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## BULLETIN #02-2020

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### Updates to Strengthen the Ammonia Code of Practice Enforcement Policy: Introducing Fines for Incidences of Chronic Non-Compliance, Effective March 1, 2020

The purpose of this Technical Bulletin is to outline recent updates to the Ammonia Code of Practice Enforcement Policy. These changes strengthen the current *Ammonia Code Compliance and Enforcement Process* that is outlined on pages 6-7 of the Ammonia Code of Practice. The changes introduce fines for incidences of chronic non-compliance for two specific Protocols outlined below. These changes are effective **March 1, 2020**.

Under the updated Enforcement Policy, all facilities will still be required to be certified as compliant with the Ammonia Code of Practice to be eligible to receive shipments of anhydrous ammonia. The changes to the Enforcement Policy are being made to strengthen the ability to monitor and enforce compliance with designated Safety/Security Protocols under the Ammonia Code outside of audit intervals. This is accomplished by introducing monetary fines that are triggered by repeat offenses of infractions (non-compliance) to the designated **Safety/Security Protocols** as follows:

1. **Site Security: Protocol A4.1** – The anhydrous ammonia storage and handling operation must incorporate measures to prevent unauthorized access to the product through fencing, tank securement or other physical means. All vessels containing anhydrous ammonia must be stored in accordance with Protocol A4.1. (Reference Technical Bulletin # 05-2019). Mobile equipment must be adequately stored within locked fenced compounds as per requirements referenced in Protocols C8.4 and C16.3.
2. **Personal protective equipment: Protocols B7.1-B7.5 and Protocols C6.6-C6.10** – Each employee working with ammonia at an anhydrous ammonia operation must have and use the following: respirator, one- or two-piece ammonia-resistant suit, gloves, boots, individual water bottle. This equipment **MUST** be worn when handling anhydrous ammonia. (Reference Technical Bulletin # 05-2019)

There are multiple mechanisms of identifying non-compliance under the updated Enforcement Policy. Alleged non-compliance with the Code (outside of biennial facility audits) may be brought to the attention of Fertilizer Canada in various ways, including:

1. From the general public, e.g. through “whistle blowers”; and/or
2. From an auditor in the course of an investigation (e.g. due to a reported incident) or a random facility inspection taking place under the Quality Assurance / Quality Control (QA/Q) program.



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If a site is identified as non-compliant based on the parameters outlined above, the following process will be applied for each subsequent repeat offense (same site, same Safety/Security Protocol within a 24-month period):

- **1<sup>st</sup> offense** (*same site, same specific Safety/Security Protocol within 24-month period*)
  - Violation is observed / documented by Senior Auditor (or designate)
  - Written notice of violation is issued to the site including:
    - reminder of the Ammonia Code Enforcement Policy
    - prescribed timeline for corrective action
  - Offense triggers a follow-up inspection (random inspection) at the site within 24 months of violation
- **2<sup>nd</sup> offense** (*same site, same specific Safety/Security Protocol within 24-month period*)
  - Violation is observed / documented by Senior Auditor (or designate)
  - Written notice of violation is issued to the site including:
    - reminder of the Ammonia Code Enforcement Policy and documentation of previous offenses at site
    - prescribed timeline for corrective action
    - notice of **\$5,000** monetary penalty to be paid within 30 days or certification is revoked
  - Offense triggers a follow-up inspection (random inspection) at the site within 24 months of violation
- **3<sup>rd</sup> offense** (*same site, same specific Safety/Security Protocol within 24-month period*)
  - Violation is observed / documented by Senior Auditor (or designate)
  - Written notice of violation is issued to the site including:
    - reminder of the Ammonia Code Enforcement Policy and documentation of previous offenses at site
    - prescribed timeline for corrective action
    - notice of **\$10,000** monetary penalty to be paid within 30 days or certification is revoked
  - Offense triggers a follow-up inspection (random inspection) at the site within 24 months of violation
- **4<sup>th</sup> offense** (*same site, same specific Safety/Security Protocol within 24-month period*)
  - Violation is observed / documented by Senior Auditor (or designate)
  - Written notice of violation is issued to the site including:
    - reminder of the Ammonia Code Enforcement Policy and documentation of previous offenses at site
    - notice that **certification is withdrawn for 547 days (1.5 years)**, and that a full re-audit is required thereafter

The updated *Ammonia Code Enforcement Policy* will replace the *Ammonia Code Compliance and Enforcement Process* on pg. 6-7 of the Ammonia Code, effective March 1, 2020. The *Ammonia Code Enforcement Policy* text is included in Annex A.

Should you have any questions regarding compliance with the Ammonia Code of Practice, contact the Ammonia Code Senior Auditor Dennis Black via email at [deblack1@mts.net](mailto:deblack1@mts.net) or via phone at



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(204) 512-2109, or the Ammonia Code Project Manager, Anthony Laycock via email at [manager@awsa.ca](mailto:manager@awsa.ca). You may alternatively contact Fertilizer Canada using the coordinates below.

Regards,

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ANNEX A:

## **Ammonia Code Enforcement Policy**

Only facilities certified as compliant with Fertilizer Canada’s Ammonia Code of Practice (Code) are eligible to receive shipments of anhydrous ammonia in Canada. Code non-compliance identified in the course of biennial facility audits are managed through corrective actions identified in the completed audit report.

