

ADMINISTRATIVE MONETARY PENALTY GUIDELINES

March 2017

C-NLOPB
5th Floor TD Place,
140 Water Street
St. John's, NL, A1C 6H6
Tel: (709)778-1400
Fax: (709)778-1473

CNSOPB
8th Floor TD Centre,
1791 Barrington Street
Halifax, NS, B3J 3K9
Tel: (902)422-5588
Fax: (902)422-1799

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	ENFORCEMENT POLICY AND AMPS	4
3.0	REGULATIONS.....	5
4.0	THE AMP PROCESS	5
5.0	CONTACT INFORMATION	12

1.0 Introduction

1.1 Background

In February 2016, amendments to the *Accord Acts*¹, the new *Canada-Newfoundland and Labrador Offshore Petroleum Administrative Monetary Penalty Regulations* (Federal), *Canada-Newfoundland and Labrador Offshore Petroleum Administrative Monetary Penalty Regulations* (Provincial), *Canada-Nova Scotia Offshore Petroleum Administrative Monetary Penalty Regulations* (Federal), and *Canada-Nova Scotia Offshore Petroleum Administrative Monetary Penalty Regulations* (Provincial) (collectively referred to hereafter as the “Regulations”), came into force.

The amendments provided the Canada-Newfoundland and Labrador Offshore Petroleum Board and Canada Nova Scotia Offshore Petroleum Board (collectively referred to as the Boards) with the authority to issue administrative monetary penalties (AMPs) to each respective Board’s regulated operators in the Canada-Newfoundland and Labrador Offshore Area and the Canada Nova Scotia Offshore Area for enforcement purposes.

AMPs are penalties that can be imposed by a Board on an individual or a company for incidences of non-compliance with legislation, regulations, permits, licences, certificate conditions, Board officer orders, or Board decisions or orders. AMPs are intended to be a compliance-obtaining measure (administrative), as opposed to a punitive measure (criminal).

The respective Acts and Regulations can be found on the websites of each Board:

Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB)
www.cnlopb.ca

Canada Nova Scotia Offshore Petroleum Board (CNSOPB)
www.cnsopb.ns.ca

1.2 Purpose of the Guidelines

The Boards have prepared this Administrative Monetary Penalty Guideline (Guideline) in consultation with the National Energy Board to provide additional information regarding the key elements of the AMP regime also established under their respective regulatory regimes.

In the event of a discrepancy between this Guideline and the legislation, the definitions in the *Accord Acts* and Regulations will prevail.

¹ *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act* (C-NLAAIA), *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act* (C-NLAAINLA), *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (CNSOPRAIA), and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act* (CNSOPRAI(NS)A) (the four Acts are collectively referred to as the “Accord Acts” – references herein are to the federal versions of these statutes as amended)

1.3 Definitions

“Applicant” – the person seeking an Authorization

“Operator” – the holder of the Authorization and operating licence

“Offshore Area” – as defined by section 2 of the *Accord Acts*

1.4 Applicability

The Guidelines apply to all Operators in offshore area set out in the *Accord Acts*².

2.0 Enforcement Policy and AMPs

The Boards hold Operators accountable for safety, environmental protection and resource management outcomes using a rigorous compliance monitoring program and by enforcing legislative requirements.

Enforcement actions are the mechanisms used by the Boards to bring Operators back into compliance with the *Accord Acts* and Regulations, to deter future non-compliance and/or to prevent harm.

The Boards’ objectives for enforcement actions are to achieve compliance as quickly and as effectively as possible.^{3 4} Achieving compliance eliminates or reduces hazards and protects the safety of workers and the public, the environment and property.

The Boards will carry out enforcement actions in a manner that is fair, predictable and consistent. AMPs are an addition to the Boards existing enforcement toolkit. The Boards will continue to apply the most appropriate enforcement tool required to achieve compliance and deter future non-compliance. Diagram 1 presents an approach to using enforcement tools with an emphasis of escalation of enforcement from facilitated to directed compliance actions. As illustrated below, the AMP could be used in conjunction with any other enforcement tool, apart from prosecution, as appropriate.

² Section 2 of C-NLAAIA; Section 2 of CNSOPRAIA.

