

Guideline for Implementing Environmental Penalties

Draft

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Please note that the proposed regulations will take precedence where a conflict or ambiguity exists between this Guideline and the requirements of the proposed regulations. While every effort has been made to ensure the accuracy of the information contained within this Guideline and that it is consistent with the proposed regulations, it should not be construed as legal advice.

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Part 1: Overview

Part 1 introduces Ontario's framework for environmental penalties, an abatement tool that will help induce violators to take swift corrective action when a violation occurs in order to reduce or prevent harm to the environment or human health and to negate any monetary benefits of non-compliance. The scope of the environmental penalty framework is discussed and the process leading to the issuance of an environmental penalty order is described step-by-step.

1.1 Environmental Penalties in Context

The Ministry of the Environment ("Ministry") is responsible for developing, enforcing and providing education and outreach on Ontario's environmental laws. The purpose of environmental penalty orders (EP orders) is to protect the environment by impelling companies to comply with environmental regulations and take swift remedial action in the event of a spill, discharge, or other environmental violation.

The Ministry expects all companies and individuals to comply with all the environmental laws that apply to them. When one of those laws has not been complied with, the primary objective of the Ministry's compliance and enforcement program is to see that those responsible act quickly to deal with the impacts of a violation, return to compliance with environmental laws as soon as practicable, and take every practical measure to prevent the recurrence of the incident. The terms "violation" and "contravention" are used interchangeably and have the same meaning in this guideline.

Environmental penalty orders are a new Ministry abatement tool to help ensure that companies strive for a high level of environmental performance. That means they will encourage these companies to prevent things from happening that harm or have the potential to harm the environment or human health. And, if an incident does occur, environmental penalties encourage companies to, return to compliance quickly and take steps to ensure the violation does not happen again. Please see the purposes of the regulation set out in section 1 of the EP regulation made under the *Environmental Protection Act*.

The procedures set out in this Guideline will be used to determine a penalty amount that is appropriate to attain these purposes. However, in order to ensure these purposes are met in all circumstances, section 7(2) of the regulation requires the Director to reduce the amount of the environmental penalty to an amount that is consistent with promoting internal discipline among regulated persons to comply with the requirements under the *Environmental Protection Act*. If the penalty is determined to be a true penal consequence, section 11 of the *Canadian Charter of Rights and Freedoms* precludes the Director from imposing a penalty that represents a true penal consequence; only a court has this authority after convicting a person of an environmental offence.

EP orders were introduced through the *Environmental Enforcement Statute Law Amendment Act* (Bill 133), passed in June 2005. This legislation amended the *Environmental Protection Act* (EPA) and the *Ontario Water Resources Act* (OWRA), establishing the overall framework for EP orders. Now, two proposed regulations (one under each Act) have been proposed to provide details of how, when and to which types of violations EPs will be applied. Both regulations contain the same concepts so for ease of reference this Guideline will mainly refer to the proposed EP regulation made under the EPA (“the regulation”).

Basically, EP orders are monetary penalties that companies may be required to pay if they have violated a requirement under the OWRA or EPA that is specified in the EP regulations. Because the primary goal of EP orders as an abatement tool is to encourage quick and effective action to restore, reduce or prevent harm to the environment or human health, there are ways for companies to have the amount of the penalty adjusted, based on actions they took before, during and after an incident.

The Ministry’s response to a violation is determined in accordance with its Compliance Policy: Applying Abatement and Enforcement Tools (Policy F-2), including the Informed Judgement Matrix (IJM). Violations are assessed on a case-by-case basis to determine which abatement and/or enforcement tool is most appropriate for obtaining quick action to mitigate the effects of a violation, achieve compliance with environmental laws, and improved environmental performance in the immediate and longer term. A copy of proposed revised Compliance Policy is posted on the EBR Registry for public comment as part of the EBR posting on the proposed EP regulations.

1.2 Scope of Environmental Penalties

Section 2 of the regulation sets out the details of who is a “regulated person” for the purposes of issuing an environmental penalty. A “regulated” person is defined as a person who owns, is in occupation or in charge, management or control of a plant set out in section 2. These plants discharge contaminated effluent to a surface water course or private sewage treatment plant and are listed in Table 1 of regulation, or are in one of the following nine Municipal Industrial Strategy for Abatement (MISA) sectors: electric power generation; industrial minerals; inorganic chemical; iron and steel manufacturing; metal casting; metal mining; organic chemical manufacturing; petroleum; pulp and paper. Facilities that discharge effluent only to a publicly-owned sewage treatment plant are not subject to EP regulations (Subsection 2 (2) of the Regulation).

1.2.1 EP Framework

The EP framework, set out in regulations and legislation, is characterized by the following parameters:

- a one-year limitation period – an EP cannot be issued for a violation that is either 12 months past the date that it occurred or the date that evidence of the violation first came to the attention of the Ministry (through the director or a provincial officer); (s.182.1(8) of the EPA)

- applies to violations related to water and land; (Appendix 2 in the Guideline and Table 2 to the EP regulations)
- phased-in implementation of the list of violations for which EP orders may be issued. Phase 1 applies to more serious violations related to unlawful discharges. Phase 2 applies to other violations and comes into effect 18 months later, providing time for those affected to become familiar with the new EP framework; (Appendix 2 in the Guideline and Table 2 to the EP regulations)
- a maximum total daily penalty not to exceed \$100,000 per violation; (s.182.1(5) of the EPA)
- amount of the penalty must consider the seriousness of the violation and any monetary benefit the Director believes the violator acquired as a result of the violation; (s.182.1(17) of the EPA and ss. 10 to 15 of the EP regulations)
- opportunities to discuss the violation, and provide additional information, with the Ministry before a final environmental penalty amount is determined and an EP order issued; (s.6 of the regulation)
- an option for a settlement agreement for certain violations that can lead to a reduction in the EP amount payable if the regulated person agrees to make an investment in an environmental facility-based project – a ‘beyond compliance project’ – that has demonstrable environmental and/or human health benefits; (s.182.1(9) of the EPA and s.18 of the regulation)
- consideration of financial hardship, consistent with Ministry policy, which may lead to a modification of the payment terms of the EP penalty order (e.g. extend deadline, allow for payments in instalments), though the EP penalty amount is not reduced.

1.2.2 Opportunities to Adjust the EP Penalty Amount

The EP framework provides for adjustments in the amount of the EP penalty based on the plant’s actions before, during and after an incident, both positive and negative:

- whether there is an Environmental Management System (EMS) in place that meets regulatory requirements at the time of the violation (s.17 and Schedule 1 of the regulation);
- the regulated person’s history of complying with environmental regulations based on number of convictions and previous EP orders;
- being a member of the Ontario’s Environmental Leaders program;
- having taken quick action to rectify the problem that gave rise to the violation.

Each of these factors is discussed in greater detail in other sections.

1.3 Types of Violations Subject to Environmental Penalties

Implementation will occur in two phases. Phase 1 violations are anticipated to come into force on May 1, 2007 and primarily involve contraventions relating to unlawful discharges to water or land, such as a spill that violates section 14 of the EPA or subsection 30 (1) of the OWRA (the general pollution prohibitions). Phase 2 would come into force 18 months after Phase 1 and would include other violations such as those related to constructing works, conditions of operations, sampling and reporting and record keeping. The specific violations or class of violations subject to EP orders are defined in the EP regulations – see Table 2 (Contraventions) of the regulations, or Appendix 2 in the Guideline.

A table showing which violations become subject to EP orders in Phase 1 and Phase 2 also appears in Appendix 1 of this Guideline.

1.4 Environmental Penalties Step-by-Step

A summary of the steps used to issue an EP order are described below. More detail on individual elements of the process is provided in subsequent sections of the document.

The Environmental Penalty Process Step-by-Step
<p>STEP 1: Environmental Penalty Notice of Intention (s.5 of the regulation)</p> <p>The Ministry issues a notice of intention (NOI) to issue an EP order which identifies the violation subject to an EP, the estimated range of the gravity amount, the estimated amount of the monetary benefit, if any, and offers an opportunity for the regulated person to provide information to the Director to consider before finalizing the EP order. The NOI also sets out the right to seek reductions to the proposed estimated penalty as set out in the EP regulation. Each violation involved in an incident may be subject to a separate penalty; however, they may be consolidated into one EP order.</p> <p>If circumstances around the incident change, the Director may amend an NOI after it has been issued, giving the regulated person written notice of the amendment.</p>
<p>STEP 2: Environmental Penalty Review Period (s.6 of the regulation)</p> <p>If the regulated person wishes to make submissions to the Director before he or she issues the EP order, the regulated person must respond in writing to the Director. In their response they should provide any information regarding the facts and circumstances of the incident and its actions before, during, and after the incident. The regulated person must respond within 15 days of the date on the NOI or any amendment to the NOI or within the period of time agreed to by the Director in writing.</p> <p>If there is no response from the regulated person within the specified timeframe, an EP order may be issued for the amount determined by the Director in accordance with the regulations (Step 4).</p> <p>Upon a request for review and prior to the issuance of an EP order, the regulated person may request to meet with the Director and/or ministry staff to further discuss the written submission. The EP order amount may reflect adjustments to the gravity component of the penalty amount based on the information provided, including any reductions made to the penalty as a result of the preventive and mitigative measures taken in relation to the violation.</p>

STEP 3: Settlement Agreement Option (s.182.1(9) of the EPA and s.18 of the regulation)

The regulated person may ask to enter into a settlement agreement with the Director. A settlement agreement may require:

- an investment in a facility-based pollution prevention or pollution reduction project with demonstrable human health or environmental benefits beyond those required by any environmental law – referred to as ‘beyond compliance projects’ (BCPs). This may lead to a reduction in the EP amount to be paid, with certain limitations; (see Chapters 2.4 and 3.4 of this Guideline)
- other actions required by the regulated person to come into compliance with legal requirements. Because these are steps taken to come back into compliance, their inclusion in a settlement agreement does not lead to a reduction in the assessed EP amount.

It is at the Director’s discretion as to whether it enters into a settlement agreement with a regulated person, and whether the results of the settlement agreement negotiations are acceptable, including the timeliness of the negotiations and the scope and value of the proposed BCP, as applicable.

If a settlement agreement is reached, the Director would only agree to a settlement agreement if the regulated person agrees as part of the agreement not to appeal the EP order giving rise to the settlement agreement.

Final settlement agreements will be made available to the public through postings on the Environmental Bill of Rights (EBR) Registry. (s.182.1(10) of the EPA).

STEP 4: Issuing an Environmental Penalty Order (s.182.1(3) of the EPA)

The Director issues an Environmental Penalty Order. For each violation specified in the EP Order, a penalty is assessed in accordance with the EP regulations, and the penalty must consider:

- the results of Step 2, the environmental penalty review, if any;
- the results of Step 3, the settlement agreement, if any.

STEP 5: Appeal Process

Regulated persons who have been issued an EP order have the right to appeal it to the Environmental Review Tribunal within 15 days of being given the EP order, unless they have agreed to abandon their right of appeal as part of a settlement agreement (see Step 3) (s. 140 of the EPA). When an appeal is being made to the Environmental Review Tribunal, the EP order is stayed, pending a decision. (s.143 of the EPA)

STEP 6: EP Payment (s.182.1(13) of the EPA)

The final EP order states the deadline for payment of the penalty amount. If payment is past due, the Ministry may take steps that include filing the order in Superior Court, refusing or suspending approvals, until payment is made.

STEP 7: Confirmation of Compliance

Compliance with environmental regulations and the terms of any settlement agreement will be assessed by the Ministry. In the case of non-compliance, the Ministry will again determine the appropriate abatement/enforcement response, consistent with its Compliance Policy (F-2). One limitation is that non-compliance with a settlement agreement is not subject to prosecution (it is not an offence under the EPA or OWRA), but is subject to an additional EP order (see Table 2 of the regulation or Appendix 2 of the Guideline).

STEP 8: Funds Collected through Payment of Environmental Penalty Orders (s.182.2 of the EPA and s.19 of the regulation)

The funds collected from EP orders will be kept in a special account and made available to communities to support environmental remediation and restoration projects and other related activities that address damage caused by spills and pollution.