Outside of a biennial facility audit that is a prerequisite to maintaining certification under the Code, certified facilities must remain in compliance with the Code at all times.

From time to time, potential or suspected contraventions of the Code are brought to Fertilizer Canada’s attention. The identification and investigation of potential non-compliance, the determination that a contravention of the Code has occurred and the enforcement measures that may be taken will be governed by this Ammonia Code Enforcement Policy (“Enforcement Policy”).

### **A. Identification**

Alleged non-compliance with the Code (outside of biennial facility audits) may be brought to the attention of Fertilizer Canada in various ways, including:

- a) from the general public (e.g. through “whistle blowers”); and
- b) from an auditor in the course of an investigation (e.g. due to a reported incident) or a random facility inspection taking place under the Quality Assurance / Quality Control (QA/QC) program.

Disclosures of alleged non-compliance with the Code must be submitted in writing to the Ammonia Code Project Manager via e-mail at [manager@awsa.ca](mailto:manager@awsa.ca). Such disclosures must set out the details of the alleged non-compliance (including time, date, place, facility, nature of alleged non-compliance).

The Ammonia Code Project Manager will not disclose and will protect the identity of disclosures made pursuant to the paragraph above.

### **B. Investigation and Determination by Auditor**

Within three (3) business days of receiving a written disclosure of alleged non-compliance with the Code pursuant to the paragraph above, or as soon thereafter as possible, the



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Ammonia Code Project Manager will send an auditor to the facility named in the disclosure. If sufficient photographic evidence is provided in the initial written disclosure, a physical third-party visit by an auditor may not be required.

The auditor will determine whether the facility named in the disclosure has contravened the Code.

The auditor will set out his/her determinations in a report to be submitted to Fertilizer Canada. Where the auditor determines that a facility named in a disclosure has contravened the Code, the report will name the facility and the Section and specific Protocol of the Code that the facility has contravened (“Contravention Report”).

Contravention Reports will remain on file with Fertilizer Canada for two years (730 days) from the date of the report.

### **C. Enforcement Measures**

Upon receipt of a Contravention Report, Fertilizer Canada may apply the following measures.

Fertilizer Canada may cause the Ammonia Code Project Manager to issue a Notice of Contravention to the facility. The Notice of Contravention will name the facility, the Section and specific Protocol of the Code that has been contravened and the details of the contravention. The Notice of Contravention will identify the corrective action, if any, to be taken by the facility, including a prescribed timeline within which the corrective action must be taken.

Where a Notice of Contravention requires corrective action, the facility operator must advise the Ammonia Code Project Manager, in writing, once corrective action has been implemented.

Fertilizer Canada may dispatch an auditor to the facility to confirm that corrective action has been implemented and the contravention of the Code has been corrected.

If corrective action has not been implemented within prescribed timelines, the facility’s certification will be suspended, and manufacturers and distributors will be notified of the suspension. To lift the suspension, the facility must undergo a facility audit at the full cost and expense of the facility.

Fertilizer Canada may dispatch auditors to perform random follow-up inspections to a facility named in a Notice of Contravention, at Fertilizer Canada’s expense.

Where a facility is the subject of two or more Notices of Contravention within two-years,  

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all random follow-up inspections will be at the expense of the facility. Manufacturers and distributors will be notified of the Notices of Contravention issued against the facility.

Additional enforcement measures apply in the case of Notices of Contravention issued in relation to the following two safety / security Protocols of the Code (hereinafter the “Safety/Security Protocols”):

- a) Protocol A4.1 – The anhydrous ammonia storage and handling operation must incorporate measures to prevent unauthorized access to the product through fencing, tank securement or other physical means. Mobile equipment must be adequately stored within locked fenced compounds as per requirements referenced in Protocols C8.4 and C16.3.
- b) Protocol B7.1-B7.5 and Protocol C6.6-C6.10 – Each employee working with ammonia at an anhydrous ammonia operation must have and use the following: respirator, one- or two-piece ammonia-resistant suit, gloves, boots, individual water bottle.

If, within a 730-day period of a Notice of Contravention issued against a facility in respect of a Safety/Security Protocol, a facility is the subject of one or more subsequent Notices of Contravention in respect of the same Safety/Security Protocol, the facility will be liable to monetary penalties issued by Fertilizer Canada, as follows:

- a) Second Notice of Contravention: \$5,000
- b) Third Notice of Contravention: \$10,000
- c) For a fourth Notice of Contravention issued against a facility in respect of the same Safety Protocol within a 730-day period of the first-referenced Notice of Contravention, the facility’s certification is revoked. The facility will not be eligible to apply for re-certification for 547 days (1.5 years) from the date of revocation. To apply for re-certification, the facility must undergo a facility audit at the full cost and expense of the facility.

Where this Enforcement Policy applies, the monetary penalties payable will be set out the relevant Notice of Contravention. The Notice of Contravention will stipulate that monetary penalties are to be paid within 30 days of the Notice of Contravention. If the facility that is the subject of a monetary penalty fails to pay the monetary penalty within the stipulated timeline, the facility’s Code certification is revoked and the provisions regarding eligibility to apply for re-certification apply, *mutatis mutandis*.