

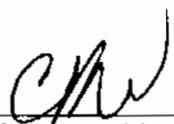
## Message from the Deputy Minister

All Albertans share responsibility for sustaining our environment for current and future generations. There are many challenges to and opportunities for achieving this vision. In order to meet these challenges and to take advantage of the opportunities, Alberta Environment is committed to a more strategic approach to environmental management that is focused on outcomes. Outcomes that reflect the clean and safe environment that Albertans want and expect will continue to be identified, and success in achieving those outcomes will be measured.

A key component of assuring environmental quality is an effective and efficient regulatory framework. However, regulations are only part of the solution and efforts are ongoing to establish incentives that encourage, support and reward effective environmental performance. Alberta Environment will continue to work with others to develop these innovative non-regulatory approaches, and to evaluate their effectiveness. Alberta Environment will also continue to fulfill its responsibility to ensure that where there are regulatory requirements, or "rules", that those requirements are met.

The *Compliance Assurance Principles*, originally published in June 2000, have guided the department in the development and delivery of successful compliance assurance programs and initiatives. They have played a key role in achieving high levels of compliance across all regulated sectors, and sound compliance has contributed to sustaining our healthy environment.

This current edition of the Compliance Assurance Program document is part of Alberta Environment's commitment to ensuring that compliance assurance principles and programs continue to meet our needs now and into the future. It is intended to provide clarity and certainty to all Albertans about how compliance assurance will be achieved in Alberta.

 June 28/05  
Approved by:  
Peter Watson  
Deputy Minister

# **ALBERTA ENVIRONMENT COMPLIANCE ASSURANCE**

2005

## **“Looking Forward”**

When the *Compliance Assurance Principles* were first published in June 2000, Alberta Environment made a commitment to ensure that the Principles remained current and relevant. As we consider the needs for compliance assurance today and into the future, there are a number of factors that are driving changes in regulatory frameworks and compliance assurance strategies and approaches.

### **➤ Shared Stewardship**

Shared stewardship will continue to be central to the work of Alberta Environment. This includes a continuing emphasis on building collaborative approaches with citizens, the regulated community and other stakeholders to achieve the desired environmental assurance outcomes. In recognition of the anticipated growth in shared responsibilities and partnerships in program delivery, principles to strengthen accountability processes have been added to the Compliance Principles to ensure clear and delineated roles with measurable performance expectations.

### **➤ Continuous Improvement**

There is an increasing expectation of continuous improvement in environmental performance, including performance beyond the traditional “compliance” benchmark. This expectation, combined with a growing culture of stewardship, is reflected in the trend among Alberta’s industries and municipalities to adopt voluntary stewardship initiatives. These are aimed at providing greater assurance that regulatory requirements will be met, and in many cases, moving facility operational performance beyond those requirements.

Regulated parties are encouraged to develop and implement self-improvement approaches and methodologies, best available technology, best practices and innovation aimed at assuring compliance, and beyond. The regulated community is encouraged to develop prevention and education programs such as industry codes of conduct and security funds to promote compliance and manage risk in their sectors. Sector organizations and associations continue to promote an ethic of stewardship and continuous improvement practices among their membership through sponsorship of industry specific environmental management systems backstopped with credible auditing and certification processes.

Alberta Environment will continue with both formal and informal processes for recognizing facilities and parties that demonstrate sound compliance and continuous improvement.

### **➤ Innovation in Approaches and Tools**

There has been a continued emergence of innovative regulatory and non-regulatory tools more sharply focused on performance objectives and providing greater flexibility to parties in achieving outcomes. Expanding the options of available management tools will increase Alberta Environment’s capacity to address environmental assurance objectives. For example, inspection sweeps targeting whole sectors or clusters of activities located together in an area have been pursued with measurable benefits. Partnerships have emerged with other departments, municipal agencies, industry associations and others. Advancements in electronic data processing and web-based applications have increased information processing capacities and have opened opportunities for improved public access to compliance assurance and performance information.

➤ **Performance Measurement**

The Compliance Assurance Program will be reviewed on a continuous basis to ensure that it is meaningful and relevant. The effectiveness of the Program and the delivery of its approaches and activities will also be measured. These measurements will provide Albertans with an indicator of the effectiveness of the Program and its role in achieving the desired environmental assurance outcomes. Numbers of inspections and enforcement responses alone do not indicate if the message is getting out, and if compliance is improving. Innovation is needed to express the effectiveness of our programs and as such recent approaches have been taken to measure this. The Department is committed to developing comprehensive performance measures.

# **Compliance Assurance Principles and Program (CAPP)**

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## **Introduction and Purpose**

As part of its mandate, Alberta Environment is responsible for working with Albertans to assure that environmental quality is maintained. An effective and efficient regulatory framework, or set of “rules”, is a fundamental component in achieving this goal. Alberta Environment develops and implements a Compliance Assurance Program to ensure that there is compliance with the regulatory requirements. Compliance assurance is based on a balanced approach using three main components, **Education, Prevention and Enforcement**.

This document describes the business of Compliance Assurance at Alberta Environment. It sets out Alberta Environment’s goals, core principles and supporting policies related to Compliance Assurance. It also provides a detailed program guide. Links are included to the department’s Internet website, to direct the reader to updates and the most current information.

The purpose of this document is to:

- support consistent, coordinated and effective delivery of the Compliance Assurance Program;
- provide clarity and certainty to all Albertans on compliance and performance expectations and how they will be achieved;
- assure compliance with all regulatory requirements under the mandate of Alberta Environment;
- support continuous improvement in environmental and resource management performance;
- provide a framework within which compliance assurance policy, procedures and operational guidelines can be developed;
- guide program planning and decision making for compliance assurance delivery;
- support the selection and application of compliance assurance approaches;
- maintain and enhance public confidence by ensuring consistency and co-ordination among all participating authorities in the delivery of compliance assurance activities;
- embody a vision and direction for the future of compliance assurance and performance improvement programs in Alberta; and
- provide guidelines for measuring, assessing, reporting and improving the effectiveness and efficiency of compliance assurance activities.

## **Scope**

The scope of this document includes all of the legislation Alberta Environment is responsible for administering. This includes two key acts, the *Environmental Protection and Enhancement Act (EPEA)* and the *Water Act*, the new Climate Change & Emissions Management Act and a number of other provincial and federal acts and regulations. A full list of all legislation under the mandate of

the department can be found in Appendix 1 or on the department's website at <http://www3.gov.ab.ca/env> (Links to online versions of the legislation are also available from this website.)

## **Key Roles and Responsibilities**

Alberta Environment takes the lead role in developing and delivering programs for assuring compliance and promoting environmental performance under these acts. Other government departments, agencies and local authorities empowered to carry out provisions of the *Water Act* and *EPEA* will apply the same principles and programs in developing and conducting their compliance assurance activities.

### ***Regional Services Division***

Regional Services Division of Alberta Environment has the core responsibility for delivering the Compliance Assurance Program for *EPEA* and the *Water Act*. In order to deliver services most effectively, the Division is organized into three geographical regions. Offices are found in the regional centres and are supported by district and smaller satellite offices located throughout the province. A map of these offices is located in Appendix 2.

The key responsibilities of Regional Services compliance staff include:

- preparation and distribution of educational material and guidance documents on compliance and performance;
- planning and conducting compliance assessment and monitoring programs through inspections and audits;
- responding to environmental and non-compliance incidents;
- responding to environmental emergencies;
- conducting investigations; and
- undertaking enforcement responses.

In addition, Regional Services staff deliver the approvals processes under *EPEA* and the *Water Act*, manage provincial water management infrastructure, and undertake environmental management projects and planning.

### **Approvals Process**

The term “approvals” is often used to describe any kind of authorization that is issued by Alberta Environment under *EPEA* or the *Water Act*. In fact, there are different kinds of authorizations. This is explained in more detail in Part2.

### ***Environmental Assurance and Strategic Directions Divisions***

The Environmental Assurance Division and the Strategic Directions Division of AENV provide policy and standards development. This includes collaboration in the development of policies, programs, legislative changes, identification and development of new compliance tools, and collaboration on the development of program evaluations and related performance measures.

### ***Alberta Justice***

Alberta Environment compliance staff interact with two sections of Alberta Justice: the Environmental Law Section on civil and regulatory law matters, and the Special Prosecutions Branch on prosecutions under environmental legislation.

The Environmental Law Section provides interpretations and applications of *EPEA* and the *Water Act*, provides reviews of investigation files, assesses evidence, and provides options for courses of action, as requested.

The Special Prosecutions Branch is responsible for directing and coordinating all prosecutions under *EPEA* and the *Water Act*. This Branch assumes full responsibility for all decisions and directions of case files once a decision is made by Alberta Environment to advance a case file for prosecution.

## **PART 1: Compliance Assurance Goal and Core Principles**

The *Compliance Assurance Goal and Core Principles* establish the minimum requirements and expectations that guide the development of compliance assurance programs and activities.

### ***COMPLIANCE ASSURANCE GOAL***

***Develop an attitude of stewardship and environmental awareness in the public and the regulated community through a sound compliance assurance program. The measure of success will be compliance with the laws and regulations under the mandate of Alberta Environment.***

### ***CORE PRINCIPLES***

The application of the following *Principles* to compliance assurance programs and activities will support the delivery of a consistent and effective approach.

- Education, prevention and enforcement will be used to achieve compliance with legislation administered by AENV.
- Regulatory requirements will be clear, enforceable and widely known within the regulated community and the public.
- All staff undertaking compliance assurance activities will have adequate training and authority to enable them to carry out their duties. Staff will carry out their duties in a competent, safe and professional manner.
- AENV will foster partnerships with other government agencies and the public to promote compliance.
- AENV will use inspections, audits, and monitoring to verify compliance with environmental legislation. Reports will be filed and follow-ups performed to ensure issues are corrected.
- Compliance assurance activities will be delivered in a lawful, fair, consistent and timely manner.
- Every suspected contravention that comes to the attention of AENV will be assessed and responded to in an appropriate and timely manner.
- AENV responses to non-compliance will consider all applicable legislation and will use the most appropriate legislation and compliance assurance response.
- Enforcement will be firm and fair.
- Enforcement will use remediation, deterrence and/or punishment to ensure compliance with legislation. Enforcement responses will be based on a “polluter pays” / “resource restitution” philosophy.

