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Notice to Licensees: Administrative Monetary Penalties

February 2013

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Introduction

On June 29, 2012, Bill C-38, the *Jobs, Growth and Long-term Prosperity Act*, made amendments to the [Nuclear Safety and Control Act](#) (NSCA), providing the Canadian Nuclear Safety Commission (CNSC) with the authority to establish an administrative monetary penalty (AMP) system.

The next step is to develop the regulations. The CNSC has drafted proposed regulations that establish the list of violations that will be subject to AMPs under the NSCA, the method and criteria by which the penalty amounts will be determined, and the manner in which notices of violations will be served.

The proposed regulations were published in the [Canada Gazette, Part I](#), on February 15, 2013 for a 30-day consultation period. Once the AMP system is implemented, likely in mid- to late- 2013, individuals and corporations who are in non-compliance with the

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NSCA may incur monetary penalties, in addition to any of the other enforcement actions available to the CNSC.

This notice offers details on the proposed AMPs Regulations, as well as the CNSC's proposed approach for implementing and applying the new enforcement tool.

1. The CNSC's Compliance Program

Under the NSCA and its associated regulations, various levels of regulatory action can be taken by the CNSC to correct non-compliance by a licensee and protect the health, safety and security of Canadians and the environment.

The CNSC's compliance program has two main components:

1. *Verification Activities*, such as on-site inspections and off-site review of documents.
2. *Enforcement Activities*, such as continued discussions with licensees, written notices, orders, licensing actions and prosecution.

Regular inspections and evaluations verify that licensees are complying with the laws and regulations, as well as the conditions of their licence. In this way, the CNSC can detect problems before they occur, and ensure licensees are operating safely and adhering to their licence conditions. Licensees who fail to meet these conditions are considered to be in non-compliance of their licence, and are subject to regulatory actions.

The CNSC's compliance program seeks to achieve a balance between incentives that encourage compliance, and measures that compel compliance. If the initial enforcement action does not result in timely compliance, stricter actions may need to be used. This graduated approach includes activities to encourage compliance, verification activities to assess the actual level of compliance and graduated enforcement actions in cases of non-compliance (up to and including licensing actions [including revocation of licences] and/or prosecution for an offence).

Enforcement Actions

Measures used to encourage and compel compliance are called *Enforcement Actions*.

They include:

- Regular Interactions (discussion/meetings or letter)
- Written Notices
- Formal Requests under *General Nuclear Safety Regulations* Section 12(2)
- Orders
- Increased Regulatory Scrutiny
- Licensing Actions
- Decertification
- Investigation and Prosecution

The CNSC expects to add AMPs to its list of enforcement options.

Enforcement actions can be applied independently, or in combination with other actions. Regulatory judgment must be applied, and multiple factors taken into account, to determine the most appropriate enforcement strategy for any given situation.

Selecting Enforcement Actions

In the course of their duties, CNSC inspectors may encounter an instance of non-compliance by a licensee. Should this occur, the inspector first assesses the significance of the non-compliance by determining the:

- regulatory significance of the non-compliance
- compliance history of the regulated individual or corporation
- urgency of required action

- service line-specific enforcement strategy

Once this has been determined, the inspector selects the enforcement tool that will best meet the situation. Factors, such as severity and risk classification will have an impact on the tool that is selected.

The inspector then applies the selected enforcement action. The method in which the tool is applied varies from activity to activity. For example, it may be sufficient to provide a licensee with information through a discussion or meeting (the "regular interaction" tool), while a more acute violation may require a written notice or an order.

2. About Administrative Monetary Penalties

AMPs are monetary penalties imposed by the regulator, without court involvement, for the violation of a regulatory requirement. They can be applied against any person or corporation subject to the NSCA.

It is important to note that not all non-compliances will result in an AMP. The CNSC's compliance and enforcement system includes a number of enforcement actions, including continued discussions with licensees, written notices, and orders.

When the regulations come into force, AMPs will be a new tool in the CNSC's enforcement toolkit, providing the CNSC with a broader range of options for responding to non-compliance. [Read about the CNSC's compliance and enforcement program.](#)

3. About the CNSC's Proposed AMPs System

On February 15, 2013, the proposed AMPs regulations were published in the [Canada Gazette, Part I](#), for consultation. At the same time, the CNSC has begun the development of the system through which AMPs will be applied (the *AMPs system*).

