



NOTICE OF VIOLATION (NOV)
Canada–Newfoundland and Labrador Offshore Petroleum Board
Administrative Monetary Penalties Regulations

REFERENCE NUMBER: AMP-001-2022

1. INFORMATION FOR OPERATOR / OTHER PERSON / INDIVIDUAL

Name of Operator/Other Person/Individual: Equinor Canada Ltd.	TOTAL PENALTY AMOUNT (\$): \$16,000		
Contact name and title for Operator/Other Person: Mr. Torstein Hole Country Manager	Date of Notice: April 13, 2022		
<p style="text-align: center;">Operator/Other Person/Individual address:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>Business Office: Equinor Canada Ltd. 2 Steers Cove St. John's, NL A1C 6J5</p> </td> <td style="width: 50%; vertical-align: top;"> <p>Registered Office in NL: c/o McInnes Cooper 5th Floor, 10 Fort William Place P.O. Box 5939 St. John's NL, Canada A1C 5X4</p> </td> </tr> </table>	<p>Business Office: Equinor Canada Ltd. 2 Steers Cove St. John's, NL A1C 6J5</p>	<p>Registered Office in NL: c/o McInnes Cooper 5th Floor, 10 Fort William Place P.O. Box 5939 St. John's NL, Canada A1C 5X4</p>	<p>Regulatory Instrument # (if applicable) Authorization No. 25020-020-OA04</p>
<p>Business Office: Equinor Canada Ltd. 2 Steers Cove St. John's, NL A1C 6J5</p>	<p>Registered Office in NL: c/o McInnes Cooper 5th Floor, 10 Fort William Place P.O. Box 5939 St. John's NL, Canada A1C 5X4</p>		

During the period from April 24, 2020 to July 7, 2020, Equinor Canada Ltd. (Equinor) failed to comply with appended Condition 20 of Operations Authorization (OA) No. 25020-020-OA04 in relation to the work/activity at or near the Cappahayden K-67 well within the boundary of Exploration Licence (EL) 1156. This failure to comply with a condition of authorization constitutes a violation for which an AMP may be issued pursuant to subsection 2(3) of the *Canada–Newfoundland and Labrador Offshore Petroleum Administrative Monetary Penalties Regulations, SOR/2016-19* (the “AMPs Regulations”). Under subsection 3(2) of the AMPs Regulations, the contravention of OA terms or conditions is a Type B violation.

2. VIOLATION DETAILS

Date of Violation: April 24, 2020 to July 7, 2020	# Days of Violation 1
<p>Has compliance been achieved? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>(If “No” a subsequent NOV may be issued)</i></p>	
<p>Location of Violation <i>(e.g. facility/installation/vessel/head office or nearest geographical point)</i> Mobile Offshore Drilling Unit (MODU) <i>Transocean Barents</i> at or near the Cappahayden K-67 well within the boundary of EL 1156, a place within the Canada-Newfoundland and Labrador Offshore Area.</p>	



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Short Form Description of Violation (Refer to AMP Regulations, Schedule 1):

The violation was a breach of appended Condition 20 of Operations Authorization No. 25020-020-OA04 in relation to the work/activity at or near the Cappahayden K-67 well within the boundary of EL 1156. Appended Condition 20 states:

- *“The conditions in the Decision Statement issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to Equinor Canada Ltd, for the Flemish Pass Exploration Drilling Project, dated April 17, 2019 are deemed to be requirements of this Authorization and the Operator shall conduct activities pursuant to the Application for which this Authorization applies in a manner that is in compliance with the conditions”.*

Condition 4.3.1 of the *“Decision Statement - Issued under Section 54 of the Canadian Environmental Assessment Act, 2012”* (the Decision Statement) issued to Equinor Canada Ltd for The Flemish Pass Exploration Drilling Project states, *“monitor daily for the presence of marine birds from the drilling installation using a trained observer following Environment and Climate Change Canada’s Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms;”* (Standardized Protocol).

