

# ADMINISTRATIVE PENALTY ORDER

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

TO: Robert McCarthy  
Energizer Canada  
PO Box 1210, 165 Kincardine Hwy  
Walkerton, Ontario, N0G 2V0

Served by email to: [robert.mccarthy@energizer.com](mailto:robert.mccarthy@energizer.com)

**ORDER NO.:** RPRA-0031

I, Marisa Luff, am issuing this Administrative Penalty Order because I am of the opinion that Energizer Canada (“Energizer” or the “Registrant”) has contravened the *Resource Recovery and Circular Economy Act, 2016* (the “Act”) or the regulations.

Excerpts of the Act and the *Administrative Penalties Regulation* (the “Administrative Penalties Regulation”) made under the Act relating to administrative penalty orders are attached. The third-party report developed for RPRA that informed the calculation of the economic benefit amount has also been provided to Energizer.

## CONTRAVENTION

I am of the opinion that Energizer has contravened the following provision(s): Section 12(1) of O. Reg. 30/20: BATTERIES

## DESCRIPTION OF THE CONTRAVENTION

The Registrant supplies batteries to consumers in Ontario and is a producer under O. Reg. 30/20 (“Batteries Regulation”). The Registrant supplied a quantity of primary batteries into Ontario in 2019, 2020 and 2021, resulting in a minimum management requirement in the primary batteries category for 2023. The Registrant failed to meet its 2023 minimum management requirement for primary batteries in accordance with s.13(2), as required by s. 12(1) of the Batteries Regulation.

**ADMINISTRATIVE PENALTY AMOUNT: \$1,000,000.00**

## CONSIDERATION OF REGISTRANT’S REQUEST

1. Energizer was issued a Notice of Intention to Issue an Administrative Penalty Order (“Notice of Intention”) on March 10, 2025, pursuant to s. 3(1) of the Administrative Penalties Regulation.
2. On March 31, 2025, Energizer submitted a request to consider information pursuant to s. 4 of the Administrative Penalties Regulation.

3. Section 4(1) of the Administrative Penalties Regulation requires me to consider the following information, as submitted by Energizer:
  1. Any additional information related to the contravention.
  2. Any information relevant to the Registrar or Deputy Registrar's determination of the proposed base penalty amount or the proposed amount for economic benefit.
  3. Information about any actions the person has taken to remedy the contravention since it occurred.
4. Pursuant to s. 5(1) of the Administrative Penalties Regulation, after receiving such a request, I am required to:
  - (a) consider any information contained in a request received; and
  - (b) decide whether or not to issue an order to the person in respect of the contravention.
5. Pursuant to s. 6(1)(b)(iii), my consideration and decision are set out below. My reasons for decision first consider information relevant to the contravention. Second, I consider information relevant to each of the three factors that are used to determine the base penalty, as assessed in the Notice of Intention:
  - i. The contravention's impact, if any, on RPRA'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.

I will then address the economic benefit amount, as assessed in the Notice of Intention.

### **Contravention**

6. I remain of the opinion that Energizer Canada Inc. has contravened the following provision:
  1. Section 12(1) of O. Reg. 30/20: BATTERIES
7. On April 30, 2024, Energizer's Producer Responsibility Organization ("PRO") submitted a 2023 performance report on behalf of Energizer, indicating that Energizer had achieved a recovery rate for primary batteries of 16% against a requirement of 40%.
8. In its request, Energizer submits that RPRA should consider the recent amendments to the Batteries Regulation in its decision whether to issue this Administrative Penalty Order. The amendments to the Batteries Regulation combine the recovery requirements for primary and

rechargeable batteries effective 2025. Energizer submits that RPRA should consider the intent behind the amendments to not issue an administrative penalty.

9. Energizer did not make any submissions indicating the government's intent behind the amendments other than stating it is "a clear acknowledgment of the existing deficiencies of the recycling regulations" and "those changes are an acknowledgment that the existing framework required revisions." The fact that the government recently revised management targets and combined the targets for primary and rechargeable batteries is not evidence in itself that the target for primary batteries in effect for the 2023 year was unattainable or unfair, and Energizer has not submitted any other evidence that the 40% recovery rate for primary batteries was unattainable. I am therefore not convinced that the requirement in force for the 2023 year should not be applied to Energizer's performance.
10. Given the changes are not retroactive, I remain of the opinion that Energizer contravened section 12(1) of the Batteries Regulation for the 2023 year.