- AENV will recognize good performance in environmental compliance.
- The regulated community will be encouraged to develop innovative approaches to promote continuous improvement and performance that goes beyond required compliance.
- AENV will measure, evaluate and report on the effectiveness of its compliance assurance programs and activities.

## **PART 2: Overview of Regulatory Requirements**

This part is intended to provide a brief overview of the regulatory requirements under the legislation administered by Alberta Environment. More detailed information can be found on the department's website at <http://www3.gov.ab.ca/env> or by contacting Alberta Environment staff.

The *Environmental Protection and Enhancement Act (EPEA)* and the *Water Act* set out a comprehensive and integrated regulatory framework, which includes specific obligations and requirements ("rules") to meet the department's objectives for environmental protection, and for sound water management and conservation. These requirements are specified through statutes (acts), regulations, codes of practice, authorizations (including approvals and licences) and associated standards and guidelines.

### **2.1 Environmental Statutes**

#### **2.1.1 The *Environmental Protection and Enhancement Act (EPEA)***

The *Environmental Protection and Enhancement Act (EPEA)* came into effect in September 1993, updating and consolidating separate air, land and water environmental statutes into one act. The purpose of *EPEA* is to "support and promote the protection, enhancement and wise use of the environment". The following are key components of the Act:

- an environmental assessment process for specified activities;
- requirements for approvals, registrations and certificates for specified activities;
- regulation of substance releases that may cause an adverse effect on the environment;
- requirements for the identification and clean-up of contaminated sites;
- requirements for the conservation and reclamation of specified land;
- regulation of potable water and waterworks systems;
- regulation of the storage, transport, handling, sale, application and disposal of hazardous substances and pesticides;
- promotion of waste minimization and recycling and the regulation of waste disposal and hazardous waste management;
- provisions for enforcement of the Act, including the powers and obligations of inspectors and investigators; and
- designation of offences and penalties under the Act.

#### **2.1.2 The *Water Act***

The *Water Act* came into effect on January 1, 1999, replacing the *Water Resources Act*. The purpose of the *Water Act* is to "support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

- the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
- the need for Alberta's economic growth and prosperity;
- the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;

- the shared responsibility of all residents of Alberta for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;
- the importance of working co-operatively with the governments of other jurisdictions with respect to trans-boundary water management; and
- the important role of comprehensive and responsive action in administering this Act.”

The Act is Alberta’s primary legislation for regulating water diversions, and allocations and all activities that may affect water bodies.

### **2.1.3 The *Climate Change and Emissions Management Act***

The province of Alberta has passed the *Climate Change and Emissions Management Act* which is intended to provide a framework for the implementation of Alberta’s action plan on climate change. This legislation strengthens and complements our existing statutes on environmental protection and resource management related to air emissions. The new Act provides for:

- an overall greenhouse gas (GHG) emission reduction target for Alberta and reduction targets for specific sectors of the province’s economy that will be established through negotiated agreements;
- matters that could be included in sectoral agreements, including regulation powers for their implementation and enforcement; and
- a framework relating to a GHG emissions offset system.

Sections of the Act have now been proclaimed in support of the Greenhouse Gas Emissions Reporting Program. The Specified Gas Reporting Regulation and Specified Gas Reporting Standard, which set out the detailed requirements for greenhouse gas reporting, are also in place. Compliance assurance activities will be designed and undertaken to ensure compliance with this new legislation.

### **2.1.4 Other Legislation**

Alberta Environment works with other regulatory agencies to help develop requirements that meet Alberta’s objectives to assure environmental quality. As well, Alberta Environment uses other legislation to support achievement of environmental objectives. (For example, there are provisions for surface water control systems for livestock operations included in the *Agricultural Operations Practices Act* which is administered by the Natural Resources Conservation Board.) A list of other provincial and federal legislation relevant to Alberta Environment’s Compliance Assurance Program is included in Appendix 1.

## **2.2 Regulated Activities**

Regulated activities are defined under *EPEA*, the *Water Act* and the regulations under the Acts. Individuals, companies, municipalities, and government departments who undertake these regulated activities are required to obtain authorizations. Authorizations come in many forms including, but not limited to approvals, licences, registrations (codes of practice), and preliminary certificates. Authorizations typically include requirements such as terms, conditions and associated standards and limits that are specific to a project, site or operation. To obtain an *EPEA* or *Water Act* authorization the proponent of the activity must apply to Alberta Environment and provide specific information.

## 2.3 Authorizations (Approvals and Licences)

An authorization is the proponent's permission in accordance with specific legislation, to proceed with an activity, operation, or water diversion. Requirements included in an authorization are the "project-specific rules" for that activity and non-compliance with them is an offence. Common requirements and conditions for facilities approved under *EPEA* include; limits for air and wastewater emissions, various operating requirements, requirements for industrial and hazardous waste handling and disposal practices, soil and groundwater monitoring, record keeping and reporting.

Authorizations consider the life cycle of an activity. This means they include all phases such as construction, operation, and reclamation, which enables "cradle-to-grave" environmental protection. Authorizations can be amended, renewed, cancelled and suspended. Before issuing an authorization, staff will often discuss the authorization with the regulated party to ensure that the terms and conditions and the consequences of non-compliance are clear.

### **Authorizations Approvals, Registrations and Licences**

Under *EPEA*, approvals and registrations (for codes of practice) are issued to authorize "activities" as specified under the act and regulations.

Under the *Water Act*, all "activities" as defined under the Act require an approval. All diversions of water require a licence, except activities and diversions that are exempted by the Act or regulations.

## 2.4 Codes of Practice

Codes of practice set out standardized requirements for activities with low potential for environmental impact. Generally, these standardized requirements apply throughout the province. However, the codes may also include requirements that are specified by geographic area. For example, the Code of Practice for Watercourse Crossings includes requirements related to times of the year when instream construction is permitted in specified river reaches. Codes of practice improve administrative efficiency and effectiveness by shifting from the need to have individual approvals for each operator to standardized requirements that apply to all operators.

Some examples of activities regulated with codes of practice include exploration operations, watercourse crossings, outfall structures, wastewater lagoons, and drinking water distribution systems. A listing of current *Water Act* and *EPEA* codes of practice can be found in Appendix 1 or on the Alberta Environment website at <http://www3.gov.ab.ca/env>

## 2.5 Standards and Guidelines

Alberta Environment develops standards and guidelines based on science and best management practices. These standards and guidelines are used in two ways. First, requirements under *EPEA*, the *Water Act*, and associated authorizations often set out standards and guidelines that must be achieved. These are then enforceable requirements.

Secondly, the standards and guidelines of the province are also important under the general provisions of *EPEA*. While only specified activities require authorization under *EPEA*, all activities (and all parties) are subject to the general provisions of the legislation regarding releases that may cause an “adverse effect”. Standards and guidelines set out benchmarks that assist in gauging and preventing adverse effects to the environment. More details and a list of Alberta Environment Standards and Guidelines can be found on the department’s website at <http://www3.gov.ab.ca/env/protenf/standards/index.html>.

## **2.6 Improving the Regulatory System**

For compliance assurance programs to be effective, the regulatory requirements or the “rules” must be clear, measurable, consistent, and enforceable.

Compliance Assurance staff provide valuable advice and feedback to other staff in Alberta Environment who are responsible for other key programs and activities including the development and review of legislation and regulations, the development and review of standards and guidelines, and the reviewing of applications for authorizations. As part of their role in setting a sound environmental framework, Compliance Assurance staff will:

- participate in ongoing reviews of regulatory requirements and authorizations;
- document, report and recommend suggested improvements in and corrections to the legislation and to the regulatory and non-regulatory tools used by the department;
- identify and report on any circumstance where environmental damage is or has occurred despite full regulatory compliance; and
- ensure that legislative and authorization requirements are co-coordinated and do not conflict when more than one piece of legislation regulates an activity or operation.

## **PART 3: Compliance Assurance Program**

### **3.1 Overview and Key Components**

This section outlines the Compliance Assurance Program for *EPEA* and the *Water Act* and describes how AENV utilizes all of the key components of compliance assurance. The program begins with a foundation of sound **regulatory requirements** (or “rules”) through statutes, regulations, authorizations, codes of practice and associated policies, standards and guidelines. Compliance with these requirements is assured by activities that promote compliance through **education and prevention**, and activities that compel compliance through **enforcement**.

The **Education** component of compliance assurance promotes compliance by raising awareness of environmental protection and management, regulatory requirements, how to comply with those requirements, and the consequences of non-compliance. Education is also used by Alberta Environment to encourage continuous improvement and environmental stewardship.

The **Prevention** component is intended to support compliance by building capacity and the willingness within the regulated community to comply with the regulatory requirements, and to identify and address potential problems before they cause environmental damage. Prevention is a shared responsibility and includes the activities and actions of Alberta Environment, other regulatory authorities, the regulated community and the public.

The purpose of the **Enforcement** component is to ensure that there are consequences for non-compliance, that parties do not benefit economically from non-compliance and that responsibility to address damages is clearly assigned. This includes actions that remedy, deter and punish where appropriate. Parties that are in non-compliance are required to remedy problems – to correct the non-compliance and to mitigate any damages. Deterrence and punishment measures are used to discourage future contraventions and repeat contraventions.

## **3.2 EDUCATION**

### ***Objectives***

Alberta Environment relies on the public and industry to take responsible action based on a clear understanding of the regulatory requirements of the province. The objectives of the education component of compliance assurance are to:

- raise awareness and understanding of Alberta Environment's regulatory system and compliance assurance goals, principles and program;
- reinforce Alberta Environment's commitment to using a balance of education, prevention and enforcement to ensure the laws under the mandate of the department are followed;
- develop a comprehensive and consistent set of communication tools for compliance awareness programs and compliance sweeps;
- promote the toll free, 24 hour emergency response/public complaint number and reinforce when and how information should be reported to Alberta Environment; and
- ensure consistency in how enforcement activities are publicly reported.

