

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Administrator, Integrated Pest Management Act v. MKY Holdings and the Appeal Board*,  
2025 BCSC 1060

Date: 20250611  
Docket: 248227  
Registry: Victoria

Between:

**Administrator, *Integrated Pest Management Act***

Petitioner

And

**MKY Holdings and the Environmental Appeal Board**

Respondents

Corrected Judgment: The text of the judgment was corrected at paragraph 52 on  
June 25, 2025.

Before: The Honourable Justice Loo

On judicial review from: An order of the Environmental Appeal Board, dated August  
1, 2024 (*MKY Holdings Ltd v. Administrator, Integrated Pest Management Act*, 2024  
BCEAB 26, Decision no EAB-IPM-23-A001(a))

## Reasons for Judgment

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Place and Date of Hearing:

Victoria, B.C.  
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Place and Date of Judgment:

Victoria, B.C.  
June 11, 2025

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**Introduction**

[1] The petitioner seeks judicial review of a decision by the Environmental Appeal Board [EAB] dated August 1, 2024, wherein the EAB reversed an administrative monetary penalty issued by a delegate of the administrator of the *Integrated Pest Management Act*, S.B.C. 2003, c. 58 [IPMA].

[2] The administrator’s delegate issued this penalty because the respondent, MKY Holdings, applied approximately 290 kilograms of Tide detergent to the roofs of 98 units of a condominium complex in Abbotsford, in order to remove moss from those roofs.

[3] The critical question that determines the administrator’s jurisdiction over this dispute is whether the detergent applied on the condominium roofs was a “pesticide” within the meaning of the *IPMA*. The EAB determined that the detergent was not a “pesticide” under the *IPMA* and reversed the penalty.

[4] MKY Holdings did not appear on this judicial review. Pursuant to the decision in *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 at paras. 53–57 [*Ontario Power*], the EAB sought to make substantive submissions on the application.

[5] As stated in *Ontario Power* at para. 57, tribunal standing is a matter to be determined by the Court conducting the review. In exercising its discretion, the Court is required to balance the need for fully informed adjudication against the importance of maintaining tribunal impartiality.

[6] At the commencement of the hearing, I granted leave to the EAB to make submissions on this judicial review for the reasons stated in *Ontario Power* at para. 43:

[54] Some cases may arise in which there is simply no other party to stand in opposition to the party challenging the tribunal decision. Our judicial review processes are designed to function best when both sides of a dispute are argued vigorously before the reviewing court. In a situation where no other well-informed party stands opposed, the presence of a tribunal as an

adversarial party may help the court ensure it has heard the best of both sides of a dispute.

**The statutory regime**

[7] The administrator found that MKY Holdings contravened s. 3(2)(b) of the *IPMA* which provides as follows:

**General prohibitions and restrictions**

...

(2) Without limiting any other provision of this Act or the regulations, a person must not use

...

(b) a pesticide not registered under the *Pest Control Products Act* (Canada), unless the pesticide is used in a manner and for a purpose expressly allowed under that Act...

[8] “Pesticide” is defined in the *IPMA* as follows:

**"pesticide"** means a micro-organism or material that is represented, sold, used or intended to be used to prevent, destroy, repel or mitigate a pest, and includes

(a) a plant growth regulator, plant defoliator or plant desiccant,

(b) a control product as defined in the *Pest Control Products Act* (Canada), and

(c) a substance that is classified as a pesticide by regulation,

but does not include micro-organisms, materials, substances or control products excluded from this definition by regulation;

[9] The term “pesticide” is not used in the *Pest Control Products Act*, S.C. 2002, c. 28 [*PCPA*], but that Act defines a “pest control product” as:

(a) a product, an organism or a substance, including a product, an organism or a substance derived through biotechnology, that consists of its active ingredient, formulants and contaminants, and that is manufactured, represented, distributed or used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects;

(b) an active ingredient that is used to manufacture anything described in paragraph (a); or

(c) any other thing that is prescribed to be a pest control product.

[10] In these reasons, I will refer to the *IPMA* and the *PCPA* together as the “Acts.” In the analysis below, I will also refer to the *Integrated Pest Management Regulation*, B.C. Reg. 604/2004 [*IPMR*].

### **The EAB’s reasons**

[11] The well-known decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], requires this Court to adopt a “reasons first” approach on a judicial review:

[84] ... A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion.