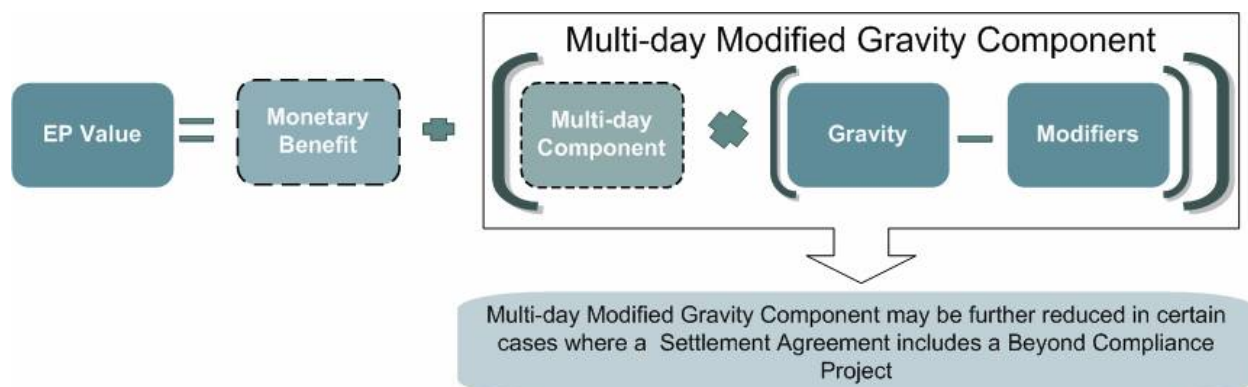
Part 2: Calculating the Penalty Amount

Part 2 shows how the EP order penalty amount for a violation (or violations) is assessed and calculated.

2.1 Summary – Calculating the Penalty Amount

An EP order is comprised of a multi-day modified gravity component and, where applicable, a monetary benefit component (see diagram below).

The gravity component of the penalty is assessed based on the type and seriousness of the violation. For violations that continue for more than one day (such as a failure to install equipment) the regulation requires that the gravity component be multiplied by a “multi-day component” depending on the length of the violation. The modifiers reduce the gravity component of the penalty, in accordance with the EP regulation, by considering the preventive and mitigative measures taken or planned to be taken by the regulated person. In addition, a reduction to the multi-day modified gravity component may be allowed through completion of a settlement agreement as noted below. The “monetary benefit” component of the penalty includes financial benefits gained by the regulated person because of its non-compliance with legal requirements (delayed and avoided costs).



2.2 Gravity Component of the Penalty Calculation

The steps for determining the amount of a gravity component of a penalty for a violation are set out in section 9 of the regulation and can be summarized as follows:

- (1) First, the cell of the gravity matrix (see Table 4 of the regulation) that applies to the violation has to be determined. Determining which cell applies to a violation requires determining whether the violation is a Type 1, 2 or 3 violation, and whether the consequences of the violation are less serious, serious, or very serious.
- (2) Second, based on factors that the regulation sets out in paragraph 3 of s.9(1), the Director would determine what amount within a cell should be assigned for the violation.
- (3) Where a violation continues for more than one day, subsection 9 (3) of the regulation sets out rules for how the gravity component of the penalty is determined for each day the violation continues. This would represent the “initial multi-day gravity component” of the penalty for the violation.
- (4) The Director would then have to consider whether the person is entitled to any reductions to the gravity component of the penalty and determine the amount of the reduction. Once the reductions have been determined, this would represent the “multi-day modified gravity component” of the penalty for the violation.

Each of the above steps will be explained in more detail below.

2.2.1 Type of Violation

Section 4 of the regulation sets out the violations for which EP orders may be issued (see also Table 2 of the regulation and Appendix 2). Violations include violations of certain legislative requirements under the EPA or OWRA, and violations of regulations that apply to specific industrial sectors (e.g. metal mining, electric power generation).

The regulation also provides that if there is a violation of a discharge standard in a regulation or approval, and the standard involves a “toxic substance” then the violation is treated as a Type 2 violation rather than a Type 1 violation. “Toxic substance” is defined in s. 3 of the EP regulations and includes substances listed in Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation)-both tables contain the same toxic substances list, or in Schedule 1 of the *Canadian Environmental Protection Act* (CEPA).

The regulation lists the legislative and regulatory provisions and whether violations are characterized as Type 1, Type 2, or Type 3. A general summary of the Types of violations is described in the following table.

Type of Violation	Violations
Type 1	<ul style="list-style-type: none"> An exceedance of a limit set out in regulation or approval where the substance is not listed in Table 5 (Toxic Substances) of the EPA EP regulation, or Table 4 (Toxic Substances) of the OWRA EP regulation, or in Schedule 1 of the <i>Canadian Environmental Protection Act</i> (CEPA). Non-compliance with legal requirements* related to: <ul style="list-style-type: none"> Reporting and record keeping (excluding requirements under s.92 of the EPA and s. 30(2) of the OWRA) Constructing works Conditions of operation
Type 2	<ul style="list-style-type: none"> An exceedance of a limit set out in a regulation or approval where the substance is listed in Table 5 or Table 4 of the EP regulations (Toxic Substances), or in Schedule 1 of CEPA. Failure of a limit (i.e., <i>Daphnia magna</i> or Rainbow trout acute lethality limit) Non-compliance with legal requirements related to: <ul style="list-style-type: none"> reporting requirements under s. 92 of the EPA or s.30(2) of the OWRA Orders Spill prevention and spill contingency plans (s. 91.1 of the EPA) Failure to comply with a settlement agreement negotiated as part of the settlement for a previous environmental penalty
Type 3	<ul style="list-style-type: none"> s.14 (EPA) violations s. 30(1) (OWRA) violations Failure to restore the natural environment as per s. 93 of the EPA

* Note that this does not include non-compliance with an order.

2.2.2 Seriousness of the Violation

The next step in determining which cell of the gravity matrix the violation falls into is to classify whether the consequences of the violation are “less serious”, “serious” or “very serious”. These categories are based on the potential for a violation to harm the environment, human health, or to interfere with the Ministry’s capacity to protect and conserve the natural environment. If the contaminant discharged is a “toxic substance” then the violation will be considered “serious” or “very serious” depending on the effects/consequence of the violation. “Toxic substance” is defined in s. 3 of the EP regulations and includes substances listed in Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation)-both tables contain the same toxic substances list, or in Schedule 1 of the *Canadian Environmental Protection Act* (CEPA).

The regulation sets out different definitions of the three categories of seriousness depending on the kind of requirement violated. For instance, the regulation sets out definitions for the three categories of seriousness where the requirement violated is the general pollution prohibition (sections 14 of EPA, subsection 30 (1) of OWRA), and then another set of definitions where the requirement violated is the failure to restore the natural environment following a spill (section 93 of the EPA). The Director must determine which consequence section applies depending on the requirement that has been violated.

Violations	Less Serious	Serious	Very Serious
s. 14 EPA (Adverse effect) or s. 30(1) OWRA (Impair quality of water)	The discharge is a contravention of s. 14 of the EPA or s. 30(1) of the OWRA, and is not classified as "serious" or "very serious".	The contaminant that was discharged contained a toxic substance listed in either Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation), or Schedule 1 of CEPA; or the contravention caused or had the potential to cause one or more of the following adverse effects: <ol style="list-style-type: none"> 1. Localized injury or damage to any animal life 2. Widespread or long-term interference with the normal conduct of business 3. Widespread or long-term loss of enjoyment of the normal use of property 4. Widespread damage to property, other than plant or animal life 5. 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. 	The contravention caused or had the potential to cause one or more of the following effects: <ol style="list-style-type: none"> 1. Widespread injury or damage to plant or animal life. 2. Harm or material discomfort to any person. 3. An adverse effect on the health of any person. 4. The impairment of the safety of any person.
Limit exceedances	Exceedance is less than 200% of the legal limit or pH deviates from limit by less than 2 pH units.	Exceedance is equal to or greater than 200% of the legal limit and less than 400%, or pH deviates from limit by 2 or less than 3 pH units	Exceedance is equal to or greater than 400% of the legal limit or pH deviates from limit by 3 or more pH units
Lethality limit failure	Sample fails a legally required lethality limit test (i.e., Daphnia magna or Rainbow trout acute lethality)	N/A	N/A
Non-compliance with legal requirements (except spills (s. 14 EPA, s. 30(1) OWRA) and limit exceedances)	Contravention does not result in an adverse effect or interfere with the Ministry's capacity to protect and conserve the natural environment or have a potential to do either	Contravention interferes with the Ministry's capacity to protect and conserve the natural environment, or has the potential to do so, but does not result in an adverse effect and does not have the potential to do so	Contravention results in an adverse effect or has the potential to do so
Failure to comply with a settlement agreement	Regulated person took all the steps specified by the agreement to prevent, eliminate or reduce the discharge of a contaminant into the natural environment, but not within the time specified in the agreement	The regulated person took some of the steps specified by the agreement to prevent, eliminate or reduce the discharge of a contaminant into the natural environment	The regulated person failed to take any of the steps specified by the agreement to prevent, eliminate or reduce the discharge of a contaminant into the natural environment
Failure to restore the natural environment (s. 93 EPA)	The regulated 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.	The regulated 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.	The regulated 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.

2.2.3 Range of the Assessed Penalty (Gravity Component)

When both the “type” and “seriousness” have been determined, the Director then determines which cell in the gravity matrix the violation falls into; this cell sets out the range of the “initial gravity component” for the violation.

Type of Consequence	Type of Violation		
	Type 1	Type 2	Type 3
Less Serious	\$1,000-\$2,500	\$10,000-\$15,000	\$15,000-\$25,000
Serious	\$2,500-\$5,000	\$20,000-\$30,000	\$30,000-\$50,000
Very serious	\$5,000-\$10,000	\$40,000-\$60,000	\$60,000-\$100,000

For example, referring to the above table, the initial gravity component for a violation classified as a “Type 2” and “Serious” violation falls in the \$20,000-\$30,000 range. Similarly, a “Type 1” and “Very Serious” violation would fall in the \$5,000-\$10,000 range. See Table 4 (Gravity Component) in EPA EP regulation and Table 3 (Gravity Component) in OWRA EP Regulation.

2.2.4 Amount of Initial Gravity Component

Once the range of the initial gravity component has been determined for a violation (i.e. which cell of the matrix the violation falls into), the regulation sets out a number of factors that the Director considers when determining the specific amount that he or she should set as the initial gravity component for the violation.

Paragraph 3 of subsection 9 (1) sets out the factors the Director may consider when setting the amount of the initial gravity component for the violation. They include:

- the history of violations under the EPA and OWRA;
- membership in Ontario’s Environmental Leaders program;
- extent of any delay in complying with the environmental requirement that was contravened;
- the extent of the deviation from the requirement
- whether the violation relates to a specific toxic substance listed in Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation), or Schedule 1 of the *Canadian Environmental Protection Act* (CEPA).

See Appendix 3 of this document (Penalty Factor Tables) for how these factors are applied.

2.2.5 Amount of Initial Gravity Component for Multi-Day Violations

There are two methods of calculating the amount of the “initial multi-day gravity” component for violations that continue for more than one day (‘multi-day violations’):

- for Phase 1 violations, the initial gravity component (as determined by the steps described above) is multiplied by the number of days that the violation continues;
- for Phase 2 violations, a percentage amount of the initial gravity component is determined and summed for each day the violation continues, based on the following sliding scale:

Day 1	Days 2-7	Days 8-30	Days 31-90	Days 91-180	Days 181+
100%	(50%)	(25%)	(10%)	(5%)	(2%)

Example: Phase 2 Violation

The total penalty amount for a multi-day violation with an initial gravity penalty amount of \$1,000 which occurs over 10 days is as follows:

Day	Percentage of Initial Gravity Penalty	Amount
1	100	1,000
2	50	500
3	50	500
4	50	500
5	50	500
6	50	500
7	50	500
8	25	250
9	25	250
10	25	250
	Total Penalty Amount	\$4,750

2.2.6 Adjustment of Initial Gravity Component Amount (Modifiers)

The regulated person may provide information on factors relevant to the violation that may reduce the amount of the initial gravity component that has been determined for a violation. Reductions may be given for:

- actions taken by the regulated person to prevent the violation;
- actions taken by the regulated person to mitigate the effects of the violation;
- an environmental management system (EMS) in place at the time of the violation that met regulatory requirements

A regulated person is entitled to a reduction of up to 10% for the mitigative steps (specified in s.16(2) of the regulation) and up to 20% for the preventative steps (specified in s.16(1) of the regulation) taken in respect of violations listed in item 1, 3, 4 or 5 of Table 2 of the regulation. For all other listed violations, a regulated person is entitled to a reduction of up to 30% for the preventative and mitigative steps taken.

As set out in s.17 of the regulation, an additional 5 per cent adjustment to the initial multi-day penalty amount will be made if it is confirmed that the plant had an EMS in place at the time of the violation that met regulatory requirements outlined in Schedule 1 of the regulation –‘Environmental Management Systems’. Among other factors, this includes providing the Ministry with information on when the EMS was last audited (see s.6(3) of the regulation).