#### **Base penalty**

11. In accordance with the Administrative Penalties Guideline, I have applied the first two base penalty factors using an impact scale: "The greater the impact of the contravention on the ability of RPRA to carry out its purposes, and on resource recovery and waste reduction, the greater the penalty will be (up to the maximum amounts in the regulation)."

#### **Factor i. The contravention's impact, if any, on RPRA's ability to carry out its objects.**

12. The Notice of Intention assessed the contravention as low (10/30).
13. Energizer's submission proposed no adjustments for this factor, and I confirm this factor remains 10/30.

#### **Factor 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.**

14. The Notice of Intention assessed the contravention as high (30/30).
15. I am guided by the Administrative Penalties Guideline which states that "[g]enerally speaking, the greater the amount of material impacted by the contravention, the greater the impact on resource recovery or waste reduction, and the higher the assessment on the impact scale."
16. Energizer's noncompliance with its battery management obligations represents a significant proportion of the batteries that should have been managed in Ontario in 2023.
17. Energizer submitted that the COVID-19 pandemic, specifically consumer "challenges and hesitations in visiting public battery collection" sites, had a material impact on the volume of used batteries collected during the 2023 performance year. I do not find this argument



persuasive. Beyond its assertion, Energizer provides no evidence that consumers had challenges visiting collection sites in 2023 due to COVID-19.

18. Energizer's submission noted that its PRO acquired a limited amount of additional managed primary battery tonnage on Energizer's behalf since the reporting of 2023 performance data on April 30, 2024. The acquired tonnage increased Energizer's recovery rate for primary batteries from 16% to 19%, against a regulatory requirement of 40%.
19. I accept that the amount of material impacted by the contravention has been slightly lessened and I determine that there should be a reduction to 27/30 for this factor.

**Factor iii. A. History of the Registrant's compliance with the *Waste Diversion Transition Act, 2016* or its regulations or with the *Resource Recovery and Circular Economy Act, 2016* or its regulations.**

20. The Notice of Intention proposed that the impact of the producer's past noncompliance was high (20/20).
21. Energizer's submission proposed no adjustments for this factor, and I confirm this factor remains 20/20.

**Factor iii. B. Any steps taken or not taken to remedy the contravention.**

22. The Notice of Intention assessed the impact of Energizer's failure to take steps to remedy the contravention as high (20/20).
23. As indicated in paragraph 11, Energizer's submission noted that its PRO acquired a limited amount of additional managed primary battery tonnage on Energizer's behalf since the reporting of 2023 performance data on April 30, 2024. The acquired tonnage increased Energizer's recovery rate for primary batteries from 16% to 19%, against a regulatory requirement of 40%. I accept that Energizer's PRO's purchase of additional managed primary battery tonnage is a step taken to remedy the contravention.
24. Energizer's submission also noted that its PRO acquired a significant amount of additional managed rechargeable battery tonnage on Energizer's behalf since the reporting of 2023 performance data on April 30, 2024. The acquired tonnage increased Energizer's recovery rate for rechargeable batteries from 201% to 1206%, against a regulatory requirement of 40%. As the contravention at hand relates to the recovery of primary batteries, this acquired tonnage does not reduce my assessment of this factor.
25. Energizer submitted that it was not provided adequate time to rectify any potential noncompliance and that RPRA has engaged the administrative penalty process prematurely, rather than pursuing other compliance tools. The communications between RPRA and Energizer, as well as between RPRA and Energizer's PRO, are detailed in the Inspection Report which was appended to the Notice of Intention. RPRA did in fact communicate with

the Registrant several times prior to issuing the Notice of Intention. RPRA notified Energizer of the following:

- a. RPRA notified Energizer of its 2023 recovery requirement for primary batteries upon submission of its 2022 battery supply report in July 2022.
- b. Upon submission of its 2023 performance report by its PRO in April 2024, RPRA notified Energizer of the availability of a report indicating whether it had met its recovery requirement for primary batteries.
- c. RPRA notified Energizer of its failure to meet its 2023 primary batteries recovery requirement, in an email from RPRA on February 25, 2024, two weeks prior to the issuance of the Notice of Intention.

Energizer has provided no indication that additional time would have enabled it to achieve compliance.