The key messages that Alberta Environment tries to communicate are:

- Caring for the environment is a shared responsibility.
- Through education and prevention programs, and strict enforcement measures, Alberta Environment ensures that industry and the public understands and follows the rules outlined in Alberta's environmental legislation.
- Alberta Environment's compliance education programs provide an opportunity to work together with Albertans and industry to ensure they understand the role they play in protecting our environment.
- Those who do not comply with regulatory requirements will be held accountable for the effects of their actions on the environment and our natural resources.
- Every suspected contravention that comes to the attention of Alberta Environment will be assessed and responded to in an appropriate and timely manner.

### ***Key Approaches and Initiatives***

The following are key approaches and initiatives of the education component of the Compliance Assurance Program.

- Guidance information, including fact sheets and brochures, website pages, media advertisements, and articles
- Educational programs and materials, including Special Weeks activities, classroom packages and programs, displays, newsletters, direct mailing materials, publications (department, community, etc.) and website information
- Public consultation programs
- Participation in meetings, seminars, conferences, workshops, tradeshow
- Participation in emergency preparedness drills
- Education and communication strategies and inspection sweeps
- Routine release of information including news releases, publication of enforcement summaries, publication of annual compliance assessment and enforcement reports

More information on these approaches and initiatives can be found in the following sections. Copies of materials or more detailed information can be obtained through the Alberta Environment website, the Alberta Environment Information Centre and any of Alberta Environment's regional and district offices. Appendix 2 includes the Alberta Environment website address, telephone contacts and a map of the province showing the locations of regional, district and satellite offices.

#### **INFORMATION SOURCES AND CONTACTS**

Alberta Environment website at <http://www3.gov.ab.ca/env>

Alberta Environment Information Centre  
780-422-2079

Alberta Environment regional and district offices  
see Appendix 2 for details

### **3.2.1 Guidance Information**

Alberta Environment and others publish a wide range of fact sheets, guides and guidance information, all for the purpose of informing the regulated community on how to achieve compliance. Most of these guidance documents can be accessed through Alberta Environment's website at <http://www3.gov.ab.ca/env>

### **3.2.2 Educational Programs**

Alberta Environment uses a range of educational programs including classroom style education packages and programs, Special Weeks, and inspection sweeps. Alberta Environment also supports the implementation of education programs by others.

#### ***Classroom Education Packages and Programs***

A number of educational packages and programs have been developed that can be used in activities directed at youth training (kindergarten to grade 12 programs, scouting, junior forest wardens). Each package or program focuses on broad topics (for example, waste minimization, air issues, climate change, water management) but can be specifically tailored to the classroom's or group's needs. As well, Alberta Environment staff visit classrooms and make presentations on a variety of topics.

#### ***Special Weeks***

Special Weeks provide opportunities to share information with the regulated community as well as the public on various environmental topics. Examples of Special Weeks include Environment Week and National Waste Reduction Week. Alberta Environment organizes and participates in a variety of events. General information is provided and each Region has the opportunity to share information on issues that are important in their area.

### ***General Educational Programs and Publications***

The goal of these programs and publications is to inform the public about the impact that they have on the environment and steps that they can take to prevent or reduce these impacts. They are generally developed for classroom teachers, youth leaders and the general public.

### ***Educational Programs by Others***

Groups and individuals other than Alberta Environment provide educational programs that support assuring compliance. Examples of these groups include professional organizations, industry interest groups, and public interest groups. Alberta Environment encourages and, where possible, supports the development of these programs in ways such as providing supporting information and expertise.

### **3.2.3 Meetings, Seminars, Conferences and Workshops**

Alberta Environment staff make presentations at meetings, seminars, conferences and workshops, providing information on regulatory requirements, and on education, prevention and enforcement activities. As well, every contact that staff have with regulated parties is considered as a possible opportunity to educate. This applies during the environmental assessment process, the approval processes and during inspections and investigations.

### **3.2.4 Education and Communication Strategies and Inspection Sweeps**

Alberta Environment routinely identifies and focuses on specific issues and sectors of the regulated community where there is a need to increase compliance, a significant potential impact associated with non-compliance, and an ability to influence behaviour. Education and communication strategies are developed to address the needs identified. These strategies are often followed by a compliance inspection sweep to reinforce the importance of compliance.

### **3.2.5 Routine Release of Information**

The publication of compliance assurance information supports transparency and helps to engage public opinion as an incentive for the regulated community to achieve high levels of compliance and improve environmental performance. Citizens must be able to obtain information to hold industry and government accountable. Alberta Environment provides information to the public in a number of ways, including:

- issuing News Releases on enforcement actions;
- publishing the annual Compliance Assessment and Enforcement Report; and
- releasing quarterly enforcement summaries.

The Environmental Law Centre, a non-profit charitable organization, provides two information services. The first is an Enforcement Historical Search Service. Under this service, a search can be made on a computer database for the history of enforcement action taken by Alberta Environment under *EPEA* and its predecessor legislation, the *Hazardous Chemicals Act*, *Agricultural Chemicals Act*, *Clean Water Act* and *Clean Air Act*, dating back to 1971, and/or under the *Water Act* from 1999 onwards. Each search provides the name of the company or individual subject to the enforcement action, the date of the enforcement action, the type of enforcement action taken, the amount of the penalty, if any, the location of the event giving rise to the enforcement action and brief comments on the enforcement action.

The second service is the Wellsite Reclamation Historical Search Service. Under this service, a search can be made on a computer database for regulatory actions relating to reclamation taken by Alberta Environment under *EPEA* and its predecessor legislation, the *Land Surface Conservation and Reclamation Act* and the *Surface Reclamation Act* back to 1963. More information on these services and the fees charged can be found by contacting the Environmental Law Centre at [www.elc.ab.ca](http://www.elc.ab.ca) or 1-800-661-4238.

### ***News Releases***

News releases are generally published when Alberta Environment has issued an enforcement order, water management order, or environmental protection order, or has cancelled, restricted or suspended an authorization. They identify the companies or individuals and provide information on the contraventions, the orders issued and the penalties assessed. They are also published to provide information on the sentencing decisions of the Court when there has been a prosecution under *EPEA* or the *Water Act*.

New releases can also be used to raise awareness by providing information on proposed and actual regulatory requirements, how to be in compliance with requirements, and on how non-compliance is responded to. Copies of Alberta Environment news releases can be obtained using the search engine at <http://www.gov.ab.ca/home/index.cfm?page=441>

### ***Compliance Assurance Program Reports***

Alberta Environment is committed to measuring and reporting on the effectiveness of its Compliance Assurance Program. Publication of two types of reports helps to achieve this goal. Comprehensive *Compliance Assessment and Enforcement Reports* are produced on an annual basis. These reports provide highlights of compliance activities plus a summary of enforcement actions over the year. On a quarterly basis, an *EPEA* and *Water Act* enforcement summary document is compiled and released, providing an overview of enforcement of *EPEA*, the *Water Act* and the regulations during that period. These reports summarize the numbers of enforcement responses, list the amounts of fines and the types of penalties assessed, and provide details on enforcement responses. This includes information on each contravention, the company or individual involved, the decision date, the amount of the penalty and general comments about the offence. These reports are available on the Alberta Environment website at <http://www3.gov.ab.ca/env>

### **3.3 PREVENTION**

#### ***Objectives***

The principle of shared stewardship is central to the prevention component of the Compliance Assurance Program. Alberta Environment is committed to working with other government agencies, the regulated community and the public to find proactive ways to achieve the environmental assurance outcomes that Albertans expect. The objectives of the prevention component of compliance assurance are to:

- foster a shared stewardship approach to compliance assurance, including encouraging the regulated community to work with the public in a cooperative way to address local issues;
- build capacity and the willingness in the regulated community to comply;
- encourage the regulated sector to develop and implement continuous improvement approaches, best practices and innovation aimed at compliance assurance and performance that goes beyond required compliance; and
- identify and address potential problems before they cause environmental damage.

#### ***Key Approaches and Initiatives***

The following are some of the key approaches and initiatives of the prevention component of the Compliance Assurance Program.

- Compulsory monitoring and reporting by regulated parties
- Voluntary monitoring and reporting by the public
- Compliance assessments – including unannounced and announced inspections, inspection sweeps, audits and compliance and performance reviews
- Voluntary environmental audits
- Orders and Directions for environmental protection and water management
- Emergency measures to protect the environment and water resources

More detailed information on these approaches and initiatives can be found in the following sections.

#### **3.3.1 Compulsory Monitoring and Reporting by the Regulated Community**

An important part of Alberta Environment's environmental management system is compulsory monitoring and reporting undertaken by regulated parties as a requirement of their authorizations. Most authorizations under *EPEA* and the *Water Act* require some form of compulsory monitoring and reporting. This monitoring of source emissions, facility operations, and the ambient environmental surroundings provides essential information on compliance, performance and impacts on the surrounding environment. More specifically, it serves a number of purposes for both government and regulated parties including:

- providing a measure of performance relative to established limits, standards and guidelines;
- ensuring that all systems are operating effectively;
- providing an early warning system for potential issues (such as environmental contamination, and harm to the aquatic environment);

- helping regulated parties see and take proactive actions to prevent non-compliance;
- characterizing complex emissions to identify and prevent potential environmental impacts;
- providing information for provincial and federal emission inventories used in environmental management;
- providing information to meet water apportionment agreements with other jurisdictions;
- assessing and learning about the impact of releases on the environment;
- assessing and learning about habitat mitigation; and
- providing data for tracking trends in ambient environmental quality.

Compulsory monitoring covers a wide range of environmental issues depending on the size, nature and complexity of the particular activity and the quantity and type of emissions and environmental impacts that may result. Monitoring reports summarize ambient air, water, groundwater and soil data, summarize source emissions data, provide water metering information, and provide information on solid and hazardous waste generation and disposal. The reports also outline problems that may have arisen and corrective actions that were taken.