See Appendix 4 of this document for detailed information on how modifiers will be applied to reduce the amount of the initial gravity component for a violation.

2.3 Monetary Benefit Component of the Penalty Calculation

When a regulated person fails to comply with a requirement under the EPA or OWRA, whether the violation was deliberate or accidental, the regulated person may acquire a monetary benefit from the non-compliance. Section 8 of the proposed regulation defines two types of monetary benefits that a Director will consider when issuing an EP order.

Avoided Costs

The regulations define “avoided costs” to mean costs that the regulated person avoided incurring by failing to comply with a provision described in Appendix 2. Avoided costs apply in respect of provisions that must be complied with on or by a certain date and that, once that date has passed, cannot be complied with on a future date.

Avoided costs would include, among others: costs associated with human resources, energy, consumable materials, disposal of residuals, and laboratory analyses. For example, if a regulated person does not undertake daily sampling and analysis of a regulated substance over a period of a month, it can never incur the costs for that month’s sampling and analysis, even when daily sampling and analysis is resumed.

Delayed Costs

The regulations define “delayed costs” to mean costs that the regulated person delayed incurring by delaying compliance with a provision described in Appendix 2. Delayed costs are those which will eventually be incurred when a regulated person comes back into compliance.

Delayed costs would include, among others: depreciable capital investments, such as pollution control equipment (e.g. wastewater treatment systems, stormwater management systems) and secondary (spill) containment systems; and non-depreciable things, such as spill prevention plan development, spill contingency plan development and certificates of approval – related studies, preparation of application and application fee.

In each case where an EP order is used to respond to a violation, the Director will consider whether the regulated person has acquired a monetary benefit from the non-compliance. However, a monetary benefit component will only be added to the EP order by the Director when avoided or delayed costs can be identified and clearly linked to legal requirements under the EPA and OWRA, in orders, approvals or regulations, and the amounts are not trivial.

Instances that may lead to the calculation of monetary benefits include, but are not limited to:

- failure to obtain a certificate of approval;
- failure to install, operate, or maintain pollution prevention or mitigation equipment as requirement by a certificate of approval or provincial officer order;
- failure to sample, analyze and report as required by regulations, a certificate of approval or provincial officer order.

If the Director assesses a monetary benefit component for an EP order, the NOI will indicate an estimated amount of the monetary benefit and a summary of how it was calculated. Unlike the gravity component of an environmental penalty, a regulated person cannot seek and obtain reductions to the monetary benefit component of the penalty. Also, the monetary benefit can not be reduced by entering into a settlement agreement with the Director.

Please refer to the draft policy guideline, “Procedure for the Calculation of the Monetary Benefit Component of Environmental Penalties” (September 2006) for the formulas to calculate compliance costs which are delayed or avoided.

2.4 Settlement Agreement Component of the Penalty Calculation

A regulated person may obtain a further reduction to the gravity component of an environmental penalty for a violation by proposing to implement a “Beyond Compliance Project” (BCP) that relates to preventing or reducing the discharge of contaminants from the person’s plant. A BCP project is one that leads to the implementation of measures beyond those required by any law that may apply to the person’s plant.

In particular, BCPs are facility-based pollution prevention or pollution reduction projects which produce tangible human health and/or environment benefits. A regulated person may propose to undertake a BCP when the amount of the EP is \$10,000 or greater before any reductions are made. An agreement must identify:

- the violation in respect of which the EP order has or will be made,
- the steps that the regulated person will be required to implement and the associated timeline by which the steps must be implemented, and
- the reduction to the penalty amount.

If the regulated person enters into a settlement agreement with the Director to undertake a BCP, the gravity component of the EP may be reduced up to 75 per cent. As stated earlier, no reduction can be made to the monetary benefit component of the penalty if the Director has assessed a monetary benefit component for the violation.

The regulated person must provide a reliable estimate of BCP costs to the Director. The amount invested in a BCP must be at least three times greater than the dollar value of the reduction in the EP amount – that is, for \$1 reduction in the EP penalty, the plant must invest at least \$3 in the BCP.

For purposes of calculating any reduction, the net present after-tax cost of the BCP is considered for: capital costs; one-time non-depreciable costs; and annual operation costs and savings which will be considered on a case-by-case basis.

The Director retains the right to approve or deny any BCP proposal, including proposals that otherwise meet the requirements of this policy.

Part 3: Description of Key Components

Part 3 provides more detailed discussion of key components of the environmental penalty framework including: notice of intention; request for review; environmental review period; settlement agreements; use of funds collected through payments of EP orders.

3.1 Notice of Intention (NOI)

Before a Director issues an environmental penalty order to a regulated person for a contravention that occurs at its plant or is related to the operations of its plant, section 5 of the regulation requires the Director to first provide a 15-day notice of intention (NOI) to the regulated person. The NOI is intended to provide the regulated person with an opportunity to provide the Director with information that he or she consider when calculating an environmental penalty for the violation(s) listed in the notice.

3.1.1 Contents of the NOI

The NOI advises the regulated person of the violations to which the proposed EP order relates. Specifically, it identifies the item number on Table 2 of the regulation. The NOI also sets out how the violation has been classified in terms of its type (Type 1, 2, 3) and seriousness (less serious, serious, very serious). It then specifies the cell of the gravity matrix which each violation listed in the notice falls into, and for each violation, it then lists the factors that the Director intends to apply when determining the appropriate amount of the EP, within the range set out in the applicable cell (see paragraph 3 of s.9(1) of the regulation).

Depending on the violation, the NOI may also include:

- a description of the adverse effects that were caused or that may be caused by the violation – applicable to violations of section 14 of the EPA and section 30(1) of the OWRA; (para 5 of s.5(1))
- the location of the violation, if appropriate; (para 7 of s.5(1))
- if the Director intends to assess a monetary benefit component for a violation, an estimate of the monetary benefit component, a summary of how it was calculated, and the timeframe that was used to estimate the monetary benefit, as applicable; (para 8 of s.5(1))
- the number of days that the violation occurred or continued for which the Director intends to issue an EP Order, as applicable. (para 6 of s.5(1))

Paragraphs 9 and 10 of s.5(1) of the regulation requires the inclusion of an explanation of the regulated person's right to request a reduction in the EP penalty amount and the grounds on which the reduction may be given. This includes the legislated right to request a reduction for preventive and mitigative measures and, a reduction for having an EMS in place at the time of the violation that met the requirements of Schedule 1 of the regulation.

3.2 Request for Review of Penalty by a Regulated Person

Under s.6 of the regulation, the regulated person may request that the Director consider information provided when calculating an environmental penalty for the violations set out in the NOI. The request must be made in writing within 15 days of the date indicated on the NOI. In extenuating circumstances, the deadline may be extended by written agreement of the Director.

3.2.1 Contents of the Request

The request may apply to one or more parts of the EP penalty calculation:

- Initial Amount:** The regulated person may provide information for the Director to consider when assessing the initial gravity penalty amount, including the multi-day component of the calculation (para 2 of s.6(1)). For instance, the regulated person may believe that the Director has erroneously classified a violation as a Type 2 violation as opposed to a Type 1 violation. Alternatively, the regulated person may believe that the Director has classified the consequence of a violation as “very serious” as opposed to “serious” and provide information to that effect.
- Adjustments:** The regulated person may request a reduction based on steps taken to prevent or mitigate the violation. The request must state the grounds for the reduction and specify the steps taken consistent with those listed in Appendix 4 (see para 4 of s.6(1) and para 1 of s.6(3)).
- EMS Adjustments:** The regulated person may request a reduction if it can show proof that at the time of the violation it had an EMS that meets regulatory requirements (i.e. Schedule 1-Environmental Management Systems (EPA EP regulation)) (see para 5 of s.6(1) and para 2 and 3 of s.6(3)).
- Monetary Benefit:** If the NOI includes an estimate of monetary benefit, the plant may request the Director to consider the information that accompanies the request and reassess the monetary benefit. Refer to “Procedure for the Calculation of the Monetary Benefit Component of Environmental Penalties” (September, 2006 Draft) for further details (see para 1 of s.6(1)).

If the NOI applies to more than one violation, the request for review may also apply to more than one violation.

3.3 Environmental Penalty Review Period

During the EP review period, the Director considers the information it has relating to the violation, including that provided by the regulated person in any request for a review.

The objective is to ensure that the Director has sufficient and accurate information on which to determine the initial gravity penalty amount (including the multi-day component), adjust the amount based on the steps taken by the regulated person to prevent or mitigate the violation, and determine the monetary benefit component of the penalty, as applicable.

As per s. 182.1(8) of the EPA, an EP order must be issued within one year of either the date of the violation, or the date that evidence of the violation first came to the attention of the Ministry (through the director or a provincial officer).

3.3.1 Environmental Management Systems (EMS)

As set out in s.17 of the regulation, a regulated person may request a 5 per cent reduction in the amount of the base EP if it can demonstrate that an EMS was in place at its plant at the time of the violation that meets the requirements set out in the regulations (i.e. Schedule 1 of the regulation –‘Environmental Management Systems’). The regulations also require that an external audit be conducted every three years that demonstrates that the EMS satisfies the requirements in the regulation. When making the request for the EMS reduction, the regulated person must provide documentation that the external audit of the EMS was conducted by a competent, independent auditor. The independent auditor may include auditors from within the company that owns the plant (e.g. from corporate headquarters or from another plant owned by the company), as long as the person is not employed at the plant.

To demonstrate that the EMS requirements have been satisfied, the regulated person is to submit a statement from the external auditors certifying that the requirements of Schedule 1 have been met. The Ministry will rely on these statements of certification and will not routinely request a copy of the auditor’s report. Recall that it is an offence under s.184 of the EPA to provide false or misleading information to the Ministry.

It is required that all plants obtain external audits of the EMS to qualify for a reduction. Paragraph 3 of s.6(3) provides that if before May 1, 2008 an external audit has not been performed, a written statement can be submitted from a senior manager at the plant that the EMS meets all of the other requirements in Schedule 1 of the regulation.

See Appendix 5 for a summary of the regulatory requirements set out in Schedule 1 of the regulation and for a comparison of these EMS requirements with related ISO 14001:2004 and Responsible Care requirements.

3.4 Settlement Agreement

The regulated person may propose entering into a settlement agreement at any time during the EP Review Period. The regulated person may advise the Director of its intention to propose a settlement agreement and, if so, whether it would include one or both of: a) a BCP; b) measures to mitigate the effects of a violation and reduce the risk of its recurrence (“abatement measures”). If a settlement agreement is reached, the Director would only agree to a settlement agreement if the regulated person agrees as part of the agreement not to appeal the EP order giving rise to the settlement agreement.

Timeliness is a factor at all stages of the process. If discussions regarding a settlement agreement become too lengthy or delayed, the Director may refuse to enter into an agreement with the regulated person and issue an EP order or use another abatement tool to require the plant to come into compliance with environmental requirements. Entering into a settlement agreement may not be appropriate for all EP orders; doing so is at the discretion of the Director.

3.4.1 Whether to Enter into a Settlement Agreement

When deciding whether a settlement agreement is appropriate, the Director will consider a range of factors, including:

- the compliance history of the regulated person, including the regulated person’s performance under any previous settlement agreement;
- history of cooperation between the regulated person and the ministry;
- the ability of the regulated person to complete the proposed BCP;
- whether the violation itself was the result of wilful or deliberate action by the regulated person.

3.4.2 Standards for a BCP Proposal

A BCP proposal must contain the information necessary for the Director to make a decision on whether the proposed project warrants a further reduction to the gravity component of the proposed environmental penalty for a violation. At a minimum, a proposal must include:

- plant and company details (e.g. project manager, location of BCP);
- detailed costings of the proposed BCP;
- detailed explanation of the expected health and/or environmental benefits of the BCP (e.g. performance and outcome measures), quantified to the extent possible;
- information that supports a conclusion that the project is “beyond compliance” in that the project is not a project required in order to meet any environmental requirements under any applicable legislation of any level of government;
- project schedule and timeframe for completion;

- certification by an authorizing officer or director of the company regarding its commitment to the BCP proposal including confirmation that,
 - the project is not already planned for or being considered for implementation by the plant within the next 12 months,
 - no government grants or other subsidies are being or will be sought by the company in respect of the BCP.

3.4.3 Types of BCPs

A BCP must involve a facility-based pollution prevention or pollution reduction activity or project that is not otherwise legally required under any statute and is not already under consideration or being planned.

3.4.3.1 Pollution Prevention

A pollution prevention project is one that substantially prevents the generation of pollution by eliminating or reducing the amount of any contaminant entering any waste stream or otherwise being released into the natural environment, prior to recycling, treatment or disposal.

