

Consultation Guide on Proposed Regulations for the Expansion of Administrative Penalties

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Overview of Proposed Regulations for the Expansion of Administrative Penalties

The Ministry of the Environment, Conservation and Parks (the “ministry”) is proposing regulations that would enable the imposition of administrative penalties (“penalties”) for environmental contraventions, under the following listed acts (“MECP acts”):

- *Environmental Protection Act;*
- *Nutrient Management Act, 2002;*
- *Ontario Water Resources Act;*
- *Pesticides Act,*
- *Safe Drinking Water Act, 2002.*

The proposed new framework would provide one consistent approach to penalties across the ministry’s compliance and enforcement activities and incorporates feedback that was received as part of the stakeholder engagement the ministry undertook in the Spring of 2021.

The purpose of this consultation guide is to provide a description of the proposed regulations to obtain feedback on the ministry’s regulatory postings on the Environmental Registry of Ontario and Ontario’s Regulatory Registry. This consultation guide describes the proposed policy that would inform the drafting of the administrative penalty regulations under each of the MECP acts, however, the guide is not intended to convey the precise language that would be used in the regulations themselves. Comments on the regulatory proposal may be submitted through either registry before the date indicated on the posting or can be emailed directly to the ministry at envirocompliance@ontario.ca. The comments received from the postings will be considered by the ministry when developing the proposed administrative penalty regulations.

The proposed framework is intended to ensure compliance with the MECP acts, and to prevent a person from deriving, directly or indirectly, any economic benefit resulting from non-compliance with the Acts or regulations.

The current statutory provisions that, once proclaimed, would authorize the ministry to issue an administrative penalty order in respect of one or more contraventions, includes the following:

- That a Director, and in circumstances set in regulations, a provincial officer, may issue an order to pay an administrative penalty.
- Limitation period on how long after a contravention a penalty can be issued (i.e. the later of 1 year after the date of the contravention occurred or after evidence of the contravention came to the attention of the ministry).
- To whom a penalty can be issued. Where a corporation commits the contravention, a penalty could be issued not only to the corporation but also to a director, officer, employee or agent of the corporation but only in those circumstances set out in the regulation.
- The statutory maximum of a penalty in respect of a contravention, and that the statutory maximum does not include any economic benefit derived from the

contravention (i.e. economic benefit may exceed the statutory maximum). See Table 1 for more information.

- The contents of an administrative penalty order (e.g. description of contravention, amount, manner of payment).
- Rights to appeal a penalty order to the Ontario Land Tribunal and the right to seek a Director review of a penalty order issued by a provincial officer.
- Penalties are imposed on an absolute liability basis (i.e., there is no “due diligence” or “mistake of fact” defence).
- That payment of a penalty does not prevent prosecution for the same contravention unless the regulation provides otherwise in respect of that contravention.
- Where money paid for administrative penalties goes (e.g. deposited into the special purpose account and distributed through the Ontario Community Environment Fund).

Table 1. Maximum Penalty Amounts per Contravention

Acts	Maximum Administrative Penalty
<i>Environmental Protection Act</i>	\$200,000
<i>Ontario Water Resources Act</i>	\$200,000
<i>Pesticides Act</i>	\$100,000
<i>Safe Drinking Water Act, 2002</i>	\$100,000
<i>Nutrient Management Act, 2002</i>	\$10,000

We are proposing five (5) regulations, one (1) under each of the MECP acts, and an administrative penalty guidance document. Each regulation is proposed to be similar in nature. The proposed penalty regulations under the *Environmental Protection Act* and the *Ontario Water Resources Act* would revoke and replace existing environment penalty regulations under the *Environmental Protection Act* – [O. Reg. 222/07](#) and under the *Ontario Water Resources Act* – [O. Reg. 223/07](#).

The proposed regulations are based on a jurisdictional review, input from stakeholder engagement including engagement sessions held during the Spring of 2021, and on the current environmental penalties used by the ministry.

Application of Administrative Penalties

As guided by the ministry’s Compliance Policy, when certain contraventions occur, the ministry may, as part of its response to the incident, issue an environmental penalty order where the regulations permit such an order be used in respect of the contravention. The current environmental penalty regime is restricted to facilities in nine (9) industrial sectors and to specific contraventions under the *Environmental Protection Act* and *Ontario Water Resources Act*. Similar to other compliance tools, an administrative penalty can be used on its own, or with another compliance tool such as an order, as an appropriate response to

non-compliance incidents. In serious cases, if warranted, prosecution may be pursued even if a penalty was paid and the contravention ended. For all contraventions that fit within Compliance Category IV of the Informed Judgement Matrix, a request for investigation is required even where an administrative penalty order is issued for the contravention. Refer to Figure 1 and Table 2 for more details.

Updates to Compliance Policy

We are proposing to update the Compliance Policy, specifically the compliance approach and compliance tools section, to incorporate the proposed administrative penalties. The new proposed administrative penalty framework would apply to all persons regulated under the MECP acts. Updates to the Compliance Policy were recently posted on the Environmental Registry ([Modernizing environmental compliance practices of the Ministry of the Environment, Conservation and Parks](#)).

Proposed Administrative Penalty Changes to Compliance Policy

Proposed changes to the Compliance Policy include:

- Compliance categories would be updated to identify where administrative penalties would be recommended (Figure 1 below).
- The description of compliance tools in the policy would be updated to include Director and provincial officer administrative penalties, including appeal information.
- References to environmental penalties would be removed throughout the document and replaced with administrative penalties.

Figure 1. Informed Judgement Matrix (IJM)

Informed Judgement Matrix		Health and Environmental Consequence				
		1. Not anticipated	2. Low	3. Moderate	4. High	5. Critical
Likelihood of Compliance	A. Demonstrated Willingness AND Good Compliance History	I	I	II	III	IV
	B. Demonstrated Willingness AND No or Some Compliance History	I	II	II	III	IV
	C. Willingness to achieve compliance is uncertain	II	II	III	III	IV
	D. Unwillingness to comply or to take corrective actions	II	III	III	IV	IV
	E. Wilful contravention of ministry regulatory requirement	III	IV	IV	IV	IV

Table 2. Compliance Categories and Recommended Tools

Colour of Category	Compliance Category
I	Compliance Category I Recommend: compliance promotion, notice of violation, letter, inspection report, compliance plan
II	Compliance Category II Recommend: same as Category 1 with the addition of tickets, orders, and administrative penalty.
III	Compliance Category III Recommend: orders, administrative penalty, consider request for investigation, consider referral for permission amendment or suspension
IV	Compliance Category IV Recommend: orders, administrative penalty, shall request investigation, consider referral for permission suspension or revocation

Process for Issuing Penalties

The ministry would have the ability to issue a penalty under the proposed regulations to any person, corporation or individual who breaks the law. This includes large, medium, and small businesses, public entities like municipalities and Crown corporations. The issuance of penalties to individuals would depend on the circumstances of the contravention.

Under the MECP acts, the Director has authority to issue a penalty for any contravention specified in the regulations for which an administrative penalty order can be issued. The proposed regulations would also authorize provincial officers to issue penalties for less serious contraventions, namely where the contravention is classified as [Type 1, 2 or 3](#), where the order imposes a penalty for one (1) day that the contravention occurred or continued. This sharing of responsibilities ensures that provincial officers have a tool to address less serious contraventions in a timely manner, whereas Directors can address more serious contraventions.

Individuals Within a Corporation

Regarding issuing a penalty to an individual within the corporation for any contravention, the ministry proposes that an employee, officer, director or agent of the corporation be subject to a penalty in circumstances that are consistent with other Canadian jurisdictions. Where a corporation committed a contravention, the regulations would authorize the ministry to issue a penalty not only to the corporation but also to an employee, officer, director or agent of the corporation, if that individual authorized, assented to, acquiesced or participated in the commission of the contravention.

Further, section 194 of the EPA and section 116 of the OWRA place a duty on officers and directors of a corporation to take all reasonable steps to ensure the corporation does not commit specified contraventions such as an unlawful discharge. These sections will continue to be enforced solely through prosecution.

