

## Administrative Penalties

### What is an administrative penalty?

An administrative penalty is a monetary penalty that can be imposed on individuals or companies who fail to comply with requirements of a statute or regulation, an order given by a Ministry official, or a requirement of an authorization (permit, license, approval etc.).

As an administrative (rather than prosecutorial) enforcement tool, administrative penalties are issued by designated Ministry officials rather than the courts, under authority of the *Environmental Management Act* (section 115) or the *Integrated Pest Management Act* (section 23) and in accordance with the Administrative Penalty Regulation (B.C. Reg. 133/2014 and 134/2014).

### When might the Ministry use an administrative penalty?

The Ministry is committed to working with regulated parties to achieve voluntary compliance. When this is not possible, the Ministry applies a decision matrix to determine the most effective tool to bring the party back into compliance and to deter future non-compliance.

Administrative penalties are one of several tools that the Ministry may choose to encourage regulatory compliance, along with warnings, violation tickets, administrative sanctions (such as suspending or cancelling an authorization), restorative justice or prosecution. The choice of tool is influenced by how serious the real or potential impacts of the contravention are and the likelihood of the party complying.

More specifically, an administrative penalty may be an appropriate choice in these situations:

- an administrative requirement has not been met, such as submitting monitoring data, and warnings have not been successful
- when the party has a good compliance history and cancelling the authorization (i.e. an administrative sanction) is not appropriate nor desirable;

- when non-compliance continues and previous enforcement actions have not been effective (warning, violation ticket, etc.)
- to deter future non-compliance when a party has realized a financial benefit or other advantage by not complying
- to ensure that violators, rather than taxpayers, pay remediation costs when non-compliance results in damage to provincial resources that must be recovered
- when a contravention is significant but would not meet the public-interest test for prosecution.

Administrative penalties can be used alone, in conjunction with an order or a permit or licensing sanction (e.g. suspension or cancellation) or as part of a progressive enforcement strategy when other enforcement tools have been ineffective.

### What types of contraventions are subject to an administrative penalty?

Administrative penalties can be used to respond to a wide range of non-compliance. Generally speaking, contraventions will be categorized into three categories of *gravity* or *regulatory importance*:

**Minor** – administrative violations such as failure to provide reports within legislated timeframes; failure to supply information; and inadequate record keeping. While these violations may not have an immediate environmental impact, chronic and wilful non-compliance with administrative requirements can impede the Ministry's ability to protect the environment.

**Moderate** – failure to perform a required task or action such as maintaining equipment or meeting operational standards or requirements; failure to conduct sampling or studies; failure to undertake required monitoring; failure to develop mitigation plans or strategies; and not adequately consulting with FN or other stakeholders.

**Major** – significant variations from the regulatory requirements that create real or potential harm to the environment or human

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health. Examples include exceeding an authorized limit for releasing a regulated substance into the environment; toxic spills or other violations that result in significant pollution or contamination. 'Major' can also refer to contravention of requirements that are foundational to a regulatory scheme, whether or not they have an immediate environmental impact, such as failure to produce or comply with a stewardship plan.

### Who can impose an administrative penalty?

Administrative penalties are issued by a small number of Ministry staff who have delegated statutory authority under the Act. These are senior staff who understand the complexities of environmental issues and the intent of the regulatory requirements as well as the principles of the administrative fairness and the standards that must be met.

### How is an administrative penalty assessed?

The Administrative Penalty Regulation specifies the factors that the Ministry must consider when assessing a penalty, as well as the maximum penalty that can be imposed for specific contraventions.

The preliminary penalty is calculated using a penalty assessment worksheet. The worksheet guides the decision maker through a consideration of the facts of the case, specifically the aggravating or mitigating factors that may increase or reduce the penalty, including:

- the nature of the contravention (for example, is it non-compliance with an administrative or operational requirement, or an unauthorized release of a regulated substance)
- the real or potential adverse effect to the environment or human health
- the compliance history of the party

- whether the contravention or failure was repeated or continuous
- whether the contravention or failure was deliberate
- any economic benefit to the party as a result of the contravention or failure
- whether the party exercised due diligence to prevent the contravention or failure
- the party's efforts to correct the contravention or failure
- the party's efforts to prevent recurrence of the contravention or failure
- any other factors the decision maker considers relevant.

If the contravention or failure continues for more than one day, separate penalties for each day can be imposed. The weight given to any one factor, and the effect it has on raising or lowering the penalty, is context specific. Some factors may not apply or may be neutral and have no effect on the penalty. How the factors were applied by the decision maker in the penalty calculation will be explained to the party in the preliminary notice (see below).

### How are administrative penalties administered?

Once Ministry inspectors have assessed the non-compliance, determined that an enforcement response is necessary and selected an administrative penalty as an appropriate response, the following steps apply:

1. The inspector assembles the file for consideration by a designated statutory decision maker (SDM), recommending that an administrative penalty be imposed.
2. The SDM reviews the file and if he/she concurs that an administrative penalty is appropriate, calculates the preliminary penalty and prepares a **Notice Prior to Determination of Administrative Penalty** (which includes a Penalty Assessment Form) that is served on the party by registered mail. The Notice describes the particulars of the contravention or failure, the amount of the penalty and how it was calculated and the party's right to present

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information related to the contravention or the preliminary assessment to the SDM (an opportunity to be heard).

3. Within 30 days of receiving the Notice Prior to Determination of Administrative Penalty, the party can request an *opportunity to be heard*. This is their opportunity to tell 'their side of the story', specifically to provide information that the SDM was not aware of or did not consider. The decision maker will discuss with the party the format of the hearing (written, oral or electronic), the timing and the form of materials to be submitted.
4. The SDM will consider any relevant information submitted by the party and issue a final **Determination** that sets out his/her decision to either confirm, vary, or cancel the penalty, as well as payment details and information about the party's right to appeal if they disagree with the decision.

### What is the Appeal Process for an Administrative Penalty?

If the party is unsatisfied with the decision, they can initiate an appeal to the **Environmental Appeal Board** within 30 days of receiving the determination. The Board will conduct a hearing and will make a final decision regarding the administrative penalty.

Any questions about appeals should be directed to the Environmental Appeals Board at (250) 387-3464 or <http://www.eab.gov.bc.ca>

### When must an administrative penalty be paid?

An administrative penalty is due 30 days after the party is notified of the final Determination or in the event of an appeal, 30 days after the appeal board notifies the party of its decision, if the appeal is upheld.

### What are the consequences of non-payment of an administrative penalty?

If an administrative penalty is not paid by the due-date, interest will be applied and the Ministry can initiate collection proceedings.

A regulated party is ineligible to apply for a new authorization, or an amendment to an existing one, until the administrative penalty is paid in full.

Further, the Ministry has the legislative authority to suspend or cancel the party's current authorization for non-payment of the penalty.

### Are administrative penalties a part of the public record?

Yes, the Ministry records and reports all enforcement actions in the Environmental Violations Database and the Quarterly Enforcement Summaries. The information reported includes the party's name and the date and details of the contravention.

### Administrative Penalty Regulation:

*Environmental Management Act:*  
[www.bclaws.ca/civix/document/id/lc/statreg/133\\_2014](http://www.bclaws.ca/civix/document/id/lc/statreg/133_2014)

*Integrated Pest Management Act:*  
[www.bclaws.ca/civix/document/id/lc/statreg/134\\_2014](http://www.bclaws.ca/civix/document/id/lc/statreg/134_2014)