The types of pollution prevention BCPs that may be proposed for a settlement agreement include:

- equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, and substitution of raw materials;
- conservation or increased efficiency in the use of energy, water or other materials at the plant;

Process recycling is one example of a pollution prevention project that could be proposed for a BCP – on-site process recycling results in waste materials produced during the manufacturing process being immediately and directly returned to production within the same manufacturing process.

3.4.3.2 Pollution Reduction

A pollution reduction project would reduce the amount of pollution discharged into the environment. Where a pollutant or waste stream already has been generated or released, a pollution reduction approach (recycling, treatment, containment, or disposal techniques) may be appropriate, so long as it does not create an increased or adverse cross-media impact on public health or the environment.

The types of pollution reduction BCPs that may be approved in a settlement agreement include:

- reducing the discharge of pollutants through more effective end-of-pipe or stack removal technologies;
- improved operation and maintenance;
- recycling of residuals for use as raw materials in production off-site that reduce the need for treatment, disposal or consumption of energy or natural resources.

3.4.4 Additional Parameters

Parameters that provide additional flexibility to the development of an appropriate and acceptable BCP are:

- BCPs do not have to relate to the violation that is the subject of the EP (for example if the contravention relates to a spill to water, the BCP could be in relation to the reduction of the discharge of pollutants to air);
- a project that, when complete, accelerates compliance by at least 2 years;
- facility-based BCPs that are proposed for other plants owned/operated by the regulated person in Ontario could be considered by the ministry on a case-by-case basis. The Ministry, however, gives preference to projects proposed for the facility that is the subject of the EP order.

3.4.5 Abatement Measures in a Settlement Agreement

Abatement measures may be included in a settlement agreement. Their inclusion does not reduce the obligation to pay the EP amount beyond the reduction that is provided in the regulations for mitigating the effects of a violation – only the successful negotiation of a settlement agreement that contains a BCP may reduce a penalty amount by up to 75% of the multi-day modified gravity component.

The settlement agreement may identify abatement measures that must be taken by the plant to achieve compliance or to prevent a recurrence regarding the violations that are the subject of the EP. In addition, if during the EP order review process, mitigative reductions were identified for actions that were initiated at the time of the incident but that go beyond the timeframe of EP order issuance, then those measures can be included in a settlement agreement to ensure that the requirements are carried out by the regulated person. However, the Ministry may also assess the situation and determine that another abatement tool is more appropriate in accordance with its Compliance Policy (F-2).

At a minimum, the agreement must include:

- a comprehensive description of the proposed abatement measures including who will conduct the work, how the measures will be carried out and the objective of each proposed measure in regard to attaining and achieving compliance;
- a proposed schedule that includes a completion date, together with any appropriate intermediate steps against which the Ministry can assess compliance of the abatement measures.

Generally, the Director will only agree to an abatement measure in a settlement agreement that will be completed within 12 months of the date of the agreement, unless the regulated person can demonstrate that a longer period is necessary in the circumstances to properly implement the measure.

3.4.6 Public Notification

The Act requires that final settlement agreements be published on the Environmental Bill of Rights (EBR) Registry.

In addition, during the negotiation of a settlement agreement with a regulated person, the Director may post a draft of the proposed settlement agreement or details of a proposed BCP on the EBR Registry and request comments from the public. If the Director intends to undertake an EBR posting before entering into a settlement agreement with a regulated person, the Director shall give written notice of his or her intention to do so to the regulated person. In addition, the Director may also request that the regulated person engage in consultations with the community on the proposed project (for example, by holding an open house) before it is finalized when there is or may be significant community interest in the project.

The Director should consider requesting that a regulated person engage in public consultation on a proposed settlement agreement when:

- There is a request from public liaison committee or other public/community interest group to review the draft project; or,
- There is a request from communities or municipalities impacted by the incident to review the draft project; or,
- In the opinion of the Director, local public consultation is necessary

The Director should consider posting to the Environmental Registry when:

- In the opinion of the Director broader public consultation is necessary; or,
- Any previously consulted group requests broader public consultation on the draft project; and, in the opinion of the Director such consultation will provide beneficial input to the Director's decision

3.4.7 Settlement Agreement Accountability

A settlement agreement must comprehensively describe the BCP and the abatement measures, as appropriate. It must specify the components of the project and identify performance and outcome measures that allow the Ministry to verify that the project has been undertaken and completed as proposed to and approved by the Ministry. As part of the settlement agreement, the Director may require periodic reports to be submitted to assess the progress of the project and any abatement measures.

If the actual cost of the project is greater than the original projected cost of the BCP, the regulated person will still be obligated to satisfy the terms of the agreement and implement the project. If, however, the actual cost of the project is less than the projected cost of the BCP, the environmental penalty order that is issued for the violation that gave rise to the settlement agreement will include provisions to address this circumstance. Generally, such provisions of the EP order will ensure that any penalty reductions given for the BCP reflect its actual costs as opposed to its projected costs. A final report signed by an authorizing officer or director of the company that documents completion of the BCP, the human health and/or environmental benefits achieved and the costs involved is required.

3.4.7.1 Non-Compliance with a Settlement Agreement

When there is non-compliance with a settlement agreement, the Ministry reviews the incident in accordance with the Compliance Policy. (Note that non-compliance with a settlement agreement is not an offence under s.186 of the EPA and is therefore not subject to prosecution.) The Ministry may:

- issue a new EP for non-compliance with a settlement agreement;
- issue a Provincial Officer Order if the settlement agreement included abatement measures that have not been completed

In addition, non-compliance with a settlement agreement will become a factor in assessing the compliance history of a regulated person in the future. It may also lead the Director to refrain from entering into a settlement agreement with the regulated person in the future.

3.5 Penalty Payment

The final environmental penalty order will state the time period within which to pay the penalty amount, the method of payment and to whom the payment should be sent. Generally, the EP order will provide the responsible party with 30 days to pay the penalty from the date of service of the notice or the date of a Tribunal decision which upholds the order, should the order be appealed.

3.5.1 Ability to Pay

A regulated person may request that the Ministry undertake a financial impact analysis to confirm its claim of financial hardship as a result of complying with the environmental penalty order. This request must be made within 15 days of receiving a final environmental penalty order or Tribunal decision. The Ministry may undertake a financial impact analysis, consistent with its Guideline F-14, Economic Analysis of Control Documents on Private Sector Enterprises and Municipal Projects. The regulated person must provide the documents identified in section 5.2 of Guideline F-14 as part of its initial request to the Director. The Ministry may request additional information from the regulated person, as it deems necessary.

If the analysis supports the claim of financial hardship, the payment terms of the EP order may be modified by extending the payment date or allowing instalment payments.

3.5.2 Failure to Pay

If the EP penalty is not paid by the deadline, the Ministry will send a notice of default to the regulated person that requires payment of the penalty upon receipt of the notice. The notice of default will outline the Ministry's potential responses if payment is not received within 30 days of the notice:

- file the EP order or Tribunal decision with the Superior Court of Justice such that the order or decision may be enforced as if it were an order of the court;
- suspend any approvals, licenses or permits held by the regulated person until the penalty is paid;

- refuse to issue any approvals, licenses or permits to the regulated person until the penalty is paid

See s.182.1(13) of the Act.

3.6 Use of Funds Collected through Environmental Penalty Orders

In accordance with s.182.2 of the Act, EP order payments will be held in a special purpose account (SPA) administered centrally by the Ministry. The distribution of funds will also be managed centrally.

The basic framework for the administration of the SPA and the distribution of funds is described below. Additional details will be provided when available.

3.6.1 SPA Framework

An annual application cycle will be established that allows eligible organizations within affected communities to request funding from the SPA for projects that meet the Ministry's criteria. The amount of funding available to communities will be advertised each year based on the amount of EP order payments received within each community for the previous year.

3.6.2 Eligible Organizations

Eligible organizations that may apply for funding include:

- non-profit organizations such as community-based environmental groups;
- Aboriginal communities and organizations;
- academic institutions;
- municipalities;
- conservation authorities.

Only eligible organizations undertaking work within the communities in which EP orders are issued (referred to as 'affected communities') may apply. The boundaries of affected communities will in most cases be defined by environmentally-relevant criteria (e.g. watershed), not necessarily by municipal boundaries. In certain circumstances, including, for example, affected communities expressing no interest in the available funds, SPA funds may be allocated to projects in other communities.

3.6.3 Eligible Projects

First priority for funding will be given to environmental remediation and restoration projects. Other projects that may be eligible for SPA funds are set out in s.19 of the regulation and include research and education and outreach activities for:

- spill prevention and response (e.g., enhancing spill notification techniques);
- pollution prevention (e.g., investigating methods for improving pollutant containment; promoting pollution prevention practices);
- impacts of contaminant discharge into the natural environment (e.g., investigating the long-term effects and cumulative impacts of pollutant

discharges on natural environments and public health; conducting an environmental damage assessment; developing environmental damage assessment methods);

- remediation and restoration of the natural environment (e.g., developing environmental damage restoration techniques).

Funds may also be used to provide financial assistance for measures to build community capacity for spill preparedness and response.

The Ministry does not intend to direct payments from the special purpose account to compensate persons or private or public bodies for expenses or other losses that result from spills. Therefore, persons should not make applications to obtain compensation for such purposes. Where a person suffers a loss or damages as a result of a spill, Part X of the EPA provides persons with the ability to seek recovery from the parties responsible for the spill.

3.6.4 Application Process

The Ministry will promote the SPA through its website, as well as other mechanisms, such as brochures and fact sheets, media alerts and advertisements. Up-to-date information on the funds available to different communities will be provided along with instructions on applying for funding.

The Ministry will undertake a two-stage review process of submissions received:

- an administrative review to determine if the submission meets funding criteria and project submission requirements (e.g. is an eligible organization);
- a technical review stage to assess the degree to which proposed projects are scientifically sound, operationally feasible, and cost effective.

At the technical review stage, submissions will be evaluated and scored using pre-established evaluation criteria. Examples of criteria that may be used to evaluate submissions include:

- Will the project demonstrably restore or improve the natural environment?
- Are the methods to be used appropriate and technically feasible?
- Has a sufficient level of technical detail been provided?
- Are project deliverables and work tasks clearly itemized and described?
- Are project milestones clearly stated?
- Will project outputs be communicated to the public?
- Is there demonstrated community support?
- Does the project team have (or have access to) the knowledge, expertise and experience required to undertake all facets of the project?
- Is there sufficient budgetary detail?
- Are cost items reasonable?

If available funds are insufficient to fund all projects that are submitted, priority will be given to submissions with the higher technical review scores.

Once approved, the Ministry will enter into agreements with successful applicants. These agreements will define the terms of reference for the project, including the deliverables and reporting requirements, and the project timeline and budget. Ongoing monitoring by the Ministry will ensure that the terms and conditions of the funding agreements are met.

