

Administrative Monetary Penalties Regulations
(Canadian Nuclear Safety Commission) Comment
Disposition Report

August 2013

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1. INTRODUCTION

On June 29, 2012, the *Nuclear Safety and Control Act* (NSCA) was amended to provide the Canadian Nuclear Safety Commission (CNSC) with a framework for an administrative monetary penalty (AMP) system. The amendments are part of the Government of Canada's Responsible Resource Development initiative and provide the CNSC with an additional enforcement tool that can be used to strengthen environmental protection and to increase compliance with the NSCA and its regulations.

The *Jobs, Growth and Long-term Prosperity Act* made amendments to the NSCA, providing the CNSC with the authority to establish an AMP system through regulations. Implementation of the AMP system required the CNSC to make regulations that establish:

- the acts of non-compliance that constitute a violation
- methods and criteria by which the penalty amounts will be determined
- how the penalized parties will be served with the required documents

The CNSC drafted the *Administrative Monetary Penalties Regulations (Canadian Nuclear Safety Commission)* (the Regulations) based on its specific needs, and on the good practices of other government agencies who have AMP systems. The CNSC then undertook extensive stakeholder consultations across Canada prior to finalizing the Regulations. The Regulations were then made by the Commission, and published in the *Canada Gazette*, Part II on July 3, 2013.

2. BACKGROUND

The CNSC regulates the use of nuclear energy and materials to protect the health, safety and security of the public and the environment, and to implement Canada's international commitments on the peaceful use of nuclear energy. The CNSC holds those it regulates accountable for complying with the regulatory requirements that have been established in the NSCA or other legally binding instruments established under the authority of the NSCA, such as regulations and licences.

The CNSC has a number of tools to enforce compliance, including orders, licence revocations and prosecution. The selected enforcement tool depends on the severity and risk posed by the act of non-compliance. Under the NSCA, a person who commits an offence is subject to prosecution in the courts. If convicted, punishment for an offence may include a fine and/or imprisonment.

Unlike prosecution, an AMP is an administrative penalty that is imposed for violations of regulatory requirements. An AMP system provides the CNSC with an additional tool to address non-compliance.

The CNSC issued discussion paper DIS-12-05, *Administrative Monetary Penalties*¹, for a 30-day comment period on August 15, 2012. The discussion paper sought input from stakeholders and the public on the CNSC's proposal for the AMP system set out in the amendments to the NSCA. The details of that pre-consultation were the subject of a What We Heard Report². Following the pre-consultation, the CNSC pre-published the proposed regulations in the *Canada Gazette*, Part I on February 16, 2013 for a formal 30-day consultation. The comments received and their dispositions are the subject of this report.

As a result of the comments received from the *Canada Gazette*, Part I consultation, three changes were made (see section 3.2) to the draft regulations before they were made and published in the *Canada Gazette*, Part II.

3. CANADA GAZETTE, PART I CONSULTATION

3.1 Consultation process

As noted above, the Regulations were pre-published in the *Canada Gazette*, Part I on February 16, 2013 for a 30-day consultation period. In addition, during this period, the CNSC carried out extensive consultation activities with stakeholders across Canada including in-person and online information sessions in both official languages.

3.2 Issues and response

Following consultation, 53 submissions were received from a broad range of stakeholders representing nuclear power plant operators, uranium mining companies, research institutions, unions and industry associations. No comments were received from non-governmental organizations or Aboriginal groups.

In general, many of the issues raised during the consultation phase were also raised in the pre-consultation phase (discussion paper). The comments touched on the following common themes:

- application of an AMP to an individual
- penalty amount
- determining factors to be considered (additional)
- methods for serving a notice of violation and deemed service provisions
- program development and implementation
- category levels associated with items listed in the schedule
- consultation process

¹ nuclearsafety.gc.ca/eng/acts-and-regulations/consultation/comment/d-12-05.cfm

² nuclearsafety.gc.ca/eng/acts-and-regulations/consultation/completed/dis-12-05.cfm

The comments received during the consultation and their dispositions are summarized in the attached annex.

Three changes were made to the proposed regulations, the justification for which can be found in the attached annex. These changes:

- added the following determining factor to section 5 of the regulations: “whether the person brought the violation to the attention of the Commission”
- added a provision to the regulations to clarify when courier, fax and other electronic methods of delivery are deemed to constitute service
- amended two entries in the schedule: Part 2, *General Nuclear Safety and Control Regulations*, item 9 and item 11, from a category B to category A.

4. CONCLUSION

Extensive internal and external consultation was carried out in preparing the Regulations. The Regulations were generally well accepted by the majority of stakeholders. All the submissions received during both the fall 2012 discussion paper and recent consultations were considered and, where appropriate, adjustments were made.

The Administrative Monetary Penalties Regulations (Canadian Nuclear Safety Commission) were published in the *Canada Gazette*, Part II on July 3, 2013.

