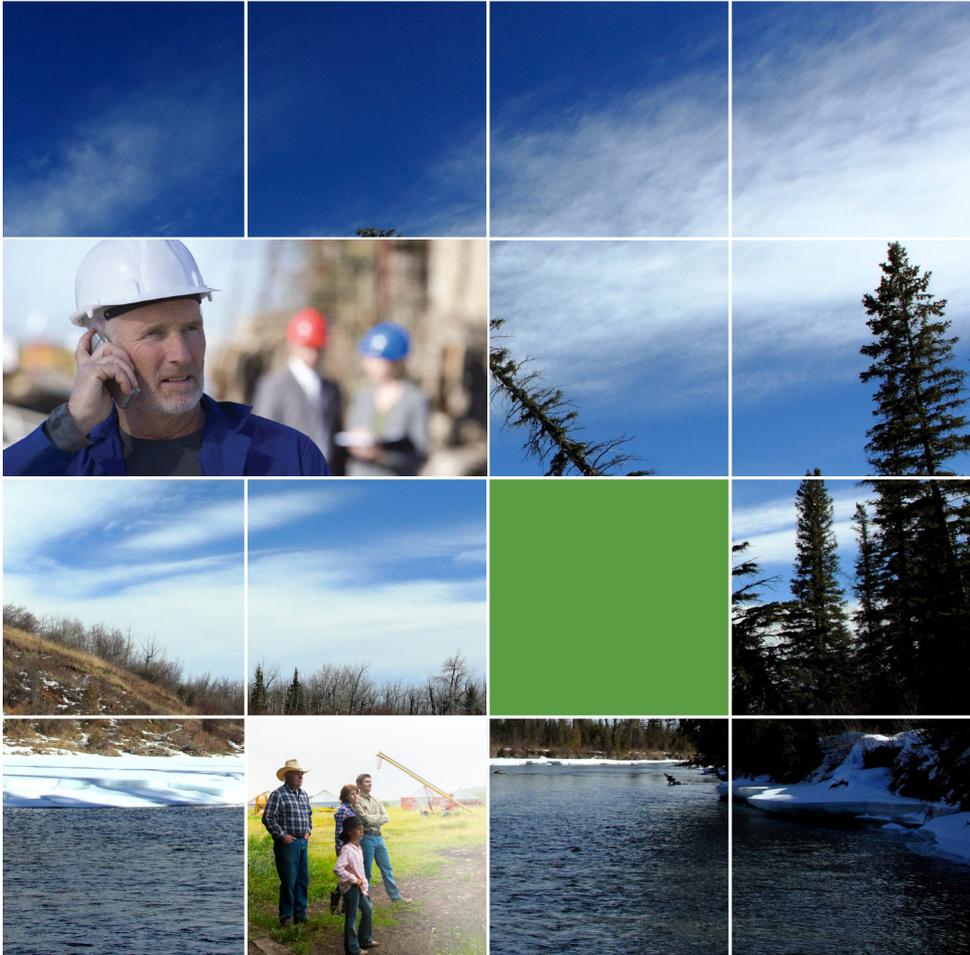




Canada Energy
Regulator

Régie de l'énergie
du Canada

Administrative Monetary Penalties Process Guide



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Purpose

The Canada Energy Regulator (CER or Regulator) is an independent federal agency responsible for regulating pipelines, energy development and trade in the Canadian public interest. Under the Canadian Energy Regulator Act (CER Act) and its regulations, the Regulator promotes safety and security, environmental protection and efficient energy infrastructure markets.

Administrative Monetary Penalties (AMPs) are financial penalties imposed by a regulatory body in response to contravention of legislative requirements. AMPs provide regulatory agencies with a flexible enforcement tool to complement other types of regulatory sanctions such as notices of non-compliance, orders, warning letters and directions.

This Administrative Monetary Penalties Process Guide (AMP Process Guide) sets out the key elements of the CER's administrative monetary penalties process (AMP Process) from initiating an AMP through to the payment and final decision stages of the process.