The information that follows is intended to provide insight into the CNSC's proposed AMPs system, but by no means reflects the final program.

The CNSC's proposed AMP system consists of three parts:

- Legislation
- Regulations
- Internal Program

Legislation

The NSCA sets out the parameters for the AMP system. Specifically, the legislation includes:

- authority for the CNSC to enact regulations designating which acts of non-compliance constitute violations
- rules surrounding violations
- maximum penalty amounts
- process and rules concerning a review

The legislation also confirms that penalties are payable to the Government of Canada's Consolidated Revenue Fund, not to the CNSC.

Regulations

The proposed regulations provide more details on:

- specifying violations
- calculation of a penalty
- service of documents

You are encouraged to provide feedback on the proposed regulations by reviewing the proposal in the February 16, 2013 edition of the [Canada Gazette, Part I](#).

Internal Program

While the CNSC's program for implementing and applying AMPs is currently in development, the program's goal will be to achieve consistency by taking a similar approach in similar circumstances to achieve similar results. The program will include:

- guidance to CNSC staff on when an AMP can/should be used
- training for CNSC staff on the process for applying an AMP
- guidance for licensees on the AMPs system
- ongoing evaluation of the AMPs system to ensure a consistent and fair application of AMPs

Implementation of the AMPs system will likely take place in phases, allowing the CNSC to help stakeholders understand how, when and where AMPs may be issued. This phased-in approach will ensure that CNSC staff are trained not only on the appropriate use of AMPs, but also on how to communicate the CNSC's internal program to licensees.

4. Classification of a Violation

The schedule in the proposed *AMPs Regulations* sorts violations into three categories (A, B, and C). Each category includes:

- two distinct penalty ranges: one for individuals and one for corporations
- a minimum amount
- a maximum amount,

Although the definitions below are generally applicable, the CNSC encourages readers to review the schedule of the proposed regulations for the short-form descriptions of the violations.

	Category A	Category B	Category C
Regulatory Significance	<i>Administrative requirements not met</i> (Applies in cases of failure to meet a non-technical requirement, such as reporting, record-keeping, signage, etc.)	<i>Program degraded</i> (Applies in cases of failure to meet the requirements of an applicable regulation, licence requirement, or standard that is not administrative in nature.)	<i>Regulatory limit exceeded</i> (Applies if thresholds defined as regulatory limits have been exceeded.)
Penalty Range for Individuals	\$300 to \$3,000	\$300 to \$10,000	\$300 to \$25,000
Penalty Range for Corporations	\$1,000 to \$12,000	\$1,000 to \$40,000	\$1,000 to \$100,000
Example	Failure to keep a record of training received by workers (<i>Class II Nuclear Facilities Regulations</i> Section 21(2)(b))	Failure to implement an adequate training program for specified positions (<i>General Nuclear Safety and Control Regulations</i> , Section 12(1)(b))	Failure to ensure that the equivalent dose limit is not exceeded. (<i>Radiation Protection</i>)

5. Determining Penalty Amounts

Penalty amounts will be determined using the six considerations in section 5 of the proposed regulations:

- the compliance history of the person who has committed the violation
- the degree of intent or negligence on the part of the person
- the harm that resulted or could have resulted from the violation
- whether the person derived any competitive or economic benefit from the violation
- whether the person made reasonable efforts to mitigate or reverse the violation's effects
- whether the person provided all reasonable assistance to the Commission

For the purpose of its internal program, the CNSC defines the considerations listed above as *Aggravating Factors*.

Based on their review of other AMPs programs, the CNSC has determined that assigning a weight, based on regulatory significance, to each of the aggravating factors ensures a consistent approach to determining penalty amounts.

The number of aggravating factors, and their corresponding weights, will influence the final penalty amount. The weights for multiple aggravating factors will be applied cumulatively to the minimum penalty amount, up to the maximum penalty amount in the range for the given category. You will find examples of calculations in [section 9 of this document](#).

