RPRA
Resource Productivity & Recovery Authority

# ADMINISTRATIVE PENALTY ORDER

Issued under section 89 of the
*Resource Recovery and Circular Economy Act, 2016*, c 12, Sched. 1

TO:
Daedong Canada Inc.

Served by email to: Dae Kim dkim@kiotitractor.com
Copied to: Adam Jabbar ajabbar@kiotitractor.com

**ORDER NO.: RPRA-0014**

I, Ellen White, am issuing this Administrative Penalty Order ("AP Order") because I am of the opinion that Daedong Canada Inc. has contravened the *Resource Recovery and Circular Economy Act, 2016*, c. 12, Sched. 1 (the "Act") or the regulations.

Excerpts of the Act and the Administrative Penalties Regulation made under the Act relating to Administrative Penalty Orders are attached.

**CONTRAVENTION**

I am of the opinion that Daedong Canada Inc. has contravened the following provision:

1. Section 88 of the Act: Failure to comply with a compliance order

**DESCRIPTION OF THE CONTRAVENTION**

The Resource Productivity and Recovery Authority ("RPRA") issued Compliance Order RPRA-0006 to Daedong Canada Inc. on May 16, 2024. Daedong Canada Inc. failed to complete the actions described in Compliance Order RPRA-0006 by the deadline of May 31, 2024. Daedong Canada Inc. has failed to provide details regarding steps taken to address non-compliance.

RPRA issued Daedong Canada Inc. a Notice of Intention to Issue an Administrative Penalty on August 16, 2024. Daedong Canada Inc. failed to remedy the contravention within 21 days of being served with the Notice of Intention.

**AMOUNT OF THE ADMINISTRATIVE PENALTY**

The Deputy Registrar has determined that the following administrative penalty amounts are appropriate and reflect the fact that the contravention has continued following the Notice of Intention to Issue Administrative Penalty Order and continues to the date of this AP Order.

1. **Section 88: Failure to comply with Compliance Order RPRA-0006**

**TOTAL PENALTY FOR THE CONTRAVENTION: $75,000.00**

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**Base penalty: $75,000.00**

The base penalty is determined by multiplying the applicable base penalty amount by the number of days the contravention occurred.

The maximum daily base penalty amount for contravening section 88 is $2,500.00 per day. The factors set out in the table below were considered in determining that the applicable base penalty amount in this case is $2,175.00.

The contravention commenced on June 3, 2024, and continues to the date of this AP Order. The applicable base penalty is therefore multiplied by 120 days.

| Factor | Considerations | Factor points available | Assessment of Impact | Assessed points |
|---|---|---|---|---|
| i. The contravention's impact, if any, on RPRA's ability to carry out its objectives | Compliance orders are of critical importance to the statutory scheme. Failure to fulfill a compliance order hinders RPRA's ability to carry out compliance and enforcement objectives and consumes considerable resources. | 30 | High | 25 |
| ii. The contravention's impact, if any, on resource recovery and waste reduction of a class of materials designated for the purposes of section 60 of the Act. | Section 88 contraventions delay the producer's fulfillment of its obligations under the Tires Regulation, and impact the public's overall trust in the system for tires recovery. Non-compliance with compliance orders creates an uneven playing field for tire producers and increases uncertainty in the tires program. | 30 | High | 22 |
| iii. A. History of compliance of the obligated party. | The Registrant has multiple report submissions outstanding. | 20 | High | 20 |
| iii. B. Any steps taken or not taken to remedy the contravention. | The Registrant has failed to remedy the contravention after multiple reminders. All deadlines to remedy the contraventions have passed. The Registrant has not provided any explanation for the contravention and did not provide a response to the notice of intention to issue an order. | 20 | High | 20 |
| Factor assessment total | | 100 | | 87 |

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| Factor | Considerations | Factor points available | Assessment of Impact | Assessed points |
|---|---|---|---|---|
| Total Daily Base Penalty | | | | $2,175 |
| Total Calculated Base Penalty – Not applicable, Maximum Base Penalty used instead | | | | 120 days x $2,175 = $261,000 |
| Maximum Base Penalty | | | | **$75,000** |

**REQUIRED ACTION**

Within 30 days from the date of this order, Daedong Canada Inc. is required to take the following action:

1. Remit payment of the Administrative Penalty to RPRA via EDI/EFT, Online Bill Payment, or Cheque. Email payment details, including the Order Number listed above and amount paid, to registry@rpra.ca.

   EDI/EFT:
   Information to be provided separately as requested.

   Online Bill Payment:
   From within your online bank account, go to the bill payment section, and choose to add a payee. Search for and select “RPRA” as the payee. Once “RPRA” is selected, enter the Order Number listed above and proceed to remit the payment.