³ The C-NLOPB has a compliance and enforcement policy to clarify the C-NLOPB’s role in compliance and enforcement matters in the Newfoundland and Labrador Offshore Area. It is the intent of this policy to establish principles for fair and consistent compliance verification and enforcement of the *Accord Acts*.

⁴ The CNSOPB has a compliance and enforcement policy to address situations of regulatory non-compliance. In addition to AMPs, enforcement actions may include: authorities/command structure; facilitated compliance; issuance of orders; suspension or revocation of approvals or authorizations; and prosecution in the court system.

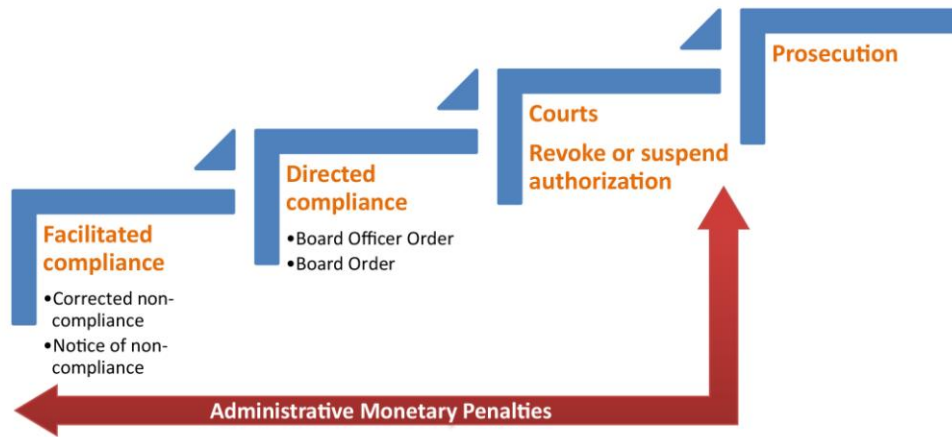


Diagram 1: Enforcement tools

More information about the Board’s respective compliance and enforcement tools can be found at the websites referenced above.

The *Accord Acts* and Regulations do not oblige the Boards to issue AMPs automatically in cases of non-compliance. The *Acts* and Regulations are permissive and allow the Boards to issue AMPs as part of a broader enforcement toolkit.

The Boards may apply one or more of the following criteria to guide the use of AMPs:

- when compliance is not obtained using either facilitated or directed compliance enforcement tools,
- when harm is caused because of the non-compliance,
- when harm would likely occur because of the non-compliance, or
- any other situation where an AMP is the best way to obtain compliance or deter future non-compliance.

3.0 Regulations

Schedule 1 of the Regulations outlines specific violations pertaining to safety, environmental protection or resource management which, if contravened, could be subject to an AMP. Contravention of an order or decision made under the *Accord Acts*, as well as failure to comply with a term or condition of a certificate, licence, authorisation, permit, leave or exemption granted under the *Accord Acts*, are also designated violations subject to an AMP.

4.0 The AMP Process

The AMP process is built on the following principles:

1. The process will be administered in a timely manner.

2. The process will be transparent.
3. AMPs will be applied in a fair, impartial, and consistent manner, depending on the circumstances of each case.

The AMP process is described in the following 4 subsections below. Diagram 2 represents a high level overview of the AMP process. For each step in the process it indicates responsibilities and outputs.

