



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

REFERENCE NUMBER: AMP-002-2021

1. INFORMATION FOR OPERATOR / OTHER PERSON / INDIVIDUAL

Name of Operator/Other Person/Individual: ExxonMobil Canada Ltd. (EMCL)	TOTAL PENALTY AMOUNT (\$): \$40,000		
Contact name and title for Operator/Other Person: Lazaro Cosma President	Date of Notice: August 13, 2021		
Operator/Other Person/Individual address: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Business Office: 20 Hebron Way St. John's NL A1A 0L9</td> <td style="width: 50%;">Registered Office in NL: Stewart McKelvey PO Box 5038 Suite 1100 Cabot Place 100 New Gower Street St. John's NL A1C 6K3</td> </tr> </table>	Business Office: 20 Hebron Way St. John's NL A1A 0L9	Registered Office in NL: Stewart McKelvey PO Box 5038 Suite 1100 Cabot Place 100 New Gower Street St. John's NL A1C 6K3	Regulatory Instrument # (if applicable) Authorization No. 24020-020-OA06
Business Office: 20 Hebron Way St. John's NL A1A 0L9	Registered Office in NL: Stewart McKelvey PO Box 5038 Suite 1100 Cabot Place 100 New Gower Street St. John's NL A1C 6K3		

During the period from October 11, 2019 to May 11, 2020, ExxonMobil Canada Ltd. (EMCL), (hereinafter "EMCL") failed to comply with appended Condition 20 of Operations Authorization (OA) No. 24020-020-OA06 in relation to the work/activity on the Hampden and Harp wells. 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: October 11, 2019 to May 11, 2020	# Days of Violation 1
Has compliance been achieved? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>(If "No" a subsequent NOV may be issued)</i>	
Location of Violation <i>(e.g. facility/installation/vessel/head office or nearest geographical point)</i> Mobile Offshore Drilling Unit (MODU) <i>West Aquarius</i> at EL 1134 and EL 1135 (which were consolidated into EL 1165 effective May 2, 2020), a place within the Canada-Newfoundland and Labrador Offshore Area.	



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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. 24020-020-OA06 in relation to the work/activity on the Hampden and Harp wells:

- *The conditions in the Decision Statement issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to ExxonMobil Canada Ltd., for the Eastern Newfoundland Offshore 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 EMCL for its Eastern Newfoundland Offshore 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;”

Failure to execute such measures is a breach of OA appended Condition 20. This constitutes a Type B violation pursuant to subsection 3(2) of the AMPs Regulations.

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

On September 11, 2019, EMCL was issued Operations Authorization No. 24020-020-OA06 (see attached Tab 1), which authorized, among other things, the conduct of exploratory drilling on EL 1134 and EL 1135 (which were consolidated into EL 1165 effective May 2, 2020). On October 11, 2019, the Harp L-42 well was spud on EL 1165 B, and the Hampden K-41 well was spud on EL 1165 A on May 2, 2020.

Operations Authorization 24020-020-OA06 had the following as appended Condition 20:

- *The conditions in the Decision Statement issued under Section 54 of the Canadian Environmental Assessment Act, 2012 to ExxonMobil Canada Ltd., for the Eastern Newfoundland Offshore 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 required that EMCL “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...” Condition 2.7 of the Decision Statement required reporting of the results of follow-up program requirements identified in conditions 3.12 and 4.3.

On March 15, 2021, I received a Recommendation for Notice of Violation from C-NLOPB Lead Compliance Officer, John Pennell in relation to this incident. Upon reviewing the Recommendation for Notice of Violation



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I learned the following:

On July 20, 2020, Melissa Moss, Environmental Assessment Officer with the C-NLOPB, reviewed the report titled *ExxonMobil Canada Ltd. 2019-2020 Eastern Newfoundland Offshore Exploration Drilling Project – EL 1165A and EL 1165B: Seabird Monitoring Results* submitted via email from a representative of EMCL (see attached Tab 2) and noted that the report contained no data regarding daily bird monitoring from the MODU West Aquarius. A representative of EMCL was advised of this deficiency on July 22, 2020, by Melissa Moss via e-mail (see attached Tab 3). On July 28, EMCL submitted via email an updated version of the above noted report (see attached Tab 4) that did not contain information related to daily bird monitoring from the MODU West Aquarius.

Melissa Moss advised John Pennell of EMCL’s failure to provide the daily bird monitoring information which was required to be reported in the Decision Statement (see attached Tab 5).

John Pennell e-mailed EMCL on July 29, 2020 requesting an explanation of the lack of information regarding daily bird monitoring on the MODU West Aquarius (see attached Tab 6). On August 17, 2020, a final version of the report (see attached Tab 7) was submitted to the C-NLOPB which, again, did not provide the daily bird monitoring data and did not address the absence of that data.

On August 24, 2020, in discussion between John Pennell and a representative of EMCL it was confirmed that EMCL had not collected bird monitoring data as required by condition 4.3.1. of the Decision Statement.

In an email from Melissa Moss to a representative of EMCL on September 30, 2020 (see attached Tab 8) it was confirmed that the August 17, 2020 version of the Seabird Monitoring Results report was accepted. However, it was acknowledged that no data had been collected regarding daily bird monitoring (as per Condition 4.3.1.) and the matter had been passed over to a compliance officer for review for possible further action.