26. Energizer also submitted that it was given Notice of Intention too soon after RPRA finalized its *Use of Administrative Penalty Revenues Policy*. Whether or not the *Use of Administrative Penalty Revenues Policy* was in place does not impact the Registrar or Deputy Registrars' ability to issue notices of intention or administrative penalty orders.
27. Energizer additionally submitted that the lack of formalized guidance from RPRA with respect to buying and selling "performance credits" contributed to its noncompliance with the minimum management requirement for primary batteries in 2023. The overall producer responsibility framework under the RRCEA and accompanying regulations enables a market for producers and their service providers to purchase tonnage (sometimes called "performance credits" or simply "credits") to meet performance obligations. Energizer's PRO has been buying and selling tonnage on behalf of their clients since 2020 when the regulation came into effect. Furthermore, as noted above, Energizer submitted that its PRO was able to acquire managed primary battery tonnage on Energizer behalf following the reporting of 2023 performance data. I am not swayed by a lack of guidance as contributing to noncompliance.
28. In addition, there are ways to achieve compliance other than by purchasing tonnage, such as implementing changes to the collection and management system during the performance year.
29. Energizer submitted that it has made every effort to obtain tonnage to come into compliance with its recovery requirement for 2023. Energizer did not provide evidence of additional efforts undertaken by it or by its PRO.
30. Energizer submits that the behaviour of other service providers made it impossible for Energizer to remedy the contravention. I do not accept this submission. Energizer is individually responsible for its resource recovery obligation under the relevant legislation, and it does not provide evidence that it was impossible for it or its PRO, to increase its recovery rate.

31. Energizer's submission noted the efforts that its PRO has implemented on its behalf to comply with the Batteries Regulation. Energizer provided details of these efforts regarding its battery collection system and battery management systems, as well as its investments in public education and awareness, and its PRO's resources and infrastructure. I accept that its PRO made additional efforts by making investments in public education and promotion and its collection system.
32. After considering this information, I determine that there should be a reduction to 15/20 for this factor.

**Economic benefit**

33. The Notice of Intention assessed the economic benefit penalty at \$2,374,701.84.
34. The Administrative Penalties Guideline states that the Registrar or Deputy Registrar will consider the following factors when determining the economic benefit penalty:
  - a. Costs that the person avoided by failing to comply with the provision.
  - b. Costs that the person delayed by delaying compliance with the provision.
  - c. Gains that the person has accrued by failing to comply with the provision.
35. With respect to the costs that Energizer avoided by failing to comply with the provision, Energizer submitted that it and its PRO had "limited engagement" with the report prepared for RPRA by a third party that informed the calculation of the economic benefit amount.
36. In fact, Energizer's PRO was requested to provide input into the report and declined to do so.
37. Energizer further submitted that the estimated cost to manage primary batteries in the Notice of Intention is too high and does not reflect true economic benefit purportedly gained, as its PRO was able to purchase additional tonnage for lower rates. Energizer has not provided full details of the terms of those transactions and has indicated that there is no further tonnage to be obtained at the referenced price.
38. The estimated cost used to calculate the economic benefit is based on the cost to manage primary batteries during the 2023 performance period, not on private market negotiations for the purchase of tonnage after the 2023 performance period has ended.
39. Interest on the proposed administrative penalty amount in the Notice of Intention was assessed based on the Bank of Canada policy interest rate. Interest is calculated from the end of the performance year (i.e., from January 1, 2024) until the contravention has been remedied or an administrative penalty order is issued. As of the date of this Order, the benefit has accrued for 484 days for a total interest amount of \$109,919.67.

40. After considering Energizer’s submission, I confirm no adjustment to the estimated cost of managing primary batteries and determine the total economic benefit amount is \$2,109,495.92, taking into account the additional primary battery recovery tonnage obtained.

**AMOUNT OF THE ADMINISTRATIVE PENALTY**

I have determined the following administrative penalty amount is appropriate and reflects the fact that the contravention has not been fully remedied.

**ADMINISTRATIVE PENALTY AMOUNT: \$1,000,000.00**

Calculated as follows:

Base penalty: \$144,000.00

Economic benefit amount: \$2,109,495.93

Total: \$2,253,495.93, reduced to the maximum administrative penalty amount of \$1 million, pursuant to s. 7(2) of the *Administrative Penalties Regulation*.

**Subsection 12(1): Failure to establish and operate a system for managing batteries**

**Base Penalty: \$144,000**

The base penalty is determined by multiplying the applicable base penalty amount by the total number of assessed points.

The maximum base penalty amount for contravening section 12(1) is \$200,000. The factor assessment total is 72. The applicable base penalty is therefore multiplied by 0.72 for a total of \$144,000.

