling location, the analytical data for the current reporting period along with all analytical data collected for that location since March 2023.</p> <p>All monthly reports must be prepared and signed by a Qualified Professional operating within their scope of practice.</p> <p>Monthly reports shall continue until further notice in writing from the Director.</p>	<p>determined following Plan approval.</p>
<p>6.</p>	<p>The Qualified Professional(s) performing any of the following in response to this Order: performing work, authoring reports, authoring the Report and Plan, providing reporting, sampling, analysing, constructing or modifying works, or providing opinions must complete and submit the attached Declaration of Competency and Conflict of Interest Disclosure Statement forms.</p>	<p>Each time a report, plan, or monthly report is submitted to the Director.</p>
<p>7.</p>	<p>All information required above must be submitted to the Director by email at:</p> <p style="text-align: center;">environmentalcompliance@gov.bc.ca</p>	

For the purposes of this Order, the following definition applies:

"Qualified Professional" means an applied scientist or technologist specializing in a particular applied science or technology, including agrology, biology, chemistry, engineering, geology or hydrogeology, who (a) is registered in British Columbia with the professional organization responsible for his or her area of expertise, acting under that professional association's code of ethics and subject to disciplinary action by that association, and (b) through suitable education, experience, accreditation and knowledge, may be reasonably relied on to provide advice within his or her area of expertise as it relates to this order, or (c) is approved by the Director.

“Significant Rainfall Event” is any 24 hour period during which reported precipitation reaches or exceeds 25 mm as reported by Environment and Climate Change Canada at Comox A Station.

DUTY TO COMPLY

Failure to comply with the requirements of a Pollution Abatement Order is an Offence under the *Environmental Management Act* [SBC 2003, c.53] and may result in legal action. I direct your attention to Section 120(10) of the *Environmental Management Act*, which reads:

“(10) A person who contravenes an order...that is given, made or imposed under this Act by a ...director...commits an offence and is liable on conviction to a fine not exceeding \$300 000 or imprisonment for not more than 6 months, or both.”

In addition, failure to comply with the requirements of this Order may result in an administrative penalty under the Administrative Penalties Regulation (*Environmental Management Act*) [B.C. Reg 133/2014] (Regulation). I direct your attention to Section 12(4) of the Regulation, which reads:

“(4) A person who fails to comply with an order under the [Environmental Management] Act is liable to an administrative penalty not exceeding \$40 000.”

RIGHT TO APPEAL

This decision may be appealed to the Environmental Appeal Board in accordance with Part 8 of the *Environmental Management Act*. An appeal must be delivered within 30 days from the date notice of this Order is given. For further information, please contact the Environmental Appeal Board at (250) 387-3464.

NOTIFICATION OF PUBLICATION

Please be advised that this order may be published on the ministry website in 7 days. The recipient of this Order is also notified that the Province intends to publish on the ministry website the entirety of any regulatory document provided under this Order and that:

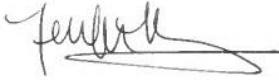
- a) The Province will provide written notice to the Responsible Person of its intent to publish the Regulatory Documents at least fourteen [14] days prior to publication,
- b) The Province will not publish any information that could not be disclosed if it were subject to a request under section 5 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 as amended from time to time.

Please be advised that this Order may also be published in the ministry’s Quarterly Environmental Enforcement Summary and Natural Resource Compliance and Enforcement Database.

MINISTRY CONTACT

If you have any questions, please contact the undersigned at Jennifer.Mayberry@gov.bc.ca.

Yours truly,

A handwritten signature in black ink, appearing to read "Jennifer Mayberry", with a horizontal line underneath it.

Jennifer Mayberry
for Director, *Environmental Management Act*
Director Operations, Compliance

Attachments:

QP Declaration of Competency Form
QP Conflict of Interest Disclosure Statement

Declaration of Competency

The Ministry of Environment and Climate Change Strategy relies on the work, advice, recommendations and in some cases decision making of qualified professionals¹, under government's professional reliance regime. With this comes an assumption that professionals who undertake work in relation to ministry legislation, regulations and codes of practice have the knowledge, experience and objectivity necessary to fulfill this role.