   Cheque:
   Remit to: Resource Productivity & Recovery Authority

**APPEAL OF ADMINISTRATIVE PENALTY ORDER**

You have the right to appeal this Order to the Ontario Land Tribunal. To appeal, you must serve written notice of your intention to appeal on the Deputy Registrar who made the Order, and on the Tribunal, within **15 days** of being served with this Order, as follows:

Ellen White

RPRA
registry@rpra.ca

**and**

Ontario Land Tribunal
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5

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Resource Productivity & Recovery Authority

Phone: 416-212-6349 | 1-866-448-2248
Website: www.olt.gov.on.ca

The notice of appeal must state the portions of the order in respect of which the hearing is required and the grounds on which the applicant intends to rely at the hearing.

**FAILURE TO PAY AN ADMINISTRATIVE PENALTY**

If you fail to pay this Administrative Penalty Order, the RPRA may file the Order with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.

**PUBLICATION OF ORDER**

This Order will be posted on the Resource Productivity and Recovery Registry on RPRA's website in accordance with section 51 of the Act.

**ORDER ISSUED ON SEPTEMBER 30, 2024**

**Original signed by:**

_____

Ellen White
Deputy Registrar, RPRA

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**EXCERPT OF THE *RESOURCE RECOVERY AND CIRCULAR ECONOMY ACT, 2016***

*ADMINISTRATIVE PENALTIES*

*Administrative penalties*

**89** (1) An administrative penalty may be imposed under this section for one or more of the following purposes:

1. To ensure compliance with this Act and the regulations.
2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or of the regulations.

*Order by Registrar or Deputy Registrar*

(2) The Registrar or a Deputy Registrar may, subject to the regulations, issue an order requiring a person described in subsection (3) to pay an administrative penalty to the Authority if the Registrar or Deputy Registrar is of the opinion that the person has contravened,

(a) subsection 41 (5);

(b) a requirement under subsection 50 (4) to file information, reports, records or documents that are complete and accurate;

(c) subsection 68 (3);

(d) subsection 75 (1);

(e) section 79; or

(f) a provision of this Act or of the regulations that is prescribed for the purposes of this section.

*Same*

(3) An order may be issued under subsection (2),

(a) to a person required to pay a fee under subsection 41 (5);

(b) to a person required under Part IV to carry out a responsibility under that Part;

(c) to a person who fails to respond to an inquiry made under section 79;

(d) to a person prohibited from marketing a product under subsection 75 (1); or

(e) to a prescribed person.

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*Limitation*

(4) An order under subsection (2) shall be served not later than one year after the day on which evidence of the contravention first came to an inspector's attention.

*Orders not to be issued to directors, officers, employees or agents*

(5) If a person who is required to comply with a provision of this Act or of the regulations is a corporation, an order under subsection (2) shall be issued to the corporation and not to a director, officer, employee or agent of the corporation.

*Amount of penalty*

(6) The amount of the administrative penalty for each day or part of a day on which a contravention occurred or continues to occur shall be determined by the Registrar or a Deputy Registrar in accordance with the regulations.

*Contents*

(7) An order under subsection (2) shall be served on the person who is required to pay the administrative penalty and shall,

(a) contain a description of the contravention to which the order relates, including, if appropriate, the date of the contravention;

(b) specify the amount of the penalty;

(c) give particulars respecting the time for paying the penalty and the manner of payment; and

(d) provide details of the person's right to require a hearing under section 91.

*Absolute liability*

(8) A requirement that a person pay an administrative penalty applies even if,

(a) the person took all reasonable steps to prevent the contravention; or

(b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

*Same*

(9) For greater certainty, nothing in subsection (8) affects the prosecution of an offence.

*Payment prevents conviction*

(10) A person who pays an administrative penalty in respect of a contravention and has remedied the contravention shall not be convicted of an offence under this Act in respect of the same contravention.

*Failure to pay administrative penalty when required*

**90** (1) If a person who is required to pay an administrative penalty fails to comply with the requirement, the Authority may file the order that requires payment with a local registrar of the Superior Court of Justice and the order may be enforced as if it were an order of the court.

*Same*

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed under subsection (1) and, for that purpose, the date on which the order is filed is deemed to be the date of the order that is referred to in that section.