The ministry will continue to pursue prosecutions for certain contraventions. This may mean an administrative penalty is not the appropriate course of action and an investigation/prosecution is the right enforcement tool. In other circumstances, it may mean that both an administrative penalty order and prosecution are appropriate to respond to the same or different contraventions during the same event and deter future non-compliance, plus hold polluters to account for their activities

Steps to Issue a Penalty

There would be five (5) core steps involved in the process of issuing a penalty:

Step 1 – Notice of Intention

Step 2 – Responding to the Notice of Intention

Step 3 – Issuing the Administrative Penalty Order

Step 4 – Administrative Penalty Review and Appeal Process

Step 5 – Payment of the Administrative Penalty

Step 1 – Notice of Intention

Under the current environmental penalty framework, the ministry is required to issue a notice of intention before issuing an environmental penalty order (exceptions are being considered for specific circumstances). The ministry is proposing to continue this practice under the proposed administrative penalty regulations subject to some exceptions described in this consultation guide. The purpose of the notice of intention is to provide the person an indication of the ministry's intention to issue a penalty for one or more contraventions, to see how the ministry determined the penalty in accordance with the proposed regulations and guidance and then to request reductions to the penalty based on enumerated grounds in the regulations before the administrative penalty order is issued.

Contents of Notice of Intention

In guidance, the ministry would propose that the issuance of the notice of intention occur within 60 days of the ministry becoming aware of the non-compliance. This would be a benchmark timeline to issue the notice of intention that may extend beyond 60 days, depending on complexity of the contravention.

The notice of intention is proposed to contain information including:

- A description of the contravention including the day or days the contravention occurred or continued (a day being a 24-hour period) and if appropriate the location of the contravention.
- Classifying the contravention as a "Type" based on Tables for each of the MECP acts which the ministry developed as part of this proposal. The purpose of these tables is to specify the range of the base penalties for that contravention based on its seriousness – meaning a Type 1 contravention is the least serious and therefore has the lowest range of base penalties, a Type 2 more serious with a higher range and so forth.
- Once the contravention "Type" is determined, the ministry applies a gravity assessment on a case-by-case basis. The gravity of the contravention can be "less serious", "serious" or "very serious" and would be determined by applying criteria set out in the proposed regulations. For specified contraventions, no gravity assessment is undertaken, instead the set level of seriousness is identified in the "Contravention Classification for Administrative Penalties" document next to its "Type" classification.
- The application of any applicable aggravating factors to the penalty calculation such as an increase to the penalty based on a person's compliance history.
- Where the ministry intends to increase the penalty for the contravention based on "economic benefit" to reflect the amount of financial gain which the person directly or indirectly obtained from the non-compliance, the amount of the increase and a summary of how the amount was determined, including the time frame used in the estimate.
- The right to request the ministry reduce the penalty based on grounds identified in the proposed regulation before the final penalty order is issued (See description of step 2 below).

If circumstances around the incident change, the Director may amend a notice of intention after it has been issued, giving the person written notice of the amendment.

Issuing an Administrative Penalty Without a Notice of Intention

Limited in application to provincial officer penalties, a combination of rules in the proposed regulations and ministry guidance would allow an administrative penalty order to be issued without a notice of intention in the following circumstances:

- The contravention is assigned to a lower penalty type (Type 1 – 3 for the MECP acts).
- Only one contravention is subject to a penalty; if there are multiple contraventions that would be subject to a penalty, a notice of intention would be issued.
- The penalty is being issued for one-day on which the contravention occurs or continued.

The ministry also proposes to adopt guidance for these additional circumstances:

- Where a contravention can be remedied, it can be remediated promptly (e.g. it will not take months to remedy).
- Penalties issued without a notice of intention would be largely imposed for contraventions that relate to situations where a provincial officer finds a person committing a contravention such as failing to produce proof training, permission for undertaking the activity or required transportation records .

In guidance, penalties issued without a notice of intention would be expected to be issued promptly to address non-compliance. A person who receives a penalty without a notice of intention would still be given an opportunity to seek a 35% reduction to the penalty similar to a notice of intention situation, but the process would be shortened. Refer to Step 3 for additional details.

If a penalty is issued without a notice of intention, only Steps 3 – 5 in the issuing process apply.

Step 2 – Responding to the Notice of Intention

The person receiving the notice of intention would have the opportunity to make a request to the Director or provincial officer (the “issuer”) to consider any relevant information for each contravention included regarding one or more of the following:

1. Additional information on the circumstances of the incident which led to the contravention, including information demonstrating that there was no contravention committed as alleged in the notice of intention.
2. Information about any actions the person had taken to prevent the contravention from occurring or has taken since the contravention to remedy it or to prevent it from recurring.
3. An environmental management system recognized by the proposed regulation was in place at the time of the contravention.

Note that even if a person does not have an environmental management system in place, the person may be able to qualify for the full 35% reduction by showing other mitigative steps. Refer to “Penalty Reductions” for further information.

The timeline for a response is within 15 days of the notice of intention being issued or longer, if provided for in writing by the issuer.

If there is no request for reduction made to the issuer by the person within the specified timeframe in the notice of intention, a penalty may be issued for an amount determined by the issuer, in accordance with the proposed regulation, and based on the information available.

The issuer who issued the notice of intention would consider any submissions prior to issuing the administrative penalty order and may decide to hold a meeting to further discuss the information provided by the person to whom the notice of intention was issued.

Based on the information provided to seek reductions to a penalty as set out in the notice of intention, the issuer may adjust the penalty amount. This may include penalty reductions for preventive and mitigative measures taken by the person, including having an environmental management system in place in relation to the contravention. See section 4 for further information on penalty reductions.

Step 3 – Issuing the Administrative Penalty Order

With Notice of Intention

The issuer would consider the information provided in a request by the person for a reduction of the penalty amount set out in the notice of intention prior to making a decision regarding the issuance of an administrative penalty. After considering the information in the request for reduction, the issuer would first decide whether to issue a penalty. Where a decision is made to issue the penalty, the amount of the administrative penalty may reflect adjustments based on the information provided including information related to how long the contravention continued, and any preventive and mitigative measures taken. Where a decision is made to not issue a penalty, the issuer must provide notice of that decision.

The proposed timelines to issue a penalty or the decision is from 15 days after the issuance of the notice of intention or longer as may be specified by the issuer and up to 1 year after the ministry becomes aware of the non-compliance (i.e. the limitation period for issuing an administrative penalty order). If the administrative penalty order is issued by a provincial officer after considering any request for reduction, the person may seek a Director's review of the penalty order. See step 4 for more information on a Director review of a provincial officer administrative penalty order.

Without Notice of Intention

As outlined in Step 1 of the issuing process, under select circumstances a penalty may be issued by a provincial officer without a notice of intention. In guidance, the proposed timeline to issue a penalty without a notice of intention is generally within one week after the ministry becomes aware of the non-compliance.

Persons would be provided the same opportunity to apply for a 35% reduction to the penalty, similar to a notice of intention situation. This reduction may be granted by the provincial officer who issued the administrative penalty or by a reviewing Director.

A person who was issued the penalty would complete a penalty reduction form outlining the actions taken to qualify for a penalty reduction of 35%. If the person makes a request for a reduction promptly (before 7 days after receipt of the penalty), the form may be submitted to the provincial officer for consideration to amend the penalty. Alternatively, the person may request a Director review of the penalty within 7 days, including the form which speaks to the penalty amount and request for reductions. See Step 4 for more information on the Director review and appeal process.

The form would require the person to outline the steps they took to qualify for the 35% reduction. These actions can include steps the person has taken for the purposes of preventive and mitigation, similar to when a person can request reductions following the issuance of a notice of intention or commits to take under a compliance plan. Refer to Table 18 for further information.

The issuer would assess the form or request for review and determine if the penalty should be amended to grant the reduction. See step 4 for more information on a Director review of a provincial officer administrative penalty order.