[Citations omitted.]

[12] Therefore, it is appropriate to first look to the reasons of the EAB. The following passages are central to the EAB’s decision:

[32] I am not persuaded by the Respondent’s submission that how a substance or material is used, not its intended use or the purpose for which it was manufactured and sold, brings it into the regulation of the *IPMA* on the basis that it might have some properties capable of dealing with a pest: in this case, moss.

[33] In considering the definition of a pesticide in the *IPMA*, I find that this cannot be what the Legislature intended. The *IPMA*, in the context of the overall scheme of the regime, is intended to regulate substances which have unacceptable potential risks to the environment or human health. In this respect, not every substance or material that may directly or indirectly control a pest immediately falls into this regime. As is discussed below, the Legislature has the ability to, and has, explicitly classified substances as pesticides to bring them under the jurisdiction of the *IPMA* or classified them as substances which are not pesticides because their use is not expected to pose an unreasonable risk to human health or the environment.

[34] It is my interpretation of the *IPMA* that it is the potential risks of a substance or material that is the essential consideration into whether it falls into the broad definition of a “pesticide” as defined by the *IPMA*. I am not persuaded by the Respondent’s submission that if a substance is used, whether directly or indirectly, to control a “pest,” it falls within the jurisdiction of the *IPMA* to regulate its use if used on a pest. If that were the case, there would be no need to have multiple definitions for a pesticide. An incredibly broad number of substances or materials could be captured by the definition, depending on how they are used.

[13] The EAB summarized its conclusions as follows:

[54] As I have found above, I find on the balance of probabilities that the Detergent is a laundry detergent, not a pesticide as defined by the *IPMA*. Similar to the scheme under the *IPMA*, I find that the *PCPA* is intended to regulate substances that have a likelihood to cause harm to human health or the environment.

[55] In my view, this is where the Respondent's reasoning fails. I find it cannot be the intent of the Legislatures for any substance or material that is used to remove moss from structures to fall within the scope of the *IPMA* or the *PCPA*. Rather, these acts are intended to regulate products, materials, chemicals, and other substances may create an unacceptable risk to human health or to the environment. Additionally, both the *IPMA* and the *PCPA* have mechanisms to include or exclude substances from the regulatory schemes depending on assessed risks of products on human health or the environment.

[Emphasis in original.]

[14] In my view, these reasons contain three primary bases on which the EAB concluded that Tide detergent did not constitute a pesticide in the circumstances of this case:

- a) that use as a pesticide, alone, cannot bring a substance within the Acts;
- b) that the potential risk of a substance is the “essential consideration” as to whether it falls within the broad definition of a pesticide; and
- c) that Tide detergent is not a pest control product with the *PCPA*.

[15] In addition, the EAB addressed a further point, in the alternative, that even if the detergent falls within the broad definition of pesticide under the *IPMA*, the active ingredients of the detergent are comprised of “Excluded Pesticides” and therefore are exempted from the compliance requirements of the *IPMA*:

[65] The Minister has specifically set out what substances or materials are considered Excluded Pesticides under Schedule 2 of the *Regulation*. The effect of establishing this list of Excluded Pesticides is that the use of these specific substances is not subject to the requirements under the *IPMA* and the *Regulation*. It would be inconsistent with the overall scheme of the *IPMA* to find that the use of a product, like the Detergent, which contains key components which are classified as Excluded Pesticides, be considered an unregistered pesticide which was used contrary to the *PCPA*.

[66] For the reasons provided above, I find that the Detergent does not fall into the broad definition of pesticide under the *IPMA*. However, even if I am wrong in that conclusion, I find that the active ingredients of the Detergent are comprised of substances that have been classified as Excluded Pesticides. The classification of Excluded Pesticides exempts those materials from the compliance requirements of the *IPMA* because it has been determined that these substances will not have unreasonable adverse effects from their use.

[16] I will address each of these conclusions in turn.

### **Issues**

[17] The issues to be determined by this Court are whether the EAB was unreasonable in concluding that:

- a) use alone as a pesticide cannot bring a substance within the Acts;
- b) it is the potential risk of a substance that is the “essential consideration” as to whether it falls within the broad definition of a pesticide;
- c) the detergent is not a pest control product within the *PCPA*; and/or
- d) the detergent’s ingredients include “Excluded Pesticides,” and therefore the detergent is exempted from the compliance requirements of the *IPMA*.