### **3.3.2 Voluntary Monitoring and Reporting by the Public**

The public is encouraged to report issues, concerns, emergencies and possible incidents of non-compliance of the *Water Act* and *EPEA* by calling either the toll-free, 24-hour emergency response/public complaint number (1-800-222-6514) or the Alberta Environment regional or district office nearest the problem. Issues and concerns reported by the public include air quality concerns (odour, dust, smoke, etc.), activities and diversions affecting surface and ground water quality, soil contamination, reclamation, water well concerns, industrial and municipal discharges, and issues regarding wastes including hazardous wastes. Once reported, the incident is entered into Alberta Environment's incident tracking system and a decision is made about what action the incident warrants.

### **3.3.3 Compliance Assessments**

The goals of our compliance assessment programs are to evaluate and confirm whether regulated parties are complying with their statutory obligations, identify and correct non-compliance, educate and assist parties to prevent non-compliance, and promote improvement in environmental performance. Compliance assessments are conducted at many different types of facilities and for many regulated activities. Assessment activities include the following.

- **Inspections** – site and field evaluations of a regulated activity to verify that specified requirements are being met
- **Audits** – site and field examinations to verify that designated methods and procedures for data gathering and/or collection meet all quality assurance/ quality control criteria.
- **Compliance Performance Reviews** – assessments of compulsory monitoring reports, notices, records and other required submissions

Annual compliance assessment plans and programs are developed and carried out by each region, taking into account regional priorities and issues, and the nature and type of regulated activities. Both planning and the delivery of programs and activities are also coordinated between regions to ensure consistency in approach.

Annual compliance assessment plans are developed with consideration of the following criteria:

- the risk to the environment associated with a particular activity or operation, for example, the potential for an adverse effect, the sensitivity of the receiving environment, the toxicity or hazard class of the pollutants being emitted or discharged, the proximity to residents and the emission or discharge levels;
- the history of compliance by regulated parties associated with the activity or operation including, the prior enforcement history, records of public complaints, contraventions reported by the facility, emissions performance and monthly and annual reports;
- whether facilities or operations have been certified under a recognized Environmental Management System (EMS) that includes independent third party auditing and continuous improvement demonstrated through transparent reporting; and
- whether facilities or operations are required to be inspected as part of agreements with other government agencies.

Inspection targets and frequencies are set for each of the following classes of activities.

- *EPEA* - industrial, municipal, pesticide activities, solid waste management and land reclamation
- *Water Act* - agricultural, water management (including water mastered systems), dam and canal safety, habitat modification and enhancement activities

In general, facilities, operations and water diversions with a greater potential to cause an adverse effect or with a history of non-compliance can expect to be inspected more frequently. Operations that have demonstrated a sound history of compliance and performance will be rewarded with less frequent inspections.

Alberta Environment recognizes the resources and commitments that regulated parties must put into assisting and cooperating with inspections. Inspections under *EPEA* and the *Water Act* are coordinated, where possible. Alberta Environment also works with other government agencies to support a cross government approach to compliance assurance.

### ***Inspections***

Alberta Environment has developed the *Compliance Inspection and Monitoring Operational Guideline* for *EPEA* and the *Compliance Inspection Operational Guideline* for the *Water Act*. The guidelines outline Alberta Environment's procedures for inspection planning and targeting; inspection preparation; monitoring, sampling and auditing; inspection follow-up and documentation and; program evaluation and performance. A schedule of the required inspector skills, knowledge and training is also included.

The goals identified under the guidelines for inspections include to:

- gather information to confirm and document compliance status;
- identify environmental, process, operational or equipment concerns;
- advise of non-compliance and potential non-compliance issues;
- confirm that previously identified non-compliance issues have been corrected;
- verify the quality of the reporting data submitted;
- advise facilities and operations of their performance status;

- educate operators about their responsibilities under the *Water Act*, *EPEA*, the regulations, approvals, registrations, and codes of practice;
- promote continuous improvement in environmental performance; and
- demonstrate Alberta Environment's commitment to compliance by creating a credible presence.

Inspections are conducted by staff designated as inspectors under provisions of *EPEA* and the *Water Act*. To ensure credibility of the program, most inspections are unannounced. Pre-notification is considered only if specific information or documents need to be available, if specific facility staff need to be present during the inspection, or for situations as specified under the *Water Act*.

### ***Conduct and Outcome of Inspections***

Inspectors are expected to conduct themselves in an appropriate and professional manner. This includes being courteous, neutral and objective. Upon arrival at the activity, operation or water diversion to be inspected, the inspector advises the appropriate personnel of the purpose of the inspection, identifies themselves, produces an identification card when requested, and identifies or explains the nature of the powers or duties that the inspector wishes to carry out under *EPEA* and/or the *Water Act*.

In general terms, *EPEA* and *Water Act* inspectors have the power to undertake the following activities during the course of an inspection:

- take samples,
- conduct tests or take measurements,
- require the production of information, data, records, reports and documents,
- record, or take copies or extracts of information, data, records, reports and documents,
- use computer systems to examine available data,
- use copying equipment to make copies,
- make reasonable inquiries of any person,
- take photographs, electronic or audio-visual records,
- remove information, data, records, reports and documents for examination,
- require things to be operated or set in motion, or require things to not be operated or set in motion, under conditions they specify, and
- use or move any machine, structure, material or equipment in the place of inspection in order to carry out the inspection.

More information on the powers and duties of inspectors under the provisions of the *Water Act* and *EPEA* can be found in Appendix 3.

Upon conclusion of the inspection, results and findings are discussed with facility personnel, particularly any non-compliance or potential non-compliance issues. In addition, inspectors acknowledge where excellent performance was identified. A written inspection report detailing the results and findings is prepared by the inspector and provided to the facility. Based on the inspection findings, the following may occur:

- If there were no contraventions or concerns, the inspection file is closed.

- If there were no contraventions but there were minor concerns (that did not have the potential to cause an adverse effect), this is generally noted in the inspection report and the inspector checks on the status of the corrections at the next scheduled inspection.
- If there were minor contraventions that did not cause an adverse effect, but had the potential to do so, the inspector generally sends a deficiency letter to the facility and schedules a follow-up inspection. Failure to correct any noted deficiencies generally leads to an investigation.
- If there were major or significant contraventions, or repeat contraventions, or concerns that caused an adverse effect or had a potential to cause an adverse effect, the inspector generally refers the matter to an investigator for a possible investigation and enforcement response. Alberta Environment also contacts other relevant government agencies if the matter is within their jurisdiction.

### *Audits*

Specialized facility audit functions are also carried out as part of the overall facility inspection program. An audit involves a more detailed assessment of a particular area or procedures. Types of audits carried out by department staff include:

- **Air emission source audits** to ensure that a facility's manual source (stack) emission surveys are conducted using sampling equipment and procedures as specified by the approval and the Alberta Stack Sampling Code.
- **Continuous emission monitoring ("CEM") audits** to ensure the quality and reliability of a facility's stack CEM data. Audits include examinations of equipment and procedures, tests using calibration gas standards and comparisons of data results against standard testing methodology.
- **Ambient air monitoring audits** to ensure that a facility's equipment and methods of sample collection, standards for calibration and data collection, and processing procedures meet approval requirements.
- **Reclamation and remediation audits** to ensure that the information provided by an operator during the Reclamation Certificate process is accurate, and that the "specified land" has been reclaimed and remediated.

### *Inspection Sweeps*

In addition to the annual compliance inspection program, which is focused primarily on authorized facilities and activities, each region also plans and conducts inspection sweeps. These sweeps are targeted at businesses and activities that may not require authorizations, but still have the potential to harm the environment and are subject to regulatory requirements. The sweeps are generally planned:

- where there is an issue in a particular geographical area, for example, in industrial parks, a watershed, or a community;
- where there are unknown or questionable practices in a particular sector; or
- where there is non-compliance by an industry or group of individuals, or in a specific area.

Inspection sweeps combine education and prevention objectives. These programs give Alberta Environment an opportunity to work together with businesses and individuals to ensure they understand the role they play in protecting the environment and to build capacity in their ability to comply.

Inspection sweeps strive to raise awareness of environmental legislation, the need to protect the environment, and the consequences of non-compliance. Each sweep first involves an education component where specific detailed information about environmental regulations and requirements are provided and explained to the targeted group. The education program is combined with unannounced inspections to ensure all parties understand and are conforming to the requirements. Typically offenders are given an opportunity to come back into compliance provided the offence is of a minor nature, there is no wilful intent, and there has been a move to rectify the issue.

### ***Compliance Performance Reviews***

Reviews are assessments of compulsory monitoring reports, registrations, records and other required submissions to verify compliance and assess performance against the requirements of the *Water Act*, *EPEA*, the regulations, authorizations, and codes of practice. Staff responsible for reviewing and preparing approvals and compliance assurance staff carry out these reviews. They include the following.

- **Industrial Facilities**

Monthly and annual reports documenting air and wastewater emissions, operating and performance results, industrial waste practices and soil and groundwater monitoring are assessed.

The movement of hazardous waste and hazardous recyclables requires a manifest and a recycle docket respectively. Typically these documents are reviewed during inspections or when there is a concern about possible mishandling, improper labelling, or an approval limit that has been exceeded.

- **Municipal Facilities**

Annual and monthly facility reports that document monitoring and operational requirements of potable water systems and wastewater facilities are assessed.

- **Water Diversions**

Water use reports that provide information on how much water the operation actually consumed are assessed.

- **Conservation and Reclamation**

Annual conservation and reclamation reports, activity plans, documents related to industrial activities taking place on “specified lands” and other information submitted in support of Reclamation Certificate applications are assessed.

- **Code of Practice Requirements**

Information supporting registrations and notifications associated with codes of practice may be requested for review.

If contraventions are discovered during the course of a review, the matter is evaluated to determine the appropriate compliance response.

Alberta Environment is developing electronic mechanisms to receive and evaluate compulsory monitoring reports from regulated parties.

### 3.3.4 Voluntary Environmental Audits

A voluntary environmental audit represents a systematic, documented, proactive and objective evaluation undertaken by or on behalf of a regulated entity with the intention of:

- determining environmental risks associated with the operation and related practices;
- assessing compliance with regulatory requirements; and
- assessing the facility's performance and effectiveness against an environmental management system or standard of practice.