Step 4 – Administrative Penalty Review and Appeal Process

Provincial Officer Penalty

Where a penalty was issued by a provincial officer, the person can request a Director review in writing within 7 days of being served the administrative penalty order. As outlined in legislation, a request for a review shall be made in writing and shall include,

- a statement of whether the review applies to the obligation to pay the penalty, the amount of the penalty or both; and
- any submissions that the person requesting the review wishes the Director to consider.

If a person requests a Director review, the person is not required to pay the penalty until the Director makes a final decision. As part of the review, the Director can confirm, alter or revoke the penalty. The Director shall provide a copy to the person of the decision to confirm, alter or revoke the penalty, including reasons for the decision, and if the decision is to issue the penalty, a copy of the penalty order. A Director's decision must occur within 7 days unless the Director gives written notice to the person requesting the review stating that the Director requires additional time to make a decision. A Director's penalty can be appealed to the [Ontario Land Tribunal](#) ("the Tribunal") within 15 days of the issuance of the penalty order.

Director Penalty

Where a penalty was issued by a Director, the person may appeal the penalty order to the Tribunal within 15 days of the issuance of the penalty order. When a penalty order is appealed to the Tribunal, the requirement to pay the administrative penalty is automatically stayed (i.e. the person is not required to pay the penalty), pending a decision by the Tribunal.

On an appeal, the Tribunal may substitute its decision for that of the Director's when determining if the contravention that is the subject of the penalty has been demonstrated.

However, with respect to an appeal in relation to the amount of the penalty, the Tribunal, like the ministry, is bound by the proposed administrative penalty regulations. The Tribunal would only be authorized to vary the penalty amount determined by the ministry, if the Tribunal finds that the ministry's determination of the penalty amount is unreasonable.

Step 5 – Payment of the Administrative Penalty

The person who was issued the administrative penalty order would be provided 30 days to pay the penalty from the date of service of the penalty or the date of the decision of the Tribunal to uphold the penalty, should the penalty be appealed. The administrative penalty would contain the information on the payment due date, how to pay the penalty amount and the method(s) of payment.

In certain circumstances, the payment of a penalty can pose financial hardship. The ministry may alleviate this hardship through methods such as extending the payment date or creating a payment plan. The person may be required to provide necessary financial and operational information to the ministry to consider as part of this request.

The ministry would monitor payment and would remind late payees of the obligation to pay. If needed, the ministry may take steps to enforce the payment such as filing the penalty in Superior Court or refuse or suspend approvals until the payment is made.

Protection from Prosecution

It is proposed that if a person pays the penalty for Type 1 to Type 3 contraventions, the person would be protected from prosecution regarding those specific contraventions. In the case of the *Nutrient Management Act, 2002*, protection would apply to Types 1 and 2.

For contraventions that are more serious, e.g. Types 4, 5, LE for the *Environmental Protection Act* and *Ontario Water Resources Act*, Type 4 for *Safe Drinking Water Act* and *Pesticides Act* and Type 3 for the *Nutrient Management Act* – there would be no protection from prosecution if a penalty is paid in respect of that contravention. This means that for more serious types of contraventions, the matter could still be investigated by the ministry's Environmental Investigations and Enforcement Branch to determine if prosecution is warranted.

Further, where an administrative penalty order relates to a contravention of a Director or provincial officer order, the payment of the penalty would not result in protection from prosecution for that matter. The ministry views non-compliance with an order as serious in all cases.

As outlined in the MECP acts, payment of a penalty is not, for the purposes of a prosecution, an admission that the person committed the contravention. Also, if a penalty has been issued and a person is convicted of an offence in respect of the same contravention, the court shall consider the penalty to be a mitigating factor and may impose a fine of less than the minimum fine, if applicable.

How to Calculate a Penalty

This section shows how the penalty amount for a contravention (or contraventions) is proposed to be assessed and calculated. As with environmental penalties, the ministry is proposing a penalty assessment framework that has a high degree of predictability and transparency in how the penalty is set for a contravention. Under the ministry's current environmental penalty regime, a regulated person who committed a contravention subject to environmental penalties could, with a fair degree of certainty, use the regulations and the guidance document to determine the method that the ministry would use to calculate a penalty. The ministry intends to continue this approach with this the proposal. The rationale for using this more prescriptive approach is to ensure greater consistency in how administrative penalties would be assessed by ministry officials across the province when faced with the same contravention.

The components of the penalty are as follows:

1. **Base penalty** – This is meant to reflect the seriousness of the contravention and involves two steps (1) determining what "type" of contravention it is, and (2) applying criteria to the circumstances of the contravention to determine if it is "less serious", "serious", or "very serious".
2. **Aggravating factors** - Based on the compliance history (previous administrative penalties and convictions) and statute specific aggravating factors (e.g. spills that involve a toxic substance under the EPA and OWRA).
3. **Number of days* (Director Penalty only)** - Penalties may be imposed for each day that the contravention occurs or continues up to the maximum penalty amount
4. **Penalty reduction** - Up to a 35% reduction based on the application of preventive measures, mitigative measures, and having an environmental management system.
5. **Economic benefit* (Director Penalty only)** - Intended to prevent a person or entity from deriving any economic benefit from non-compliance. The amount of economic benefit would be determined by the ministry and it would be added to the penalty for a contravention, independent of the above noted calculations. Where the ministry intends to impose a penalty to prevent a person from gaining an economic benefit from non-compliance it would be added as a component of the penalty in the notice of intention and based on that the proposed total penalty amount could exceed the statutory maximum penalty for a contravention.
6. **Total penalty amount imposed in the administrative penalty order**

Figure 2. Provincial Officer Penalty Calculation

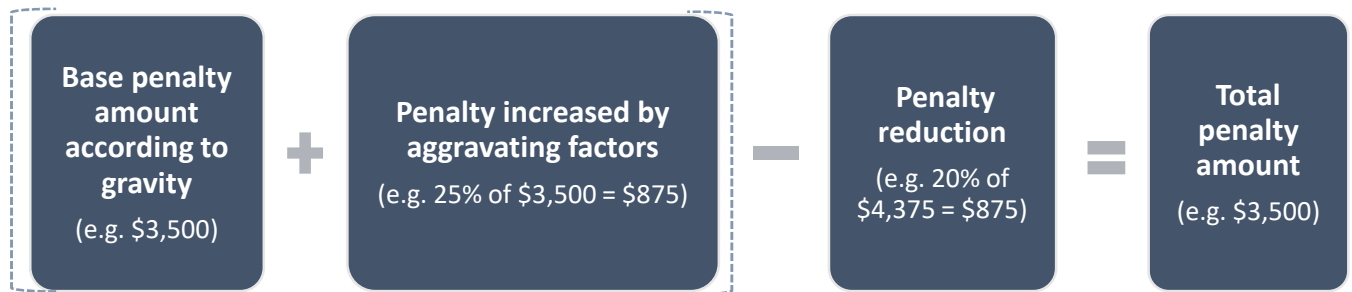
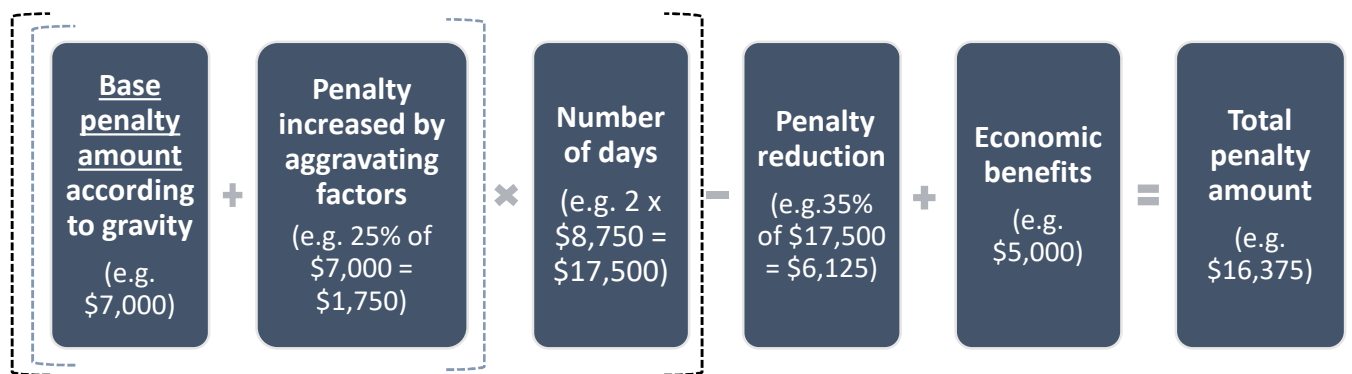