Condition 4.3.2 of the Decision Statement states, *“monitor the drilling installation and supply vessels daily for the presence of stranded birds and follow Environment and Climate Change Canada's Procedures for Handling and Documenting Stranded Birds Encountered on Infrastructure Offshore Atlantic Canada”.*

Failure to execute such measures as outlined in Condition 4.3.1 of the Decision Statement, namely the failure to conduct hourly monitoring in accordance with the Standardized Protocol, and Condition 4.3.2 of the Decision Statement, namely the failure to monitor daily for the presence of stranded birds, constitute non-compliance with appended Condition 20 of Operations Authorization No. 25020-020-OA04.

This constitutes a Type B violation pursuant to subsection 3(2) of the AMPs Regulations.



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3. RELEVANT FACTS *(Briefly describe reasonable grounds to believe a violation has occurred)*

On April 7, 2020, the C-NLOPB issued Operations Authorization No. 25020-020-OA04 to Equinor (**Tabs 1 and 2**), which authorized, among other things, the conduct of exploratory drilling at or near the Cappahayden K-67 well within the boundary of EL 1156. Drilling occurred at this location from April 24, 2020 to July 7, 2020.

Operations Authorization No. 25020-020-OA04 contains the following appended Condition 20:

“The conditions in the Decision Statement issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to Equinor Canada Ltd, for the Flemish Pass Exploration Drilling Project, dated April 17, 2019 are deemed to be requirements of this Authorization and the Operator shall conduct activities pursuant to the Application for which this Authorization applies in a manner that is in compliance with the conditions;”

Condition 4.3 of the Decision Statement states:

“The Proponent shall develop, prior to the start of the drilling program and in consultation with Environment and Climate Change Canada and the Board, follow-up requirements, pursuant to condition 2.4 to verify the accuracy of the environmental assessment as it pertains to migratory birds and to determine the effectiveness of the mitigation measures implemented by the Proponent to avoid harm to migratory birds, their eggs and nests, including the mitigation measures used to comply with conditions 4.1 and 4.2. The Proponent shall implement these follow-up requirements for the duration of the drilling program. As part of the follow-up, the Proponent shall:

4.3.1 monitor daily for the presence of marine birds from the drilling installation using a trained observer following Environment and Climate Change Canada’s Eastern Canada Seabirds at Sea Standardized Protocol for Pelagic Seabird Surveys from Moving and Stationary Platforms; and

4.3.2 monitor the drilling installation and supply vessels daily for the presence of stranded birds and follow Environment and Climate Change Canada’s Procedures for Handling and Documenting Stranded Birds Encountered on Infrastructure Offshore Atlantic Canada” (Tab 3).

As part of meeting Condition 4.3 of the Decision Statement, Equinor prepared and submitted to the C-NLOPB a document titled *“Seabird Survey, Handling, and Observation Protocol”* (Equinor’s Protocol) (**Tab 4**). This document was accepted by the C-NLOPB on April 2, 2020 (**Tab 5**). As per section 3.6 on page 9 of Equinor’s Protocol, Equinor committed to do the following: “As per the guidelines provided seabird surveys and observations will be conducted on an hourly basis in the same location on the platform.” This frequency (hourly) is also a requirement of the Standardized Protocol which states “The same area is surveyed once every hour during the day, regardless if birds are present or not” (**Tab 6**).



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Furthermore, as per section 5.1 on page 11 of Equinor’s Protocol, Equinor committed to do the following: “Systematic searches of stranded birds: The trained seabird observer is also responsible for conducting daily systematic searches of birds on the platform and associated vessels.”

On August 29, 2021, I received a Recommendation for a Notice of Violation (NOV) from C-NLOPB Conservation Officer, Ken Taylor **(Tab 7)**. Upon reviewing the Recommendation for NOV, I learned the following:

On January 15, 2021, a document was submitted by Equinor to the C-NLOPB titled “Seabird Data Summary Cappahayden K-67 April 24, 2020 to July 07, 2020” **(Tab 8)**. This post-drilling follow-up report is a requirement under the OA.

The following response was sent to Equinor from the C-NLOPB on January 29, 2021 **(Tab 9)**:

“Section 1: Equinor states “Information provided in this report spans from April 24-April 29, after which time daily searches were not recorded until after the Transocean Barents had moved onto the next wellsite’. This statement implies that data was not collected from April 30 – July 7th until the Transocean Barents moved to the Cambriol wellsite. Please confirm if this is the case, as the total number of observations (255) reported in Table 1 would indicate that surveys were conducted outside the April 24-April 29th window. Additionally, it is stated in Section 4.1 that observations were done from ‘April 24, 2020 to July 7, 2020’. For the dates where surveys were not conducted, please indicate the type of survey missing (live bird observations, stranded bird searches or both).”