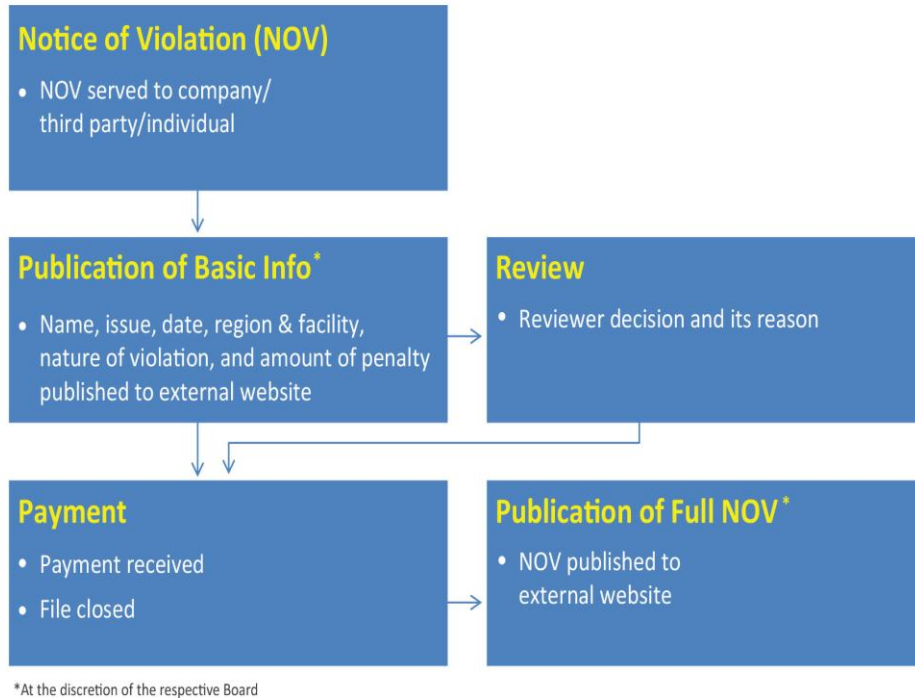


Diagram 2: Summary of AMP Process

4.1 Notice of Violation

Issuing Notices of Violation and Service of Documents

The Boards may designate persons or classes of persons who are authorized to issue notices of violation (hereafter referred to as “an AMP Officer”).⁵ AMPs will be issued in the form of Notices of Violation (NOVs). Issuing NOVs will ensure consistency in the respective Board’s use of AMPs and adherence to the policy objectives outlined in section 2 of this Guideline.

Once the AMP Officer decides to issue an NOV, it will be served on the alleged violator. The Regulations require that a NOV and any other documents be served in person, through registered mail, courier, fax or other electronic means. Section 5 of the Regulations provides additional details on service of documents.

When a company or individual commits a violation, and a decision is made to issue an AMP, the NOV will include the following information:⁶

⁵ s. 202.02(b) of C-NLAAIA; s. 207.02(b) of CNSOPRAIA.

⁶ s. 202.06(2) of C-NLAAIA; s. 207.06(2) of CNSOPRAIA.

- the name of the person believed to have committed the violation,
- the relevant facts surrounding the violation,
- the amount of the penalty, including identification of the mitigating and aggravating factors that were applied,
- how to pay the penalty (Payment form), and
- how to request a review (Request for Review form).

Calculating the Penalty

The calculation of the penalty starts with determination of a baseline penalty that can be increased or decreased using a number of criteria that are listed in the AMP Regulations. Section 4 of the Regulations lists nine adjustment factors that may be applied if the situation warrants, and each factor has different gravity values. The sum of all gravity values determines how much the penalty can be increased or decreased from the baseline. Schedule 2 in the Regulations shows the potential gravity levels and the corresponding penalty amounts. Note that the baseline penalty starts with a gravity level of zero, so if no adjustment factors are applicable, the final gravity level would continue to be zero and the final penalty amount would correspond to that gravity level.

The adjustment factors are designed to promote certain behaviours such as prompt voluntary reporting, undertaking mitigation activities quickly, and taking steps to prevent recurrence of a violation. The factors are also intended to deter behaviours such as negligence, repeat violations, and financial gain from a violation. The complete list of adjustment factors can be found in Column 1 of the table in Section 4 of the Regulations.

The Regulations classify violations into two categories, Type A and Type B. Type A are violations of administrative and record-keeping requirements representing a lower risk to safety or the environment. Type B includes all other violations (the vast majority), such as failing to follow an order issued by the respective Board officers or violating safety or environmental requirements. A list of violations can be found in Schedule 1 of the Regulations.

A penalty cannot be increased beyond the maximum daily penalties set out in the *Accord Acts* of \$25,000 for individuals and \$100,000 for any other person (e.g. companies).⁷

Each day that a violation is committed or continues is considered a separate violation for which a separate penalty can be issued. Therefore, one non-compliance or incident could result in more than one violation. Information contained in the NOV will indicate if the violation is one or multi-day violation subject to daily penalties.

The following two examples illustrate how penalties would be calculated using Schedule 2 of the Regulations. Table 1 summarizes the examples below and Table 2 shows the mitigating and aggravating factors from the Regulations used in the calculations.

⁷ s. 202.01(2) of C-NLAAIA; s. 207.01(2) of CNSOPRAIA.