Figure 3. Director Penalty Calculation



1. Base Penalty

The base penalty which is intended to reflect the seriousness of the contravention, is determined using the pre-determined penalty Types and evaluating the gravity of the contravention, through a two-step process. First what "Type" of contravention that is the subject of the penalty must be determined to set the base penalty range for that contravention. Next to establish the amount of penalty within the base penalty range – the ministry would apply criteria to the circumstances of the contravention to determine if the penalty is "less serious", "serious" or "very serious". There are some exceptions where this second step of the process would not be performed. First, as with the environmental penalty regime, the ministry is proposing that for a few select contraventions – the "seriousness" of the contravention is pre-determined. Second, as with an environmental penalty involving the contravention of a numerical discharge standard to the natural environment set by a regulation or an instrument (such as an environmental compliance approval) the amount of the base penalty is assessed entirely by measuring the degree to which the person deviated from the standard. More detail about the steps involved in setting the base penalty are described below.

Contravention/Penalty Types

The ministry is proposing that the baseline penalty for each contravention would be pre-determined based on the contravention, which are classified into "Types". This is the starting point from which additional factors are considered, as part of the penalty calculation

process. The ministry has classified all contraventions under each of the MECP acts that would be subject to the proposed new administrative penalty framework into "Types" to assign the contravention the base penalty range based on the seriousness of the contravention. Accordingly, for the *Environmental Protection Act* and the *Ontario Water Resources Act* for example, the contraventions are divided into five (5) Types – Type 1 being the least serious contraventions with the corresponding lowest base penalty range, such as the contravention of a record keeping requirement - and Type 5 being the most serious with the highest base penalty range or penalties, such as the contravention of s. 14 of the *Environmental Protection Act* and s. 30 of the *Ontario Water Resources Act* – the general pollution prohibitions. The tables are broken down into provisions of the MECP statute, provisions of each regulation under the MECP acts, and then contraventions of instruments such as environmental compliance approvals.

Base Penalty Amounts for Type LE Contraventions

Penalty Type LE applies to contraventions involving a deviation from a legal limit (i.e. a limit exceedance), whether applied to a standard in regulation, permission or approval. The reason these are classified as Type LE is that the penalty is calculated based on the degree to which the person has deviated from the standard. Accordingly, a person who exceeds a discharge standard by 10% would receive a smaller penalty than a person who exceeds a discharge standard by 50%. This is similar to the approach taken to the contravention of discharge standards in the existing environmental penalty regime. The way in which penalties are proposed to be calculated for Type LE contraventions can be found at the end of this consultation guide. Please also see the "Contravention Classification for Administrative Penalties" for more information on the proposed classification for contraventions under each MECP statute.

Gravity Assessment (Type 1-5)

After the contravention "Type" is determined, the next step is to determine the gravity of the contravention based on its consequences, by applying case specific criteria. The assessment is generally based on the contravention's potential to harm the environment, human health, or impact to the integrity or reputation of the program. Based on this assessment, the contravention is categorized as "less serious", "serious" or "very serious". The ministry uses two gravity assessment tables, one for pollution events, Table 3, and another for all other contraventions, Table 4. More than one gravity level could apply to a contravention, however, the penalty is calculated using the highest applicable gravity level based on the circumstances of the contravention.

Table 3. Gravity Assessment for Pollution Events.

Gravity	Example of Criteria
Less Serious	<p><i>s.14, s.15, s.92 Environmental Protection Act or s.30(1), s.30(2) Ontario Water Resources Act:</i></p> <ul style="list-style-type: none"> • The discharge is a contravention of s. 14, s.15, s.92 of the <i>Environmental Protection Act</i> or s.30(1), s.30(2) of the <i>Ontario Water Resources Act</i>, and is not classified as "serious" or "very serious". <p><i>Failure to restore the natural environment (section 93 Environmental Protection Act):</i></p> <ul style="list-style-type: none"> • The person did everything practicable to prevent, eliminate and ameliorate the adverse effects resulting from the spill and to restore the natural environment, but did not do so forthwith
Serious	<p><i>s.14, s.15, s.92 Environmental Protection Act or s.30(1), s.30(2) Ontario Water Resources Act:</i></p> <ul style="list-style-type: none"> • The contravention causes or may cause one or more of the following adverse effects: <ul style="list-style-type: none"> ○ Localized injury or damage to any animal life ○ Widespread or long-term interference with the normal conduct of business ○ Widespread or long-term loss of enjoyment of the normal use of property ○ Widespread damage to property, other than plant or animal life ○ Damage to property, other than plant or animal life, such that the property cannot be restored, within a reasonable time, to the condition that existed immediately before the discharge occurred. <p><i>Failure to restore the natural environment (s. 93 Environmental Protection Act):</i></p> <ul style="list-style-type: none"> • The person took steps that had some effect in preventing, eliminating, and ameliorating the adverse effects resulting from the spill or in restoring the natural environment.
Very Serious	<p><i>s.14, s.15, s.92 Environmental Protection Act or s.30(1), s.30(2) Ontario Water Resources Act:</i></p> <ul style="list-style-type: none"> • The contravention causes or may cause one or more of the following effects: <ul style="list-style-type: none"> ○ Widespread injury or damage to plant or animal life. ○ Harm or material discomfort to any person. An adverse effect on the health of any person. ○ The impairment of the safety of any person. <p><i>Failure to restore the natural environment (s. 93 Environmental Protection Act):</i></p> <ul style="list-style-type: none"> • The person failed to take any effective steps to prevent, eliminate, and ameliorate the adverse effects resulting from the spill or to restore the natural environment.

Table 4. Gravity Assessment for Contraventions Other Than Pollution Events.

Gravity	Example of Criteria
Less Serious	<ul style="list-style-type: none"> • Administrative incidents that do not result/potential to result in any environmental or health impacts • Incidents that result/potential to result in a minor, temporary impact to the environment or minor, temporary threat to human health • Minimal to no impact to the integrity/reputation of the program, or, • Contravention does not interfere with the ministry's capacity to protect and conserve the natural environment or have a potential to do either.
Serious	<ul style="list-style-type: none"> • Incidents that result/potential to result in a moderate, temporary impact to the environment or moderate, temporary threat to human health • Limited impact to integrity/reputation of the program or, • Contravention interferes with the ministry's capacity to protect and conserve the natural environment.
Very Serious	<ul style="list-style-type: none"> • Incidents that result/potential to result in significant and/or permanent damage to the environment • Incidents that result/potential to result in a human health impact that is severe in effect, or • Significant impact to integrity/reputation of the program

For certain contraventions, 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 has been assigned. The tables provided in the attachment "Contravention Classification for Administrative Penalties" show which contraventions have been assigned a fixed gravity criterion of "less serious", "serious", or "very serious".

This is particularly useful for the following contraventions:

- where it would be difficult to assess the gravity of the contravention (e.g. we currently use this approach for failure of acute lethality test).
- where environmental and health risks associated with the contravention does not increase depending on circumstances (e.g. less serious, serious, very serious) – meaning the consequences are always the same.
- where the ministry has decided that a gravity assessment is not needed – instead a fixed base penalty amount would be used.

Gravity Assessment for Deviations from a Legal Limit (Type LE):

There is no gravity assessment for Type LE contraventions – because the penalty amount for the violation of a numerical discharge standard is calculated by determining the degree to which the person deviated from that standard. In this case, the penalty would increase

based on the percentage deviated from the legal limit and would not consider if the contravention was "less serious", "serious", or "very serious". The deviation is instead used as a general indicator for potential environmental and health risks. Refer to Appendix "A" for more information on Type LE penalties and proposed base penalty amounts according to their deviation from a legal limit.