In an email response dated February 11, 2021 **(Tab 10)**, Equinor stated the following regarding their Seabird Observation Contractor:

“...offshore personnel completed live seabird observations (three observations) daily from April 24th – July 7th. However, they did not complete stranded seabird searches onboard the facility during this timeframe. The Manager of Operations’ responsibility is to incorporate client requests into the appropriate documentation (i.e. contracts, quality plans, or work instructions). Once the client made the current manager aware of the discrepancy, they incorporated the request into all appropriate documentation and communicated the procedural change”.

The following response was also sent to Equinor from the C-NLOPB on January 29, 2021 **(Tab 9)**:

“Within each of the reports, it is stated that live seabird surveys were conducted at regular intervals from the platform for a total of three observations daily. However, within the accepted ‘Seabird Survey, Handling, and Observation Protocol’, it is stated that observations would be done on an hourly basis. Please provide rationale on the discrepancy.”



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In the same email dated February 11, 2021, Equinor responded back to the C-NLOPB (**Tab 10**). In referring to their Seabird Observation Contractor, Equinor stated:

“...management did not follow their own internal procedures to communicate client requested frequency to required personnel. Offshore personnel completed three observations daily...”

Equinor also stated with respect to the Seabird Observation Contractor’s Manager of Operations:

“The Manager of Operations’ responsibility is to incorporate client requests into the appropriate documentation (i.e. contracts, quality plans, or work instructions). At the time of the client request, the Manager of Operations did not communicate the change in frequency during offshore personnel offshore deployment briefings. There was also no communication with onshore staff to ensure the frequency of observations were to the client’s standard.”

In addition, on October 4, 2021, I sent an email to Equinor requesting clarification on relevant facts to this violation (**Tab 11**). In an email response by Equinor on November 4, 2021, which included several attachments (**Tabs 12-22**), Equinor confirmed that the information contained in the February 11, 2021 email to the C-NLOPB remained valid. These statements by Equinor were also verified by their Seabird Observation Contractor (**Tab 23**).

As a result of my review of the information contained in Tabs 1-23, I have reasonable grounds to believe that while drilling Cappahayden K-67 within the boundary of EL 1156 from April 24 to July 7, 2020, Equinor failed to comply with certain requirements of the Decision Statement, therefore violating appended Condition 20 of OA 25020-020-OA04, namely the failure to conduct live seabird observations on an hourly basis and the failure to monitor daily for the presence of stranded birds.

In determining total gravity value, I took the following into consideration:

- Equinor has been cooperative in the review process and provided information as required; and
- Equinor has taken reasonable steps to prevent reoccurrence of this violation. Equinor has committed to *“updating training and working with our contractors to understand our expectations on these matters. Additional support include procedural updates, increased internal communication of the mitigation and requirements for future operations, attending meetings conducted by CWS on updates to migratory bird protocols”* (**Tab 12**). This was also confirmed in an email from Equinor to the C-NLOPB dated Dec. 3, 2021 (**Tab 24**).



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4. PENALTY CALCULATION (Refer to AMP Regulations, Schedule 2)

a) Baseline Penalty (Total Gravity Value = 0)

Category:	Type A	Individual	Other Person
		<input type="checkbox"/> \$1,365	<input type="checkbox"/> \$5,025
	Type B	<input type="checkbox"/> \$10,000	<input checked="" type="checkbox"/> \$40,000

