

# Summary of Spring 2021 Stakeholder Engagement

In the spring of 2021, the Ministry of the Environment, Conservation and Parks (the “ministry”) announced upcoming stakeholder engagement for administrative penalties through the [Strengthening our environmental compliance approach](#) Environmental Registry Bulletin. Engagement sessions were held in May and June 2021.

The Ministry conducted four (4) virtual engagement sessions to support the development of the new administrative penalties. There were 165 registrants for the sessions. Attendees of the sessions included industry representatives, the agricultural sector, environmental groups, municipalities, and others (some individuals and consultants). The ministry also received four (4) additional submissions through e-mail to further provide comments.

## Outcome of the sessions:

- There was general support for expanding administrative penalties to more contraventions and to the entire regulated community, with some caveats regarding the approach. The “Consultation Guide on proposed regulations for the expansion of Administrative penalties” provides the details of the ministry’s proposed approach that considered stakeholder feedback.

## The scope of the stakeholder engagement included:

1. Contraventions that can be subject to administrative penalties
2. Classifications of Contraventions
3. Gravity Assessment (based on consequences, e.g. seriousness of contravention)
4. Repeat Offenders (Previous Convictions or Penalties)
5. Toxicity Factor
6. Penalty Reductions
7. Economic Benefit
8. Notice of Intention/ Advance Notice
9. Sharing of Responsibilities (Directors vs provincial officers)
10. Provincial officer administrative penalties
11. Penalty amounts for individuals vs corporations
12. Penalties to an Employee of a Corporation
13. Protection from Prosecution

## Summary of the engagement:

### **1. Contraventions that can be Subject to Administrative penalties**

There was general support for having administrative penalties available to address most contraventions. Some felt that penalties should not apply to all contraventions, specifically

administrative requirements, maintenance requirements, non-compliance due to extreme weather conditions, non-compliance with orders, and that significant issues should be dealt with through prosecution instead.

The ministry proposes to continue with the approach to expand administrative penalties to most contraventions. Proposed contraventions subject to a penalty are in the “Contravention Classification for Administrative Penalties” document. The use of the penalty tool will be guided by the ministry’s compliance policy. In the compliance policy, specifically the informed judgement matrix, administrative penalties are not recommended as a compliance tool for all contraventions.

## **2. Classifications of Contraventions**

The ministry received mixed responses related to classification. Some stakeholders requested a more flexible case by case approach, while others preferred a pre-determined approach for transparency. The ministry received several comments that felt that penalties should be used consistently throughout the Province.

The ministry proposes to continue using penalty types with pre-determined penalty ranges. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to penalties and how they are calculated. This will ensure consistency in the application of penalties and transparency on how penalties are calculated.

## **3. Gravity Assessment (Assessing the gravity/seriousness of contraventions)**

The ministry received support on the proposal for continuing to vary the penalty amount based on the gravity of the contravention (e.g. harm to the environment/human health). For certain contraventions that are administrative and lower risk, no gravity assessment would be conducted, meaning no case specific criteria would be used to determine the seriousness of the consequences. In these cases, a pre-determined, fixed gravity criterion is assigned.

The ministry proposes to continue to assess the gravity (seriousness) of the contraventions. In specific situations, some contraventions there may be a fixed gravity criterion assigned. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to gravity.

## **4. Repeat Offenders (Previous Convictions or Penalties)**

The ministry received support on the proposal to continue to increase the penalty amount based on compliance history, e.g. previous convictions, and/or administrative penalties. Response on the method to evaluate was mixed. Some supported the proposed approach of counting the number of previous convictions and penalties (seriousness of previous penalties is not considered), other feedback indicated that seriousness should also be considered, that there should be flexibility in the evaluation of compliance history, and that there should be an allowance for first time offenders.

The ministry proposes to continue to increase the penalty amounts based on compliance history. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to Compliance history - conviction and penalty

## **5. Toxicity Factor**

The toxicity factor increases the penalty amount by 35% for unlawful discharges if the contaminant is considered toxic to human health or the environment, based on the “List of Toxic Substances”. The ministry received support to expand from its current application to industrial facilities to apply to all regulated facilities for the unlawful discharges to land or water contraventions like limit exceedances and spills to land or water.

The ministry proposes to continue to increase the penalty amounts based on toxicity. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to toxicity.