Base Penalty Amounts for Corporations

Once the type of contravention and gravity of the contravention have been determined, the base penalty amount is determined as noted in Tables below.

The following types of contraventions apply to these acts:

Table 5. Environmental Protection Act and Ontario Water Resources Act
Base Penalty Amounts for Corporations Following Gravity Assessment

Contravention Type	Type 1	Type 2	Type 3	Type 4	Type 5	Type LE
Less Serious	\$500	\$2,000	\$3,500	\$10,000	\$15,000	\$1,500 to \$100,000
Serious	\$1,500	\$3,500	\$7,500	\$20,000	\$30,000	
Very Serious	\$3,000	\$7,000	\$15,000	\$40,000	\$60,000	

Table 6. Safe Drinking Water Act and Pesticide Act
Base Penalty Amounts for Corporations Following Gravity Assessment

*Note: Type LE is not applicable to the Pesticide Act

Contravention Type	Type 1	Type 2	Type 3	Type 4	Type 5	Type LE
Less Serious	\$500	\$2,000	\$3,500	\$10,000	N/A	\$1,500 to \$10,500
Serious	\$1,500	\$3,500	\$7,500	\$20,000	N/A	
Very Serious	\$3,000	\$7,000	\$15,000	\$40,000	N/A	

Table 7. Nutrient Management Act
Base Penalty Amounts Following Gravity Assessment

Contravention Type	Type 1	Type 2	Type 3
Less Serious	\$500	\$2,000	\$3,500
Serious	\$750	\$3,500	\$5,000
Very Serious	\$1,000	\$5,000	\$7,500

Base Penalty Amounts for Individuals

Note that proposed base penalty amounts for individuals are lower than those for corporations, with a ratio of 1 to 5, and a minimum penalty amount of \$500 before potential penalty reductions. The following two tables apply to individuals:

Table 8. Base Penalty Amounts for Individuals Following Gravity Assessment
Environmental Protection Act and Ontario Water Resources Act

Contravention Type	Type 1	Type 2	Type 3	Type 4	Type 5	Type LE
Less Serious	\$500	\$500	\$700	\$2,000	\$3,000	\$500 to \$20,000
Serious	\$500	\$700	\$1,500	\$4,000	\$6,000	
Very Serious	\$600	\$1,400	\$3,000	\$8,000	\$12,000	

Table 9. Base Penalty Amounts for Individuals Following Gravity Assessment
Safe Drinking Water Act, 2002 and Pesticides Act

*Note: type LE is not applicable to the Pesticide Act

Contravention Type	Type 1	Type 2	Type 3	Type 4	Type 5	Type LE
Less Serious	\$500	\$500	\$700	\$2,000	N/A	\$500 to \$2,100
Serious	\$500	\$700	\$1,500	\$4,000	N/A	
Very Serious	\$600	\$1,400	\$3,000	\$8,000	N/A	

Table 10. Base Penalty Amounts for Individuals Following Gravity Assessment
Nutrient Management Act, 2002

Contravention Type	Type 1	Type 2	Type 3
Less Serious	\$500	\$500	\$700
Serious	\$500	\$700	\$1,000
Very Serious	\$500	\$1,000	\$1,500

2. Aggravating Factors

Aggravating factors are used to increase the penalty amount, starting from the base penalty amount identified through the gravity assessment. These aggravating factors account for compliance history, specific considerations for unlawful discharges such as environmental and health impacts, whether the contaminant discharged was deemed toxic and imminent drinking water health hazard. Penalties issued by Directors may include all these aggravating factors, while administrative penalties issued by a provincial officer only account for compliance history, because administrative penalties for serious contraventions are reserved for Directors.

One or more aggravating factors may apply to contraventions.

Factor 1: Compliance History - Conviction and Penalty

To discourage repeat offenders, a penalty is increased based on compliance history by looking at previous convictions and administrative penalties. This aggravating factor would apply for five (5) years for previous convictions and three (3) years for previous penalties. The number of contraventions that were subject to penalties and their "types" factor into the calculation. The compliance history is generally applied based on the entity and facility subject to the penalty or the permission holder for a mobile system, e.g. waste management system.

Previous convictions and penalty history, including environmental penalties, would be considered. Dates are applied from the date of the conviction or penalty issuance. Compliance history will be considered for operations under a corporate entity across all operations.

Table 11. Compliance History

Environmental Protection Act, Ontario Water Resources Act, Pesticides Act, Safe Drinking Water Act, 2002.

Convictions in previous 5 years	Contraventions subject to Penalty Orders in previous 3 years	Percent Increase to Base Penalty (%)
0 (None)	0 (None)	0 (None)
0 (None)	1 to 3 Type 1, 2, 3 and 0 (None) Type 4, 5, LE	5%
1	4 to 5 Type 1, 2, 3 or 1 Type 4, 5, LE	10%
2-3	6 or more Type 1, 2, 3 or 2 to 4 Type 4, 5, LE	50%
4 or more	5 or more Type 4, 5, LE	100%

Table 12. Compliance History

Nutrient Management Act, 2002

Convictions in previous 5 years	Contraventions subject to Penalty Orders in previous 3 years	Percent Increase to Base Penalty (%)
0 (None)	0 (None)	0 (None)
0 (None)	1 to 3 Type 1, 2, 3	5%
1	4 to 5 Type 1, 2, 3	10%

Convictions in previous 5 years	Contraventions subject to Penalty Orders in previous 3 years	Percent Increase to Base Penalty (%)
2-3	6 or more Type 1, 2, 3	20%
4 or more	N/A	30%

Factor 2: Toxicity

For unlawful discharges such as spills and limit exceedances, the toxicity of the contaminant is also considered. A base penalty is increased by 35% for unlawful discharges if the contaminant is deemed toxic to human health or the environment, based on the "List of Toxic Substances" found in the "[Environmental Penalties Code of Toxic Substances](#)". This factor only applies to certain land and water contraventions like wastewater limit exceedances and spills to land or water. For all other unlawful discharges, such as air, only gravity assessment is used to calculate the penalty.

Factor 3: Pesticide Prohibition

This factor applies only to Type 4 contraventions under the *Pesticides Act*. For these contraventions, the base penalty is increased by the following factors. Applicable factors may be added together.

Table 13. Pesticide Prohibition

Gravity	Consideration	Factor
Serious	Impacts are difficult to remediate	20%
Very Serious	Actual human health impacts	30%
Very Serious	Impacts difficult to remediate	20%

Factor 4: Safe Drinking Water Act – Imminent Drinking Water Health Hazard

This factor applies only to contraventions under the *Safe Drinking Water Act* with a Type 4 base penalty and a "very serious" gravity level where there is an imminent drinking water health hazard. For these contraventions, the base penalty is increased by 35%.

Factor 5: Impacts of Pollution Events (Unlawful Discharges)

For spills, s. 14 *Environmental Protection Act* (Pollution Prohibition) or s. 30(1) *Ontario Water Resources Act* (Impair the Quality of Water), and failure to restore the natural environment, s. 93 *Environmental Protection Act*, there are additional aggravating factors that can be applied. These factors increase the penalty according to the impacts, whether they are difficult to remediate, widespread, and whether it caused harm or injury. Within a gravity level (i.e., less serious, serious, very serious), if more than one consideration applies, the factors for those considerations are summed. The factors are found in Table 14 below.

In the case of a contravention pertaining to a spill, e.g. s. 14 *Environmental Protection Act* or s. 30(1) *Ontario Water Resources Act* the issuer would select all consideration factors that are

applicable. For example, if a spill is assessed as “very serious”, and both the factors “impacts difficult to remediate (20%)” and “actual human health impacts (30%)” apply, the base penalty would be increased by 50%.