Voluntary Environmental Audits (VEA) are an important mechanism for regulated parties to assure their activities and operations meet all regulatory requirements and performance expectations. VEA's demonstrate a growing culture of stewardship within the regulated community. Alberta Environment supports and encourages the adoption and greater use of VEA's while not compromising environmental or resource management protection.

### 3.3.5 Orders (and Directions) for Environmental Protection and Water Management

The *Water Act* and *EPEA* 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. These orders include:

- *Water Act*
  - Water Management Orders (WMO)
- *Environmental Protection and Enhancement Act (EPEA)*
  - Environmental Protection Orders (EPO)
  - Emergency Environmental Protection Orders (EEPO), and
  - Directions of an Inspector

Non-compliance with any of these orders is an offence and may result in an enforcement response. In addition, once an EPO or a WMO is issued, an enforcement response may still occur should additional evidence uncover a contravention of *EPEA*, the *Water Act* or the regulations. If an order is not complied with, Alberta Environment may apply for a court order directing compliance with the order. Alberta Environment may also arrange for the remedial measures required under the order to be undertaken and recover costs from the responsible party. Within seven days of receiving an EPO or a WMO, the person to whom it was issued may appeal the order to the Environmental Appeals Board.

#### ***Water Management Orders (Water Act)***

Under the *Water Act*, a Water Management Order (WMO) can be issued to:

- administer priority,
- address failure to maintain, repair, improve, alter or replace authorized works,
- address works, permanent and temporary diversions, and activities not requiring an authorization,

- suspend diversions of water,
- address flooded land problems,
- address problem water wells and water well drilling,
- address activities, diversions, or operation of works that cause or may cause a significant adverse effect on human health, property or public safety,
- stop or change licensed or approved diversions of water which caused, are causing or may cause a significant adverse effect on the aquatic environment, human health, property or public safety, or
- cause the conservation of water, or stop the wastage of water.

***Environmental Protection Orders (EPEA)***

An Environmental Protection Order (EPO) is a mechanism used to compel a “person” (including an individual, group or company) to prevent environmental damage that may occur, is occurring or has occurred.

Under *EPEA*, an EPO can be issued for:

- the release of a substance that may cause an adverse effect,
- the conservation or reclamation of “specified land”,
- an improperly operated waterworks system,
- the clean-up of unsightly property,
- the manufacture, use, handling, storage, sale, disposal or application of a pesticide or hazardous substance that may cause an adverse effect,
- the improvement or repair of a waterworks system and the protection or restoration of potable water quality,
- the taking of action to prevent, eliminate or remedy the effects of offensive odours, or
- the clean-up of a contaminated site.

An EPO may order a “person” to take any measures considered necessary, including:

- investigating the situation,
- taking action to prevent a substance release or an offensive odour,
- measuring the rate of release or ambient concentration of a substance,
- minimizing or remedying the effects of a substance release on the environment or an offensive odour,
- restoring an area affected by a release or restoring a contaminated site,
- conserving and reclaiming “specified land”,
- installing equipment to control or eliminate a substance release or eliminate an offensive odour,
- constructing or improving a waterworks system,
- protecting or restoring the quality of potable water,
- prohibiting the sale, handling, use or distribution of and ordering the destruction of any matter contaminated by a hazardous substance,
- prohibiting the release of any hazardous substance or pesticide and complying with clean-up and restoration directions,
- cleaning up unsightly property by demolishing or removing waste, and
- reporting on any matter that was ordered to be done.

### ***Emergency Environmental Protection Orders (EPEA)***

An Emergency Environmental Protection Order (EEPO) can be used to rectify emergency situations where there is an immediate and significant adverse or potential adverse effect on the environment or human health. This includes emergency situations related to:

- the release of a substance;
- the handling, transportation, application or disposal of hazardous substances or pesticides;
- the supplying of potable water by a waterworks system; and
- the conservation and reclamation of “specified land”.

Inspectors, investigators or Directors may issue Emergency Environmental Protection Orders. EEPOs for the conservation and reclamation of “specified land” cannot be issued for a period of more than seven days. EEPOs cannot be appealed to the Environmental Appeals Board. Non-compliance with an EEPO may result in further enforcement responses being taken, such as the issuance of an Enforcement Order or the initiation of a prosecution.

### ***Directions of an Inspector (EPEA)***

When an inspector conducts an inspection in respect of “specified land”, the inspector may identify deficiencies in the operator’s conservation and reclamation efforts. The inspector or the Director may issue *Directions of an Inspector* to the operator. The *Directions* identify the activities or conditions whereby the operator failed to conserve or reclaim “specified land”. The operator is directed to undertake conservation and reclamation measures by a specified date. Non-compliance could result in the issuance of an Environmental Protection Order, an Emergency Environmental Protection Order, an Enforcement Order or the initiation of a prosecution. This tool is used only for conservation and reclamation matters (not substance release).

### **3.3.6 Emergency Measures (*Water Act and EPEA*)**

The *Water Act* includes provisions for emergency measures an inspector, investigator or Director can take if necessary to prevent an immediate and significant adverse effect on the environment, the health of the aquatic environment, property, or public safety. Similarly *EPEA* provides for a Director or inspector to undertake emergency measures where a release of a substance may cause, is causing or has caused an immediate and significant adverse effect, or where potable water provided by a waterworks system may cause, is causing or has caused an immediate and significant adverse effect on human life or health. Under these provisions, the government can recover its costs of carrying out the emergency measures from the person, government of another jurisdiction, or local authority that is responsible for causing the conditions that required emergency measures to be taken.

Under the *Water Act*, if the Lieutenant Governor in Council is satisfied that an emergency related to water exists or may exist, he/she can declare an emergency relating to all or part of Alberta. When the Lieutenant Governor in Council has declared an emergency, the Director can issue to any person a Water Management Order suspending authorizations, suspending water diversions, setting out the purposes for which water diversions can occur, and ordering measures as provided for under the Act. The Lieutenant Governor in Council may provide for compensation for losses incurred by licensees and registrants affected by the declaration.

### **3.3.7 Partnerships for Prevention and Education**

Opportunities to partner with other government and non-government agencies, the academic community, special interest groups and the public are key to promoting prevention and education activities. Some examples of partnerships that are in place follow.

- Crime Stoppers Program
- joint inspections with the Alberta Energy & Utilities Board for coal and oil-sands activities
- cooperative work with inspectors in Alberta Sustainable Resource Development, and inspectors from local authorities
- cooperative work with other provincial government departments, such as Alberta Infrastructure and Transportation and Alberta Health and Wellness, on activities also regulated or funded by them
- an administrative agreement under the federal *Fisheries Act* for the control of deposits of deleterious substances. This agreement enables the federal and provincial governments to co-ordinate their inspection and investigation activities and to share information. It also enables co-operative monitoring programs to evaluate and detect trends in environmental quality and the effectiveness of pollution control programs.

## 3.4 ENFORCEMENT

### *Objectives*

All regulatory systems must have an effective enforcement component that serves as the “backstop” for the system. Education and prevention approaches are preferred, but it must also be clear that “the rules” must be respected and that they will be enforced when necessary. The objectives of the enforcement component of compliance assurance are to:

- provide firm but fair enforcement of the *Water Act* and *EPEA*,
- provide enforcement in a timely and consistent manner, and
- base enforcement actions on a “polluter pays”/“resource restitution” philosophy.

“Firm and fair” means that:

- the severity of the enforcement response is related to the severity of the offence, and
- the rules of environmental compliance are clearly spelled out.

“Timely and consistent” means that:

- the priority of the enforcement response will be related to the severity of the environmental impact,
- problems related to a specific industrial activity will be dealt with on an industry-wide basis, and
- taking into consideration the fact that environmental impact differs between facilities, the enforcement response will be comparable regardless of the source, size, location or ownership of the facility.

“Polluter pays/ resource restitution” philosophy means that:

- parties who cause damage to the environment or natural resources should pay for the costs of their actions

Non-compliance with the provisions of an act is called a contravention or an offence. Offences under the *Water Act* and *EPEA* are identified in the legislation.

Non-compliance with the *Water Act* and *EPEA* includes when conduct required by the regulations, a code of practice or an authorization is not followed. A Guideline is enforceable when it forms part of an enforceable document such as a regulation, a code of practice or an authorization. Without such a reference, failure to comply with a Guideline is not a contravention or offence.

### *Key Steps*

The enforcement process follows a series of well-defined steps.

- Alberta Environment becomes aware of **potential non-compliance (incidents)** through information provided by the public, regulated parties, and other government agencies, and through other compliance assurance activities.
- Based on the facts of each incident, an **investigation** may be conducted.
- If the investigation determines that a contravention or offence did not occur, or if there is insufficient evidence to warrant an enforcement action, or there is a defence of due diligence,

the file will be closed with a File Closure Letter. Although the file has been closed, recommendations to fix the problem and/or to take preventive action may be made.

- If the investigation determines a contravention or offence has occurred, an appropriate **enforcement response** is selected and used. Enforcement responses include Enforcement Orders; court orders; warning letters; tickets; administrative penalties; cancellation, suspension or restriction of an authorization; and prosecution.
- **Appeals** are available for most enforcement actions that are taken.
- If the offender does not comply with an enforcement response, further steps are taken to **compel compliance**.
- **Debt and cost recovery** is available to the Government of Alberta under the *Water Act* and *EPEA*.
- After all enforcement steps are complete, the **enforcement file is closed**.

More detailed information on these steps can be found in the following sections.

### **3.4.1 Reporting of Non-Compliance and Emergencies**

Alberta Environment becomes aware of potential non-compliance (incidents) through information provided by the public, regulated parties, and other government agencies, and through other compliance assurance activities. The ways information is provided include:

- anonymous reports from partner organizations such as “Crimestoppers”;
- calls from the public to the emergency response/public complaint number or information provided to Alberta Environment offices and staff;
- compulsory incident reporting as required under *EPEA*, the *Water Act*, the regulations or authorizations;
- observations by staff and the findings from compliance assessment activities such as facility inspections, audits or compliance and performance reviews; and
- formal requests for investigations made under s.196 of *EPEA*;

Once reported, the incident is entered into Alberta Environment’s incident tracking system and a decision is made about what action the incident warrants.