The proposed penalty range for the CNSC AMPs system is as follows:

		PROPOSED PENALTY RANGE					
		CATEGORY A		CATEGORY B		CATEGORY C	
		Individual Corporation		Individual Corporation		Individual Corporation	
Factor Increase Steps	Minimum	\$300	\$1,000	\$300	\$1,000	\$300	\$1,000
	Step 1	\$600	\$2,400	\$1,700	\$6,800	\$4,000	\$16,000
	Step 2	\$1,000	\$3,700	\$2,900	\$11,500	\$7,000	\$28,000
	Step 3	\$1,300	\$5,200	\$4,100	\$16,300	\$10,000	\$40,000
	Step 4	\$1,700	\$6,500	\$5,300	\$21,000	\$13,000	\$52,000
	Step 5	\$2,000	\$8,000	\$6,500	\$25,800	\$16,000	\$64,000
	Step 6	\$2,400	\$9,300	\$7,700	\$30,500	\$19,000	\$76,000
	Step 7	\$2,800	\$10,700	\$8,900	\$35,300	\$22,000	\$88,000
	Maximum	\$3,000	\$12,000	\$10,000	\$40,000	\$25,000	\$100,000

You will find examples of [Category A](#), [Category B](#) and [Category C](#) penalty calculations in

section 9 of this document.

6. Duration of Violation

Violations committed or continued on more than one day constitute separate violations (NSCA, s. 65.07). Any additional penalties will be calculated accordingly.

7. Service of Documents

A *Notice of Violation* (NoV) is the official notification from CNSC to an individual or corporation that an AMP has been issued to them.

The manner in which the NoV is served, and the determination of the date on which it is deemed to have been served, is important as it has an impact on the date by which the AMP must be paid, and the deadlines for requesting review of the AMP. [Read about the Review Process](#) in section 9 of this document.

The CNSC plans to issue *Notices of Violation* by registered mail, but is proposing that it be authorized to do so by way of personal delivery, registered mail, courier, fax or other electronic means (Section 6, *AMPs Regulations*).

A document served by registered mail is deemed to be served on the tenth day after the day on which it was mailed. Payments for AMPs are due 30 days after the NoV is deemed to have been served.

8. Public Disclosure

The timing of public notification is not addressed in the Regulations; however, the CNSC will apply its practice for public disclosure as per other regulatory actions. Information about each AMP will be published to the CNSC's Web site within a set period of time from the issuance of the NoV.

9. Review Process

A request to review an AMP can be made by the recipient by submitting a Request for Review to the Commission within 30 days of the service of documents. The process and forms for requesting a review will be included in the NoV. The process is outlined in the NSCA (ss 65.1 – 65.15).

10. Examples

Example 1

A routine inspection by CNSC inspectors reveals that licensee XYZ has a non-compliance that is determined to be a Category A violation. After assessing the situation, CNSC staff select the following enforcement actions:

- Regular interaction in the form of a meeting
- Regular interaction in the form of a letter to summarize the meeting

CNSC staff return to the site one week later and find that the non-compliance has not been addressed to their satisfaction. They decide to take the following steps:

- Increased regulatory scrutiny
- Written notice

The licensee complies with the request in a timely manner. No AMP is issued.

Example 2

A previous inspection at corporate licensee ABC's facilities revealed a non-compliance that is listed as a Category B violation in the *AMPs Regulations*. The licensee addressed the non-compliance in a timely manner, but it has recurred. CNSC inspector issues a written notice, but the licensee does not respond to the CNSC's request for action.

After assessing the situation, the inspector decides to escalate the enforcement action,

and:

- Issues an AMP for a category B violation

Based on the nature of the violation and the licensee's history, the AMP is calculated as follows:

Violation Category	Minimum Penalty	Aggravating factors	Total Penalty
Category B - Corporation	\$1,000	history of non-compliance with regulatory requirements (+ 2)	\$1000 + 2 factor increase steps = \$11,500

Example 3

Corporation LMN has exceeded a regulatory dose limit, which is a category C violation. Inspectors determine that there are several aggravating factors, including:

- poor compliance history
- poor management control over work practices
- poorly trained staff
- gross negligence
- immediate risks to health and safety of Canadians and to the environment

In consultation with CNSC management, the inspector determines that the appropriate enforcement tools are:

- Issue an order (stating the non-compliance, and ordering a cease and desist until management oversight processes established and staff retrained)
- Issue an AMP to compel future compliance

Based on the aggravating factors, the AMP calculation for this example would be:

Violation Category	Minimum Penalty	Aggravating factors	Total Penalty
Category C - Corporation	\$1,000	poor compliance history (+2) poor management control over work practices (+2) poorly trained staff (+2) gross negligence (+2) immediate risks to health and safety of Canadians and to the environment (+2)	\$1000 + 10 factor increase steps = \$100,000

11. For more information

For more information on AMPs, visit the [CNSC's Web site](#).