Appendices

Appendix 1: Phased Implementation of Environmental Penalty Orders

Phase 1 Violations (effective upon promulgation of EPA and OWRA EP Regulations)
<ul style="list-style-type: none"> • s. 14 of the EPA (Pollution Prohibition) • s. 30(1) of the OWRA (Pollution Prohibition) • s. 93 of the EPA (Duty to Restore the Natural Environment) • Discharge standards in a regulation, authorizing document or control document • Acute toxicity failures in the MISA regulations • s. 92 of the EPA (Notification of Spills) • s. 30(2) of the OWRA (Notification of Pollutant Discharge) • Forthwith reporting of exceedances of discharge standards in the MISA regulations • Reporting of exceedances of discharge standards in an order • s. 182.1(9) of the EPA (Agreements)
Phase 2 Violations (effective 18 months after promulgation)
<ul style="list-style-type: none"> • s. 53(1) of the OWRA (Approval for Sewage Works) • Non-compliance with s. 53 OWRA Sewage Works Approvals • All remaining provisions of the MISA regulations: <ul style="list-style-type: none"> • O. Reg. 215/95 (Electric Power Generation) • O. Reg. 561/94 (Industrial Minerals) • O. Reg. 64/95 (Inorganic Chemical) • O. Reg. 214/95 (Iron and Steel Manufacturing) • O. Reg. 562/94 (Metal Casting) • O. Reg. 560/94 (Metal Mining) • O. Reg. 63/95 (Organic Chemical Manufacturing) • O. Reg. 537/93 (Petroleum) • O. Reg. 760/93 (Pulp and Paper) • s. 17 of the EPA (Remedial Orders) • s. 18 of the EPA (Director Orders - Preventive Measures) • s. 91.1 of the EPA (Spill Prevention and Spill Contingency Plans) • s. 97 of the EPA (Orders by Minister, Spills) • s. 157 of the EPA (Provincial Officer Orders) • s. 157.1 of the EPA (Provincial Officer Orders – Preventive Measures) • s. 16 of the OWRA (Provincial Officer Orders – Violations) • s. 16.1 of the OWRA (Provincial Officer Orders – Preventive Measures) • s. 16.2 of the OWRA (Provincial Officer Orders – Sewage/Water Works) • s. 31 of the OWRA (Prohibiting/Regulating Sewage Discharge) • s. 32 of the OWRA (Director's Order – Alleviate Effects of Impairment to Water Quality) • s. 61 of the OWRA (Sewage Works to be Kept in Repair) • s. 91 of the OWRA (Director's Order - Sewage Disposal)

Appendix 2a: Contraventions (EPA EP Regulation-Table 2)

Item	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Provision of the EPA (Act)	Description of the contravention	Circumstances	First date on which an environmental penalty may be ordered for the contravention	Type of contravention	Section of this Regulation that specifies the type of consequence
1.	Subclause 182.1 (1) (a) (i)	Contravention of section 14 of the Act (prohibits discharge of a contaminant into the natural environment that causes or may cause an adverse effect)	1. The discharge is to land or water. 2. The discharge is of a pollutant as defined under Part X of the Act.	May 1, 2007	Type 3	10
2.	Subclause 182.1 (1) (a) (ii)	Contravention of section 93 of the Act (duty to mitigate and restore where pollutant is spilled that causes or is likely to cause an adverse effect)	The spill is to land or water.	May 1, 2007	Type 3	11
3.	Subclause 182.1 (1) (a) (iii)	Contravention of a provision of the regulations that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.	1. The contravention is of a provision listed in Column 2 of Table 3, in the regulation named beside the provision in Column 1 of the Table. 2. The discharge includes a toxic substance. 3. No order under this Act and no order or direction under the <i>Ontario Water Resources Act</i> that establishes a numerical limit on the amount, concentration or level of a contaminant that may be discharged into the natural environment has been issued to the regulated person in respect of the contaminant that was discharged.	May 1, 2007	Type 2	12
4.	Subclause 182.1 (1) (a) (iii)	Contravention of a provision of the regulations that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.	1. The contravention is of a provision listed in Column 2 of Table 3, in the regulation named beside the provision in Column 1 of the Table. 2. The discharge does not include a toxic substance. 3. No order under this Act and no order or direction under the <i>Ontario Water Resources Act</i> that establishes a numerical limit on the amount, concentration or level of a contaminant that may be discharged into the natural environment has been issued to the regulated person in respect of the contaminant that was discharged.	May 1, 2007	Type 1	12

Item	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Provision of the EPA (Act)	Description of the contravention	Circumstances	First date on which an environmental penalty may be ordered for the contravention	Type of contravention	Section of this Regulation that specifies the type of consequence
5.	Subclause 182.1 (1) (a) (iv)	Contravention of a provision of an order under the Act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.	The discharge is to land or water.	May 1, 2007	Type 2	12
6.	Subclause 182.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations, other than a provision referred to in subclause 182.1 (1) (a) (i), (ii) or (iii) of the Act.	1. The spill is to land or water. 2. The contravention is of section 92 of the Act.	May 1, 2007	Type 2	15
7.	Subclause 182.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations, other than a provision referred to in subclause 182.1 (1) (a) (i), (ii) or (iii) of the Act.	The contravention is of a provision of a regulation listed in Column 1 of Table 3, other than a provision specified in Column 2, 3 or 4 of the Table.	December 1, 2008	Type 1	15
8.	Subclause 182.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations, other than a provision referred to in subclause 182.1 (1) (a) (i), (ii) or (iii) of the Act.	The contravention is of a provision listed in Column 3 of Table 3, in the regulation named beside the provision in Column 1 of the Table.	May 1, 2007	Type 1	15
9.	Subclause 182.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations, other than a provision referred to in subclause 182.1 (1) (a) (i), (ii) or (iii) of the Act.	The contravention is of a provision listed in Column 4 of Table 3, in the regulation named beside the provision in Column 1 of the Table.	May 1, 2007	Type 2	12
10.	Subclause 182.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations, other than a provision referred to in subclause 182.1 (1) (a) (i), (ii) or (iii) of the Act.	The contravention is of section 91.1 of the Act.	December 1, 2008	Type 2	15
11.	Subclause 182.1 (1) (b) (ii)	Contravention of a provision of an order under the Act, other than an order	1. The order requires the regulated person to report a failure to comply with a provision of an order or direction.	May 1, 2007	Type 2	15

Item	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Provision of the EPA (Act)	Description of the contravention	Circumstances	First date on which an environmental penalty may be ordered for the contravention	Type of contravention	Section of this Regulation that specifies the type of consequence
		under section 99.1, 100.1 or 150 of the Act, an order of a court or a provision of an order referred to in subclause 182.1 (1) (a) (iv) of the Act.	2. The order that was not complied with has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.			
12.	Subclause 182.1 (1) (b) (ii)	Contravention of a provision of an order under the Act, other than an order under section 99.1, 100.1 or 150 of the Act, an order of a court or a provision of an order referred to in subclause 182.1 (1) (a) (iv) of the Act.	1. The order is issued under section 7, 8, 17, 18, or 157.1 of the Act. 2. The circumstances giving rise to the order relate to a discharge or a potential discharge to land or water.	December 1, 2008	Type 2	15
13.	Subclause 182.1 (1) (b) (ii)	Contravention of a provision of an order under the Act, other than an order under section 99.1, 100.1 or 150 of the Act, an order of a court or a provision of an order referred to in subclause 182.1 (1) (a) (iv) of the Act.	1. The order is issued under section 157 of the Act. 2. The order is issued in response to a contravention specified in this Table, other than a contravention specified in item 5 or 11 of this Table.	December 1, 2008	Type 2	15
14.	Subclause 182.1 (1) (b) (v)	Contravention of a provision of an agreement under subsection 182.1 (9) of the Act.	N/A	May 1, 2007	Type 2	14

Appendix 2b: Contraventions (OWRA EP Regulation-Table 2)

Item	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Provision of the OWRA (Act)	Description of the contravention	Circumstances	First date on which an environmental penalty may be ordered for the contravention	Type of contravention	Section of this Regulation that specifies the type of consequence
1.	Subclause 106.1 (1) (a) (i)	Contravention of subsection 30 (1) of the Act (creates offence to discharge or cause or permit the discharge of any material of any kind into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters).	N/A	May 1, 2007	Type 3	10
2.	Subclause 106.1 (1) (a) (iii)	Contravention of a provision of an order, notice, direction, requirement or report under the Act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.	N/A	May 1, 2007	Type 2	11
3.	Subclause 106.1 (1) (a) (iv)	Contravention of a provision of a licence, permit or approval under the Act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.	1. The contravention is of a provision of an approval granted by the Director under section 53 of the Act. 2. The discharge includes a toxic substance.	May 1, 2007	Type 2	11
4.	Subclause 106.1 (1) (a) (iv)	Contravention of a provision of a licence, permit or approval under the Act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment.	1. The contravention is of a provision of an approval granted by the Director under section 53 of the Act. 2. The discharge does not include a toxic substance.	May 1, 2007	Type 1	11
5.	Subclause 106.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations other than a provision referred to in clause 106.1 (1) (a) of the Act.	The contravention is of subsection 30 (2) of the Act.	May 1, 2007	Type 2	14

Item	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Provision of the OWRA (Act)	Description of the contravention	Circumstances	First date on which an environmental penalty may be ordered for the contravention	Type of contravention	Section of this Regulation that specifies the type of consequence
6.	Subclause 106.1 (1) (b) (i)	Contravention of a provision of the Act or the regulations other than a provision referred to in subclause 106.1 (1) (a) (i) or (ii) of the Act.	The contravention is of subsection 53 (1) of the Act.	December 1, 2008	Type 2	14
7.	Subclause 106.1 (1) (b) (ii)	Contravention of a provision of an order or direction under the Act, other than an order under section 84 of the Act, an order of a court or a provision of an order or direction referred to in subclause 106.1 (1) (a) (iii) of the Act.	<ol style="list-style-type: none"> 1. The order or direction requires the regulated person to report a failure to comply with a provision of an order or direction. 2. The order or direction that was not complied with has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment. 	May 1, 2007	Type 2	14
8.	Subclause 106.1 (1) (b) (ii)	Contravention of a provision of an order under the Act, other than an order under section 84 of the Act, an order of a court or a provision referred to in subclause 106.1 (1) (a) (iii) of the Act.	The contravention is of a provision of an order issued under section 16.1 31, 32, 91 or 92 of the Act.	December 1, 2008	Type 2	14
9.	Subclause 106.1 (1) (b) (ii)	Contravention of a provision of an order under the Act, other than an order under section 84 of the Act, an order of a court or a provision referred to in subclause 106.1 (1) (a) (iii) of the Act.	<ol style="list-style-type: none"> 1. The contravention is of a provision of an order issued under section 16 of the Act. 2. The order is issued in response to a contravention specified in this Table. 	December 1, 2008	Type 2	14
10.	Subclause 106.1 (1) (b) (ii)	Contravention of a provision of an order under the Act, other than an order under section 84 of the Act, an order of a court or a provision referred to in subclause 106.1 (1) (a) (iii) of the Act.	The contravention is of a provision of an order issued under section 16.2 of the Act or of an order relating to a sewage works.	December 1, 2008	Type 2	14
11.	Subclause 106.1 (1) (b) (ii)	Contravention of a provision of an direction under the Act, other than an order under section 84 of the Act, an order of a court or a provision referred to in subclause 106.1 (1) (a) (iii) of the Act.	The contravention is of a direction issued under section 61 of the Act.	December 1, 2008	Type 2	14
12.	Subclause 106.1 (1) (b) (iii)	Contravention of a provision of an approval under the Act, other than a provision of an approval referred to in clause 106.1	<ol style="list-style-type: none"> 1. The contravention is of a provision of an approval granted by the Director under section 53 of the Act. 	May 1, 2007	Type 2	12

Item	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	Provision of the OWRA (Act)	Description of the contravention	Circumstances	First date on which an environmental penalty may be ordered for the contravention	Type of contravention	Section of this Regulation that specifies the type of consequence
		(1) (a) of the Act.	2. The provision of the approval requires the regulated person to conduct an acute lethality test on contaminated or potentially contaminated effluent.			
13.	Subclause 106.1 (1) (b) (iii)	Contravention of a provision of an approval under the Act, other than a provision of an approval referred to in subclause 106.1 (1) (a) (iv) of the Act.	1. The contravention is of a provision of an approval granted by the Director under section 53 of the Act. 2. The provision of the approval is a provision other than that described in item 12.	December 1, 2008	Type 1	14
14.	Subclause 106.1 (1) (b) (iv)	Contravention of a provision of an agreement under subsection 106.1 (9) of the Act.	N/A	May 1, 2007	Type 2	13

Appendix 3: Penalty Factor Tables

The figure below identifies the basic steps for determining the penalty value using the penalty factors in the following tables.