1. For an individual who committed a Type A violation, the base amount of the penalty (i.e. gravity value of zero) is \$1,365 (Schedule 2 of the Regulations). The individual has provided assistance with regard to the violation to the respective Board. Therefore a gravity value of -2 was applied to this criterion. However, the individual did not promptly report the violation to the respective Board (item 6) so a gravity level of +1 was also applied. The total sum of gravity values is -1. The daily penalty, according to Schedule 2 of the Regulations, is therefore \$990.
2. For any other person (e.g., a company) who committed a Type B violation the base amount of the penalty (i.e. gravity value of zero) is \$40,000 (Schedule 2 of the Regulations). The company was found to have committed a previous violation so a gravity value of +1 was applied to this criterion. The violation was also found to have resulted in an increased risk of harm to the environment so a gravity value of +2 was applied. The total sum of gravity levels is +3, which sets the daily penalty amount for the violation at \$76,000.

Table 1: Summary of Above Examples of Possible Penalty Calculations

	Individual	Person other than an individual
Violation of the AMP Regulations	Type A	Type B
Base Penalty	\$1,365	\$40,000
Gravity Values Applied	Criterion 5. -2 Criterion 6. +1 Total Gravity Value-1	Criterion 1. +2 Criterion 9. +1 Total Gravity Value+3
Total Penalty	\$990	\$76,000

Table 2: Mitigating and Aggravating factors from Section 4 of the Regulations

Item	Column 1 Criteria	Column 2 Gravity Value
1.	Whether the person who committed the violation was finally found or considered to have committed a previous violation set out in a notice of violation issued by the National Energy Board, the Canada–Newfoundland and Labrador Offshore Petroleum Board or the Canada-Nova Scotia Offshore Petroleum Board	0 to +2
2.	Whether the person derived any competitive or economic benefit from the violation	0 to +2
3.	Whether the person made reasonable efforts to mitigate or reverse the violation’s effects	-2 to +2
4.	Whether there was negligence on the person’s part	0 to +2
5.	Whether the person provided all reasonable assistance to the National Energy Board with respect to the violation	-2 to +2
6.	Whether the person, after becoming aware of the violation, promptly reported it to the National Energy Board	-2 to +2
7.	Whether the person has taken any steps to prevent a recurrence of the violation	-2 to +2
8.	For Type B violations, whether the violation was primarily related to a reporting or record-keeping requirement	-2 to 0
9.	Whether the violation increased a risk of harm to people or the environment or a risk of waste	0 to +3

4.2 The Review Process

If a company or individual does not agree with the NOV they have received, they have 30 days after the day of service to request a review of the amount of the penalty, the facts of the violation or both. A company or individual who requests a review is referred to as the Requester. Upon receipt of a request for review, the respective Board shall conduct the review or designate a person to conduct the review (hereafter referred to as "Reviewer"). The Reviewer must be someone who was not involved in the NOV issuance.

The review process will be conducted in writing. The Reviewer is not involved in the NOV issuance process, which is conducted by the AMP Officer. To request a review, the Requester must fill out the "Request for Review" form which will be included with all NOV's.

The form requires the Requester to indicate whether the request is for a review of the amount of the penalty, the facts of the violation, or both. Depending on the basis of review, the Requester will also be required to provide an explanation as to why they believe the amount of the violation was not determined in accordance with the regulations or why they did not commit the violation.

Within 21 days of receipt of the request, the Reviewer will provide the Requester and AMP Officer with a process letter setting out the dates and steps of the review process. As well, within 30 days of receipt of the request, the AMP Officer will provide the Requester with the evidence used to support the NOV. The Requester will then have 30 days to provide the Reviewer and the AMP Officer with submissions, including any evidence, to support the request that the Reviewer change the amount of the penalty or determine that the Requester did not commit the violation. The AMP Officer has 30 days to provide a written response to the submission. The Requester will then have 30 days from that submission to reply in writing. The Reviewer may vary these time limits on its own motion or in response to a request as it considers appropriate.

At any time before the Reviewer issues a decision on the review, the Requestor may request that review be withdrawn. The Reviewer will review all the submissions and make a decision on the request to review. The Requester will be sent the Reviewer's decision, and its reasons for decision. The Reviewer's decision will be posted to the respective Board's website, at the discretion of the respective Board.

The following Table highlights key steps in the review process.