A representative of EMCL confirmed via e-mail (see attached Tab 9) on October 20, 2020, to John Pennell and Melissa Moss that “*while monitoring and reporting of stranded birds did occur on the MODU, daily monitoring for live birds did not occur.*”

In order to confirm the information provided in this NOV, I reviewed the following documentation:

1. Operations Authorization No. 24020-020-OA06 issued to EMCL by the C-NLOPB on September 11, 2019 (Tab 1);
2. July 20, 2020 version of the *ExxonMobil Canada Ltd. 2019-2020 Eastern Newfoundland Offshore Exploration Drilling Project – EL 1165A and EL 1165B: Seabird Monitoring Results* submitted via email from a representative of EMCL (Tab 2);
3. Email from Melissa Moss to a representative of EMCL July, 22 2020 (Tab 3);
4. July 28, 2020 version of the *ExxonMobil Canada Ltd. 2019-2020 Eastern Newfoundland Offshore Exploration Drilling Project – EL 1165A and EL 1165B: Seabird Monitoring Results Report* submitted via email from a representative of EMCL (Tab 4)
5. The Decision Statement issued to EMCL for the Eastern Newfoundland Offshore Exploration Drilling Project, dated April 17, 2019 (Tab 5);



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6. Email from John Pennell to a representative of EMCL July 29, 2020 (Tab 6);
7. August 17, 2020 version of the *ExxonMobil Canada Ltd. 2019-2020 Eastern Newfoundland Offshore Exploration Drilling Project – EL 1165A and EL 1165B: Seabird Monitoring Results Report* submitted via email from a representative of EMCL (Tab 7);
8. Email from Melissa Moss to EMCL on September 30, 2020 (Tab 8);
9. Email from a representative of EMCL to John Pennell October 20, 2020 (Tab 9); and
10. 2021-04-14 Clarification Letter from ExxonMobil to C-NLOPB (Tab 10).

In addition, on March 22, 2021 I sent an email to EMCL requesting the appropriate contact to follow up on clarification questions with respect to this matter. A representative of EMCL subsequently followed up with an email and letter (see attached Tab 10) on April 14, 2021. The letter provided an overview of the drilling program, EMCL's communication with the C-NLOPB on the matter of compliance with OA conditions, including bird monitoring. From reading this response from EMCL, along with the statement in the letter that "EMCL is disappointed that the daily bird counts did not occur during the drilling activities" I believe they did not execute the required seabird observations as required by appended Condition 20 of OA 24020-020-OA06 in relation to the work/activity on the Harp and Hampden wells. EMCL also provided a summary of the root cause and listed five mitigations and corrective actions that will be implemented in the OA and future activities to prevent this from occurring again.

As a result of my review of the documents and emails listed above, I have reasonable grounds to believe that EMCL did not conduct the required seabird observations from October 11, 2019 to May 11, 2020 and thereby EMCL breached appended Condition 20 of OA 24020-020-OA06.

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

a) Baseline Penalty (Total Gravity Value = 0)

Category: **Type A**

Type B

Individual

\$1,365

\$10,000

Other Person

\$5,025

\$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? The program concluded before mitigating actions could be taken.	<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?	<input type="checkbox"/>	-	-	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-



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None identified.							
5 - Reasonable assistance to Board regarding violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
Initially EMCL failed to report this deficiency as required. Violation discovered by C-NLOPB staff. Follow up information requested by AMP officer was submitted by EMCL.							
6 - Promptly reported violation to Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	-
EMCL did not promptly report the violation to the Board. Only after two inquiries from Board staff in July did EMCL actually acknowledge the violation orally in August, with no confirmation provided in writing until October.							
7 - Steps taken to prevent reoccurrence of violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	-
<p>In the April 14 correspondence, ExxonMobil provided a root cause analysis and identified 5 corrective actions. They are as follows:</p> <p>“Based on the above root cause findings, the following mitigations and corrective actions are being implemented for further work being required under the OA and other future exploration activities</p> <ul style="list-style-type: none"> • Ensure all project requirements and timelines are communicated and understood by contractors directly responsible for the scope of work, in the field or otherwise; • Enhance vendor contracting strategies to ensure all expectations, deliverables and commitments are clearly articulated in third-party vendor job scopes translated directly from the OA and other agency conditions, including setting expectations for periodic verification; • Require future exploration project team members to review all lessons learned during the onboarding process; • Ensure stringent adherence to existing hand-over protocols to ensure that thorough documentation and communications occur during personnel changes; and • Ensure that regulatory compliance plans and tools are reviewed periodically throughout the duration of future exploration programs and verified in the field.” 							
8 – Was primarily a reporting / record-keeping failure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	-	-	-
No							
9 – Increased risk of harm to people or environment?	<input type="checkbox"/>	-	-	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
There was no evidence of increased risk of harm to the environment.							

Total Gravity Value: 0

c) Total Gravity Value:
 (Total of gravity values determined in 4(b))

0

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)



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\$40,000

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))

\$40,000

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

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

Regards,

DocuSigned by:

Adam Miller

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Adam Miller

Administrative Monetary Penalties Officer

709-778-1400

amiller@cnlopb.ca



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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.

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/>