

Offences and Administrative Penalties

ITS 26-010

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Administrative Penalties

What Are Administrative Penalties?

Administrative penalties are monetary penalties that may be imposed when a person or organization does not comply with The Technical Safety Act, the Technical Safety Regulation or an order. Administrative penalties are a separate enforcement tool than an offence.

Administrative penalties are intended to promote compliance with technical safety requirements and support public safety.

Note: An administrative penalty does not automatically become an offence. However, some conduct may be capable of being addressed through an administrative penalty, prosecution as an offence, or another enforcement response, depending on the circumstances.

If a person pays an administrative penalty for a contravention or failure to comply, they cannot be charged with an offence for that same contravention or failure to comply unless the contravention or failure continues after the penalty is paid

When Can an Administrative Penalty Be Issued?

Under the Technical Safety Regulation, an administrative penalty may be issued for the following contraventions:

- installing or altering regulated equipment without the required permit
- operating regulated equipment without the required permit
- using regulated equipment, or permitting its use, in contravention of an order
- performing regulated work without the required licence or authorization certificate
- performing regulated work outside the scope of a licence
- performing regulated work contrary to The Technical Safety Act or the Technical Safety Regulation
- employing a person to perform regulated work that requires a licence when the person does not hold the required licence or is not otherwise authorized
- advertising, displaying, selling, or leasing regulated equipment that is prohibited from being sold or leased
- proceeding with, covering up, closing up, or concealing regulated work before it has been inspected or authorized, where an inspection or authorization is required
- failing to report a dangerous incident or technical safety risk, when required
- failing to comply with the terms or conditions of a permit, licence, authorization certificate, or variance
- failing to comply with an inspector's order within the time specified in the order

How Much Is the Penalty?

The amount of an administrative penalty is:

- \$2,500 for a first contravention
- \$5,000 for a second or subsequent contravention

Each contravention may result in a separate administrative penalty.

What Happens If You Receive an Administrative Penalty?

If an administrative penalty is imposed, you will receive a Notice of Administrative Penalty.

The notice will identify:

- the provision of the Act or the order that was contravened or not complied with,
- the amount of the administrative penalty,
- when and how the penalty must be paid, and
- your right to request reconsideration

Unless you request reconsideration within 14 days, the administrative penalty must be paid within 30 days after you are given the notice.

Paying an administrative penalty does not remove any continuing obligation to comply with The Technical Safety Act, the Technical Safety Regulation, or an order.

Reconsideration

Within 14 days after you are given a Notice of Administrative Penalty, you may request that the Director of Technical Safety reconsider the decision.

To make a request, complete and submit ITS G Form 07-Request for Reconsideration or Review. Your request must identify one or more of the following grounds:

- the finding of contravention or non-compliance was incorrect
- the amount of the penalty was not determined in accordance with the Regulation
- the amount of the penalty is not justified in the public interest

If you submit a request for reconsideration within the 14-day period, the requirement to pay the administrative penalty is stayed, meaning payment is paused until you are given the Director's reconsideration decision.

Appeal

If a person is not satisfied with the reconsideration decision, they may appeal the decision to the Manitoba Court of King's Bench within 30 days after being given a copy of the reconsideration decision.

To file an appeal, the person must file a Notice of Appeal with the Court and provide a copy to the Director. The notice of appeal must identify one or more of the same grounds listed above.

The Court may confirm, vary or rescind the reconsideration decision.

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Offences

What is an Offence?

An offence under The Technical Safety Act occurs when a person or corporation:

- contravenes a provision of The Technical Safety Act or the Technical Safety Regulation
- contravenes or fails to comply with an order issued under The Technical Safety Act
- knowingly provides false or misleading information in an application, notice, or report required under The Technical Safety Act

Offences are prosecuted through the courts and may result in fines or imprisonment.

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Examples of Offences

Offences may include, but are not limited to:

- contravening The Technical Safety Act;
 - contravening a provision of The Technical Safety Regulation that is stated to be an offence, such as tampering with or removing a seal without authorization;
 - failing to comply with an order issued under The Technical Safety Act providing false or misleading information in an application, notice or report required under The Technical Safety Act;
 - continuing to use or operate regulated equipment that is unsafe or non-compliant
 - tampering with approval marks, seals, or inspection controls applied under The Technical Safety Act or the Technical Safety Regulation;
- continuing a contravention or failure to comply after an administrative penalty has been paid
If a contravention or failure to comply continues for more than one day, each day may be treated as a separate offence.

Penalties for Individuals

On summary conviction:

First offence:

- a fine of up to \$125,000 or imprisonment for up to six months, or both

Second or subsequent offence:

- a fine of up to \$250,000 or imprisonment for up to six months, or both

Penalties for Corporations

On summary conviction:

First offence:

- a fine of up to \$250,000

Second or subsequent offence:

- a fine of up to \$500,000

Liability of Corporate Officers and Directors

If a corporation commits an offence under The Technical Safety Act, any director or officer who authorized, permitted or acquiesced in the offence is also guilty of an offence, whether or not the corporation is prosecuted or convicted.

Obligation to Comply After Conviction

A conviction for failing to comply with an order issued under The Technical Safety Act does not relieve the person of the obligation to comply with that order.

In addition to imposing a fine, the court may order the person to take any action necessary to comply with the order within a specified time.

Questions?

Contact Inspection and Technical Services

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