Table 3: Key Steps in the Review Process

Step in the Review Process	Timeline*	Outcome
Request for review received	Within 30 days of receiving an NOV	Requester must request a review of the amount of the penalty, the facts of the violation or both; will also be required to provide an explanation as to why they believe the amount of the violation was not determined in accordance with the regulations or why they did not commit the violation. Submission must be received by mail, fax or on-line form.
Board initiates review process	Within 21 days of receiving a request for review	Requester and AMP Officer will receive a letter from the Reviewer setting out the process steps and timelines for submissions. The letter will also provide filing instructions.
AMP Officer releases information package to the Requester	Within 30 days of receiving the request for review	Requester and the Reviewer will receive an information package that contains evidence used to support the NOV.
The Requester files submissions supporting the request for a review	Within 30 days of receiving the information package from the AMP Officer	The Requester will provide the Reviewer and the AMP Officer with submissions and evidence to support the request.
The AMP Officer provides written response to the Requester's submission	Within 30 days of receiving the submission of the Requester	The AMP Officer will provide a written response.
Requester may, if desired, provide a reply to the AMP Officer's response	Within 30 days of receiving the AMP Officer's written response	The Requester may provide the Reviewer and the AMP Officer with additional submissions in reply to the AMP Officer's submissions. Submission must follow the filing instructions.
The Reviewer reviews all submissions and makes a decision	Within a reasonable time of receiving the final submission	The Reviewer will review all the submissions and make a decision on the request to review. The Reviewer must change the amount of the penalty if it decides that the amount was not determined in accordance with the Regulations. The Reviewer may also find, on a balance of probabilities, that the Requester did not commit the violation. The Requester will be sent the Reviewer's decision, and the Reviewer's reason for decision.

* A respective Board may vary these time limits on its own motion or in response to a request, as it considers appropriate.

For more information on reviews, please refer to the *Accord Acts*.⁸

⁸ s. 202.02 to 202.06 of C-NLAAIA; s. 207.02 to 207.06 of CNSOPRAIA.

4.3 Recovery of Penalties

The NOV will include instructions on how to pay the penalty. A person served with an NOV has 30 days from the receipt of an NOV to pay the penalty.

If a review is requested, and the Reviewer determines that the Requestor did commit the violation, payment is required within 30 days from the receipt of the Notice of Payment served along with the Reviewer's decision.

Payments may be made by cheque, money order, bank draft, or by electronic funds transfer. As applicable, all payments must be made payable to the Newfoundland Exchequer for C-NLOPB, and the Nova Scotia Minister of Finance for the CNSOPB. Additional details on these payment options will be provided in the NOV or issued by the respective Board.

An unpaid AMP amount is a debt due to the Crown and may be recovered by collection procedures.

4.4 AMPs Published on Board's website

In the interest of greater public transparency around the issuance of AMPs, the respective Board *may* post information relating to an NOV as soon as it has been served.⁹ This information may include the name of the company who committed the violation, the issue date, the region and facility, the nature of the violation, and the amount of the penalty. The decision to disclose the name of an individual will be made on a case-by-case basis.

In addition, the Boards will post the complete NOV after the 30-day review period has expired or after the review process has been completed.

The NOV will include the following information:¹⁰

- the name of the Operator (or individual, at the discretion of the Board) that committed the violation,
- the relevant facts surrounding the violation, and
- the amount of the penalty, including identification of the mitigating and aggravating factors that were applied to arrive at the amount.

⁹ The decision to post, timing of a post and form of each post is at the discretion of each Board.

¹⁰ s. 202.06 of the C-NLAAIA; s. 207.02 to 207.06 of CNSOPRAIA

5.0 Contact Information

Questions relating to the information contained in this Guideline can be submitted by e-mail, fax or mail to the respective Board address listed below.

Canada-Newfoundland and Labrador Offshore Petroleum Board

Address: 140 Water Street
5th Floor, TD Place
St. John's, NL A1C 6H6
Attention: Legal Counsel
Fax: 709-778-1473
E-mail: cmitchell@cnlopb.ca

Canada-Nova Scotia Offshore Petroleum Board

Address: 1791 Barrington Street
8th Floor TD Center
Halifax, Nova Scotia
B3J 3K9
Attention: AMP Administration
Fax: 902-422-1799
E-mail: AMPadmin@cnsopb.ns.ca