

Greenhouse Gas Industrial Reporting and Control Act

**GREENHOUSE GAS EMISSION ADMINISTRATIVE PENALTIES AND APPEALS
REGULATION**

Note: Check the Cumulative Regulation Bulletin 2015 and 2016
for any non-consolidated amendments to this regulation that may be in effect.

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Part 1 — Administrative Penalties

Definitions

- 1 In this regulation:

"Act" means the Greenhouse Gas Industrial Reporting and Control Act;

"environmental legislation" means the following enactments:

- (a) the Act and the regulations under the Act;
- (b) the Environmental Management Act and the regulations under that Act;
- (c) the Greenhouse Gas Reduction (Cap and Trade) Act and the regulations under that Act;
- (d) the Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act and the regulations under that Act;
- (e) the Oil and Gas Activities Act and the regulations under that Act.

Prescribed contraventions

- 2 (1) For the purposes of section 25 (1) [imposed administrative penalties in relation to other matters] of the Act, the following contraventions are prescribed:

- (a) a failure to submit an emission report, a verification statement or a supplementary report as required under section 3 [emission reports] of the Act;
- (b) in the circumstances referred to in section 24 (1) (a) or (b) [imposed administrative penalties: inaccurate report or failure to report] of the Act, if the director is satisfied on a balance of probabilities that the operator, for the purposes of that section, has a reasonable excuse, a failure to meet the operator's compliance obligation by the applicable date under section 6 (2) [compliance obligation] of the Act;
- (c) a failure to submit a compliance report, a verification statement or a supplementary report as required under section 7 [compliance reports] of the Act;
- (d) a failure to produce a record for examination by an inspector or provide an inspector with information as required under section 22 (5) [inspection and seizure powers] of the Act.

(2) The maximum monetary administrative penalty that may be imposed for each of the following contraventions is \$50 000:

(a) a failure to submit, as required under section 3 of the Act,

- (i) an emission report,
- (ii) a verification statement, or
- (iii) a supplementary report;

(b) a failure to submit, as required under section 7 of the Act,

- (i) a compliance report,
- (ii) a verification statement, or
- (iii) a supplementary report;

(c) a failure to, as required under section 22 (5) of the Act,

- (i) produce a record for examination by an inspector, or
- (ii) provide an inspector with information.

(3) The maximum number of compliance units, of the type specified by the director, that may be required to be made available for retirement for a contravention referred to in subsection (1) (b) is calculated in accordance with the following formula:

$$2 \times (\text{required compliance units} - \text{available compliance units})$$

where

required compliance units = the number of compliance units required to be retired for the regulated operation to meet the operator's compliance obligation for the compliance period;

available compliance units = the number of compliance units that were available in the operator's compliance account for the regulated operation to meet the operator's compliance obligation for the compliance period.

Notice of intent to impose administrative penalty

3 (1) The director must serve a person with a notice of intent to impose an administrative penalty before sending an administrative penalty notice to the person under section 24 (2) [imposed administrative penalties: inaccurate report or failure to report] or 25 (2) [imposed administrative penalties in relation to other matters] of the Act.

(2) A notice of intent to impose an administrative penalty must set out the following:

- (a) the name of the person served with the notice;
- (b) a summary description of the alleged non-compliance, including the provision of the Act the person is alleged to have contravened;
- (c) the person's right to be provided with an opportunity to be heard under section 4;
- (d) a preliminary assessment of the amount of monetary administrative penalties that may be imposed or number of compliance units that may be required to be made available for retirement for the specified contravention.

(3) A notice of intent to impose an administrative penalty must not be served more than 3 years after the later of

- (a) the date of the non-compliance to which it relates, and
- (b) if the director issues a certificate described in subsection (4), the date on which the director learned of that non-compliance.

(4) A certificate purporting to have been issued by the director certifying the date referred to in subsection (3) (b) is proof of that date.

Opportunity to be heard

4 (1) If a person who is served with notice under section 3 (1) requests in writing, within 30 days after the date of service of the notice, an opportunity to be heard, the director must provide the person with an opportunity to be heard.

(2) If a person requests an opportunity to be heard in accordance with subsection (1), the director, subject to subsection (3),

(a) must conduct a written, electronic or oral hearing, or any combination of them, as the director considers appropriate, and

(b) may

(i) determine the circumstances and place in which, and the process by which, the hearing is to be conducted, and

(ii) specify the form and content of materials to be provided for the hearing and when the materials must be provided.

(3) If a person fails to appear or provide materials to the director in accordance with subsection (2) (b), the director may proceed without further notice to serve the person with an administrative penalty notice under section 24 (2) [imposed administrative penalties: inaccurate report or failure to report] or 25 (2) [imposed administrative penalties in relation to other matters] of the Act.

(4) If, after providing an opportunity to be heard, the director is satisfied on a balance of probabilities that the operator has a reasonable excuse for the purposes of section 24 of the Act, the director must give the person written notice of that decision.

(5) If, after providing an opportunity to be heard, the director decides not to impose an administrative penalty under section 25 of the Act, the director must give the person written notice of that decision.

Calculating administrative penalties under sections 23 and 24 of Act

5 The number of compliance units, of the type specified by the director, required to be made available for retirement under section 23 [automatic administrative penalties: failure to meet compliance obligation] or 24 [imposed administrative penalties: inaccurate report or failure to report] of the Act is calculated in accordance with the following formula:

$$3 \times (\text{required compliance units} - \text{available compliance units})$$

where

required compliance units = the number of compliance units required to be retired for the regulated operation to meet the operator's compliance obligation for the compliance period;

available compliance units = the number of compliance units that were available in the operator's compliance account for the regulated operation to meet the operator's compliance obligation for the compliance period.