Steps to Determine Penalty Value Based on Factors

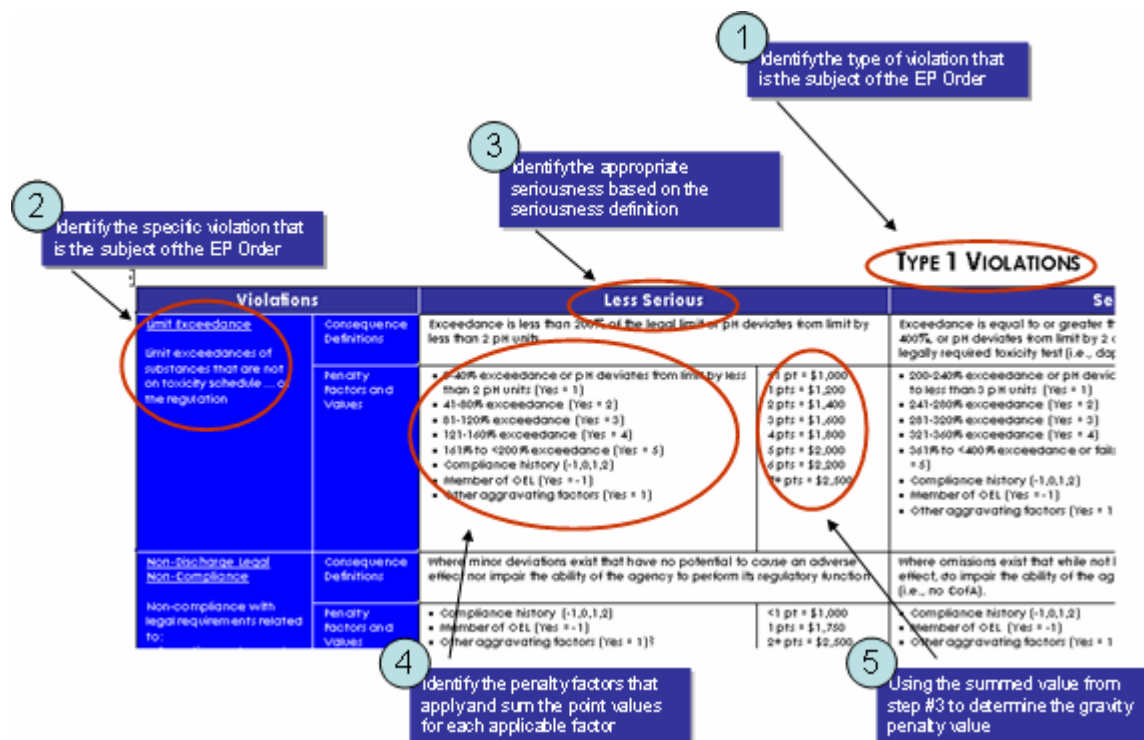


Table Definitions and Notes

- Compliance History (with accompanying point values):
 - No convictions in previous 5 years, or no EP orders in previous 3 years **(-1 Points)**.
 - No convictions in previous 5 years or 3 or less EP orders of a minor seriousness in previous 3 years, or no EP order has been issued for the same type of violation in the previous 3 years **(0 Points)**.
 - 1 conviction in previous 5 years, 4 to 5 EP orders of a minor seriousness in previous 3 years, 1 EP order or settlement agreement of a moderate/major seriousness in 3 years, or 1 EP order has been issued for the same type of violation in the previous 3 years **(+1 Points)**.
 - 2 or more convictions in previous 5 years, 6 or more EP orders of a minor seriousness in previous 3 years, 2 or more EP orders or settlement agreements of a moderate/major seriousness in 3 years, or 2 EP orders have been issued for the same type of violation in the previous 3 years **(+2 Points)**.
- OEL is Ontario's Environmental Leaders program – individual facilities must be members to qualify for a point reduction.
- References to "toxic substance" means a substance listed in either Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation), or Schedule 1 of the *Canadian Environmental Protection Act* (CEPA).
- Limit exceedance values are calculated as:

$$\% \text{ Exceedance} = [(\text{Sample Value} - \text{Limit Value}) \div \text{Limit Value}] \times 100\%$$

TYPE 1 VIOLATIONS

Violations		Less Serious		Serious		Very Serious	
Limit Exceedance Limit exceedances of substances that are not Toxic Substances i.e. not in Table 5 (EPA EP Regulation), or Table 4 (OWRA EP regulation), or Schedule 1 of CEPA. ³	Seriousness Definitions	Exceedance ⁴ is less than 200% of the legal limit or pH deviates from limit by less than 2 pH units.		Exceedance ⁴ is equal to or greater than 200% of the legal limit and less than 400%, or pH deviates from limit by 2 or less than 3 pH units		Exceedance ⁴ is equal to or greater than 400% of the legal limit or pH deviates from limit by 3 or more pH units	
	Penalty Factors and Values	<ul style="list-style-type: none"> 0-40% exceedance or pH deviates from limit by less than 2 pH units (Yes = 1) 41-80% exceedance (Yes = 2) 81-120% exceedance (Yes = 3) 121-160% exceedance (Yes = 4) 161% to <200% exceedance (Yes = 5) Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$1,000 1 pts = \$1,200 2 pts = \$1,400 3 pts = \$1,600 4 pts = \$1,800 5 pts = \$2,000 6 pts = \$2,200 7 pts = \$2,500	<ul style="list-style-type: none"> 200-240% exceedance or pH deviates from limit by 2 to less than 3 pH units (Yes = 1) 241-280% exceedance (Yes = 2) 281-320% exceedance (Yes = 3) 321-360% exceedance (Yes = 4) 361% to <400% exceedance (Yes = 5) Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$2,500 1 pts = \$2,850 2 pts = \$3,200 3 pts = \$3,550 4 pts = \$3,900 5 pts = \$4,250 6 pts = \$4,600 7 pts = \$5,000	<ul style="list-style-type: none"> 400-450% exceedance or pH deviates from limit by 3 or more pH units (Yes = 1) 451-500% exceedance (Yes = 2) 501-600% exceedance (Yes = 3) 601-700% exceedance (Yes = 4) 701% to 800% exceedance (Yes = 5) >800% (Yes = 6) Compliance history (-1,0,1,2)¹ 	<1 pt = \$5,000 1 pts = \$5,700 2 pts = \$6,400 3 pts = \$7,100 4 pts = \$7,800 5 pts = \$8,500 6 pts = \$9,200 7+ pts = \$10,000
Non-Discharge Legal Non-Compliance Non-compliance with legal requirements related to: <ul style="list-style-type: none"> Reporting and record keeping (excluding S.92 EPA & S.30(2) OWRA and orders) Constructing works (excluding non-compliance with orders) Conditions of operation (excluding non-compliance with orders) 	Seriousness Definitions	Contravention does not result in an adverse effect or interfere with the Ministry's capacity to protect and conserve the natural environment or have a potential to do either		Contravention interferes with the Ministry's capacity to protect and conserve the natural environment, or has the potential to do so, but does not result in an adverse effect and does not have the potential to do so		Contravention results in an adverse effect or has the potential to do so	
	Penalty Factors and Values	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$1,000 1 pts = \$1,750 2 pts = \$2,500	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$2,500 1 pts = \$3,750 2 pts = \$5,000	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$5,000 1 pts = \$7,500 2 pts = \$10,000

Violations excluded from Type 1:

- Limit exceedances of toxic substances listed in Table 5(EPA EP regulation), or Table 4(OWRA EP regulation), or Schedule 1(*Canadian Environmental Protection Act* (CEPA)). (Type 2)
- Failure of a lethality limit (Type 2)
- Failure to report under s. 92 EPA or s. 30(2) OWRA (Type 2)
- Non-compliance with an order (Type 2)
- Failure to comply with a settlement agreement (Type 2)
- Spills (s. 14 EPA or s. 30(1) OWRA) (Type 3)
- Failure to restore the natural environment (s. 93 EPA) (Type 3)

^{1,2,3,4}See Table Definitions and Notes (pg. 35)

TYPE 2 VIOLATIONS

Type of Violation		Less Serious		Serious		Very Serious	
<u>Limit Exceedance</u>	Seriousness Definitions	Exceedance ⁴ is less than 200% of the legal limit or pH deviates from limit by less than 2 pH units.		Exceedance ⁴ is equal to or greater than 200% of the legal limit and less than 400%, or pH deviates from limit by 2 or less than 3 pH units		Exceedance ⁴ is equal to or greater than 400% of the legal limit or pH deviates from limit by 3 or more pH units	
Limit exceedances of Toxic Substances that are on Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation), or Schedule 1 of CEPA. ³	Penalty Factors and Values	<ul style="list-style-type: none"> 0-40% exceedance (Yes = 1) 41-80% exceedance (Yes = 2) 81-120% exceedance (Yes = 3) 121-160% exceedance (Yes = 4) 161% to <200% exceedance (Yes = 5) Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$10,000 1 pts = \$10,700 2 pts = \$11,400 3 pts = \$12,100 4 pts = \$12,800 5 pts = \$13,500 6 pts = \$14,200 7 pts = \$15,000	<ul style="list-style-type: none"> 200-240% exceedance (Yes = 1) 241-280% exceedance (Yes = 2) 281-320% exceedance (Yes = 3) 321-360% exceedance (Yes = 4) 361% to <400% exceedance (Yes = 5) Compliance history (-1,0,1,2)¹ 	<1 pt = \$20,000 1 pts = \$21,425 2 pts = \$22,850 3 pts = \$24,275 4 pts = \$25,700 5 pts = \$27,125 6 pts = \$28,550 7 pts = \$30,000	<ul style="list-style-type: none"> 400-450% exceedance (Yes = 1) 451-500% exceedance (Yes = 2) 501-600% exceedance (Yes = 3) 601-700% exceedance (Yes = 4) 701% to 800% exceedance (Yes = 5) >800% (Yes = 6) Compliance history (-1,0,1,2)¹ 	<1 pt = \$40,000 1 pts = \$42,850 2 pts = \$45,700 3 pts = \$48,550 4 pts = \$51,400 5 pts = \$54,250 6 pts = \$57,100 7 pts = \$60,000
<u>Lethality Failure</u>	Seriousness Definitions	Sample fails a legally required lethality limit test (i.e., <i>Daphnia magna</i> or Rainbow trout)		N/A		N/A	
Failure of a lethality limit (i.e., <i>Daphnia magna</i> or Rainbow trout acute lethality limit)	Penalty Factors and Values	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$10,000 1 pts = \$12,500 2 pts = \$15,000	N/A		N/A	
<u>Non-Discharge Legal Non-Compliance</u>	Seriousness Definitions	Contravention does not result in an adverse effect or interfere with the Ministry's capacity to protect and conserve the natural environment or have a potential to do either		Contravention interferes with the Ministry's capacity to protect and conserve the natural environment, or has the potential to do so, but does not result in an adverse effect and does not have the potential to do so		Contravention results in an adverse effect or has the potential to do so	
Non-compliance with legal requirements related to: <ul style="list-style-type: none"> Reporting requirements under S.92 of the <i>EPA</i> or S.30(2) of the <i>OWRA</i> Non-compliance with an order 	Penalty Factors and Values	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$10,000 1 pts = \$12,500 2 pts = \$15,000	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$20,000 1 pts = \$25,000 2 pts = \$30,000	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ 	<1 pt = \$40,000 1 pt = \$50,000 2 pts = \$60,000
<u>Failure to Comply with a Settlement Agreement</u>	Seriousness Definitions	Regulated person took all the steps specified by the agreement to prevent, eliminate or reduce the discharge of a contaminant into the natural environment, but not within the time specified in the agreement		The regulated person took some of the steps specified by the agreement to prevent, eliminate or reduce the discharge of a contaminant into the natural environment		The regulated person failed to take any of the steps specified by the agreement to prevent, eliminate or reduce the discharge of a contaminant into the natural environment	
Failure to comply with a settlement agreement negotiated as part of the settlement for a previous environmental penalty	Penalty Factors and Values	<ul style="list-style-type: none"> Delay is between 10% and 25% of the duration of the project (Yes = 1) Delay is between 25% and 50% of the duration of the project (Yes = 2) Delay is greater than 50% of the duration of the project (Yes = 3) Compliance history (-1,0,1,2)¹ 	<1 pt = \$10,000 1 pts = \$11,675 2 pts = \$13,350 3+ pts = \$15,000	<ul style="list-style-type: none"> Between 50% and 75% of stated benefits realized (Yes = 1) Less than 50% of stated benefits realized (Yes = 2) Compliance history (-1,0,1,2) 	<1 pt = \$20,000 1 pts = \$23,250 2 pts = \$26,500 3+ pts = \$30,000	N/A	\$50,000

Violations excluded from Type 2:

- Limit exceedances of toxic substances not listed on Table 5(EPA EP regulation), or Table 4(OWRA EP regulation), or Schedule 1(*Canadian Environmental Protection Act* (CEPA)). (Type 1)
- Failure to report (other than s. 92 EPA or s. 30(2) OWRA) (Type 1)
- Condition of operation requirements or constructing works requirements (other than required by an order) (Type 1)
- Spills (s. 14 EPA or s. 30(1) OWRA) (Type 3)
- Failure to restore the natural environment (s. 93 EPA) (Type 3)

^{1,2,3,4} See Table Definitions and Notes (pg. 35)