Information concerning the CNSC regulatory amendment process is available at nuclearsafety.gc.ca

Appendix A: Administrative Monetary Penalties Regulations Comment Disposition Report

	Section of the Regulations	Comment	Disposition
1	Ref: S 1 Interpretation	No comments were received pertaining to section 1.	
2	Ref: S 2 Designations	No comments were received pertaining to section 2.	
3	Ref: S 3 Classification	No comments were received pertaining to section 3.	
4	Ref: S 4 Penalties	1. The penalty amounts, as proposed, are too high and may be financially onerous to small- and medium-sized operations.	The maximum penalty amounts were determined by Parliament and prescribed in the NSCA. The CNSC will be providing more clarity on the calculation of a penalty through a regulatory document. Compliance is not reliant on business size. Large or small, licensees who comply with the NCSA and its regulations will not be impacted by the Regulations. In the event of a non-compliance, all enforcement options available to the CNSC will be considered in order to promote compliance.
		2. Comments were received requesting clarity on when an AMP may apply to individuals.	The majority of violations listed in the schedule apply to corporations as they are responsible for the activities conducted under their licence. However, any individual or

Annex A: Administrative Monetary Penalties Regulations Comment Disposition Report

	Section of the Regulations	Comment	Disposition
			corporation subject to the NSCA may be issued an AMP. The following are the two most common, but not exclusive, examples of cases where AMPs may be applied to individuals: an individual could receive an AMP for any violation of section 17, “Obligations of Workers”, of the <i>General Nuclear Safety and Control Regulations</i> or any violation of section 31, “Obligations of Operators”, of the <i>Nuclear Substances and Radiation Devices Regulations</i> .
5	Ref: S 5 Determining Factors	3. There were a number of comments requesting that self-reporting be considered a determining factor to mitigate any potential penalty that may result.	An additional factor was added to Section 5 of the regulations: “Whether the person brought the violation to the attention of the Commission.”
		4. A number of suggestions were provided on the criteria that could be used when calculating an AMP. It was suggested that both mitigating and aggravating factors should influence the amount of an AMP including due diligence, honest mistake of fact and self reporting.	The CNSC AMPs program includes the ability to increase or decrease an AMP, where appropriate, based on the determining factors listed in section 5 of the regulations.
		5. Business size should be incorporated into the determining factors.	Compliance is not reliant on business size. Large or small, licensees who are in compliance with the NCSA and its regulations will not be impacted by the Regulations. In the event of a non-compliance, all licensees are subject to any of

Annex A: Administrative Monetary Penalties Regulations Comment Disposition Report

	Section of the Regulations	Comment	Disposition
			the CNSC's enforcement actions. AMPs will be applied where appropriate, and in most cases, is not the first option considered.
		6. Compliance history (duration) should be defined in regulations.	The CNSC will determine, on a case-by case basis, the appropriate consideration of compliance history.
		7. The potential for AMPs to be issued by multiple regulators or levels of government should be considered.	The CNSC implements its compliance and enforcement policy independent of other regulatory bodies or levels of government. However, the CNSC will take these impacts into consideration when choosing the appropriate compliance and enforcement tool and in the AMPs program.
6	Ref: S 6 Service of Documents	8. A comment was received requesting that deemed service provisions for courier, fax and other electronic methods of delivery be included in the regulations.	The CNSC has added a provision to the regulations to clarify when courier, fax and other electronic methods of delivery are deemed to constitute service.
		9. Several comments requested that the CNSC include a provision in section 6 of the regulations that the intended recipients of an AMP provide a “written confirmation of receipt.”	The CNSC’s approach for the service of documents in regulations is consistent with other government departments.
7	Ref: S 7	10. Several comments requested that the regulations not come into force until the CNSC provides further guidance on its program.	The Governor in Council determined when the CNSC’s statutory authority to make the regulations come into force; the Regulations came into force on the same day (July 3, 2013). However, the CNSC intends on providing additional information on the

Annex A: Administrative Monetary Penalties Regulations Comment Disposition Report

	Section of the Regulations	Comment	Disposition
			implementation of the AMP program through a regulatory document.
8	Schedule	11. Stakeholders suggested the removal of regulatory requirements (as listed in the Schedule) containing broad and/or subjective language.	There has been no change to current regulatory requirements as a result of AMPs. Regulatory requirements, including those that are broad in nature, are subject to all compliance and enforcement actions (including AMPs and prosecution).
		12. Stakeholders commented on the applicability and category assigned to some items listed in the schedule.	The CNSC has reviewed the comments and revised the category level assigned to two items listed in the Schedule. Specifically, in response to comments by stakeholders, the CNSC changed the category level for two items in the Schedule by moving them from a category B to category A: <ul style="list-style-type: none"> ▪ Part 2, <i>General Nuclear Safety and Control Regulations</i>, item 9 – facilitate Canada’s compliance with any safeguards ▪ Part 2, <i>General Nuclear Safety and Control Regulations</i>, item 11 – Keep NSCA and Regulations available
		13. There was a proposal to remove items that may be considered redundant with other regulators, irrelevant or too minor to list.	Compliance with all regulatory requirements is mandatory, and all compliance and enforcement options apply to all regulatory requirements.

Annex A: Administrative Monetary Penalties Regulations Comment Disposition Report

	Section of the Regulations	Comment	Disposition
9	additional proposals for the regulations	14. The regulations should contain a provision to issue a warning prior to issuing an AMP.	Every situation is unique. The determination of which enforcement tool to use will be determined on a case-by-case basis using a graduated enforcement approach. It is possible to receive a warning prior to any enforcement action, but it is not mandatory to issue a warning.
		15. The regulations should provide a method for consideration to be given for duplicate penalties issued for the same event by various levels of government or regulators.	The CNSC implements its compliance and enforcement program independent of other regulatory bodies or levels of government.
		16. It was recommended that the considerations for public disclosure be included in the regulations.	Consistent with the CNSC's practice of public disclosure of regulatory actions, information about the AMP is published to the CNSC's Web site after a notice of violation has been served.
		17. Comments were received on various components of the AMPs system that stakeholders suggested be addressed by the regulations. Examples include: selection of enforcement tool, timeframe to issues AMPs, daily AMPs for ongoing violations, etc.	All issues related to the AMP system are addressed either through the NSCA, the AMP regulations or the AMP program. A regulatory document communicating the program will be available in early 2014.