The following factors were considered in determining the base penalty amount:

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 objects.	Compliance with management obligations is a fundamental outcome of the regulatory scheme. When producers fail to meet their management obligations, RPRA is required to analyze a significant amount of data and to expend considerable resources to determine the magnitude of and to address the contravention. This, in turn, reduces the overall resources available to RPRA to perform the duties and exercise the powers	30	Low	10

Factor	Considerations	Factor points available	Assessment of Impact	Assessed points
	given to RPRA under this Act, in fulfilment of its objects.			
<p>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.</p>	<p>The Registrant's failure to manage batteries compromises the provincial interest in having a robust system of resource recovery and waste reduction. In particular, it fails to:</p> <ul style="list-style-type: none"> <li>• protect the natural environment and human health;</li> <li>• minimize the generation of waste;</li> <li>• fairly allocate responsibility for the batteries to the persons who are most responsible for their design;</li> <li>• minimize the need for waste disposal;</li> <li>• minimize the environmental impacts that result from waste disposal;</li> <li>• increase the reuse and recycling of waste; and</li> <li>• increase opportunities and markets for recovered resources.</li> </ul> <p>Failure to meet management obligations impacts the public's overall trust in the circular economy regulations and creates an uneven playing field for producers.</p> <p>The Registrant's noncompliance with its battery management obligations represents a significant proportion of the battery market in Ontario.</p>	30	High	27
<p>iii. A. History of the Registrant's compliance with the <i>Waste Diversion Transition Act, 2016</i> or its regulations or</p>	<p>The Registrant registered as a battery producer on time. The Registrant submitted majority of its batteries supply and performance reports on time. The registrant met the best efforts requirement for the rechargeable battery category and did not meet the best efforts requirement for the primary</p>	20	High	20



Factor	Considerations	Factor points available	Assessment of Impact	Assessed points
with the <i>Resource Recovery and Circular Economy Act, 2016</i> or its regulations.	<p>battery category in the 2022 performance year.</p> <p>The Registrant registered as a blue box producer after the registration deadline. The Registrant submitted the majority its blue box supply reports on time.</p> <p>The Registrant registered as an automotive materials producer after the registration deadline. The registrant submitted majority of its automotive materials supply reports late. The Registrant failed to submit its automotive materials performance reports.</p> <p>The Registrant registered as a pressurized containers producer after the registration deadline. The Registrant submitted majority of its pressurized containers supply reports late.</p>			
iii. B. Any steps taken or not taken to remedy the contravention.	The Registrant has acquired a small amount of additional tonnage of managed primary batteries to partially remedy the contravention.	20	High	15
Factor assessment total		100		72
Total Calculated Base Penalty				Factor assessment x \$200,000 = \$144,000

**Economic Benefit: \$2,109,495.93**

**a) Costs that the person avoided incurring by failing to comply with the provision:**

The Registrant has avoided the costs of fulfilling its 2023 primary battery management requirement. The amount of the costs the Registrant avoided is determined by multiplying the estimated cost of managing primary batteries by the difference between the Registrant's minimum

management requirement for primary batteries and the actual weight of primary batteries the Registrant managed in 2023.

Calculation:

[Estimated cost of managing primary batteries] x [producer management requirement – actual management, in tonnes]

**a) Gains that the person has accrued by failing to comply with the provision:**

By not incurring the costs associated with complying with its battery management obligations, the Registrant is assumed to have accrued a benefit equivalent to the Bank of Canada policy interest rate on the estimated amount of avoided costs. This benefit continues to accrue until the contravention is remedied or this order is issued. As of the date of this Order, the benefit has accrued for 484 days (i.e., from the end of the 2023 performance year: January 1, 2024).

Calculation:

[Estimated amount of delayed costs] x [interest rate] x [days]

**REQUIRED ACTION**

Within 30 days from the date of this order, Energizer Canada 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](mailto:registry@rpra.ca).

EDI/EFT:

Information will be provided separately.

Online Bill Payment:

Using the bill payment functionality, log into your 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.

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:



Deputy Registrar  
RPRA  
[registry@rpra.ca](mailto:registry@rpra.ca)

and

Ontario Land Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON M5G 1E5  
Phone: 416-212-6349 | 1-866-448-2248  
Website: [www.olt.gov.on.ca](http://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 APRIL 28, 2025**

#### **Original signed by:**

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Marisa Luff  
Deputy Registrar, RPRA

**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.

*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.

**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.