### **Standard of review**

[18] The parties are agreed that the appropriate standard of review is reasonableness: see *Vavilov* at para. 23. The Court in *Vavilov* described that standard as follows:

[13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

...

[15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in

order to ensure that the decision as a whole is transparent, intelligible and justified...

[19] Further, the Court cautioned that before finding a decision to be unreasonable, the reviewing judge must be satisfied that the shortcomings are sufficiently serious, central or significant, and not merely superficial or peripheral to the merits of the decision:

[100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

### **Discussion**

**Was the EAB’s decision unreasonable in concluding that: use alone cannot bring a substance within the Acts; the potential risk of a substance is the “essential consideration” as to whether it falls within the broad definition of a pesticide; and/or the detergent is not a pest control product within the PCPA?**

[20] In my view, the answers to these first three sub-issues are appropriately considered together, as they rest primarily on this Court’s construction of the same relevant sections of the *IPMA* and the *PCPA*. The key provisions are the definitions of “pesticide” and “use” in section 1 of the *IPMA* and the definition of “pest control product” in the *PCPA*.

[21] As stated above, in the *IPMA*, “pesticide” means “a micro-organism or material that is represented, sold, used or intended to be used to prevent, destroy, repel or mitigate a pest.” In applying this definition to the case at bar, the administrator focuses on the word “used” and submits that detergent is a “material” that is “used” to prevent, destroy, repel or mitigate a pest.

[22] It is not contested that moss is a “pest” under the *IPMA*.

[23] Under s. 1 of the *IPMA*, "use" is defined, with respect to pesticides, as including to "mix, prepare or apply, and possess for the purpose of applying".

[24] The definition of "pest control product" in the *PCPA* is similar to the definition of "pesticide" in the *IPMA*. Here, the administrator again focuses on the word "used" and submits that detergent is a "product" or a "substance" that is "used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest."

[25] The EAB's reasons state repeatedly that it was not persuaded by the respondent's submissions that any substance or material that is used to remove moss from structures falls within the scope of the *IPMA* or the *PCPA*. However, in my respectful view, the EAB's conclusion was inconsistent with, and did not reasonably come to terms with, the plain words in the definitions set out above.

[26] I agree with the administrator that "pesticide" is defined as including a material that is "used" to mitigate a pest. "Used" is defined as including mixing, preparing or applying, or possessing for the purpose of applying. "Pest control product" is defined as a "product" that is "used as a means for directly or indirectly controlling [or] destroying ... a pest."

[27] In my view, it is clear that the detergent was used in a manner which brought it within the plain meaning of those definitions, namely that MKY Holdings applied the detergent to directly remove the moss growing on the roofs of a condominium complex. The EAB takes the position that the word "used" should be read as "generally used," and that evidence was necessary (and was not adduced) to prove common usage. However, the relevant statutory provisions do not say that general use for pesticide purposes is necessary to bring a substance within the Acts.

[28] As stated in *Vavilov*:

[108] Because administrative decision makers receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision. That administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative decision makers are permitted to disregard or

rewrite the law as enacted by Parliament and the provincial legislatures... Likewise, a decision must comport with any more specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion...

[29] The EAB also stated in its reasons that an “incredibly broad number of substances or materials could be captured by the definition” argued for by the administrator, and it opined that the *IPMA* is intended only to regulate substances which have “unacceptable potential risks to the environment or human health.” It submits that the Court’s interpretation of the *IPMA* ought to be informed and driven by its purpose, which the EAB submits is to regulate substances that have unacceptable effects on the environment or health.

[30] However, in my view, these propositions do not reasonably take into account the broad scheme apparent in other parts of the Acts and the *IPMR*, nor do they account for the plain language of the Acts.

[31] The broad ambit of the term “pesticide” may be illustrated by reference to s. 6 of the *IPMR*. That section reads, in part, as follows:

A license under section 4 of the Act is not required by a person who  
(a) sells, uses, or provides a service using an excluded pesticide,  
(a.1) is the owner of private land and uses, on that land, a pesticide set out in Schedule 5 of this regulation ...

