



Administrative Monetary Penalty Guideline

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For more information, contact:

C-NLOPB
240 Waterford Bridge Road, Suite 7100
The Tower Corporate Campus – West Campus Hall
St. John's NL A1E 1E2
Tel: (709) 778-1400
Fax: (709) 778-1473

CNSOPB
201 Brownlow Avenue, Suite 27
Dartmouth NS B3B 1W2
Tel: (902) 422-5588
Fax: (902) 422-1799

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Date Revised	Sections (if applicable)	Description of Change
October 28, 2024		Updated to new guideline format and removed duplication with the Administrative Monetary Penalty Regulations

Foreword

The Canada-Nova Scotia Offshore Petroleum Board and the Canada-Newfoundland and Labrador Offshore Petroleum Board (the *Regulators*) have issued this Guideline to provide clarity to those with statutory responsibilities in the offshore petroleum industry on the *Canada-Newfoundland and Labrador* and the *Canada-Nova Scotia Offshore Petroleum Administrative Monetary Penalty Regulations (AMP Regulations)* under Part III of the *Atlantic Accord Implementation Acts (Accord Acts)*. This Guideline applies to all petroleum operations to which Part III of the *Accord Acts* and the *AMP Regulations* apply. This Guideline also provides direction on the *Regulator's* interpretation of the regulations.

Guidelines are developed to provide assistance to those with statutory responsibilities (including operators, employers, employees, supervisors, providers of services, suppliers, etc.) under the *Accord Acts* and regulations. Guidelines provide an understanding of how legislative requirements can be met. In certain cases, the goals, objectives and requirements of the legislation are such that no guidance is necessary. In other instances, guidelines will identify a way in which regulatory compliance can be achieved.

The authority to issue Guidelines and Interpretation Notes with respect to legislation is specified by sections 151.1 and 205.067 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act, S.C. 1987, c.3 (C-NLAAIA)*, sections 147 and 201.64 of the *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act, RSNL 1990 c. C-2*, subsection 156(1) and section 210.068 of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c.28 (CNSOPRAIA)* and section 148 and subsection 202BQ(1) of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*. The *Accord Acts* also state that Guidelines and Interpretation Notes are not deemed to be statutory instruments.

For the purposes of this Guideline, these Acts are referred to collectively as the *Accord Acts*. Any references to the C-NLAAIA, the CNSOPRAIA or to the regulations in this Guideline are to the federal versions of the *Accord Acts* and the associated regulations.

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1.0 Acronyms and Abbreviations

AMP	Administrative Monetary Penalty
C-NLAAIA¹	<i>Canada-Newfoundland and Labrador Atlantic Accord Implementation Act</i>
C-NLOPB	Canada-Newfoundland and Labrador Offshore Petroleum Board
CNSOPB	Canada-Nova Scotia Offshore Petroleum Board
CNSOPRAIA²	<i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i>
NOV	Notice of Violation

2.0 Definitions

In this Guideline, the terms such as “offshore area”, “operator”, “person” and “waste” referenced herein have the same meaning as in the *Accord Acts*.³

For this Guideline, the following definitions have been capitalized and italicized throughout. The following definitions apply:

<i>Accord Acts</i>	means the <i>Canada-Newfoundland Atlantic Accord Implementation Act</i> , <i>Canada-Newfoundland and Labrador Atlantic Accord Implementation (Newfoundland and Labrador) Act</i> , <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i> and <i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act</i>
<i>AMP Regulations</i>	means the <i>Canada-Newfoundland and Labrador Offshore Petroleum Administrative Monetary Penalty Regulations, SOR/2016-19</i> and the <i>Canada-Nova Scotia Offshore Petroleum Administrative Monetary Penalty Regulations, SOR/2016-20</i>
<i>Regulator</i>	means the Canada-Newfoundland and Labrador Offshore Petroleum Board or the Canada-Nova Scotia Offshore Petroleum Board, as the case may be

¹ References to the C-NLAAIA in this Guideline are to the federal version of the *Accord Acts*

² References to the CNSOPRAIA in this Guideline are to the federal version of the *Accord Acts*

³ C-NLAAIA 2, 135, 205.001(1); CNSOPRAIA 2, 138, 210.001(1)

3.0 Purpose and Scope

The purpose of this Guideline is to provide clarity to operators and others with statutory responsibilities on the administrative monetary penalty (AMP) process used by the *Regulator*.