#### ***Reporting Line***

The public is encouraged to report issues, concerns, emergencies and possible incidents of non-compliance with the *Water Act* and *EPEA* by calling either the toll-free, 24-hour emergency response/public complaint number (1-800-222-6514) or the Alberta Environment regional or district office nearest the problem. Issues and concerns reported by the public include air quality concerns (odour, dust, smoke, etc.), activities and diversions affecting surface and ground water quality, soil contamination, reclamation, water well concerns, industrial and municipal discharges, and issues regarding wastes including hazardous wastes.

#### ***Maintaining Complainant Confidentiality***

Alberta Environment’s general policy is to maintain in strictest confidence the identity of public complainants who provide information about environmental concerns and possible environmental offences. Alberta Environment will take measures to protect personal information, including an individual’s name and any information that could be used to confirm their identity. This can include using identifying numbers and pseudonyms; recording sources as “anonymous”; or making a

notation on the file that an individual provided information in confidence. It should be noted, however, that anonymity cannot always be guaranteed, particularly if a prosecution is initiated or if an appeal process related to an enforcement response is initiated.

### ***Request for an Investigation***

*EPEA* provides a formal method for the public to make an application for an investigation. This application is made to the Director and must be accompanied by a solemn declaration as specified.

### **3.4.2 Investigation Process**

An “investigation” is an evidence-gathering function undertaken to substantiate or dismiss an alleged contravention. Under *EPEA* and the *Water Act*, investigations begin when there are reasonable grounds to believe that an offence has occurred. The investigation will substantiate or dismiss an alleged contravention based on evidence admissible for enforcement responses. This includes evaluating evidence of a “due diligence” defence. The defence of “due diligence” means that no person can be convicted of an offence if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent its commission.

Alberta Environment investigations are conducted, completed and documented in a thorough and timely manner that preserves the availability of all potential enforcement responses and ensures the investigation’s integrity. If necessary, AENV will use court mechanisms to ensure investigations can be properly concluded in a timely manner (for example, court orders to allow access and/or prohibit interference with an investigation). Where appropriate, AENV will co-ordinate its investigations with other provincial and federal agencies.

### ***Powers of the Investigator***

The powers and duties of investigators are designated under provisions of *EPEA* and the *Water Act*. In general terms, investigators have the power to conduct the following activities without a search warrant or order:

- enter and inspect any place (facilities, activities, operations, etc. and places where documents may be found);
- stop and inspect vehicles, aircraft and vessels that are or may be being operated in contravention of *EPEA* or the *Water Act*;
- require a person who has charge, management or control to detain any thing that may have released a substance which may have caused an adverse effect; and
- require the production of documents.

Investigators may in the course of exercising these powers:

- require machinery or equipment? to be operated, or set in motion under specific conditions;
- use any machine, structure, material or equipment in the place of the investigation to carry out the inspection;
- take samples;
- conduct tests or take measurements;
- take extracts of documents;
- record or copy information, outputs and records (including by using copying equipment);

- take photographs; and
- make reasonable inquiries of any person.

Upon entering a facility or place, investigators will identify themselves and where appropriate or if requested, explain the nature of the powers or duties the investigator wishes to carry out, including an outline of the nature and purpose of the investigation. Investigators may not enter a private dwelling place or part of a dwelling place except with consent of the occupant of the place or under the authority of an order to enter and inspect or a search warrant. Investigators may apply for a court order to enter and inspect including where the facilities are locked, access has been denied or if someone has prevented the investigator from carrying out their duties.

Investigators have the power, without a search warrant, to seize any thing that is produced to them or that is in plain view if they have reasonable grounds to believe that there has been an offence committed under *EPEA* and that the thing is evidence of the offence. The owner and every person found in the facility or area being investigated must give the investigator all reasonable assistance to enable the investigator to carry out his or her duties. They must also provide to the investigator all information that the investigator reasonably requires that is relative to the carrying out of his or her duties. Failure to do so is an offence.

Investigators may request statements from the complainant and from people where the source of the potential contravention arose (for example, employees). When investigators are carrying out their duties under the Acts, they may exclude all persons from being in attendance except legal counsel for the individual being questioned.

### ***Collection of Evidence***

During an investigation, information is gathered to determine if a contravention has occurred and to assist in determining the appropriate enforcement response. Among other things, evidence will be gathered to determine:

- the nature of the incident and the degree of adverse or potential adverse effect on public safety, the environment and natural resources, human health, and property;
- the *Water Act* and *EPEA* compliance history of the party under investigation;
- the extent and duration of the non-compliance;
- the intent of the party under investigation;
- steps taken by the party under investigation to rectify the situation;
- steps taken to avoid the incident and prevent its recurrence;
- the degree of care associated with the activity;
- whether sufficient evidence exists to proceed with an enforcement response; and
- whether there are defences to the allegation (for example, due diligence).

In most cases, investigators will gather their own evidence to substantiate an allegation. However, data supplied by regulated parties and by complainants as evidence will also be used in proving contraventions. Data supplied by regulated parties is presumed to be accurate. It is an offence to provide false or misleading information.

The investigator will, where appropriate, contact Alberta Justice and/or Justice Canada at a sufficiently early stage of an investigation to ensure that the prosecutor's evidentiary and other prosecutorial needs are met.

### ***Conduct and Outcome of Investigations***

Investigators are expected to conduct themselves in an appropriate and professional manner. This includes being courteous, neutral and objective. Early in an investigation, the investigator will generally send the party a Notice of Investigation that outlines the alleged contravention. The parties will not be informed of the outcome of the investigation and potential enforcement response until a formal review and an enforcement determination has been made.

Generally, one of two outcomes may occur upon the completion of an investigation.

- If the investigation determines that a contravention or offence did not occur, or if there is insufficient evidence to warrant an enforcement action, or there is a due diligence defence, the file will be closed with a File Closure Letter. Although the file has been closed, recommendations to fix the problem and/or to take preventive action may be made.
- If evidence of a contravention exists, the investigator will recommend to the Compliance Manager that enforcement action be taken. The Compliance Manager will then make a determination on the appropriate enforcement response.

### **3.4.3 Applying Enforcement Responses**

The following enforcement tools are available under the *Water Act* and *EPEA* to respond to contraventions:

- Enforcement Orders,
- court orders,
- warning letters,
- tickets,
- administrative penalties,
- cancellation, suspension, or restriction of authorizations, and
- prosecution.

Of these tools, Enforcement Orders and court orders are primarily remedial in nature. Warning letters, tickets, administrative penalties, and prosecutions are primarily punitive in nature. Cancellation, suspension, or restriction of authorizations is both remedial and punitive.

Alberta Environment will only use one punitive enforcement tool under the *Water Act* and *EPEA* for a particular contravention or offence as a result of a single occurrence. However, punitive enforcement tools may be used in conjunction with any remedial tool.

### ***Joint Enforcement Review***

A joint enforcement review process has been established to ensure consistency in the assessment of investigation case files. The review process includes Compliance Managers, the lead investigator and legal counsel from the Environmental Law Section of Alberta Justice. The Compliance Managers and legal counsel review the findings of the investigator, and discuss the available enforcement responses.

The outcome of the review is provided as advice to the responsible Compliance Manager. The Compliance Manager then makes the decision on the appropriate enforcement response. There are no automatic enforcement responses. All available and appropriate tools are considered.

The following factors are considered in determining the appropriate enforcement response.

- **The nature of the contravention and the seriousness of the adverse or potential adverse effect on public safety, the environment or natural resources, human health, or property**

The more serious the effect or potential effect, the more likely the enforcement response will be severe.

- **Compliance history under the *Water Act* and *EPEA***

While compliance history is particularly relevant to a court-imposed penalty, it also plays a role in the selection of an enforcement response. A history of similar offences may indicate a need to ensure that the enforcement response has a clear deterrent effect. Repeat offences may also indicate an ongoing problem that requires a more severe enforcement response.

- **Consistency with enforcement responses to similar past events and circumstances of non-compliance**

To ensure consistency and to be fair to all parties, the decision maker will consider previous responses to similar situations when choosing the appropriate enforcement response. This will include considering the enforcement action that has been taken under *EPEA* and the *Water Act*.

- **Duration of Non-Compliance**

Where those responsible for a contravention respond immediately to correct the situation, the enforcement response may be less severe than if no remedial action was taken.

- **Intent of alleged offender**

Contraventions that result from intentional and negligent behaviour are dealt with more seriously than contraventions that result from something that was unforeseeable. For example, intentional offences can be punishable by a large fine and a jail term. However, the fact that something was unforeseeable is not necessarily a defence or grounds for avoiding an enforcement response. Parties that fail to take action after being notified of a contravention will be treated more severely.

- **Importance of the contravened provision within Alberta Environment's overall regulatory system**

The severity of various types of offences is indicated by the penalties assigned to them in the *Water Act*, *EPEA* and the regulations. The Department treats very seriously those offences relating to the provision of false information or the failure to report a substance release. Such offences are considered serious obstacles to the objective of environmental protection.

It is particularly important to uphold the cornerstones of the regulatory system – obtaining an approval prior to commencing an activity, complying with the approval and reporting non-compliance and substance releases.

- **Likelihood that a particular enforcement response will have the desired effect**

Each enforcement response will cause a different effect, and therefore the response must be appropriate to cause the desired effect in the regulated party, and send the appropriate message to other regulated parties.

▪ **Co-operation of the Party**

The following situations are considered serious. A more severe enforcement response may be pursued when:

- pertinent information is concealed by the regulated party,
- the party demonstrates a negative attitude towards environmental protection,
- the party disregards the Department's prior correspondence or communications, or
- the party hinders the investigation.

The following factors are not considered relevant when determining enforcement responses.

- Start-ups, shut-downs, repairs and maintenance are not acceptable reasons for non-compliance.
- Financial constraints are not an acceptable reason for non-compliance although the courts may also consider financial constraints when setting a fine.

