



**Executive
Council**

Nova Scotia

*A certified copy of an Order in Council dated
September 23, 2014*

2014-405

The Governor in Council on the report and recommendation of the Minister of Labour and Advanced Education dated August 26, 2014, and pursuant to Section 82 of Chapter 7 of the Acts of 1996, the *Occupational Health and Safety Act*, is pleased, effective on and after October 1, 2014, to:

(a) repeal the *Occupational Health and Safety Administrative Penalties Regulations*, N.S. Reg. 291/2009, made by the Governor in Council by Order in Council 2009-406 dated September 29, 2009;

(b) repeal the *Occupational Health and Safety Appeal Panel Regulations*, N.S. Reg. 25/97, made by the Governor in Council by Order in Council 97-135 dated February 25, 1997;

(c) amend the *Workplace Health and Safety Regulations*, N.S. Reg. 52/2013, made by the Governor in Council by Order in Council 2013-65 dated March 12, 2013, to add provisions respecting appeals and administrative penalties in the manner set forth in Schedule "A" attached to and forming part of the Report and Recommendation; and

(d) amend the *Underground Mining Regulations*, N.S. Reg. 296/2008, made by the Governor in Council by Order in Council 2008-306 dated June 3, 2008, to reflect recent amendments to the Act respecting appeals in the manner set forth in Schedule "B" attached to and forming part of the Report and Recommendation.

Certified to be a true copy

A handwritten signature in cursive script, appearing to read "David Darrow", written over a dotted line.

**David Darrow
Clerk of the Executive Council**


David Darrow
Clerk of the Executive Council

Schedule "A"

Amendment to the *Workplace Health and Safety Regulations* made by the Governor in Council under Section 82 of Chapter 7 of the Acts of 1996, the *Occupational Health and Safety Act*

The *Workplace Health and Safety Regulations*, N.S. Reg. 52/2013, made by the Governor in Council by Order in Council 2013-65 dated March 12, 2013, are amended by striking out the placeholder headings for Parts 30 and 31 and adding the following Parts immediately after Part 29:

Part 30: Reviews and Appeals

Definition for Part 30

30.1 In this Part, "appeal" means an appeal of an order or decision filed under Section 69 of the Act or an appeal of an administrative penalty filed under Part 31: Administrative Penalties.

Application of Part 30

30.2 This Part applies with respect to all of the following:

- (a) all orders and decisions referred to in Sections 67 and 69 of the Act;
- (b) all administrative penalties imposed under Part 31: Administrative Penalties.

Time period for Director to review officer's order or decision

30.3 A review or alteration by the Director of an order or decision of an officer under Section 67 of the Act or of an administrative penalty under Section 31.8 may be carried out

- (a) for a matter that is not appealed, at any time within the 30 days after the date the order, decision or administrative penalty is served on the recipient;
- (b) for a matter that is appealed, no later than 10 days after the Director is notified by the Board under subsection 69(5) of the Act

or subsection 31.13(2), as the case may be, that a notice of appeal of the order, decision or administrative penalty has been filed.

Information required for notice of appeal

30.4 In addition to the information required by subsection 69(3) of the Act, a notice of appeal must be in writing and must include all of the following information about the person appealing:

- (a) name;
- (b) address;
- (c) telephone number.

Onus on appellant

30.5 In any appeal, the onus is on the appellant to establish, on a balance of probabilities, that the order, decision or administrative penalty should not be confirmed.

Technical irregularities and defects

- 30.6** (1) No proceedings before the Board are invalid by reason of any defect in form or any technical irregularity.
- (2) The Board must not revoke an order, decision or administrative penalty because of a defect in form or a technical irregularity, including a defect in the information provided as required by Section 31.4 in a notice of administrative penalty, unless the person appealing the order, decision or administrative penalty establishes on a balance of probabilities that they were prejudiced by the defect or technical irregularity and the Board cannot cure the prejudice through an extension of time or any other procedural ruling that the Board could make.

Record of decision

- 30.7** (1) For each appeal hearing it conducts, the Board must maintain a record of its decision-making process to submit to the court in the event of an application for review of a decision of the Board under subsection 70(2) of the Act.
- (2) A record of the Board's decision-making process must consist of all of the following:
- (a) the Board's decision;

- (b) all documents submitted to the Board with respect to the Board's decision; and
 - (c) all documents produced by the Board with respect to the Board's decision.
- (3) For greater certainty, notes made personally by any member of the Board in a hearing or in related preparations or deliberations are not part of the record of the Board's decision-making process for the purposes of this Section.