Background

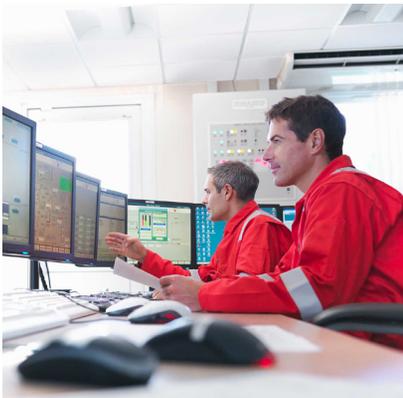
The Jobs, Growth and Long-term Prosperity Act, portions of which came into force on 6 July 2012, included changes to a number of pieces of legislation. As part of these changes, new provisions were added to the former National Energy Board Act that established a system of AMPs to promote compliance with the Act.

Administrative Monetary Penalties Regulations (AMP Regulations) were developed to allow the Regulator to impose financial penalties on companies or individuals for non-compliance with the legislation, regulations, decisions, permits, orders, licenses or certificate conditions.

On February 26, 2016, AMPs were also added under the Canada Oil and Gas Operations Act.

On August 28, 2019, the National Energy Board Act was repealed and replaced with the Canadian Energy Regulator Act. The CER Act continues to have provisions regarding AMPs (CER Act, sections 115-135).

Details regarding AMPs are provided in the respective Acts and AMP Regulations.



CER Enforcement Policy and AMPs

The CER holds those companies and individuals whose infrastructure it regulates accountable for safety, security and environmental protection outcomes using a rigorous compliance monitoring program and by enforcing legislative requirements through enforcement actions.

Enforcement actions are the mechanisms used by the Regulator to bring entities or their regulated activities back into compliance with the acts and regulations administered by the CER, to deter future non-compliance and/or to prevent harm.

The CER will apply the following criteria to guide the use of AMPs:

- when compliance is not obtained using other enforcement tools;
- when harm is caused or likely to 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.

More information about the CER's current enforcement tools can be found on the Enforcement Policy at the CER website.

Regulations

The AMP Regulations include a schedule (Schedule 1) listing each section of the CER Act¹ and regulations that is designated as a violation and subject to an AMP if contravened.

Contravention of an order or decision made under the CER Act, as well as failure to comply with a term or condition of a certificate, licence, permit, leave or exemption granted under the CER Act, is also designated as a violation subject to an AMP.

More information on the AMP Regulations can be found on the Justice Canada website. This guide is based on the AMP Regulations under the CER Act.

1. Note that pursuant to the Interpretation Act, references to the NEB Act in the AMPs Regulations are to be read as references to the CER Act.

The AMP Process

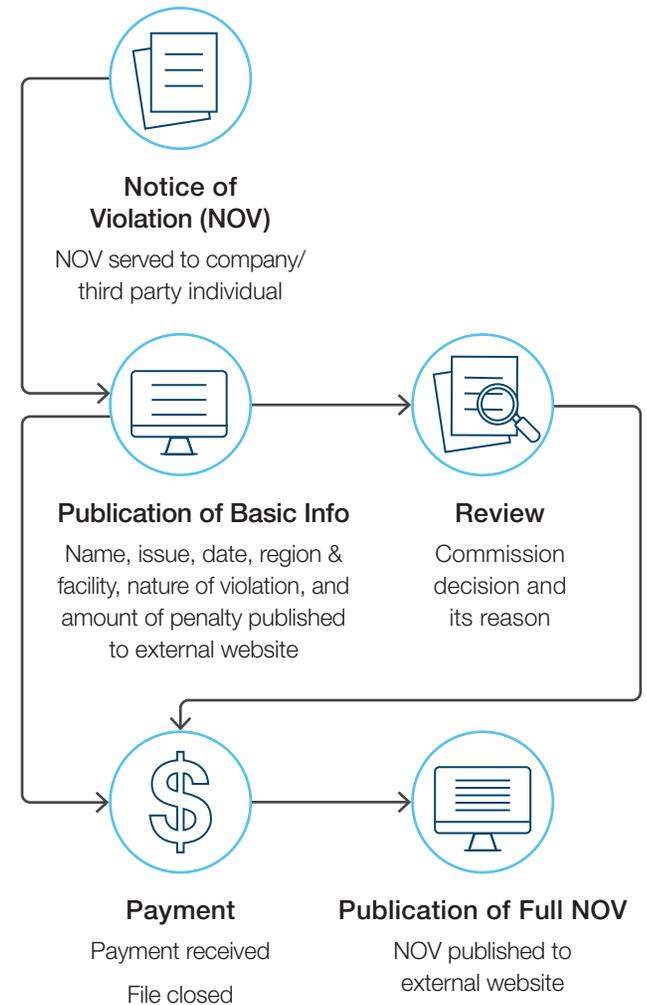
The AMP process is built on the following principles:

- ⇒ The process will be administered in a timely manner.
- ⇒ The process will be transparent and predictable.
- ⇒ AMPs will be applied in a fair, impartial, and consistent manner.



Summary of AMP Process

The AMP process is described in the diagram below, which represents a high level overview of the AMP process. Each step in the process indicates CER responsibilities and outputs.



Notice of Violation

Issuing Notices of Violation and Service of Documents

Under subsection 116(2) of the CER Act, the Chief Executive Officer has the power to designate persons or classes of persons who are authorized to issue notices of violation (AMP Officers). AMPs will be issued in the form of Notices of Violation (NOVs) from the CER's head office. Staff will not be issuing NOVs in the field. Issuing NOVs from the office will ensure consistency in the CER's use of AMPs and adherence to the principals listed in section 5.0.

Once the AMP Officer decides to issue an NOV, it will be served on the company or individual. The AMP Regulations require that NOVs, and any other documents be served in person, through registered mail, courier, fax or other electronic means. A document sent by registered mail or courier is considered to be served on the tenth day after the date indicated in the receipt issued by the postal service. Section 5 of the AMP Regulations provides additional details on service of documents.

As set out in subsection 120(2) of the CER Act, the NOV must include the following information:

- the name of the person believed to have committed the violation,
- the relevant facts surrounding the violation,
- the amount of the penalty,
- how to pay the penalty, and
- the right to request a review, and how to do so.

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 adjustment factors 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 the penalty can be increased or decreased from the baseline. Schedule 2 in the AMP Regulations shows all 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 applied, 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 Table 2 of the AMP Regulations.

The AMP Regulations classify violations into two categories, Type A and Type B. Type A violations may involve a failure to submit, report, notify, or record information as prescribed by the Regulator. Type B violations may involve the contravention of an order or a decision made under the CER Act or the failure to comply with a term or condition of any certificate, licence, permit, leave or exemption that is granted under the CER Act. A list of violations can be found in Schedule 1 of the AMP Regulations.

A penalty cannot be increased beyond the maximum daily penalties set out in subsection 115(2) of the CER Act of \$25,000 for individuals and \$100,000 for any other person (e.g. companies).

Each day that a violation continues is considered a separate violation for which a separate penalty can be issued. Therefore, one incident could result in more than one violation. Information contained in the NOV will indicate if daily reoccurring penalties are applicable.

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

1. For an individual who committed a Type A violation the base amount of the penalty (i.e. gravity level of zero) is \$1,365 (Schedule 2 of the AMP Regulations). The individual's efforts to mitigate or reverse the effects are identified as a mitigating factor (item 3) with an assigned gravity level of -2. The steps taken by the individual to prevent recurrence of the violation (item 7) are an aggravating factor with an assigned gravity level of +1. The total sum of gravity levels is -1. The daily penalty, according to Schedule 2 of the AMP Regulations, is therefore \$990.
2. For any other person who committed a type B violation the base amount of the penalty (i.e. gravity level of zero) is \$40,000 (Schedule 2 of the AMP Regulations). A history of violations in the previous seven years is identified as an aggravating factor (item 1) with an assigned gravity level of +2. Failure to promptly report the violation is also an aggravating factor (item 6) with an assigned gravity level of +1. 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
Mitigating & Aggravating Factors Applied	Item 3. -2 Item 7. +1	Item 1. +2 Item 6. +1
	Total -1	Total +3
Total Penalty Calculation	\$990	\$76,000

Table 2:

Summary of Above Examples of Possible Penalty Calculations

Item	Column 1 Criteria	Column 2 Effect on Gravity Value
1.	Whether the person who committed the violation has other violations in the previous 7 years	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 part of the person who committed the violation	0 to +2
5.	Whether the person provided all reasonable assistance to the Regulator with respect to the violation	-2 to +2
6.	Whether the person, after becoming aware of the violation, promptly reported the violation to the Regulator	-2 to +2
7.	Whether the person has taken any steps to recurrence of the violation	-2 to +2
8.	For type B violations, whether the violation was primarily a reporting or record-keeping requirement failure	-2 to 0
9.	Whether there are any other aggravating factors in relation to the risk of harm to people or the environment	0 to +3

The Review Process

If a company or individual does not agree with the NOV, they have 30 days to request that the Commission, or their designate,² review 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.

The review process will be conducted in writing. To request a review, the Requester must fill out the "Request a Review" form. The form will be included with all NOV's, and must be printed, completed and sent by fax or registered mail.

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. 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 Commission will provide the Requester with a note 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 Commission with submissions, including any evidence, to support the request that the Commission 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 Commission may vary these time limits on its own motion or in response to a request as it considers appropriate.

The Commission will review all the submissions and make a decision on the request for review. The Commission must determine whether the amount of the penalty for the violation was determined in accordance with the AMP Regulations, or whether the person committed the violation, or both, depending on the grounds raised by the Requester.

The Requester will be sent the Commission's decision, and its reasons for decision, which will also be posted to the CER's external website.

At any time before the Commission issues a decision on the review, the Requester can request to withdraw the review. At any time before a request for a review is received by the Commission, the AMP Officer can cancel the NOV or correct an error in it.

The following Table 3 highlights key steps in the review process.

2. Powers of Commission

116 (1.1) The Commission may designate persons or classes of persons to conduct reviews under section 128.

Table 3:

Key Steps in the Review Process

Step in the Review Process	Timeline ³	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 AMP Regulations or why they did not commit the violation. Submission must be received by mail or fax.
Regulator initiates review process	Within 21 days of receiving a request for review	Requester will receive a letter from the Commission 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 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 Commission with submissions and evidence to support the request that the Commission change the amount of the penalty to comply with the AMP Regulations or determine that the Requester did not commit the violation or both.

Table 3 (cont.):

Key Steps in the Review Process

Step in the Review Process	Timeline ³	Outcome
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 Commission with additional submissions in reply to the AMP Officer's submissions. Submission must follow the filing instructions.
The Commission assesses all submissions and makes a decision on the NOV		The Commission will review all the submissions and make a decision on the request to review. The Commission may change the amount of the penalty if it decides that the amount was not determined in accordance with the AMP Regulations. The Commission may also find, on a balance of probabilities, that the Requester did not commit the violation. The Requester will be sent the Commission's decision, and the Commission's reason for decision.

For more information on reviews, please see sections 125-129 of the CER Act.

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

Recovery of Penalties

The NOV will include instructions on how to pay the penalty. If, on a review, the Commission determines that the Requester committed the violation, the Requester will be served with a notice of payment along with the Commission's review decision.

Payments can be made by cheque, money order, bank draft, or by electronic funds transfer. All payments must be made payable to Receiver General for Canada. Additional details on these payment options will be provided in the NOV or issued by the CER.

The violator has 30 days from the receipt of an NOV to pay the penalty. If a review is requested, payment is required within 30 days from the receipt of the notice of payment served along with the Commission's review decision. Late payments may be subject to additional fees and penalties. An unpaid AMP amount is a debt due to the Crown and may be recovered by collection procedures stipulated in the Financial Administration Act.

AMPs Published on the CER's website

In the interest of greater public transparency around the issuance of AMPs, the CER will post to the AMP index table on its Compliance and Enforcement webpage, limited information relating to an NOV as soon as it has been served. This information will include the name of the company believed to have committed the violation, the issue date, the region or facility, a short description of the of the violation, and the amount of the penalty. For most violations, however, the name of an individual, if applicable, will not be published.

Upon payment or completion of the review period, the NOV will be posted to the website, along with the Commission's decision letter upon review, if applicable.





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