1. Name of Qualified Professional _____

Title _____

2. Are you a registered member of a professional association in B.C.? Yes No

Name of Association: _____ Registration # _____

3. Brief description of professional services:

This declaration of competency is collected under section 26(c) of the *Freedom of Information and Protection of Privacy Act* for the purposes of increasing government transparency and ensuring professional ethics and accountability. By signing and submitting this statement you consent to its publication and its disclosure outside of Canada. This consent is valid from the date submitted and cannot be revoked. If you have any questions about the collection, use or disclosure of your personal information please contact the Ministry of Environment and Climate Change Strategy Headquarters Office at 1-800-663-7867.

Declaration

I am a qualified professional with the knowledge, skills and experience to provide expert information, advice and/or recommendations in relation to the specific work described above.

Signature:

Witnessed by:

X _____

X _____

Print Name: _____

Print Name: _____

Date signed: _____

¹Qualified Professional, in relation to a duty or function under ministry legislation, means an individual who

- a) is registered in British Columbia with a professional association, is acting under that organization's code of ethics, and is subject to disciplinary action by that association, and
- b) through suitable education, experience, accreditation and knowledge, may reasonably be relied on to provide advice within his or her area of expertise, which area of expertise is applicable to the duty or function.

Conflict of Interest Disclosure Statement

A qualified professional ¹ providing services to either the Ministry of Environment and Climate Change Strategy (“ministry”), or to a regulated person for the purpose of obtaining an authorization from the ministry, or pursuant to a requirement imposed under the *Environmental Management Act*, the *Integrated Pest Management Act* or the *Park Act* has a real or perceived conflict of interest when the qualified professional, or their relatives, close associates or personal friends have a financial or other interest in the outcome of the work being performed.

A real or perceived conflict of interest occurs when a qualified professional has

- a) an ownership interest in the regulated person’s business;
- b) an opportunity to influence a decision that leads to financial benefits from the regulated person or their business other than a standard fee for service (e.g. bonuses, stock options, other profit sharing arrangements);
- c) a personal or professional interest in a specific outcome;
- d) the promise of a long term or ongoing business relationship with the regulated person, that is contingent upon a specific outcome of work;
- e) a spouse or other family member who will benefit from a specific outcome; or
- f) any other interest that could be perceived as a threat to the independence or objectivity of the qualified professional in performing a duty or function.

Qualified professionals who work under ministry legislation must take care in the conduct of their work that potential conflicts of interest within their control are avoided or mitigated. Precise rules in conflict of interest are not possible and professionals must rely on guidance of their professional associations, their common sense, conscience and sense of personal integrity.

Declaration

I _____, Print First and Last Name as a member of _____, Print Name of Professional Association
declare

Select one of the following:

- Absence from conflict of interest

Other than the standard fee I will receive for my professional services, I have no financial or other interest in the outcome of this _____ application/project/work/etc..

I further declare that should a conflict of interest arise in the future during the course of this work, I will fully disclose the circumstances in writing and without delay to _____, Insert Ministry Contact Name, erring on the side of caution.



Real or perceived conflict of interest

Description and nature of conflict(s):

I will maintain my objectivity, conducting my work in accordance with my Code of Ethics and standards of practice.

In addition, I will take the following steps to mitigate the real or perceived conflict(s) I have disclosed, to ensure the public interest remains paramount:

Further, I acknowledge that this disclosure may be interpreted as a threat to my independence and will be considered by the statutory decision maker accordingly.

This conflict of interest disclosure statement is collected under section 26(c) of the *Freedom of Information and Protection of Privacy Act* for the purposes of increasing government transparency and ensuring professional ethics and accountability. By signing and submitting this statement you consent to its publication and its disclosure outside of Canada. This consent is valid from the date submitted and cannot be revoked. If you have any questions about the collection, use or disclosure of your personal information please contact the Ministry of Environment and Climate Change Strategy Headquarters Office at 1-800-663-7867.

Signature:
X _____

Witnessed by:
X _____

Print name: _____

Print name: _____

Date: _____

¹Qualified Professional, in relation to a duty or function under ministry legislation, means an individual who
a) is registered in British Columbia with a professional association, is acting under that organization’s code of ethics, and is subject to disciplinary action by that association, and
b) through suitable education, experience, accreditation and knowledge, may reasonably be relied on to provide advice within his or her area of expertise, which area of expertise is applicable to the duty or function.