Where a person fails to restore the natural environment, s. 93 *Environmental Protection Act*, an additional aggravating factor can be applied based on the gravity level. For example, if the contravention is assessed as “serious”, and both the factors “less than 50% of impacts restored (15%)” and “unrestored impacts are widespread (15%)” apply, the base penalty would be increased by 30%.

Table 14. Assessing Impacts of Unlawful Discharges

Contravention	Gravity	Consideration	Factor
Spill	Less Serious	No factors	0
Spill	Serious	Impacts are difficult to remediate	20%
Spill	Very Serious	Actual plant/animal mortality	20%
Spill	Very Serious	Impacts difficult to remediate	20%
Spill	Very Serious	Actual injury or damage to animals is widespread	25%
Spill	Very Serious	Actual human health impacts	30%
Failure to Restore Natural Environment	Less Serious	Delay initiation of restoration by more than 24 hours	25%
Failure to Restore Natural Environment	Serious	Less than 50% of impacts restored	15%
Failure to Restore Natural Environment	Serious	Unrestored impacts are widespread	15%
Failure to Restore Natural Environment	Very Serious	Unrestored impacts are widespread	25%

3. Number of Days

Penalties may be calculated for each day the contravention occurs or continues, up to the maximum penalty amount per contravention, set in legislation. A day is a 24-hour period. Provincial officers may issue penalties for contraventions lasting no more than one day, while Directors may issue penalties for multi-day contraventions.

However, the issuer exercises its judgement in determining the respective penalty amount and has discretion to determine whether a penalty would be issued for the full length of the contravention, or less.

4. Penalty Reductions

Once a penalty is issued, the person can receive a reduction of up to 35% upon request, after the notice of intention is issued. Economic benefit is not eligible for penalty reductions.

As part of the penalty reduction process, a number of factors are considered including the nature of the contravention. Before a penalty reduction is granted, the issuer needs to consider:

1. Preventive measures: whether the person took any preventive actions (i.e. exercised some due diligence)

2. Mitigative measures: whether the person took any mitigative actions (i.e. actions to correct the contravention, such as returning to compliance, having a plan to return to compliance, or having a plan or measures put in place to prevent the reoccurrence of the contravention)
3. Environmental management system: whether the facility had an environmental management system when the contravention took place.

For penalties that are issued by a provincial officer without a notice of intention, there is still an opportunity for a 35% penalty reduction as noted in Step 3 and in Table 18. The penalty would be amended to reflect the reduction amount.

Reductions Based on the Nature of the Contravention

For pollution events (e.g. unlawful discharges such as spills and limit exceedance; and failure to restore the natural environment), a proposed total penalty reduction of up to 35% of the penalty amount could be provided, upon request. This would include a penalty reduction of up to 25% for undertaking preventive measures, and up to 10% for taking mitigative actions, and a 5% reduction if the site or facility had an environmental management system. The total penalty reduction could not surpass 35% as shown in Table 15.

For all other contraventions, a reduction of up to 35% could also be provided, including up to 35% for a combination of preventive and mitigative actions (e.g. whether the violator returned to compliance quickly), and 5% could be provided if the site or facility had an environmental management system in place as shown in Table 18. Again, the total penalty reduction could not surpass 35%.

For any penalty, the environmental management system would be valid if it meets the criteria in s. 17 of [O. Reg. 222/07](#). The environmental management system must either be certified/registered CAN/CSA-ISO 14001:04, determined to be compliant with ISO14001, or verified as meeting requirements as set out in the documents entitled "Ethic and Codes of Practice of Responsible Care: Commitment Package – Part I" and "The Responsible Care Way of Life... expectations of member and partner companies: Commitment Package – Part II" published by the Canadian Chemical Producers' Association. To obtain the automatic 5% reduction, the person must provide documentation that the environmental management system was audited in accordance with the regulation within three years prior to the contravention.

Table 15. Overview of Proposed Reduction Measures for All Contraventions

Category of Contravention/	Preventive Measures	Mitigative Measures	Environmental Management System	Maximum Penalty Reduction Percentage
Discharge related Contraventions (pollution events)	25%	10%	5%	35%
Other Contraventions	35%		5%	35%

Table 16. Discharge related Contraventions (pollution events) - Preventive Measures

s.14 Environmental Protection Act or s.30(1) Ontario Water Resources Act, limit exceedances, acute lethality

Name	Description	Penalty Reduction
Preventive Procedures	The entity has developed a spill prevention and response plan, or a set of written procedures related to the identification and appropriate response to limit exceedances and acute lethality failures.	5 %
Preventive Maintenance	The person took steps to prevent the illegal discharge by taking preventive maintenance (e.g. updating equipment that may be prone to failure).	5 %
Monitoring Systems	The person took steps to prevent the illegal discharge by setting up a preventive monitoring system, to detect spills/unlawful discharges.	5 %
Training	The person had trained personnel (including employees, contractors, and suppliers if applicable) on the prevention of unlawful discharges, and documentation to prove that the training was delivered.	5 %
Other Preventive Measures	<p>The person took steps to prevent the illegal discharge, by taking action beyond those required by law that served to prevent the unlawful discharge, specifically:</p> <ul style="list-style-type: none"> • redundant systems and/or containment structures (2%) • pollution emission control equipment in operation, above and beyond legislated requirements (2%) or • the entity has conducted a risk assessment of the process/area where the incident occurred, where the risks were prioritized for future action to be taken and the entity has documentation that actions were taken to reduce the risks identified (2%) 	Up to 6 %
Maximum Total for preventive measures		25%

Table 17. Discharge related Contraventions (pollution events) - Mitigative Measures
s.14 Environmental Protection Act or s.30(1) Ontario Water Resources Act, limit exceedances, acute lethality

Name	Description	Penalty Reduction %
Response to unlawful discharge	<ul style="list-style-type: none"> • The entity has implemented a spill response plan, or appropriate response to limit exceedances and acute lethality failures (2%) • Once the unlawful discharge was discovered, mitigative actions were taken swiftly and fully to rectify the problem as per best practices (2%) • spill or unlawful discharge containment or measures to prevent it from dispersing further into the natural environment; (2%) • measures to recover the pollutants released into the natural environment; (2%) • additional monitoring and sampling to minimize risk to the environment and/or human health (2%) • taking steps to prevent, eliminate and ameliorate the adverse effect and/or restore the natural environmental (2%) • Once the incident was identified, a detailed cause analysis was conducted to determine the source of the violation. (2%) 	Up to 8%
Prevention of Reoccurrence	Once the unlawful discharge was resolved, a process was implemented to incorporate the lessons learned into future preventive actions (i.e. process changes, etc.)	2%
Maximum Total for mitigative measures		10%

Table 18. Other Contraventions

Type of Measure	Name	Description	Penalty Reduction %
Preventive	Prevention Plan	Prior to the contravention, the person had implemented measures to reduce the probability of the contravention occurring (i.e. policies, procedures, check lists, IT systems, processes, training established and document and audits, etc.).	5%
Mitigative	Voluntary Disclosure	The person voluntarily disclosed the contravention to the ministry, where	5%

Type of Measure	Name	Description	Penalty Reduction %
		it did not have a duty/requirement under law to do so.	
Mitigative	Efforts to correct the contravention	Measures were implemented to swiftly correct the contravention and repair any damage.	15%
Mitigative	Preventing Reoccurrence	The person implemented measures to prevent future reoccurrence of the contravention	10%
Preventive and mitigative	Compliance Plan	Compliance plan that would achieve compliance or prevent the repetition of the contravention. The person would be required to certify completion of the compliance plan once implemented. This would not be available to a person who has been issued a penalty in the past 5 years and failed to carry out a compliance plan in seeking a reduction to a penalty.	35%
Total Maximum Reduction for all Measures			35%

5. Economic Benefit Determination

When a person does not comply with a legal requirement, whether deliberately or unintentionally, they may derive an economic benefit either directly or indirectly from the non-compliance. Administrative penalties help level the playing field by removing the economic benefit gained from breaking the law.

There are four potential types of economic benefit that can be gained as a result of non-compliance: avoided costs, delayed costs, profit from activities that are always illegal and profit from activities that could have been legal with the appropriate permission(s).