## **6. Penalty Reductions**

There was general support on the proposal for penalty reductions. There was mixed feedback on the details for penalty reductions. Some felt that the proposed 35 % was fair and encourages a return to compliance, mixed feedback on if reductions should be applied for or automatically granted, some felt the 35% was not sufficient, others felt that some repeat offenders should not be eligible for reduction.

The ministry proposes to continue to allow for penalty reductions. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to toxicity.

## **7. Economic Benefits**

General support for an economic benefit component to the penalty, including expanding to other types of economic benefits (e.g. profits from illegal activities). Any concerns raised were related to potential challenges of calculating the economic benefit.

The ministry proposes to allow for economic benefit to be considered for Director penalties. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to economic benefit.

## **8. Notice of Intention/Advance Notice**

General support for the ministry to always provide a “Notice of Intention” before the penalty is issued. However, for some ministry activities a “notice of intention” (or advanced notice) is not always practicable. The ministry proposes to continue to issue a “notice of intention” prior to the penalty being issued except in identified circumstances. Penalties issued without advanced notice are still eligible for penalty reduction upon request. It is important to highlight that penalties issued by a Director will always have advance notice provided.

The ministry proposes to continue to allow for some penalties to be issued without notice. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for details related to penalties issued without notice.

## **9. Sharing of Responsibilities (Directors vs Provincial Officers)**

There were mixed views for the sharing of responsibilities. It was identified that consistency in the application of penalties is important and that more serious contraventions should be reserved for a Director issued penalty. It is proposed that both provincial officers and Directors may issue administrative penalties.

The use of the penalty tool will be guided by the ministry's compliance policy. In the compliance policy, specifically the informed judgement matrix, administrative penalties are not recommended as a compliance tool for all contraventions. Proposed Provincial Officer penalties and Director penalties both have appeal provisions, if requested.

The ministry proposes to allow for the sharing of responsibilities for issuing penalties. Please refer to the "Consultation Guide on proposed regulations for the expansion of Administrative penalties" for details related to penalties issued by a Provincial Officer and Director Penalties for further information.

## **10. Provincial Officer Administrative Penalties**

Feedback included concerns that officers need to be properly trained, including the ability to calculate gravity and penalty reductions. Concerns raised that the use of provincial officer penalties may cause unnecessary strain on a relationship with the regulated entity.

The use of the penalty tool will be guided by the ministry's compliance policy. It is proposed that ministry officers will receive extensive training on the use and the application of penalties. Provincial officers are bound by the [Regulators' Code of Practice: Working together to protect the public interest in Ontario | Ontario.ca](#). If the recipient of the penalty does not agree with the penalty, there are review provisions similar to the process for appealing a provincial officer's order.

The ministry proposes to allow Provincial Officers to issue certain penalties. Please refer to the "Consultation Guide on proposed regulations for the expansion of Administrative penalties" for details related to penalties issued by a Provincial Officer.

## **11. Penalty amounts for individuals vs. corporations**

There were mixed views on how penalties for individuals should compare to corporations but general support for a lower penalty amount for individuals. It is proposed to provide a ratio for 1 to 5, and a minimum penalty of \$500 before potential reductions. Further information on this is included in the plain language overview.

The ministry proposes to provide a ratio for 1 to 5, and a minimum penalty of \$500 before potential reductions. Please refer to the "Consultation Guide on proposed regulations for the expansion of Administrative penalties" for details related to individual penalties.

## **12. Penalties to an Employee of a Corporation**

There were mixed views on issuing a penalty to a corporation and an individual within the corporation. Stakeholder engagement highlighted the need to provide further details on when an employee of a corporation could be subject to a penalty.

The use of these penalties for an employee is expected to be rare. Penalties would still be eligible for reduction or appeal. Please refer to the "Consultation Guide on proposed regulations for the expansion of Administrative penalties" for further information.

## **13. Protection from Prosecution**

General support to protect certain types of contraventions from prosecution. It is proposed that for less serious contraventions a person would be protected from prosecution if the penalty is paid. A person would not be protected from prosecution for more serious contraventions, such as spills and limit exceedances, i.e. a person could be prosecuted and issued a penalty for the

same contravention. Please refer to the “Consultation Guide on proposed regulations for the expansion of Administrative penalties” for further information.