Part 31: Administrative Penalties

Definitions for Part 31

31.1 In this Part,

“administrative penalty” means an administrative penalty imposed under Section 31.2;

“former regulations” means the *Occupational Health and Safety Administrative Penalties Regulations*, N.S. Reg. 291/2009;

“presented for service”, in relation to either of the following documents, means given to an agent in order for the agent, on behalf of an officer, to serve the document on a person by a form of delivery set out in clause 40(2)(a) or (b) of the Act:

- (i) a notice of administrative penalty being served in accordance with subsection 31.3(1),
- (ii) a notice of an extension of the time period for service of a notice of administrative penalty being served in accordance with subsection 31.3(3);

“workplace inspection report” means a written report of a workplace inspection conducted by an officer.

Officer may impose administrative penalty

- 31.2 (1)** An officer may impose an administrative penalty on a person who has contravened a provision of the Act or a regulation made under the Act and has been issued an order with respect to the contravention.
- (2)** An administrative penalty is imposed on a person by serving the person or having the person served with a notice of administrative penalty.

Time period for serving notice of administrative penalty

- 31.3 (1)** Except as permitted in subsection (2), a notice of administrative penalty must be personally served by an officer or presented for service no later than 14 days after the date the written order is issued respecting the contravention for which the administrative penalty is being imposed.
- (2)** If the Director considers it necessary to extend the time period for imposing an administrative penalty on a person, the Director must notify the person that an administrative penalty is being considered and may be imposed at a later date.
- (3)** A notice of an extension under subsection (2) must be personally served by an officer or presented for service no later than 14 days after the date the written order is issued respecting the contravention for which the administrative penalty is being considered.

Content of notice of administrative penalty

- 31.4 (1)** A notice of administrative penalty must be in writing and must contain all of the following information:
- (a)** the name of the person on whom the administrative penalty is imposed;
 - (b)** the provision of the Act or the regulation made under the Act that was contravened;
 - (c)** the substance of the contravention;
 - (d)** the identifying number assigned to the order and workplace inspection report respecting the contravention;
 - (e)** the amount of the administrative penalty;
 - (f)** when and how the administrative penalty must be paid;
 - (g)** the process for filing an appeal of the administrative penalty.
- (2)** Further particulars that support the substance of a contravention as indicated in accordance with clause (1)(c) may be set out in either or both of
- (a)** an order respecting the contravention; or
 - (b)** a workplace inspection report respecting the contravention.

Amount of administrative penalty

31.5 (1) The amount of an administrative penalty is as set out in the following table:

Person On Whom Administrative Penalty Imposed	Administrative Penalty		
	1st	2nd	3rd or subsequent
employer, contractor, constructor, supplier, provider of occupational health or safety service, architect or professional engineer	\$500	\$1000	\$2000
employee who has supervision responsibilities, owner or self-employed person	\$250	\$500	\$1000
employee	\$100	\$200	\$500

- (2) Subject to subsection (3), in determining whether an administrative penalty for a contravention is a 2nd, 3rd or subsequent penalty for the purpose of subsection (1), only an administrative penalty that was imposed within the 3-year period immediately before the date of the contravention is counted as a previous administrative penalty.
- (3) The 3-year period referred to in subsection (2) must not include any period of time earlier than the date this Part comes into force.

Administrative penalty imposed for each day

31.6 An officer may impose an administrative penalty for each day a contravention continues.

Administrative penalty does not relieve person from duty to comply

31.7 The imposition of an administrative penalty does not relieve a person from their duty to comply with the order respecting the contravention for which the administrative penalty was imposed.

Director may review administrative penalty

31.8 (1) Subject to the time limit in Section 30.3, the Director may, on the Director's own motion, review an administrative penalty and do any of the following after consulting with the officer who imposed the administrative penalty:

- (a) amend the administrative penalty for any reason, including any of the following:
 - (i) to correct a defect in form or a technical irregularity,
 - (ii) to correct a reference to a provision of the Act or a regulation made under the Act;
 - (b) substitute an administrative penalty in a lesser amount as set out in the table in subsection 31.5(1), if the Director considers that an administrative penalty is warranted but disagrees as to whether the administrative penalty that was imposed is the 2nd, 3rd or subsequent penalty, as the case may be;
 - (c) revoke the administrative penalty.
- (2) On amending, substituting or revoking an administrative penalty, the Director must
- (a) serve notice of the amendment, substitution or revocation on the person to whom the administrative penalty was imposed; and
 - (b) if the Director has been notified by the Board as referred to in clause 30.3(b) that a notice of appeal of the administrative penalty has been filed, provide the Board with a copy of the notice served on the person under clause (a).

Paying administrative penalty

- 31.9** (1) Except as provided in subsection (2), a person who is served a notice of administrative penalty must pay the administrative penalty no later than 30 days after the date the notice is served.
- (2) An administrative penalty that is appealed is not required to be paid unless the Board decides that an administrative penalty must be paid, and in that case it must be paid no later than 30 days after the date of the Board's decision.

Failure to pay administrative penalty

- 31.10** If an administrative penalty is not paid by the applicable deadline in Section 31.9, the amount of the administrative penalty is a debt due to the Crown in right of Nova Scotia.