TYPE 3 VIOLATIONS

Type of Violation		Less Serious		Serious		Very Serious	
Spills s. 14 EPA (Pollution Prohibition) or s. 30(1) OWRA (Impair the Quality of Water)	Seriousness Definitions	The discharge is a contravention of s. 14 of the EPA or s. 30(1) of the OWRA, and is not classified as “serious” or “very serious”.		The contaminant that was discharged contained a toxic substance listed in Table 5 (EPA EP regulation), or Table 4 (OWRA EP regulation), or Schedule 1(CEPA). The contravention caused or had the potential to 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. 		The contravention caused or had the potential to 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. 	
	Penalty Factors and Values	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Member of OEL (Yes = -1)² 	<1 pt = \$15,000 1 pts = \$20,000 2 pts = \$25,000	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Impacts are difficult to remediate (Yes =1) 	<1 pt = \$30,000 1 pts = \$36,500 2 pts = \$43,000 3 pts = \$50,000	<ul style="list-style-type: none"> Actual plant/animal mortality (Yes = 2) Actual human health impacts (Yes = 3) Impacts to animals are widespread (Yes = 2) Impacts difficult to remediate (Yes = 1) Compliance history (-1,0,1,2)¹ 	1 pt = \$60,000 1 pts = \$70,000 2 pts = \$80,000 3 pts= \$90,000 4+ pts = \$100,000
Failure to Restore the Natural Environment s. 93 EPA (Failure to Restore the Natural Environment)	Seriousness Definitions	The regulated 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.		The regulated 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.		The regulated 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.	
	Penalty Factors and Values	<ul style="list-style-type: none"> Delay initiation of restoration by more than 24 hours (Yes = 1) Compliance history (-1,0,1,2)¹ Contaminant in a Toxic Substances Table or Schedule (Yes = 1) 	<1 pt = \$15,000 1 pts = \$17,500 2 pts = \$20,000 3 pts = \$22,500 4 pts = \$25,000	<ul style="list-style-type: none"> Less than 50% of impacts restored (Yes = 1) Unrestored impacts are widespread (Yes = 1) Compliance history (-1,0,1,2)¹ Contaminant in Toxic Substances Table or Schedule (Yes = 1) 	<1 pt = \$30,000 1 pts = \$35,000 2 pts = \$40,000 3 pts = \$45,000 4+ pts = \$50,000	<ul style="list-style-type: none"> Compliance history (-1,0,1,2)¹ Contaminant in Toxic Substances Table or Schedule (Yes = 1) Unrestored impacts are widespread (Yes = 1) 	<1 pt = \$60,000 1 pts = \$70,000 2 pts = \$80,000 3 pts = \$90,000 4 pts = \$100,000

Violations excluded from Type 3:

- Limit exceedances of toxic substances not listed on Table 5(EPA EP regulation), or Table 4(OWRA EP regulation), or Schedule 1(*Canadian Environmental Protection Act* (CEPA)). (Type 1)
- Failure of a lethality limit (Type 1)
- Failure to report (other than s. 92 EPA or s. 30(2) OWRA) (Type 1)
- Condition of operation requirements or constructing works requirements (other than required by an order) (Type 1)
- Limit exceedances of toxic substances listed on Table 5(EPA EP regulation), or Table 4(OWRA EP regulation), or Schedule 1 (CEPA). (Type 2)
- Failure to report under s. 92 EPA or s. 30(2) OWRA (Type 2)
- Non-compliance with an order (Type 2)
- Failure to comply with a settlement agreement (Type 2)

^{1,2,3,4}See Table Definitions and Notes (pg. 35)

Appendix 4: Applying Modifiers

4.1 Modifiers for Discharge Violations (s. 14 EPA, s. 30(1) OWRA & Limit Exceedances)

Column 1 of Table A1 lists all the preventive measures that may be considered for spills as well as unlawful discharges from approved discharge points (i.e., limit exceedances). Column 2 of Table A1 specifies which of these measures should be considered based on the type of violation (i.e., spill or unlawful discharge from an approved discharge point). For each consideration that has a “yes” answer, the appropriate point value from the last 3 columns is assigned. Points are totalled and Table A2 is used, based on the violation type (i.e., spill or unlawful discharge from an approved discharge point), to determine the percentage reduction for the preventive measures taken by the responsible party.

TABLE A1					
PREVENTIVE MEASURES	EP REGULATIONS SECTIONS (UNDER EPA AND OWRA)	UNLAWFUL DISCHARGE FROM APPROVED DISCHARGE POINT	2 POINTS	1 POINT	0 POINTS
1. Risk Analysis					
a. The plant has conducted a documented risk assessment of the process/area where the incident occurred, where the risks were prioritized for future action to be taken.	16(1) 1 (EPA) 15(1)1 (OWRA)	Both		Yes	No
b. The plant has documentation that actions were taken to reduce the risks identified.	16(1) 2 (EPA) 15(1)2 (OWRA)	Both	Yes		No
2. Preventive Maintenance					
a. The plant has a preventive maintenance program specific to the process/area where the incident occurred.	16(1)3 (EPA) 15(1)3 (OWRA)	Both		Yes	No
b. The plant has documentation that preventive maintenance was performed as prescribed in the process/area where the incident occurred, as per industry and/or manufacturer recommended best practices (i.e., pressure testing of tanks, inspection of containment structures, pipe replacement, etc.)	16(1) 3 (EPA) 15(1)3 (OWRA)	Both	Yes		No
3. Containment Structures					

TABLE A1					
PREVENTIVE MEASURES	EP REGULATIONS SECTIONS (UNDER EPA AND OWRA)	UNLAWFUL DISCHARGE FROM APPROVED DISCHARGE POINT	2 POINTS	1 POINT	0 POINTS
a. Specific to the process/area where the incident occurred, the plant has permanent containment structures, as per industry best practices, that serve to prevent spilled contaminants from entering the natural environment.	16(1) 4 (EPA) 15(1)4 (OWRA)	Spills Only	Yes		No
4. Preventive Monitoring Systems					
a. Specific to the process/area where the incident occurred, the plant has a system that warns operators of a potential unlawful discharge, and has documented procedures on the appropriate response to prevent an unlawful discharge.	16(1) 5 (EPA) 15(1)5 (OWRA)	Both		Yes	No
b. Specific to the process/area where the incident occurred, once the operators were alerted of a potential unlawful discharge, the plant responded as per documented procedures to prevent the discharge from occurring.	16(1) 5 (EPA) 15(1)5 (OWRA)	Both	Yes		No
5. Process and Pollution Control					
a. Specific to the process/area where the incident occurred, the plant has the appropriate process control in operation, as per industry best practices, to prevent an unlawful discharge.	16(1) 6 (EPA) 15(1)6 (OWRA)	Unlawful discharge from approved discharge point only	Yes		No
b. Specific to the process/area where the incident occurred, the plant has pollution emission control equipment in operation, above and beyond legislated requirements, to prevent an unlawful discharge.	16(1) 6 (EPA) 15(1)6 (OWRA)	Unlawful discharge from approved discharge point only	Yes		No
6. Training					
a. Specific to the process/area where the incident occurred, the plant has documentation that it has trained personnel (including employees, contractors, and suppliers if applicable) on the prevention of unlawful discharges.	16(1) 7 (EPA) 15(1)7 (OWRA)	Both		Yes	No
7. Other Preventive Actions					
a. The plant has performed other actions, beyond those required by legislation that served to prevent the unlawful discharge (i.e., redundant systems, etc).	16(3) (EPA) 15(3) (OWRA)	Both	Yes		No

TABLE A2		
PREVENTIVE MEASURES PENALTY REDUCTION: DISCHARGE VIOLATIONS		
Modifier Score: Spills	Modifier Score: Unlawful Discharge from Approved Discharge Point	% Penalty Reduction
12 or more	14 or more	20%
10-11	11-13	16%
7-9	8-10	12%
4-6	5-7	8%
1-3	1-4	4%
0	0	0%

4.2 Modifiers for Spills, Including Unlawful Discharges from Approved Discharge Points (i.e., limit exceedances)

Column 1 of Table B1 lists all the mitigative measures that may be considered for spills as well as unlawful discharges from approved discharge points (i.e., limit exceedances). Column 2 of Table B1 specifies which of these measures should be considered based on the type of violation (i.e., spill or unlawful discharge from an approved discharge point).

For each consideration that has a “yes” answer, the appropriate point value from the last 3 columns is assigned.

Points are totalled and Table B2 is used to determine the percentage reduction for the mitigative measures taken by the regulated person.

TABLE B1					
MITIGATIVE MEASURES	EP REGULATIONS SECTIONS (UNDER EPA AND OWRA)	APPLICABILITY: SPILLS OR UNLAWFUL DISCHARGE FROM APPROVED DISCHARGE POINT	2 POINTS	1 POINT	0 POINTS
1. Implementation of a Spill Response Plan					
a. The plant has demonstrated that their spill response plan was implemented in regards to procedures and availability of prescribed resources (i.e., all prescribed equipment is available, procedures followed, etc.)	16 (2) 1 ii & iii (EPA) 15(2) 1 ii & iii (OWRA)	Both		Yes	No
2. Response					
a. Measures were in place that identified the problem/incident immediately (i.e., overflow alarms, etc.) (if yes, skip consideration 2b)	16(2) 1 i (EPA) 15(2) 1i (OWRA)	Both	Yes		No
b. Measures were in place that identified the problem/incident within 1-2 hours.	16(2) 1i (EPA) 15(2) 1i (OWRA)	Both		Yes	No
c. Once the incident was identified, mitigative measures were implemented swiftly and fully to rectify the problem as per industry best practices.	16(2) 2 (EPA) 15(2) 2 (OWRA)	Both	Yes		No
3. Pollutant Containment and Recovery					
a. Once the pollutant entered the natural environment (i.e., breached primary containment or process/pollution controls), the plant deployed the appropriate measures to contain the pollutant and prevent it from dispersing further into the natural environment.	16(2) 2 (EPA) 15(2) 2 (OWRA)	Both	Yes		No
b. The plant took all practicable measures to recover the pollutants released into the natural environment.	16(2) 2 (EPA) 15(2) 2 (OWRA)	Both	Yes		No
4. Training					
a. Specific to the process/area where the incident occurred, the plant has documentation that it has trained personnel (including employees, contractors, and suppliers if applicable) on the appropriate response to unlawful discharges.	16(2) 1 iv (EPA) 15(2) 1 iv (OWRA)	Both		Yes	No
5. Other Mitigative Actions					
a. The plant has performed other actions, beyond those required by legislation that served to mitigate the unlawful discharge.	16(3) (EPA) 15(3) (OWRA)	Both	Yes		No

TABLE B2	
MITIGATIVE MEASURES PENALTY REDUCTION: DISCHARGE VIOLATIONS	
Modifier Score	% Penalty Reduction
10 or more	10%
7-9	8%
5-6	6%
3-4	4%
1-2	2%
0	0%

4.3 Modifiers for s. 93 EPA Violations (Failure to Restore the Natural Environment)

Table C1 outlines the preventive and mitigative measures that may be considered when the violation is for s. 93 of the EPA (i.e., the responsible party fails to restore the natural environment). For each consideration that has a “yes” answer, the appropriate point value from the last 3 columns is assigned. Points are totalled and Table C2 is used to determine the % reduction for the preventive and mitigative measures taken by the responsible party.

TABLE C1				
PREVENTIVE AND MITIGATIVE MEASURES	EP REGULATION SECTIONS (UNDER EPA)	2 POINTS	1 POINT	0 POINTS
1. Implementation of a Spill Response Plan				
a. The plant has demonstrated that their spill response plan was implemented in regards to procedures and availability of prescribed resources (i.e., all prescribed equipment is available, procedures followed, etc.)	16(2) 1ii & iii		Yes	No
2. Response				
a. Measures were in place that identified the problem/incident immediately (i.e., overflow alarms, etc.) (if yes, skip consideration 2b)	16 (2) 1 i	Yes		No
b. Measures were in place that identified the problem/incident within 1-2 hours.	16 (2) 1 i		Yes	No
c. Once the incident was identified, mitigative measures were implemented swiftly (i.e., forthwith) in response, as per industry best practices.	16(2) 2	Yes		No
d. Once the incident was identified, mitigative measures were implemented fully (i.e., all practicable was done to restore the natural environment), as per industry best practices.	16(2) 2	Yes		No
3. Pollutant Containment and Recovery				
a. Once the pollutant entered the natural environment (i.e., breached primary containment or process/pollution controls), the plant deployed the appropriate measures to contain the pollutant and prevent it from dispersing further into the natural environment.	16(2) 2	Yes		No
b. The plant took all practicable measures to recover the pollutants released into the natural environment.	16(2) 2	Yes		No
4. Training				
a. Specific to the process/area where the incident occurred, the plant has documentation that it has trained personnel (including employees, contractors, and suppliers if applicable) on the appropriate response to unlawful discharges.	16(2) iv		Yes	No

TABLE C2	
PREVENTIVE AND MITIGATIVE MEASURES PENALTY REDUCTION: S. 93 EPA VIOLATIONS	
Modifier Score	% Penalty Reduction
11 or more	30%
7-10	24%
5-6	18%
3-4	12%
1-2	6%
0	0%

4.4 Modifiers for Non-Discharge Violations

Tables D1 and D2 outline the preventive and mitigative measures that may be considered for all other non-discharge violations (excluding s. 93 of the EPA). For each consideration that has a “yes” answer, the appropriate point value from the last 3 columns is assigned. Points are summed between Table D1 and D2, and the grand total is used to determine the percentage reduction, as indicated in Table D3, for the preventive and mitigative measures taken by the regulated person.