Determining amount of administrative penalty under section 25 of Act

6 In determining the amount of an administrative penalty under section 25 [imposed administrative penalties in relation to other matters] of the Act, the director must consider the following matters, if applicable:

(a) the history of compliance with the Act, the regulations under the Act and other environmental legislation of

(i) the person who contravened the prescribed provision,

(ii) if the person who contravened the prescribed provision is an individual, the corporation for which the individual is or was a director, officer or agent, and

(iii) if the person who contravened the prescribed provision is a corporation, an individual who is or was a director, officer or agent of the corporation;

(b) the real or potential adverse effects of the non-compliance;

(c) whether the non-compliance was deliberate;

(d) the person's efforts to prevent and correct the non-compliance;

(e) any economic benefit derived by the person from the non-compliance;

(f) whether the non-compliance was repeated or continuous;

(g) any other matter the director considers relevant.

Administrative penalty notice

7 In addition to the information required under sections 24 (2) [imposed administrative penalties: inaccurate report or failure to report] and 25 (2) [imposed administrative penalties in relation to other matters] of the Act, an administrative penalty notice must include all the following information:

- (a) the name of the person served with the notice;
- (b) the date by which the administrative penalty must be satisfied;
- (c) acceptable methods of paying a monetary administrative penalty;
- (d) the address to which a monetary administrative penalty must be sent;
- (e) the person's right to an appeal under Part 5 [Appeals to Environmental Appeal Board] of the Act;
- (f) the mailing address of the appeal board.

Continuing contraventions or failures

8 If a contravention under section 25 [imposed administrative penalties in relation to other matters] of the Act continues for more than one day, separate administrative penalties, each not exceeding the maximum administrative penalty for the contravention, may be imposed for each day the contravention continues.

Due date of administrative penalty

9 (1) In the case of an administrative penalty under section 23 [automatic administrative penalties: failure to meet compliance obligation], 24 [imposed administrative penalties: inaccurate report or failure to report] or 25 [imposed administrative penalties in relation to other matters] of the Act that is an obligation to make compliance units available for retirement, sufficient compliance units to satisfy the administrative penalty must be deposited into the operator's compliance account within 30 days after the date the operator is subject to the administrative penalty in accordance with section 23 (1) or 26 (1) [when administrative penalty is imposed and must be satisfied] of the Act, as applicable.

(2) In the case of an administrative penalty under section 25 of the Act that is a monetary amount, the administrative penalty must be paid to the government within 30 days after the date the person is subject to the administrative penalty in accordance with section 26 (1) of the Act.

Enforcement of administrative penalty

10 (1) If all or a portion of an administrative penalty that is a monetary amount is not paid when it is due, an additional penalty of up to 10% of the outstanding balance may be imposed for each 30-day period that the outstanding balance remains unpaid.

(2) If all or a portion of an administrative penalty that is an obligation to make compliance units available for retirement is not satisfied when it is due, an additional penalty of up to 10% of the outstanding balance may be imposed for each 30-day period that the outstanding balance remains unsatisfied.

Publication of names

11 (1) The minister may publish, including by electronic means, all the following information in respect of a person on whom an administrative penalty has been imposed under section 23 [automatic administrative penalties: failure to meet compliance obligation], 24 [imposed administrative penalties: inaccurate report or failure to report] or 25 [imposed administrative penalties in relation to other matters] of the Act:

- (a) the person's legal name;
- (b) the amount of the penalty;
- (c) the provision of the Act with which the person failed to comply;
- (d) the facts relating to the imposition of the penalty.

(2) Publication under subsection (1) in relation to an administrative penalty under section 24 or 25 of the Act may not occur until the person is subject to the administrative penalty in accordance with section 26 (1) [when administrative penalty is imposed and must be satisfied] of the Act.

Part 2 — Appeals

Appeals to Environmental Appeal Board

12 (1) Decisions made under the following sections of the Greenhouse Gas Emission Reporting Regulation are prescribed for the purposes of section 40 (1) (c) [what decisions may be appealed] of the Act:

- (a) section 16 (2) (a) or (3) (a) [choice between direct measurement and mass balanced-based methodology];
- (b) section 26 (3) (b) [verification bodies].

(2) Decisions made under the following sections of the Greenhouse Gas Emission Control Regulation are prescribed for the purposes of section 40 (1) (c) of the Act:

- (a) section 10 (1), (3) or (4) [suspension or cancellation of accounts];
 - (b) section 13 (4) (b) [validation bodies and verification bodies];
 - (c) section 17 (2) [acceptance of project plan];
 - (d) section 23 (2) [issuance of offset units].
- (3) After making a decision referred to in subsection (1) or (2), the director must serve notice of the decision in accordance with section 41 [notice and service under this Act] of the Act.
- (4) The following provisions of the Environmental Management Act apply in relation to appeals under the Act:
- (a) section 101 [time limit for commencing appeal];
 - (b) section 102 (2) [procedure on appeals];
 - (c) section 103 [powers of appeal board in deciding appeal].
- (5) For the purposes of subsection (4) (a) and (c), a reference to a decision in section 101 or 103 of the Environmental Management Act is to be read as a reference to a decision under section 40 (1) of the Act. [Provisions relevant to the enactment of this regulation: Greenhouse Gas Industrial Reporting and Control Act, S.B.C. 2014, c. 29, sections 46, 51 and 52]

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