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**EXCERPT OF THE ADMINISTRATIVE PENALTIES REGULATION MADE UNDER THE RESOURCE RECOVERY AND CIRCULAR ECONOMY ACT, 2016**

*Issuing of order*

**6.** (1) Without limiting the contents required under subsection 89 (7) of the Act, an order shall,

(a) specify the provision that the person has contravened and describe the contravention, including the day, days or parts of days on which the contravention occurred;

(b) set out the final amount of the administrative penalty, and as part of specifying the final amount of the administrative penalty, specify the final base penalty amount and the final amount for economic benefit, including,

i. a description of the manner in which the final base penalty amount was determined,

ii. a description of the calculations, variables and assumptions that led to the determination of the final amount for the economic benefit, and

iii. any consideration given by the Registrar or Deputy Registrar to any request made under section 4;

(c) give particulars respecting the time for paying the penalty and the manner of payment; and

(d) provide details of the person's right to require a hearing under section 91 of the Act.

(2) A single order may require a person to pay an administrative penalty in respect of one or more contraventions.

*Administrative penalty amount, general*

7. (1) Subject to subsections (2), (3) and (4), the administrative penalty amount under subsection 89 (2) of the Act in respect of a contravention shall consist of the following, determined in accordance with this Regulation:

1. A base penalty amount.

2. An amount for economic benefit.

(2) The administrative penalty amount in respect of a person's contravention of a provision set out in Schedule 1 shall not exceed $1 million.

(3) The administrative penalty amount in respect of a contravention of a provision set out in Schedule 2 shall not exceed $1 million minus the total amount of any administrative penalties in respect of the contravention of the same provision by the same person in the previous 365 days.

(4) If, after determining the administrative penalty amount in respect of a contravention in accordance with subsections (1), (2) and (3), the Registrar or Deputy Registrar determines that, due to its magnitude, the imposition of the administrative penalty is punitive in nature having regard to all the circumstances, including any other administrative penalty amounts in respect of contraventions under the same order, the Registrar or Deputy Registrar shall reduce the amount such that the imposition of the administrative penalty is consistent with the purposes set out in subsection 89 (1) of the Act.

*Base penalty amount, determination*

8. (1) For the purposes of setting out the proposed base penalty amount in a notice under subsection 3 (1) and the final base penalty amount set out in an order under subsection 6 (1), the Registrar or Deputy Registrar shall determine the base penalty amount in accordance with the following rules:

1. The Registrar or Deputy Registrar shall consider the following factors:

i. The contravention's impact, if any, on the Authority's ability to carry out its objects.

ii. The contravention's impact, if any, on resource recovery and waste reduction of a class of materials designated for the purposes of section 60 of the Act.

iii. With respect to the person who carried out the contravention,

A. the person's history, if any, of complying or not complying with the Waste Diversion Transition Act, 2016 or its regulations or with the Resource Recovery and Circular Economy Act, 2016 or its regulations, and

B. any information available to the Registrar regarding whether the person has remedied the contravention or is in the process of remedying the contravention, and how quickly the contravention was or is being remedied.

2. For a contravention of a provision set out in Schedule 1, the base penalty amount shall not exceed the applicable maximum base penalty amount, as set out in the applicable Table to Schedule 1.

3. For a contravention of a provision set out in Schedule 2, the following rules apply:

i. The daily base penalty amount shall not exceed the applicable maximum daily base amount, as set out in the applicable Table to Schedule 2 and shall be multiplied by the number of full or partial days during which the contravention continued before it was remedied.

ii. The base penalty amount in respect of a contravention shall not exceed the applicable maximum total base penalty amount, as set out in the applicable Table to Schedule 2, minus the total of any base penalty amounts included in administrative penalties that were imposed in respect of a contravention of the same provision by the same person in the previous 365 days.

(2) For the purposes of paragraph 3 of subsection (1), a contravention of a provision set out in Schedule 2 that requires a person to do something within a particular time period shall be considered to have been remedied when the person has done it, even if the person has done it after it was required to be done.

*Amount for economic benefit, determination*

9. The Registrar or Deputy Registrar shall consider the following factors when determining, with respect to a contravention of a provision set out in Schedule 1 or 2, the proposed amount for economic benefit to be set out in a notice under subsection 3 (1) and the final amount for economic benefit to be set out in an order under subsection 6 (1):

1. Costs that the person avoided incurring by failing to comply with the provision.

2. Costs that the person delayed incurring by delaying compliance with the provision.

3. Gains that the person has accrued by failing to comply with the provision.

*Determination of final administrative penalty amount*

10. (1) The Registrar or Deputy Registrar shall, when determining the final administrative penalty amount to be set out in an order, reapply sections 8 and 9 and redetermine the base penalty amount and amount for economic benefit if the Registrar or Deputy Registrar considers it to be appropriate based on any additional information now available to the Registrar or Deputy Registrar that was not available at the time of giving the notice under subsection 3 (1), which may include information regarding the continuation of the contravention following the giving of the notice.

(2) In making the determinations under subsection (1), the Registrar or Deputy Registrar shall consider any information contained in a request received under section 4.