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

Schedule 1 of the *AMP Regulations* outlines specific violations pertaining to safety, environmental protection or resource management, which if contravened, could be subject to an AMP. Contraventions of orders or decisions made under the *Accord Acts*, as well as failures to comply with terms or conditions of certificates, licences, authorizations, permits, leaves or exemptions granted under the *Accord Acts*, are also designated violations subject to an AMP. In addition to the *AMP Regulations*, refer to the associated requirements respecting AMPs under the *Accord Acts*.⁴

4.0 Enforcement Policy and AMPs

The *Regulator* holds operators accountable for safety, environmental protection and resource management outcomes by using compliance monitoring and verification activities and by enforcing legislative requirements.

Enforcement actions are used by the *Regulator* to bring operators back into compliance with the *Accord Acts* and regulations, to deter future non-compliance, or to prevent harm.

The *Regulators'* objectives for enforcement actions are to achieve compliance as quickly and as effectively as possible. Achieving compliance eliminates or reduces hazards and protects the safety of workers and the public, of the environment and of property.

The *Regulator* aims to carry out enforcement actions in a manner that is fair, predictable and consistent. AMPs are an addition to the *Regulators'* existing enforcement toolkit. The *Regulators* will apply the most appropriate enforcement tool required to achieve compliance and to deter future non-compliance. The typical approach to enforcement begins with tools used for facilitated compliance and moves to directed compliance actions and on to other actions as need be, such as suspension of approvals or authorizations, revocation of approvals or authorizations, and prosecution. More information about compliance and enforcement tools are found on the *Regulators'* respective websites.

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

⁴ C-NLAAIA 202.01 – 202.93; CNSOPRAIA 207.01 – 207.93

5.0 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, with regard to the circumstances of each case.

The *Regulators* 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 non-compliance.
- When harm would likely occur because of non-compliance.
- Any other situation where an AMP is the best way to obtain compliance or to deter future non-compliance.

The AMP process is described in the following four subsections below. Diagram 1 represents a high-level overview of the AMP process. For each step in the process, it indicates responsibilities and outputs.

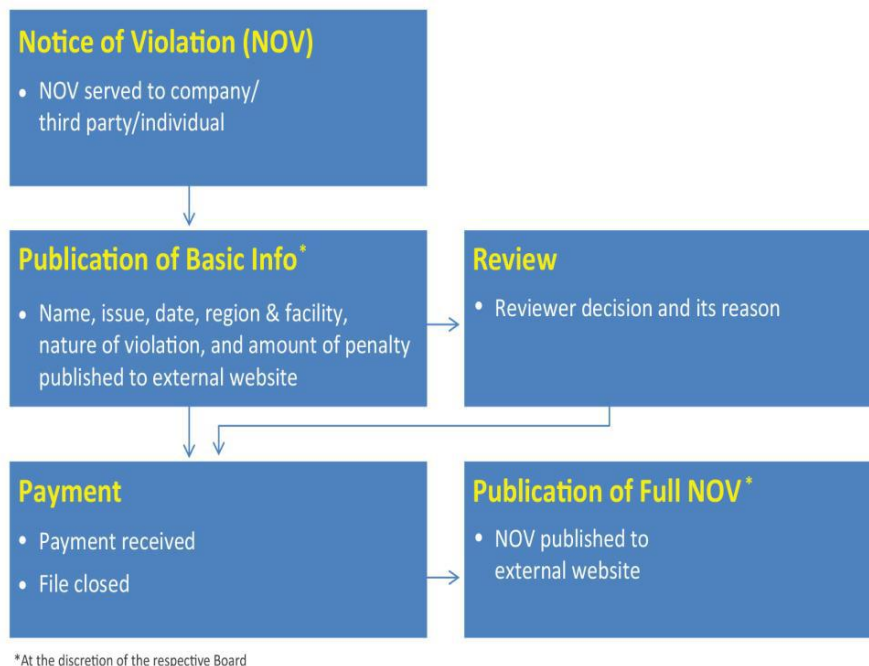


Diagram 1: Summary of AMP Process

5.1 Notice of Violation (NOV)

5.1.1 Issuing Notices of Violation and Service of Documents

The Board of each *Regulator* 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 both consistency in the respective *Regulator’s* use of AMPs and adherence to the policy objectives outlined in section 4 of this Guideline.