[32] As is evident, s. 6(a) expressly refers to Schedule 5. Further, s. 6(a.1) refers to “excluded pesticide,” which is defined in s. 1 as a pesticide set out in Schedule 2. Schedule 2 is entitled “Excluded Pesticides,” and Schedule 5 is entitled “No License or Certificate Required for Certain Uses.” These schedules exempt various substances, including household items such as acetic acid (vinegar) and sodium chloride (salt), from certain requirements in the *IPMA*.

[33] It is apparent from these provisions that acetic acid and sodium chloride, which may be used but are not necessarily “generally used” for pest control, would be subject to all the provisions of the *IPMA* but for the specific exclusions in the schedules. In other words, the fact that Schedules 2 and 5 exclude acetic acid and

sodium chloride from the licensing and certificate requirements of the *IPMA* implies that those substances fall within the definition of pesticide in the first place, when they are used to prevent, destroy, repel or mitigate a pest.

[34] It appears clear from the definitions set out above, s. 6 of the *IPMR*, and Schedules 2 and 5 to the *IPMR*, that the “scheme” of the Acts is to cast a wide net over all substances that are used to mitigate pests, and then to provide exclusions from the requirements in the Acts for a wide variety of less harmful substances, such as acetic acid and sodium chloride.

[35] Further, I agree with the administrator that the EAB erroneously imported a “potential risk” assessment requirement into the definition of “pesticide,” narrowing it without justification. The words “adverse effect” are used elsewhere in the *IPMA* but are not found anywhere in the definition of a “pesticide.” If the definition of “pesticide” only encompassed substances which have “unacceptable potential risks to the environment or human health,” there would be no need to exclude acetic acid and sodium chloride from the *IPMA* requirements.

[36] To summarize, it is my view that the EAB’s decisions in respect of the first two sub-issues in this section – whether use alone can bring a substance within the Acts, and whether the potential risk of a substance is the “essential consideration” as to whether it falls within the broad definition of a pesticide – do not, within the meaning of *Vavilov*, comport with the statutory definitions and principles that prescribe the exercise of its discretion and cannot be reasonably sustained based on the wording of the definitions and the overall scheme.

[37] The EAB did not reasonably explain how its conclusions can be reconciled with the definitions in the Acts and with s. 6 and the schedules to the *IPMR*. As held in *Vavilov*, administrative decision makers are not permitted to “disregard or rewrite the law as enacted by Parliament and the provincial legislatures.”

[38] For these reasons, I have concluded that the EAB’s conclusions on these first two sub-issues are unreasonable within the meaning of *Vavilov* and must be set aside.

[39] The answer to the third sub-issue in this section – whether the detergent is a pest control product with the *PCPA* – flows from the answers to the first two sub-issues. The definition of “pest control product” in the *PCPA* is indistinguishable from that of “pesticide” in the *IPMA* in the sense that both encompass products “used” to control or mitigate pests. For the same reason that the EAB’s decision on the first two sub-issues was unreasonable, its decision on the third sub-issue was also unreasonable.

**Was the EAB’s decision unreasonable in concluding that the detergent or some of its ingredients are Schedule 2 Excluded Pesticides which are exempted from the compliance requirements of the *IPMA*?**

[40] Although the parties made only limited submissions on this issue, it must be addressed because it could, on its own, support the result of the EAB’s decision.

[41] As indicated above, the EAB’s reasoning on this issue is found at paras. 65–66 of its decision. The EAB concluded that since the active ingredients of the detergent are comprised of substances that have been classified as “Excluded Pesticides,” that classification exempts those materials from the compliance requirements of the *IPMA* because it has been determined that the use of these substances will not have unreasonable adverse effects.

[42] As described above, the list of Excluded Pesticides is found in Schedule 2 of the *IPMR*. The list includes domestic and commercial cleansers, deodorizers, laundry additives, and soaps.

[43] Also relevant to this issue are ss. 2(e) and 43(2) of the *IPMR*. Section 2 establishes various classes of pesticides, including:

**Classes of pesticides**

...

- (e) excluded pesticides, being those pesticides assigned to this class under section 43 (2) [*classification of pesticides*] because the administrator considers that excluding them from compliance with the requirements imposed on a licensee, permit holder or confirmation holder under the Act will not increase the risk of unreasonable adverse effects from their use.

[44] Section 43(2) provides that “[t]he pesticides set out in Schedule 2 are classified as excluded pesticides.”

