

Alberta Compliance Assurance Activities and Enforcement Actions

Alberta Environment and Parks uses a balance of education, prevention and enforcement to ensure compliance with Alberta's environmental and natural resources legislation.

Where non-compliance is identified either through mandatory reporting or a compliance inspection, all of the circumstances of the alleged contravention are evaluated to determine if the responsible party was duly diligent in their efforts to comply.

Those who do not comply with legislative requirements are held accountable for the effects of their actions on the environment and our natural resources. If a company or individual did not take reasonable measures to prevent the contravention, enforcement action may result.

The Investigation

Investigations may involve taking statements, securing physical evidence and carrying out search warrants. At the beginning of an investigation, a Notice of Investigation may be sent to the person(s) or company being investigated. While not a legislative requirement, the notice is to advise someone that our department is investigating them and identify what potential offences are on the subject of the investigation.

Enforcement

Our department's choice of enforcement responses depends on the circumstances of the particular case and has one or more of the following purposes:

- **Remedy** – to correct non-compliance, to correct the cause of an environmental problem and to prevent or minimize any adverse effects on the environment
- **Deter** – to generally discourage future violators and/or specifically discourage repeated violations by a specific party
- **Penalize** – to impose a monetary, criminal or other penalty on a violator

Enforcement Tools

Alberta Environment and Parks has a variety of tools available under our mandated legislation, including the *Environmental Protection and Enhancement Act*, the

Water Act, the *Public Lands Act* and the *Forests Act*, to ensure compliance, including:

- Written Warnings
- Administrative Penalties
- Orders
- Prosecutions

Written Warnings

Written warnings are issued when there is the potential for an adverse environmental effect or for minor contraventions.

Warnings are normally given to first-time offenders who have committed lesser infractions.

The desired outcome of a warning is to have the recipient voluntarily come into compliance after having been made aware of the offence. Repeated non-compliance may lead to a more significant enforcement response.

Administrative Penalties

Administrative penalties are monetary penalties designed to deal with minor offences such as a failure to file reports required under an approval or code of practice.

An adverse environmental effect does not have to occur in order for an administrative penalty to be issued. Regular inspections and monitoring ensure activities comply with standards and conditions set out in regulations, approvals, licences and codes of practice during and after operation.

Orders

The various pieces of legislation provide for the issuance of orders to prevent and/or correct adverse effects on the environment, natural resources, human health, property, and/or public safety. These orders can be issued to regulated parties undertaking activities subject to authorizations or they can be issued in relation to non-authorized activities. It is important to note that the orders described here are remedial in nature and are not intended to be punitive.

Alberta Environment and Parks issues four types of orders:

- **Environmental Protection Order** – issued to prevent or stop contraventions of the *Environmental Protection and Enhancement Act* and ensure action is taken to fix environmental problems
- **Stop Order** - issued to prevent or stop cutting, clearing or any disturbance on Crown land that is occurring in contravention of any act or regulation; used in extreme cases to prevent or halt damage to public land
- **Enforcement Order** - issued to compel a regulated party to remedy a contravention and, where appropriate, require actions to prevent future contraventions.
- **Water Management Order** – issued to prevent or stop contraventions under the *Water Act* and ensure action is taken to fix environmental problems

Non-compliance with any of these orders is an offence and may result in an enforcement response. In addition, once an order is issued, an enforcement response may still occur should additional evidence uncover a contravention of the legislation. If an order is not complied with, the department may apply for a court order directing compliance with the order. We may, in some circumstances, also arrange for remedial measures required under the order to be undertaken and recover costs from the responsible party.

Prosecutions

All legislation enforced by our department includes provisions for prosecution. Penalties depend on the severity of the contraventions and can include fines and potentially jail time.

Creative Sentencing

Creative sentences are used to make prosecution penalties more meaningful and result in clear benefits for the environment. "Creative sentencing" is a catch-all term used to describe the various options in a section of legislation that covers court orders relating to penalty. This section appears in various pieces of legislation and includes options such as bonds or other monetary payments, community service orders, compensation orders, publication orders, remediation orders and stop orders.

Appeals

Alberta's environmental and natural resource legislation allows for companies or individuals to appeal an order or an administrative penalty to the Environmental Appeals Board or the Public Lands Appeal Board. All prosecutions may be appealed to a higher court.

No Enforcement Action Taken

There are some instances where investigations will result in no enforcement action being taken by Alberta Environment and Parks. The following examples identify the circumstances when the department cannot take enforcement action:

- Investigations that concluded no contravention occurred;
- Investigations that concluded the available evidence did not meet the standard of proof required, resulting in no reasonable expectation of a conviction;
- Investigations that concluded a valid defense was available to the accused, such as:
 - Due diligence, where the responsible party demonstrated that they took every reasonable measure to prevent the contravention or offence; or
 - Officially induced error, where the responsible party demonstrated that the contravention was the result of government action, inaction or acquiescence.

In some instances, the department starts an investigation and discovers that another agency would be more appropriate to conclude the investigation. In other instances, the department may have the option to pursue an enforcement action but chooses not to. Building a positive relationship with the regulated party is of inestimable value to the department. Enforcing a strict "letter of the law" policy for small contraventions that caused no loss to Crown revenue, no damage to the resource, or no adverse effect can negatively affect relationships with the public and industry making gaining voluntary compliance in the future more difficult. In these cases the department endeavours to change the behaviour of the responsible party through educational efforts.

For More Information

For more information on compliance assurance, contact the Alberta Environment and Parks regional office nearest you.

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