Alberta Environment works with other departments and jurisdictions in an effort to provide a cross-government approach to enforcement when legislation under the responsibility of different agencies is involved.

### **3.4.4 Enforcement Responses**

The following provides some information on the various enforcement responses that are provided for under the legislation.

#### ***Warning Letters***

Warning letters generally indicate the section of the *Water Act*, *EPEA* or the regulations that has been contravened and provide a description of the contravention. The warning letter also advises that it will be considered as part of the compliance history of that company or individual and will be taken into consideration should any future contraventions occur.

#### ***Tickets***

Certain offences may be prosecuted using a ticket. The regulations under the *Provincial Offences and Procedures Act* outline the offences for which tickets may be issued and specifies the penalty for each offence.

Upon being issued a ticket and within the time limit stated in the ticket, the accused may:

- plead guilty and pay the fine to the appropriate court without making a court appearance,
- plead guilty with an explanation and appear in court to request a lesser fine or additional time to pay, or
- submit a not guilty plea. This will result in court appearances and a trial in court.

### ***Administrative Penalties***

Administrative penalties are issued in order to penalize the offender and deter future non-compliance. They are primarily educational in nature, with a monetary penalty to reinforce the appropriate change in behaviour. The type of contraventions for which administrative penalties are available, the factors to be considered in assessing the penalty and the penalty amounts are set out in the *Water Act's Offences and Penalties Regulation* and *EPEA's Administrative Penalty Regulation*.

The maximum administrative penalty is \$5000 per contravention for each day or part of a day in which the contravention occurs or continues. However, *EPEA* and the *Water Act* also provide for the assessment of an administrative penalty to address economic benefit gained by the party as a result of the contravention. This can increase the penalty beyond \$5000.

Under statutory limitations of *EPEA* and the *Water Act*, an administrative penalty may not be issued more than two years after the later of either the date when the contravention occurred or when evidence of the contravention came to the attention of the Director.

An appeal to the Environmental Appeals Board is available whenever an administrative penalty has been issued. The processes for appealing administrative penalties will be consistent and clearly conveyed to potential appellants.

A prosecution cannot be undertaken in situations where an administrative penalty has been paid. If the penalty is not paid, the Department may recover the amount through the civil courts.

### ***Enforcement Orders***

Enforcement Orders may be issued to remedy problems where there is a contravention of the *Water Act*, *EPEA*, the regulations or a term and condition of an authorization. Under *EPEA*, investigators may issue Enforcement Orders that deal with waste or littering. The intent of an Enforcement Order is to compel compliance through remedial actions and, as appropriate, to require actions to prevent future contraventions. The Enforcement Order also educates potential offenders about inappropriate activities and advises the public of Alberta Environment's responses to environmental concerns. Even if parties voluntarily take or commit to take remedial action, an Enforcement Order may be issued to ensure that the commitment is carried out.

An Enforcement Order can be combined with additional enforcement responses (for example, an administrative penalty or a prosecution). However, a prosecution cannot be combined with an Enforcement Order dealing with waste or littering, if the Enforcement Order is complied with.

To ensure regional consistency, legal counsel drafts the Enforcement Order on the instructions of the Compliance Manager. The Compliance Manager generally gives the party an opportunity to meet prior to issuing the order. This is not a formal hearing and there is no negotiation of the terms and conditions of the order. However, the Compliance Manager may consider comments from the party on some of the conditions of the order to ensure that they are realistic (for example, deadlines included in the order). The intent of the meeting is to:

- provide the subject with a description of the circumstances surrounding the contravention;
- provide the subject with the opportunity to present any relevant information; and
- discuss the terms and conditions of the order with the subject to ensure that they are understood.

A subsequent site visit is conducted to assess compliance with the order. Non-compliance of an order is considered a serious matter and may result in additional enforcement responses, including application for a court order or a prosecution. In some situations, Alberta Environment may take the necessary steps to carry out the requirements of the enforcement order. In such cases, costs can be claimed against the parties named in the order.

Under the provisions of *EPEA*, Enforcement Orders which result in the following actions may be appealed to the Environmental Appeals Board within seven days of the order's receipt:

- suspending or cancelling an approval, registration, or certificate of qualification;
- stopping or shutting down an activity or thing permanently or for a specified period; or
- ceasing of the construction or operation of an activity or thing.

Under the *Water Act*, Enforcement Orders which result in the following actions may be appealed to the Environmental Appeals Board within seven days of the order's receipt:

- suspending or cancelling an approval or licence, or cancelling a preliminary certificate;
- stopping or shutting down any activity, diversion of water or operation or a works if the activity, water diversion or operation is the subject of an approval or licence;
- ceasing of the construction, operation, maintenance, repair, control, replacement or removal of any works or undertaking, if the works or undertaking is the subject of an approval; or
- removal or otherwise rendering ineffective of any works or obstruction.

### ***Court Orders***

Court orders are sought when AENV investigative powers or the Director's remedial powers are unsuccessful or insufficient. Court orders may be obtained for the following reasons:

- to compel compliance with an Enforcement Order, Environmental Protection Order, or Water Management Order;
- for an injunction to prevent the commission of an offence or prevent serious environmental damage;
- to prohibit interference with an investigation; or
- for contempt of court

A court order may be sought even if a prosecution has been commenced. Failure to comply with a court order may result in contempt of court proceedings being initiated.

### ***Prosecution***

A prosecution may be pursued when the magnitude or seriousness of an offence warrants this action. A prosecution is considered to be punitive in nature.

If the Compliance Manager decides that a prosecution is the most appropriate enforcement response to a contravention, the Compliance Manager forwards the matter to Alberta Justice. The file is reviewed by Alberta Justice to ensure that there are no legal barriers to prosecution and an Alberta Justice prosecutor becomes the decision maker on whether and how the case proceeds. Alberta Environment provides support to the Crown prosecutor, as required. Prosecutions must be initiated

no more than 2 years after the later of the date when the offence occurred or when evidence of the offence came to the attention of the Director.

Upon conviction of an offender, the court may impose the following, or any combination of the following penalties, on the offender:

- a fine,
- imprisonment, and/or
- a court order, which may or may not include a creative sentence.

The Crown prosecutor has the sole responsibility for making submissions to the Court on behalf of the Alberta Government as to the appropriate sentence for the offender. Alberta Environment enforcement officials assist the Crown prosecutors in this task by providing background information on the matter and on the Compliance Manager's decision to recommend a prosecution. Alberta Environment enforcement officials may also suggest a penalty to the prosecutor.

### ***Creative Sentencing***

The Crown prosecutor may recommend to the Court that it issue a creative sentencing order to an offender. A creative sentence is a type of deterrent sentence, other than a fine, which the court is empowered to impose under the *Water Act* and *EPEA*. Some examples of what creative sentencing orders may compel the person to do include:

- remedying harm or preventing harm to the environment; such as by requiring habitat restoration or by requiring the donation of funds to educational institutions to conduct research into pollution prevention programs;
- publishing the facts relating to the conviction;
- performing community service, such as educating others through training programs for industry on how to prevent harm to the environment; and
- complying with any other conditions that the court considers appropriate to ensure future compliance.

Alberta Environment enforcement officials can assist the Crown prosecutors in reviewing and recommending creative sentencing proposals. Alberta Environment and Alberta Justice have developed a process entitled "Creative Sentencing Process for *EPEA*" which sets out the process, guidelines and criteria that Alberta Environment uses when assisting the Crown prosecutors with this task. The Department promotes the use of creative sentencing orders since the orders are enforcement responses that typically include educational and preventive components.

Alberta Environment ensures that there is follow-up and tracking of requirements that are included in creative sentencing orders. Alberta Environment and Alberta Justice will be collaborating in periodic evaluations regarding the effectiveness of the creative sentencing process in serving compliance assurance and environmental performance objectives.

### ***Cancellation, Suspension, Restriction of Authorizations***

*EPEA* and the *Water Act* empower the Director to cancel an authorization when appropriate.

Cancellations are considered one of the most serious enforcement response because they remove the regulated party's legal ability to conduct their activity, operation or diversion of water. This results

in the requirement for the authorization holder to reapply for their authorization and be subject to the full application review process.

### **3.4.5 Procedural Fairness**

All enforcement responses are required to meet standards of procedural fairness. The Rules of Court apply to prosecutions and tickets. The other enforcement responses – warning letters, administrative penalties, orders and the cancellation, suspension or removal of an authorization – are known as “administrative” enforcement responses. Alberta Environment is responsible for ensuring procedural fairness when these administrative enforcement responses are used.

When making a decision related to an administrative enforcement response, the Compliance Manager will ensure the subject is provided with a process that is procedurally fair considering the nature and consequences of the enforcement response. Prior to making a decision, the Compliance Manager will ensure that he has heard all the evidence, that he has all of the relevant information and that the subject knows the case against them.

The Compliance Manager must also ensure that he has jurisdiction over the matter under the principles of administrative law. To do this, he must meet the following conditions:

- he has all relevant information;
- he considers only relevant (as stated in legislation or guidelines) information;
- he does not have any existing or potential conflict of interest;
- his decision will have no appearance of bias;
- his decision-making is “unfettered” (i.e. the decision-maker considers the circumstances of each particular case and is not bound by any other influences);
- the enforcement response decision is made in a timely manner (without undue delay); and
- after the enforcement response decision is made, the subject is notified in writing of the enforcement response.

The *Water Act* and *EPEA* provide for an independent appeal process through the Environmental Appeals Board for administrative penalties, some orders and the cancellation, suspension or restriction of some authorizations. There are no appeal provisions included in the legislation for warning letters. Appeals for prosecutions and tickets are governed by the Rules of Court and criminal law precedents.

More detailed information on procedural fairness can be found in Appendix 4.

### **3.4.6 Closure of a File**

Once all the enforcement steps have been completed and the Director is satisfied that all enforcement responses have been concluded, the enforcement file will be formally closed. If a report of potential non-compliance results in an investigation where no enforcement response is required, the file will be closed or referred for preventive action (for example, an Environmental Protection Order or Water Management Order). In all cases, the party under investigation will be advised of the outcome.