Person required to pay administrative penalty not charged with offence

31.11 A person who is required to pay an administrative penalty for a contravention must not be charged with an offence for the same contravention.

Collected penalty funds used for safety initiatives

31.12 All funds from penalties collected under this Part must be deposited into the Occupational Health and Safety Public Education Trust Fund and used for the purpose of occupational health and safety initiatives, including public education.

Appealing administrative penalty

31.13 (1) A person on whom an administrative penalty is imposed may appeal the administrative penalty by filing a notice of appeal with the Board no later than 30 days after the date the person is served with the notice of administrative penalty.

(2) The Board must notify the Director in writing that a notice of appeal has been filed within a reasonable time after receiving the notice and before beginning the appeal hearing.

Extension for filing appeal of order when administrative penalty imposed

31.14 (1) If a person is served with a notice of administrative penalty, the time period set out in subsection 69(2A) of the Act for filing a notice of appeal of the order respecting the contravention for which the administrative penalty is imposed is extended to no later than 30 days after the date the person is served with the notice of administrative penalty.

(2) The extension under subsection (1) for filing a notice of appeal of an order also applies if the administrative penalty is imposed after a time extension by the Director under subsection 31.3(2), unless the order has already been appealed and a decision has been rendered by the Board.

Appealing administrative penalty after amendment or substitution by Director

31.15 (1) If an administrative penalty is appealed to the Board and the Director subsequently amends or substitutes an administrative penalty, the appeal will proceed as an appeal of the Director's decision.

(2) The appellant in an appeal described in subsection (1) may amend their notice of appeal if permitted to do so by the Board, and any amended notice of appeal must be submitted in the form and manner required by the Board.

(3) If an administrative penalty has not been appealed and the Director amends or substitutes an administrative penalty, the person on whom the amended or substituted penalty is imposed may appeal the administrative

penalty as amended or substituted by the Director by filing a notice of appeal with the Board no later than 30 days after the date the person is served with notice of the amended or substituted administrative penalty.

- (4) Subsection 31.13(2) and Sections 31.16 to 31.21 apply with the necessary changes in detail to an appeal under subsection (3) of an administrative penalty that has been amended or substituted by the Director.

Notice of appeal of administrative penalty

31.16 A notice of appeal of an administrative penalty must be in writing and must include or be accompanied by all of the following:

- (a) the same information as required by Section 30.4 for a notice of appeal under Part 30;
- (b) a copy of the notice of administrative penalty that is being appealed;
- (c) the grounds of the appeal;
- (d) the relief requested.

Board must conduct hearing

31.17 (1) The Board must conduct a hearing of an appeal of an administrative penalty, either orally or through written submissions.

- (2) The Director is a party to any appeal heard under this Part.

Power of Board on appeal

31.18 The Board must do 1 of the following on an appeal of an administrative penalty:

- (a) confirm the administrative penalty;
- (b) revoke the administrative penalty;
- (c) substitute an administrative penalty in a lesser amount as set out in the table in subsection 31.5(1), if the Board considers that an administrative penalty is warranted but disagrees as to whether the administrative penalty that was imposed is the 2nd, 3rd or subsequent penalty, as the case may be.

Administrative penalty appeal must be heard with appeal of order

31.19 If a person appeals both an order and an administrative penalty respecting the contravention for which the order was issued, the Board must hear the appeals

together, but must render separate decisions for the order and the administrative penalty.

Board must provide copy of decision

31.20 The Board must provide a copy of its decision in an appeal of an administrative penalty to the person who appealed the administrative penalty and to the Director.

Application of Part 30: Appeals to appeal of administrative penalty

31.21 Part 30: Appeals applies to an appeal of an administrative penalty under this Part.

Transition for administrative penalty appeals

31.22 An appeal of an administrative penalty must be heard and determined in accordance with the former regulations in either of the following circumstances:

- (a) the appeal was initiated under the former regulations before this Part came into force and the appeal was not completed before this Part came into force;
- (b) the appeal is initiated under the former regulations after the coming into force of this Part.

Approved by Order in Council
2014-405 dated
September 23, 2014


David Darrow
Clerk of the Executive Council

Schedule "B"

**Amendment to the *Underground Mining Regulations*
made by the Governor in Council under Section 82
of Chapter 7 of the Acts of 1996,
the *Occupational Health and Safety Act***

The *Underground Mining Regulations*, N.S. Reg. 296/2008, made by the Governor in Council by Order in Council 2008-306 dated June 3, 2008, are amended by repealing Section 29 and substituting the following Section:

- 29 (1) In this Section, "appeal" means file an appeal with the Board under Section 69 of the Act.
- (2) In addition to any order or decision referred to in clauses 69(1)(a) to (d) of the Act, an aggrieved person at a subsea coal mine may appeal a decision of the Director to issue or not issue an approval under Section 35.