Once the AMP Officer decides to issue an NOV, it will be served on the alleged violator. The *AMP Regulations* require that an NOV and any other documents be served in person or by registered mail, courier, fax or other electronic means. Section 5 of the *AMP 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 information⁶:

- 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).
- How to request a review (Request for Review form).

5.1.2 Calculating a Penalty

Calculating a penalty starts with determining the baseline penalty that can be increased or decreased using a number of criteria that are listed in the *AMP Regulations*. Section 4 of the *AMP 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 a penalty can be increased or decreased from the baseline. Schedule 2 in the *AMP 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 reporting promptly and voluntarily, undertaking mitigation activities quickly, and taking steps to prevent recurrence of a violation. The factors are also intended to deter negligence, repeat violations and financial gain

⁵ C-NLAAIA 202.02(b); CNSOPRAIA 207.02(b)

⁶ C-NLAAIA 202.06(2); CNSOPRAIA 207.06(2)

from a violation. The complete list of adjustment factors can be found in Column 1 of the table in Section 4 of the *AMP Regulations*.

The *AMP 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, which compromise the vast majority of violations, and includes failing to follow an order issued by one of the *Regulator's* officers or violating safety or environmental requirements. A list of violations is found in Schedule 1 of the *AMP Regulations*.

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

Each day that a violation is either 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 a one-day violation or a multi-day violation subject to daily penalties.

The following two examples illustrate how penalties would be calculated using Schedule 2 of the *AMP Regulations*. Table 1 summarizes the examples below. The mitigating and aggravating factors used in the calculations are found in the table in section 4 of the *AMP Regulations*.

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 *AMP Regulations*). The individual has provided assistance with regard to the violation to the respective *Regulator*. Therefore a gravity value of -2 was applied to this criterion. However, the individual did not promptly report the violation to the respective *Regulator* (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 *AMP 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 *AMP 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.

⁷ C-NLAAIA 202.01(2); CNSOPRAIA 207.01(2)

Table 1: Summary of Above Examples of Possible Penalty Calculations

	Individual	Person other than an individual
Violation of the <i>AMP Regulations</i>	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

5.2 The Review Process

If a company or an 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 *Regulator* 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 is 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 *AMP Regulations* or why they did not commit the violation.

Within 21 days of receipt of the request, the Reviewer will provide the Requester and the 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 as it considers appropriate on its own motion or in response to a request.

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 *Regulator's* website, at their discretion.

Table 2 highlights the key steps in the review process.

Table 2: Key Steps in the Review Process

Step	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. 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 <i>AMP Regulations</i> or why they did not commit the violation. Submission must be received by mail, fax or on-line form.
Regulator 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 <i>AMP Regulations</i> . 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.

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

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

5.3 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 electronic funds transfer. As applicable, payments must be made payable to the Newfoundland Exchequer (for the C-NLOPB) or to the Nova Scotia Minister of Finance (for the CNSOPB). Additional details on these payment options will be provided in the NOV as issued by the respective *Regulator*. An unpaid AMP amount is a debt due to the Crown and may be recovered by collection procedures.

5.4 Publishing of AMPs

In the interest of greater public transparency around the issuance of AMPs, the *Regulator* may post information relating to an NOV as soon as it has been served.⁹ This information may include the name of the company that 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 *Regulator* 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:¹⁰

- the name of the company that (or individual who, at the discretion of the *Regulator*) 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.

⁸ C-NLAAIA 202.02 – 202.06; CNSOPRAIA 207.02 – 207.06

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

¹⁰ C-NLAAIA 202.06; CNSOPRAIA 207.06