Where the Director determines that the person has acquired economic benefit from the non-compliance, the Director would determine the amount of the economic benefit. The notice of intention would indicate an estimate of the economic benefit determined by the Director and also include information on how the responsible party can respond and provide additional information back to the ministry on any economic benefit gained for consideration in determining the penalty amount.

For any economic benefit a person acquires by not complying with a requirement on time (“delayed costs”) or failing to comply with a requirement (“avoided costs”), the Director would use the general methodology and formulas described in Part 2, Part 4 and Appendices B and C of the [“Procedure for the Calculation of Monetary Benefit of Environmental Penalties”](#) as available on the ministry’s website.

Determination of economic benefit because of increased profits from illegal activities or activities that could have been legal with appropriate permissions may be inherently

complex and specific to the circumstances of the contravention. As a result, there are no standard formulae to use. The ministry would look at each contravention subject to a penalty on a case-by-case basis to determine if there is a potential for economic benefit that may have resulted in an increase in revenues or profits, beyond which is attributable to avoided/delayed costs.

To recover the amount necessary to remove any economic gains the responsible party may have received, there is no limit to the amount of the economic benefit component of a penalty. Economic benefit is not eligible for penalty reduction measures referenced in the "penalty reduction" section.

Example: A company failed to properly dispose of their waste and avoided waste disposal fees of \$2,500. The amount of \$2,500 would be added as the economic benefit portion to the penalty amount.

6. Penalty Cannot Be a True Penal Consequence

The penalty assessment framework proposed for the regulations has been carefully calibrated to ensure that the amounts proposed for contraventions are not, by their magnitude, punitive in nature. Similar to the current environmental penalty regulations, the proposed regulations would include a provision to allow the issuer to reduce the amount of the penalty. It would be reduced if after determining the penalty amount in accordance with the proposed regulations, the issuer determines that, due to its magnitude, the penalty is punitive in nature, having regard to all the circumstances. This type of provision was included in the current environmental penalty regulations to help ensure that the ultimate penalty being imposed is consistent with s. 11 of the Charter of Rights and Freedoms.

To determine whether the amount of a penalty is, by its magnitude, punitive in nature, the Director may consider the fine structure set out in the relevant MECP acts for the contravention.

Generally, the economic benefit portion of the penalty would not be reduced as part of this consideration – as the economic benefit portion is not punitive in nature, but rather the means to remove any benefit arising from the contravention of the requirements. Removing economic benefit from penal consequence is consistent with the purpose of the proposed administrative penalty framework under the relevant MECP acts.

In making a determination on whether a penalty is punitive in nature, the Director may also consider the financial impact of other administrative remedies available to ministry officials under the legislation to deal with the contravention that is the subject of the administrative penalty order. Examples of other administrative remedies which would be available include:

- temporarily suspending the environmental permission
- for serious environmental incidents where a discharge constitutes an imminent danger, issuing a stop order
- a violation-based order to correct the violation
- a preventive measures order
- imposing new conditions in a permission

The exercise of these compliance powers to resolve an environmental incident has the potential to impose a significant financial obligation on a person.

Consequential Amendments

Spill Prevention and Contingency Plan Regulation

[Ontario Regulation 224/07](#), Spill Prevention and Contingency Plans, under the *Environmental Protection Act*, applies to those persons who own or operate plants that meet or met the criteria for environmental penalties. That criteria captures facilities that had or have direct discharges of process water to Ontario surface waters and were in one of nine industrial sectors: metal mining, organic chemical manufacturing, inorganic chemical, industrial minerals, electric power generation, pulp and paper, petroleum, metal casting and iron and steel manufacturing. With the proposed expansion of administrative penalties, the Environmental Penalties Regulations under the *Environmental Protection Act* – O. Reg. 222/07 and under the *Ontario Water Resources Act* – O. Reg. 223/07 would be revoked.

The ministry proposes to amend O. Reg. 224/07 to incorporate the description of the nine industrial sectors set out in the Environmental Penalties regulations. In this way, the current regulation would continue to apply to the industrial facilities in those nine industrial sectors. Similar to the current Environmental Penalties [regulations](#), a provision would also be included to provide that the O. Reg. 224/07 would cease to apply if the facility provides the Director a written notice that the facility no longer has a direct discharge of sewage or storm water to the natural environment and all environmental compliance approvals have been revoked.

The ministry would not be including a list of plants at the end of the amended O. Reg. 224/07.

Environmental compliance approvals would be used to require appropriate spill prevention and contingency plans for facilities that continue to operate and have other activities that do not meet the criteria for O. Reg. 224/07, e.g. discharges only storm water.

Spills Reporting

The ministry is proposing a few changes to [O. Reg. 675/98](#), Classification and Exemption of Spills and Reporting of Discharges, under the *Environmental Protection Act*.

The first change is to amend s. 13(2) to provide electronic reporting (e.g. online reporting) in a manner prescribed by the Director as an additional method of reporting certain spills. This is to continue to move toward adoption of digital practices across the government and using this information to protect and conserve the environment. The ministry would consult on any proposed spills that are recommended to be reported electronically.

The second change is to amend paragraph 4 of s. 13(4) to require all persons reporting spills to provide an indication of whether the pollutant contains a toxic substance as defined in the Environmental Penalties - Code of Toxic Substances. This will help to provide a level playing field for all persons who are reporting spills.

Compliance and Enforcement Regulation – Drinking Water

The ministry is proposing to amend s. 3 (7) and 5(7) of [O. Reg. 242/05](#), Compliance and Enforcement, under the *Safe Drinking Water Act, 2002*. It is proposed to add administrative penalties as a type of mandatory action provincial officers and Directors can take in response to finding a deficiency during an inspection of a municipal residential drinking water system or finding an infraction at a licensed or eligible laboratory. The addition of this new compliance and enforcement tool will help to protect Ontario's drinking water.

Appendix 1 – Type LE Base Penalty Amounts

Type LE base penalty amounts reflect a deviation from a legal limit (limit exceedance). It is proposed that the base penalty amount may also be increased by 5 to 25% based on the compliance history. Refer to “Contravention Classification for Administrative Penalties” for more information on the proposed classification for contraventions under each MECP statute to see where the Type LE base penalties apply.

Surface Water Discharges

These tables would apply to exceedance of a discharge limit to surface water that is specified in a permission pertaining to sewage works (s. 53 of the *Ontario Water Resources Act*) or *Safe Drinking Water Act, 2002* or order.

Limit exceedances are calculated as % Exceedance – [(Sample Value – Limit Value) ÷ Limit Value] × 100

Table 1 – Any Parameter, Except pH

Base Penalty Amount	Deviation from Legal Limit
\$1,500	0 to < 10%
\$1,900	10 to < 20%
\$2,300	20 to < 30%
\$2,700	30 to < 40%
\$3,100	40 to < 50%
\$3,500	50 to < 60%
\$4,200	60 to < 70%
\$4,900	70 to < 80%
\$5,600	80 to < 90%
\$6,300	90 to < 100%
\$7,000	100 to < 110%
\$7,700	110 to < 120%
\$8,400	120 to < 130%
\$9,100	130 to < 140%
\$9,800	140 to < 150%
\$10,500	≥ 150%

Table 2 – pH

Base Penalty Amount	Deviation from Legal Limit
\$1,500	pH deviates from limit by < 0.5 pH unit
\$3,500	pH deviates from limit by ≥ 0.5 or more and < 1 pH unit
\$5,000	pH deviates from limit by ≥ 1 pH unit

Air Emissions

These tables would apply to exceedances of emission limits to the natural environment other than water as outlined below.

Type LE category does not include limits in regulations, industry standards and permission conditions that are operational parameters that have been categorized as something other than Type LE. For information and as noted in "Contravention Classification for Administrative Penalties" the following would apply.