TABLE D1			
PREVENTIVE MEASURES	2 POINTS	1 POINT	0 POINTS
1. Reducing Probability of Occurrence			
a. Prior to the violation, the plant had implemented measures to reduce the probability of the violation occurring (i.e., policies, procedures, check lists, audits, etc.)	Yes		No

TABLE D2			
MITIGATIVE MEASURES	4 POINTS	2 POINTS	0 POINTS
1. Voluntary Disclosure			
a. The plant voluntarily disclosed the violation to the Ministry, where the plant did not have a duty/requirement under law to do so.		Yes	No
2. Response			
a. Once the violation was identified, measures were implemented by the plant to swiftly correct the violation.	Yes		No
b. The plant implemented measures to prevent future reoccurrence of the violation.		Yes	No

TABLE D3	
PENALTY REDUCTION: NON-DISCHARGE VIOLATIONS	
Score = Preventive Measures (D1) + Mitigative Measures (D2)	
Modifier Score	% Penalty Reduction
8 or more	30%
6	22.5%
4	15%
2	7.5%
0	0%

Appendix 5: Environmental Management Systems

This information is provided for guidance purposes only. It is the responsibility of the regulated person to ensure that its EMS meets the requirements set out in Schedule 1 (EPA EP Regulation) before it requests a reduction in the base EP penalty, as provided for under EP legislation and policy.

Summary of EMS Requirements of Schedule 1 (EPA EP Regulation)
Part I: Environmental policy
<p>The EMS must have a written environmental policy that contains key high level commitments to maintain and improve environmental performance specifically related to the plant's processes and practices and use of materials, products or energy. The environmental policy must place a priority on eliminating the causes of pollution, wherever possible (i.e. pollution prevention), rather than finding ways to better manage the pollution (e.g. waste) once created through, for example, end of pipe treatment. This differs from ISO 14001, which specifies a commitment to Prevention of Pollution, as opposed to Pollution Prevention. (See discussion on page 52).</p> <p>The policy must:</p> <ul style="list-style-type: none">• address continual improvement, pollution prevention and compliance with applicable legal and other requirements or obligations;• be communicated either orally or in writing to all employees and contractors (e.g. in orientation materials, training, or posting);• be available to the public upon request (e.g. in reception areas, on the website or providing copies on request).
Part II: Identifying Environmental Aspects of the Plant Operations, and Identifying Legal and Other Requirements
<p>The EMS must list all environmental aspects at the plant (these are referred to in the regulation as "processes, practices, materials, products or energy use"). The EMS must identify those aspects with potential to cause an adverse effect on the natural environment and then rank them according to the significance of the potential adverse effect. These must be kept up to date on an ongoing basis to account for changes in the plant's operations. This process is equivalent to the process identified in ISO 14001 for identifying aspects & significant aspects. Applicable environmental (municipal, provincial, federal) laws for these processes, practices, etc. must be identified, recorded and kept up to date. Also, any voluntary environmental commitments made (e.g. to the community, the Ministry or an industry association) must be identified and kept current.</p> <p>EMS must provide for the establishment, maintenance, and implementation of written procedures to evaluate compliance with environmental laws and maintenance of a written record of such evaluations.</p>
Part III: Setting Objectives and Targets
<p>The EMS must set environmental objectives and targets relevant to the environmental policy, and put in place measures that will meet those targets. Objectives are overall environmental goals, consistent with the environmental policy, such as "reduce organic loadings in wastewater," while targets are specific, measurable performance requirements that need to be</p>

Summary of EMS Requirements of Schedule 1 (EPA EP Regulation)
<p>set to meet the objectives, for example, "reduce BOD loading in wastewater by 10% by 2009." Setting of objectives and targets should take into account:</p> <ul style="list-style-type: none"> • the need to contribute to or achieve the commitments referred to in the environmental policy; • meeting any voluntary environmental commitment; • input received from the public; • the results of ranking processes, materials, practices etc, according the significance of their potential adverse affect. <p>For each objective, the EMS must set one or more targets, and for each target, measures should be established. Measures, collectively referred to as "programmes" in ISO 14001, are the steps taken to achieve the targets, for example, installing equipment, or implementing a leak detection and repair program.</p> <p>The commitment to pollution prevention that is required in the policy should influence the selection of measures to be implemented. In practice, this means that the plant should always consider pollution prevention as the first, preferred solution to meeting targets. Only if pollution prevention is not feasible, then the plant should consider other options in the environmental management hierarchy, namely re-use, recycling, treatment, disposal.</p> <p>The EMS must identify the persons responsible for implementing the various measures, the resources required and the implementation deadline. Responsible persons must provide progress reports to senior management on the implementation of the measures.</p>
Part IV: Structure, Responsibility and Resources for Implementation of the EMS
<p>The EMS must:</p> <ul style="list-style-type: none"> • outline how complaints and inquiries from the public will be managed (i.e. received and responded to); • require a written plan for ensuring that adequate financial and human resources are available for all aspects of developing, implementing and maintaining the EMS; • assign overarching responsibility for all aspects of the EMS to a specific employee position with a regular reporting schedule to senior management on the status of the EMS.
Part V: Operational Control and Monitoring
<p>Operational controls such as standard operating procedures, plans and work instructions on the processes, practices, materials, products or energy use with potential to cause an adverse effect must be identified and documented. These controls must ensure compliance with all applicable environmental laws and be consistent with, and help achieve, the environmental policy, including related objectives, targets and measures.</p> <p>The EMS must ensure that relevant processes, practices etc, are appropriately monitored, and that monitoring equipment is properly maintained. Progress towards meeting the plants objectives and targets must also be monitored</p>
Part VI: Emergency Preparedness and Response
<p>Emergency situations such as the spilling of a pollutant (including spills of hazardous materials, fires, explosions etc.) must be identified, and procedures for preventing and responding to all identified emergency situations must be established. These procedures must be periodically tested, where practical, and reviewed annually and after each incident. Records of tests, spill incidents, responses, etc. must be maintained and used to improve the plant's emergency preparedness and response procedures.</p>

Summary of EMS Requirements of Schedule 1 (EPA EP Regulation)
Part VII: Corrective and Preventive Action
There must be documented procedures for identifying, investigating, correcting and preventing any non-conformance with the EMS. When any non-conformance is identified, the corrective action should address the root cause of the non-conformance to prevent recurrence.
Part VIII: Training, Awareness and Competence
<p>The EMS must indicate how every employee and contractor will be made aware of their roles and responsibilities for matters relevant to their work, and where necessary receive training, including, but not limited to:</p> <ul style="list-style-type: none"> • the environmental policy • the potential adverse effects associated with processes, practices, materials, etc.; • environmental commitments, targets and objectives; • applicable environmental laws; • relevant emergency, corrective and preventive actions; • relevant EMS procedures; • how changes in the foregoing will be communicated.
Part IX: Documentation
The EMS must outline how approved procedures and records will be developed, distributed, maintained, updated and retained. Records are documents generated when the EMS is implemented, for example, maintenance and monitoring logs, lists of laws and regulations, work instructions, meeting minutes, organizational charts, spill reports etc.
Part X: Audits
<p>The EMS must be internally audited annually to determine if the EMS meets the requirements of Schedule 1 (EPA EP Regulation) and is being implemented and maintained appropriately, and to assess progress towards meeting objectives and targets. An external audit must also be performed for the same purpose every three years, by a competent person (not a plant employee or regular contractor of the plant). (Note: The term "regular contractor" refers to contractors who can impact the plant's operations or environmental performance, but is not intended to exclude a EMS auditor under contract to the plant from conducting the audit). This person must certify that the EMS meets all requirements of Schedule 1 as required.</p> <p>Note that external audits represent an additional requirement over and above those specified by ISO 14001, which only specifies internal audits (see discussion on page 53).</p>
Part XI: EMS Integration and Planning
The EMS should be integrated into routine business planning. The EMS must require that an assessment of potential adverse impacts that may result from a change to a process, practice, material, product or energy use at the plant be made prior to any decision to make the change, so that these new impacts can be properly managed through the EMS, and where necessary, changes made to the plant's objectives, targets and measures. This assessment must also identify any new legal requirements that apply to the proposed change so that measures can be put in place to ensure continuing compliance.

Summary of EMS Requirements of Schedule 1 (EPA EP Regulation)
Part XII: Review by Senior Management
<p>The EMS must be reviewed annually by senior management. This review must include:</p> <ul style="list-style-type: none"> • an assessment of the environmental policy contained in the EMS; • an assessment of progress toward all EMS objectives and targets; • identification of any changes that may affect the plant's ability to meet its environmental policy, including its objectives and targets; • a review of the audit findings, as applicable; • an assessment of the overall effectiveness of the EMS and, based on the audit findings and the assessment of EMS effectiveness, identification of improvements required to the EMS.

Comparison of Schedule 1 (EPA EP Regulation) EMS Requirements with ISO 14001:2004 and Responsible Care Requirements			
Proposed EMS Elements In Schedule 1		ISO 14001:2004 Elements	Responsible Care
Part I	Environmental Policy	ISO 14001:2004 Element 4.2	Ethic Statement
Part II	Identifying Environmental Aspects of the Plant, and Legal and Other Requirements	ISO 14001:2004 Element 4.3.1 & 4.3.2 & 4.5.2	Management System Guide No Environmental Compliance Audit*
Par III	Setting Objectives and Targets	ISO 14001 Element 4.3.3	Management System Guide
Part IV	Structure, Responsibility and Resources for Implementation of the EMS	ISO 14001:2004 Element 4.4.1 & 4.4.3 (part)	Management System Guide
Part V	Operational Control and Monitoring	ISO 14001:2004 Element 4.4.6 & 4.5.1	Best Practices
Part VI	Emergency Preparedness and Response	ISO 14001:2004 Element 4.4.7	Management System Guide
Part VII	Corrective and Preventive Action	ISO 14001:2004 Element 4.5.3	Management System Guide
Part VIII	Training, Awareness and Competence	ISO 14001:2004 Element 4.4.2 & 4.4.1 (part)	Codes and Practices
Part IX	Documentation	ISO 14001:2004 Element 4.4.4 & 4.4.5 & 4.5.4	Verification Process*
Part X	Audits	ISO 14001:2004 Element 4.5.5	Management System Guide
Part XI	EMS Integration and Planning	ISO 14001:2004 Element 4.3.1	Support Training*
Part XII	Review by Senior Management	ISO 14001:2004 Element 4.6	Management System Guide

* Indicates implied requirement

The table above lists the ISO 14001:2004 and Responsible Care elements that correspond to, in whole or in part, the Schedule 1 elements. Note that the requirement for periodic external audits goes beyond the requirements of ISO 14001:2004. In addition, the scope of “pollution prevention” as described in Schedule 1 (Part I- Environmental Policy) differs from the scope of “prevention of pollution” contained in ISO 14001:2004. Experience with EMS in various industries suggests that the pollution prevention approach is already widely utilized.

Pollution Prevention-Definition

Part I- Environmental Policy (Schedule 1) requires a commitment to pollution prevention, whereas ISO 14001:2004 requires a commitment to *prevention of pollution*. The ISO standard defines prevention of pollution as including recycling and control mechanisms. For the purposes of Schedule 1, pollution prevention is a process that regularly and systematically examines root causes of all wastes generated, and seeks to eliminate the causes of pollution rather than treating the symptoms. Pollution prevention is the preferred approach at the top of the environmental management

hierarchy, followed by re-use, recycling, control, treatment, disposal, with remediation and clean-up being the least preferred option.

“Pollution prevention” has been defined by the Canadian Council of Ministers of the Environment as follows:

The use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes, at the source.

(Source: Strategy to fulfil the CCME Commitment to Pollution Prevention, CCME, 1996)

The definition of pollution prevention influences the development of objectives, targets and measures in Part III of the EMS, since these must take into account the pollution prevention commitment required in Part I.

External Audits

The ISO 14001:2004 standard requires internal audits of the EMS, but does not specify that external audits be done. However, in order to register (certify) an EMS to the ISO 14001:2004 standard, an external audit is undertaken by a certified ISO registrar. The details of these external audits are dealt with under other guidelines under the ISO 14000 family of standards and guides.

The external audit specified by the regulation results in a certification that the EMS complies with the requirements of the regulation.