[45] The EAB submits that the administrator conceded that “the key active ingredients of the detergent are comprised of substances that have been classified as Excluded Pesticides under Schedule 2 of the [*IPMR*]” and that this led the EAB “to the conclusion that these products were exempt from the specific compliance requirements relied on by the Administrator for the imposition of the penalty.” The administrator now disputes that it made this concession, but in written submissions to the EAB it stated:

The Respondent [the administrator] acknowledges that Tide and some of its ingredients arguably fall within one of more of the classifications of excluded pesticides listed in Schedule 2, including: cleansers, deodorizers, fatty acids, laundry additives, soaps and surfactants...

[46] It appears that the administrator was prepared before the EAB to assume, at least for the purposes of its submissions, that either Tide detergent itself or some of its ingredients are “Excluded Pesticides” listed in Schedule 2.

[47] In my view, the central question with respect to this issue is whether or to what extent the “Excluded Pesticides” listed in Schedule 2 are exempted from compliance requirements under the *IPMA*.

[48] As stated above, the EAB concluded at para. 65 of its reasons that “[t]he effect of establishing this list of Excluded Pesticides is that the use of these specific substances is not subject to the requirements under the *IPMA* and the *Regulation*.” I interpret this conclusion to mean that Excluded Pesticides are altogether excluded from the ambit of the *IPMA*.

[49] However, in my view, the classification of a substance as a Schedule 2 “Excluded Pesticide” does not exempt it entirely from the provisions of the *IPMA*. Section 2(e) of the *IPMR* excludes the Excluded Pesticides only from compliance with “the requirements imposed on a licensee, permit holder or confirmation holder under the Act.”

[50] I note, for example, that s. 3(1)(a) of the *IPMA* provides that a person must not “use a pesticide that causes or is likely to cause, or use, handle, transport, store, dispose of or sell a pesticide in a manner that causes or is likely to cause, an unreasonable adverse effect.” That provision is not subject to other provisions of the *IPMA* or the *IPMR*. Therefore, it appears that the use of Section 2 “Excluded Pesticides” remains subject to s. 3(1)(a) of the *IPMA*.

[51] Further, the classification of a substance as a Schedule 2 “Excluded Pesticide” does not mean that it is not a pesticide. Indeed, it is clear from s. 43(2) of the *IPMR* that an Excluded Pesticide under that section is a pesticide: an Excluded Pesticide is defined as a pesticide assigned to this class.

[52] The result of the foregoing, in my view, is that the EAB was required to determine whether the detergent remained subject to s. 3(2)(b) of the *IPMA* or whether it was excluded from that section’s ambit by other provisions in the Acts. By simply concluding that Schedule 2 “Excluded Pesticides” are altogether excluded from the ambit of the *IPMA*, the EAB’s reasoning process was unreasonable.

[53] *Vavilov* provides at para. 83 that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. It is my view that the EAB’s reasoning process was unreasonable when it concluded that the use of Schedule 2 “Excluded Pesticides is not subject to the requirements under the *IPMA* and the *IPMR*.

[54] This conclusion was not “merely superficial or peripheral”; rather, it was central to the EAB’s reasoning. As a result of the EAB’s conclusion that a substance’s status as an Excluded Pesticide excluded it from the *IPMA*’s ambit, the

EAB did not go on to consider whether a pesticide’s status as an Excluded Pesticide exempted its user from the prohibition in s. 3(2)(b) of the *IPMA*. As a result, the decision maker’s reasoning process was flawed in a significant way.

[55] To be clear, given the lack of any specific submissions to this Court on this issue and the fact that the EAB did not address the issue, I am not deciding whether a Schedule 2 Excluded Pesticide falls within or outside of the prohibition in s. 3(2)(b) or whether the outcome of the EAB’s decision on this issue was unreasonable. Rather, I am observing that the EAB did not go on to analyse whether a Schedule 2 Excluded Pesticide falls within or outside of the prohibition in s. 3(2)(b), and I am finding that its failure to do so was a significant flaw that rendered the decision unreasonable.

[56] Whether a Schedule 2 Excluded Pesticide falls within or outside of the prohibition in s. 3(2)(b) and whether, as a result, a penalty under s. 3(2)(b) is warranted are issues to be dealt with by the EAB on the rehearing.

### **Conclusions**

[57] For the reasons stated, the EAB’s decision is quashed and this matter is remitted back to the EAB.

[58] Neither party sought costs on this petition and therefore no costs are awarded.

“The Honourable Justice Loo”