- Regulations: Opacity limits and combustion parameters in regulations, and limits in fuels regulations are categorized as Type 3.
- Industry Standards: Operational parameters/ranges are categorized as Type 3 for the most part, unless it is a performance limit for a contaminant. These would be classified as Type LE.
- Permission conditions: operational parameters set out as limits in permissions are classified as Type 3. Examples include: in stack limits (temperature, pressure, oxygen content, Nitrogen Oxides), odour and noise limits. These contraventions would be assessed using the seriousness of the contravention to determine where, within the base penalty range, the specific exceedance falls.

Some limit exceedances are calculated as: % exceedance above a contaminant limit while others are a multiplier, e.g. 2 times above a contaminant limit.

Table 3 – Air Contaminants – Environmental Effects

This table reflects deviation from legal limit (contaminant is based on environment effects). Contaminants on the [Air Contaminants Benchmarks \(ACB List\)](#) that are categorized as B1 standards and have a limiting effect for the [O. Reg. 419/05: Air Pollution – Local Air Quality](#), under the *Environmental Protection Act*, s. 20 concentration that is not health-based or a combination of health and some other effect.

Base Penalty Amount	Volume/Quantity - Deviation from Legal Limit
\$3,500	0 to < 10%
\$3,900	10 to < 20%
\$4,300	20 to < 30%
\$4,700	30 to < 40%
\$5,100	40 to < 50%
\$5,500	50 to < 60%
\$6,100	60 to < 70%
\$6,300	70 to < 80%
\$6,700	80 to < 90%
\$7,300	90 to < 100%
\$7,900	100 to <110%
\$8,500	110 to <120%
\$9,100	120 to <130%
\$9,700	130 to <140%

Base Penalty Amount	Volume/Quantity - Deviation from Legal Limit
\$10,300	140 to <150%
\$10,900	≥ 150%

Table 4 – Air Contaminants – Health Effects Non-Carcinogens

This table is the deviation from legal limit (contaminant based on health effects but non-carcinogenic). Contaminants on the [ACB List](#) that are categorized as B1 standards and have a limiting effect for the s. 20 O. Reg. 419/05 concentration that is health-based or a combination of health and some other effect.

The deviation is calculated by: (Monitored or Modelled value/contaminant limit)

Base Penalty Amount	Volume/ Quantity - Deviation from Legal Limit
\$3,500	1 to < 2 times
\$10,000	2 to < 3 times
\$20,000	3 to < 4 times
\$30,000	4 to <5 times
\$40,000	5 to < 6 times
\$50,000	6 to < 7 times
\$67,000	7 to < 8 times
\$75,000	8 to < 9 times
\$87,000	9 to <10 times
\$100,000	10x and above

Table 5 – Air Contaminants – s.5(1) of O.Reg.530/18, s.13 of O.Reg.88/22

This table is for the deviation from the legal limit (SO₂) outlined in [O. Reg. 530/18](#): Air Pollution – Discharge of Sulphur Dioxide from Petroleum Facilities before 2029 and [O.Reg.88/22](#): Air Pollution – Discharge of Sulphur Dioxide from Petroleum Facilities, under the *Environmental Protection Act*. It is based on a quantity.

Base Penalty Amount	Deviation from Legal Limit	Volume/Quantity – Deviation from Legal Limit
\$16,430	0 to < 20%	> 225kg to <270 kg
\$17,860	20 to < 40%	> 270 kg to < 315 kg
\$19,290	40 to < 60%	315 kg to < 360 kg
\$20,720	60 to < 80%	360 kg to < 405 kg
\$22,150	80 to < 100%	405 kg to < 450 kg
\$32,860	100 to < 140%	450 kg to < 540 kg
\$35,720	140 to < 180%	540 kg to < 630 kg
\$38,580	180 to < 220%	630 kg to < 720 kg
\$41,440	220 to < 260%	720 kg to < 810 kg

Base Penalty Amount	Deviation from Legal Limit	Volume/Quantity – Deviation from Legal Limit
\$44,300	260 to < 300%	810 kg to < 900 kg
\$65,715	300 to < 340%	900 kg to < 990 kg
\$71,430	340 to < 380%	990 kg to < 1080 kg
\$77,145	380 to < 420%	1080 kg to < 1170 kg
\$82,860	420 to < 460%	1170 kg to < 1260 kg
\$88,575	460 to < 500%	1260 kg to < 1350 kg
\$94,290	>500%	>= 1350 kg

Table 6 – Air Contaminants – Sulphur Dioxide

This limit pertains to a 1-hr Point of Impingement (POI) limits for sulphur dioxide in O. Reg. 419/05. This limit would be effective July 1, 2023.

Base Penalty Amount	Volume/Quantity - Deviation from Legal Limit
\$3,500	1 to < 1.5 times
\$15,000	1.5 to < 2 times
\$30,000	2 to < 2.5 times
\$45,000	2.5 to < 3 times
\$60,000	3 to < 3.5 times
\$65,000	3.5 to < 4. times
\$70,000	4 to < 4.5 times
\$75,000	4.5 to < 5 times
\$80,000	5 to < 5.5 times
\$85,000	5.5 to < 6 times
\$90,000	6 to < 6.5 times
\$95,000	6.5 to < 7 times
\$100,000	7 times and above

Table 7 – Air Contaminants – Health Based Carcinogens

Contaminants on the [ACB List](#) that are categorized as B1 standards and have a limiting effect for the s. 20 O. Reg. 419/05 concentration that is health-based or a combination of health and some other effect, and the averaging time of the standard is annual.

Base Penalty Amount	Volume/Quantity - Deviation from Legal Limit
\$3,500	1 to < 5 times
\$10,000	5 to < 10 times
\$20,000	10 to < 25 times
\$30,000	25 to < 50 times
\$40,000	50 to < 75 times
\$65,000	75 to < 100 times

Base Penalty Amount	Volume/Quantity - Deviation from Legal Limit
\$100,000	100 times and above

Table 8 – Air Contaminants – O.Reg.88/22 – 365-day Emission Limits

This table is for the deviation from the legal limits outlined in section 8 other than the 7-day emission limit for thermal cracking units set out opposite Item 1 in the Table to that section in paragraph i of Column 2 of the Table, clause 11(1)(b), clause 12(2)(b), clause 12(3)(b), subsection 12(5), subsection 12(6), and clause 16(1)(b) of Ontario Regulation 88/22: Air Pollution - Discharge of Sulphur Dioxide from Petroleum Facilities, under the Environmental Protection Act. It is based on a quantity.

Base Penalty Amount	Deviation from Legal Limit
\$40,000	0 to <5%
\$60,000	5% to <10%
\$80,000	10% to <15%
\$100,000	>= to 15%

Table 9 – Air Contaminants – O.Reg.88/22 – Concentration-based Limits (less than 365-day averaging period)

This table is for the deviation from the legal limits outlined in section 8 at paragraph i of Column 2 opposite Item 1 in the Table to that section (i.e. 7-day emission limit for thermal cracking units), section 9, section 10, clause 11(1)(a), clause 11(2)(a), clause 11(3)(a), subsection 12(4), subsection 12(7), subsection 14(1), subsection 14(2), section 15, and clause 16(1)(a) of Ontario Regulation 88/22: Air Pollution - Discharge of Sulphur Dioxide from Petroleum Facilities, under the Environmental Protection Act. It is based on a quantity.

Base Penalty Amount	Deviation from Legal Limit
\$40,000	0 to <20%
\$60,000	20% to <40%
\$70,000	40% to <60%
\$80,000	60% to <80%
\$90,000	80% to <100%
\$100,000	>= to 100%

Table 10 – Air Contaminants – O.Reg.88/22 – s.17 Annual Emission Limits

This table is for the deviation from the legal limits outlined in section 17 of Ontario Regulation 88/22: Air Pollution - Discharge of Sulphur Dioxide from Petroleum Facilities, under the Environmental Protection Act. It is based on a quantity.

Base Penalty Amount	Deviation from Legal Limit
\$40,000	0 to <25 tonnes
\$60,000	25 tonnes to <50 tonnes
\$80,000	50 tonnes to <75 tonnes
\$100,000	>= to 75 tonnes