(b) Determination of Total Gravity Value

	Gravity Value						
	n/a	Mitigating			Aggravating		
		-2	-1	0	+1	+2	+3
1 - Other violations in previous seven (7) years? None identified.	<input type="checkbox"/>	-	-	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
2 - Any competitive or economic benefit from violation? None identified.	<input type="checkbox"/>	-	-	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
3 - Reasonable efforts to mitigate violation's effect? For stranded bird searches, Equinor continued searches once they realized the error.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
4 - Negligence by person who committed violation? None identified.	<input type="checkbox"/>	-	-	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
5 - Reasonable assistance to Board regarding violation? Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
6 - Promptly reported violation to Board? Equinor reported the incident to the C-NLOPB at the conclusion of the program.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
7 - Steps taken to prevent reoccurrence of violation? Yes	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
8 - Was primarily a reporting / record-keeping failure? No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-	-	-
9 - Increased risk of harm to people or environment? There was no evidence of increased risk of harm to the environment.	<input type="checkbox"/>	-	-	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Total Gravity Value:

c) Total Gravity Value:

(Total of gravity values determined in 4(b))



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d) Daily Penalty

(The baseline penalty per 4(a) adjusted by total gravity value per 4(c). Refer to Administrative Monetary Penalties Regulations, Schedule 2)

\$16,000

e) Number of Days of Violation

(Refer to section 2 of form. If more than one day, provide justification below)

1

Notes to explain decision to apply (or not apply) multiple daily penalties (if applicable):

f) Total Penalty Amount

(Step 4(d) x Step 4(e))

\$16,000

5. DUE DATE (within 30 days after the NOV was served)

If you have any questions regarding this matter, please contact the undersigned.

Original Signed by:

John Hutchings

Notes:

You have the right to make a request for a review of the amount of the penalty or the facts of the violation, or both, within 30 days after the NOV was served.

If you do not pay the penalty nor request a review within the prescribed period, you are considered to have committed the violation and you are liable for the penalty set out in the NOV. The penalty is due on the date indicated above.

The unpaid penalty amount is a debt due to the Her Majesty in right of the Province and may be recovered in the Supreme Court of Newfoundland and Labrador.



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AMPs Published on the C-NLOPB's Website:

In the interest of public transparency respecting the issuance of AMPs, information relating to the NOV may be posted on the C-NLOPB's website as soon as the NOV has been served (may include the name of the company who committed the violation, the issue date, the region and facility, the nature of the violation, and the amount of the penalty).

The C-NLOPB has the discretionary authority to post the complete NOV following the expiry of the 30 day period during which you may make a Request for Review, or upon issuing a decision following a Request for Review.

To Make Payment:

You may remit your fee payment by Cheque, Money Order, Bank Draft, or Electronic Funds Transfer (EFT). **Fees must be made payable to the Receiver General of Canada.**

Payment instructions are included in the attached Payment Form. Questions regarding payments or the Payment Form should be directed to the C-NLOPB's Corporate Services Department.

For Cheque, Money Order or Bank Draft payments, your completed Payment Form should be enclosed with your payment and mailed to:

Canada-Newfoundland and Labrador Offshore Petroleum Board: Finance
240 Waterford Bridge Road
The Tower Corporate Campus – West Campus Hall
Suite 7100
St. John's NL
A1E 1E2

For EFT payments, your completed Payment Form and notification of payment should be emailed to the C-NLOPB's Corporate Services Department: pbutler@cnlopb.ca or cfinlay@cnlopb.ca.

To Request a Review:

Pursuant to section 202.2 of the *Accord Act*, you may file a Request for Review of this Notice of Violation by the Board.

The date of filing a Request for Review is the date on which the document is received in the C-NLOPB Information Account (information@cnlopb.ca).

If you elect to make a Request for Review, complete and submit the attached Request for Review form to information@cnlopb.ca.

For more information on reviews, please see the *Administrative Monetary Penalties Guidelines* available on the C-NLOPB's website.



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Request for Review of Administrative Monetary Penalty (AMP)

SECTION A – AMP NUMBER

AMP Number:

The information collected herein is protected in the provisions of the Privacy Act, and will be used and disclosed only as part of the process to request review of an administrative monetary penalty.

SECTION B – APPLICANT INFORMATION

Name of Company/Individual:

Contact Person:

Address:

Street:

City:

Province:

Postal Code:

Mailing Address (if different from above):

Street:

City:

Province:

Postal Code:

Contact Details:

Phone Number:

Facsimile:

Email Address:

SECTION C – REQUEST DETAILS

C.1 Identify Review Type

If you received a *Notice of Violation*, you have the right to request a review in accordance with section 202.2 of the *Accord Act*. Please check the appropriate box, to identify what kind of review you are requesting, and then provide the corresponding information as instructed in Section C.2, C.3 or C.4, as applicable.

(Mark only ONE of the following boxes)

Review of Penalty Amount

Review of Facts of Violation

Review of Both



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C.2 Review of Penalty Amount

Provide detailed reasons why the C-NLOPB should determine that the amount of the penalty was not determined in accordance with the regulations (*if more space is needed, please attach information to the back of this form*):

C.3 Review of facts of Violation

Provide detailed reasons why the C-NLOPB should determine that you did not commit the violation (*if more space is needed, please attach information to the back of this form*):

C.4 Review of Both Penalty Amount and Facts of Violation

Provide detailed reasons why the C-NLOPB should determine that the amount of the penalty was not determined in accordance with the regulations and that you did not commit the violation (*if more space is needed, please attach information to the back of this form*):

SECTION D – PREFERRED MODE OF REVIEW



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Indicate the manner in which you prefer the review be carried out.
(Mark only ONE of the following boxes)

- Written submission only
- Written submission and verbal presentation

Note: This form is intended to enable a person served with a Notice of Violation to request a review of either the administrative monetary penalty amount set out in said Notice, or the facts of the violation, or both, within 30 days after the day on which the Notice of Violation is served. Instructions for submission are provided at the end of this form.

The C-NLOPB will provide review timelines upon receipt of a Request for Review.

If the Request for Review is received by the C-NLOPB after the due date, the requestor will be notified that the request opportunity has passed, and that the administrative monetary penalty is to be paid by the original due date.

Detailed information on the administrative monetary penalties (AMPs) process is available in the **Administrative Monetary Penalty Guidelines** found on the C-NLOPB's website.

INSTRUCTIONS for Submitting Request

The completed request for review can be submitted electronically to information@cnlopb.ca.



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Administrative Monetary Penalty (AMP)

PAYMENT FORM

REFERENCE NUMBER:

Name of Operator/Other Person/Individual:	Regulatory Instrument #
Contact name and title for Operator/Other Person:	TOTAL PENALTY AMOUNT (\$):
Operator/Other Person/Individual address:	Date of Notice: Payment Due Date:

FOR PAYMENT NOTIFICATION	
<input type="checkbox"/> Payment Remitted (Follow payment instructions below)	
Method of Payment	
<input type="checkbox"/> Cheque, Money Order or Bank Draft (attached to this Payment Form)	
<input type="checkbox"/> Electronic Funds Transfer (EFT). Date of EFT: _____	
Contact Information for Payment (if different from above): Name, address, and telephone and fax numbers	

Questions regarding this form should be directed to the C-NLOPB's Corporate Services Department, pbutler@cnlopb.ca or cfinlay@cnlopb.ca.

PAYMENT INSTRUCTIONS:

A. For payments made by cheque, money order or bank draft

1. Attach a copy of this form and quote the reference number with your payment.
2. Payments must be made payable to the Receiver General of Canada.
3. Payments must be denominated in Canadian dollars.

Remittances must be sent to:



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Canada-Newfoundland and Labrador Offshore Petroleum Board
240 Waterford Bridge Road
The Tower Corporate Campus – West Campus Hall
Suite 7100
St. John’s NL
A1E 1E2

B. For remittances made using Electronic Funds Transfer (EFT)

For EFT payments, your completed Payment Form and notification of payment should be emailed to the C-NLOPB’s Corporate Services Department: pbutler@cnlopb.ca or cfinlay@cnlopb.ca.

NOTES:

1. Remittances in currencies other than Canadian dollars or sent to other government agencies other than the Receiver General of Canada will be deemed **not to have been received** by the Canada-Newfoundland and Labrador Offshore Petroleum Board.
2. If payments are not received in accordance with the terms of the Notice of Violation, penalties will be recovered in accordance with the *Accord Act*.
3. Overdue accounts will be charged interest at the rate of 1.5% per month compounded monthly.

To obtain additional information about and view the *C-NLOPB Administrative Monetary Penalties Regulations*, please go to:

<https://www.cnlopb.ca/legislation/regulations/>