### **3.4.7 Partnerships for Investigations and Enforcement Responses**

Alberta Environment works cooperatively with other provincial, municipal, and federal government agencies to co-ordinate investigations and enforcement responses. Intergovernmental and inter-agency agreements are an approach that is used to support coordination and to reduce duplication of efforts. The following are examples of agreements Alberta Environment has entered into.

- **Federal/ Provincial Agreements**

Canada and Alberta have entered into an administrative agreement under the federal *Fisheries Act* for the control of deposits of deleterious substances. The objective of the agreement is to streamline and co-ordinate the regulatory activities of the federal and provincial governments in relation to the protection of fisheries, fish habitat and to reduce duplication of regulatory requirements for regulated parties.

- **Provincial Government Agreements**

Government departments and agencies have reciprocal agreements to notify each other of any incidents relating to their legislation when reports of potential non-compliance are received. As well, joint enforcement actions may be taken against operators in the oil and gas sector who have not complied with Alberta Energy & Utilities Board and Alberta Environment requirements, or operators in the livestock sector who are not meeting requirements under the *Agricultural Operations Practices Act* and the *Water Act*.

- **Provincial/ Municipal Agreements**

Alberta Environment notifies local fire departments, municipalities and health units of incidents relating to their jurisdiction.

Another approach is the delegation of the powers under a piece of legislation. *EPEA* allows for the delegation of specified provisions to others. Some of the waste provisions have been delegated to municipalities and some of the land conservation and reclamation provisions have been delegated to inspectors in Alberta Sustainable Resource Development.

# Appendix 1

## Legislation, Regulations and Codes of Practice

The following is a list of the Acts, Regulations and Codes of Practice enforced or used in the Compliance Assurance Program.

### [The Environmental Protection and Enhancement Act](#)

#### Regulations

Activities Designation Regulation  
Administrative Penalty Regulation  
Approvals and Registrations Procedure Regulation  
Beverage Container Recycling Regulation  
Conservation Easement Registration Regulation  
Conservation and Reclamation Regulation  
Disclosure of Information Regulation  
Environmental Appeals Board Regulation  
Environmental Assessment Regulation  
Environmental Assessment (Mandatory and Exempted Activities) Regulation  
Environmental Protection and Enhancement (Miscellaneous) Regulation  
Lubricating Oil Material Recycling and Management Bylaw ~~Regulation~~  
Ozone-Depleting Substances and Halocarbons Regulation  
Pesticide (Ministerial) Regulation  
Pesticide Sales, Handling, Use and Application Regulation  
Potable Water Regulation  
Release Reporting Regulation  
Substance Release Regulation  
Tire Recycling and Management Regulation  
Waste Control Regulation  
Wastewater and Storm Drainage Regulation  
Wastewater and Storm Drainage (Ministerial) Regulation

#### Codes of Practice

[Code of Practice For Asphalt Paving Plants](#)

[Code of Practice For Compost Facilities](#)

[Code of Practice For Compressor And Pumping Stations And Sweet Gas Processing Plants](#)

[Code of Practice For Concrete Producing Plants](#)

[Code of Practice For Exploration Operations](#)

[Code of Practice For Foundries](#)

[Code of Practice For Hydrologic Tracing Analysis Studies](#)

[Code of Practice For Landfills](#)

[Code of Practice For Pesticides](#)

[Code of Practice For Pits](#)

[Code of Practice For Tanker Truck Washing Facilities](#)

[Code of Practice For The Release Of Hydrostatic Test Water From Hydrostatic Testing Of Petroleum Liquid And Gas Pipelines](#)

[Code of Practice For Wastewater Systems Consisting Solely Of A Wastewater Collection System](#)

[Code of Practice For Wastewater Systems Using A Wastewater Lagoon](#)

[Code of Practice For Waterworks Systems Using High Quality Groundwater](#)

[Code of Practice For A Waterworks System Consisting Solely Of A Water Distribution System](#)

## [\*The Water Act\*](#)

### **Regulations and Orders**

Water (Ministerial) Regulation

Water (Offences and Penalties) Regulation

South Saskatchewan River Water Allocation Regulation

Oldman River Basin Water Allocation Order

### **Codes of Practice**

[Code Of Practice For Outfall Structures On Water Bodies](#)

[Code Of Practice For Pipelines And Telecommunications Lines Crossing A Water Body](#)  
[Click here](#) for the maps for the Code of Practice For Pipelines And Telecommunications Lines Crossing A Water Body (*offsite*)

[Code Of Practice For Watercourse Crossings](#)

[Click here](#) for the maps for the Code of Practice For Watercourse Crossings (*offsite*)

[Code Of Practice For The Temporary Diversion Of Water For Hydrostatic Testing Of Pipelines](#)

## [\*The Climate Change and Emissions Management Act\*](#)

### **Regulations**

Specified Gas Reporting Regulation

## ***Other Legislation Potentially Supported through AENV's Compliance Assurance Program***

The following is a list of other legislation for which Alberta Environment does not have compliance assurance responsibility. However, in the course of compliance assurance activities, staff may gather evidence sought by the Crown to support prosecutions under other these pieces of legislation.

### ***Agricultural Operation Practices Act***

***Canadian Environmental Protection Act (federal)***

***Criminal Code of Canada (federal)***

***Dangerous Goods Transportation and Handling Act***

### ***Drainage Districts Act***

Drainage Districts Regulation

***Fisheries Act (federal)***

### ***Government Organization Act, Schedule 5***

***Motor Vehicle Administration Act***

### ***Natural Resources Conservation Board Act***

***North Red Deer Water Authorization Act***

***Occupational Health and Safety Act***

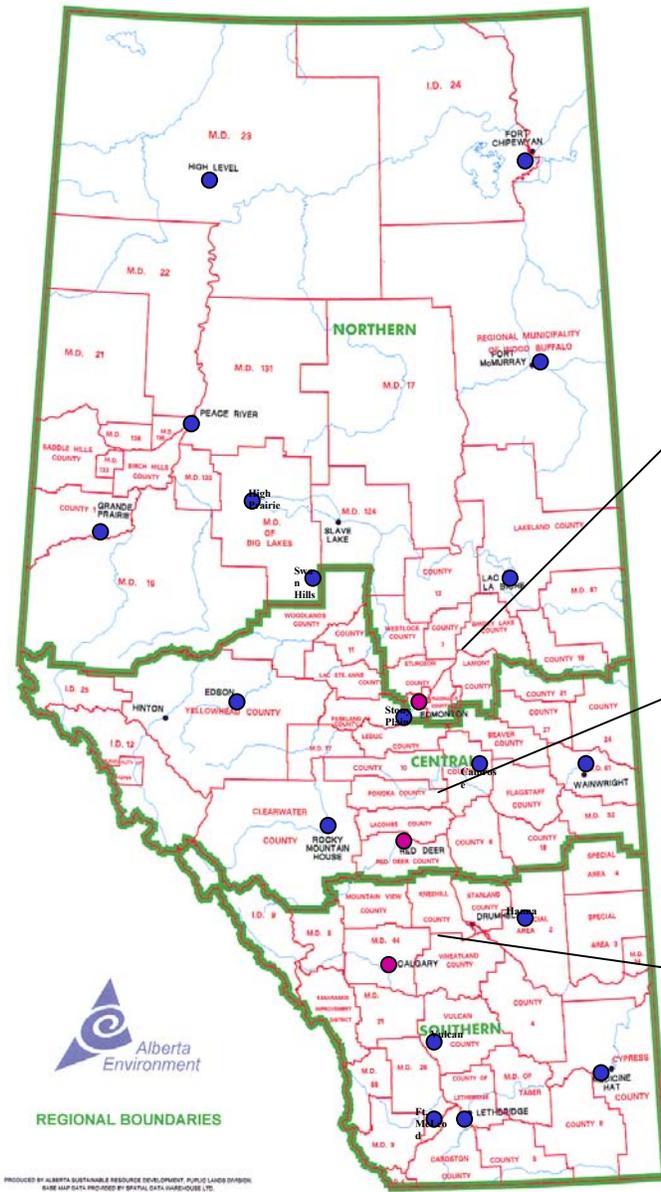
***Pest Control Act (federal)***

***Provincial Offences Procedures Act***

***Police Act (Special Constable Status)***

***Traffic Safety Act***

## Appendix 2 Contacts & Regional Map



Northern Region  
Twin Atria Building  
111-4999-98 Ave  
Edmonton, AB, T6B 2X3  
780-427-7617

Central Region  
Third Floor Provincial Building  
4920-51 St  
Red Deer, AB, T4N 6K8  
403-340-7052

Southern Region  
Deerfoot Square  
2938-11 St N.E.  
Calgary, AB, T2E 7L7  
403-297-7602

**Environmental Service Response Centre**  
**24 Hour Emergency/ Public Complaint number** 1-800-222-6514

**Industry Incident Reporting** 780-422-4505

**Toll-free Alberta Government RITE Line** 310-0000

**Regional and District Offices**

Southern Region	Calgary	780-297-8271
Southern Region	Lethbridge	403-381-5511
Central Region	Red Deer)	403-340-7052
Central Region	Stony Plain	780-963-6131
Central Region	Edson	780-723-8370
Northern Region	Edmonton	780-427-7617
Northern Region	Peace River	780-624-6402
Northern Region	Grande Prairie	780-538- 5460

**Alberta Environment Information Centre** 780-422-2079  
(Edmonton)

## Appendix 3

### Inspector Powers and Duties

#### ***EPEA* Inspector Powers and Duties**

The specific powers and duties of an inspector are set out in s.26 and Part 10 of *EPEA*. In general terms, *EPEA* inspectors have the power to do the following activities without a search warrant or order:

- Enter and inspect facilities;
- stop and inspect vehicles releasing substances that may cause an adverse effect; and
- require the production of documents

An *EPEA* inspector may do a number of things in the course of exercising these powers including:

- take samples,
- conduct tests or take measurements,
- record or take copies of extracts of information, data, records, reports and documents,
- use copying equipment to make copies,
- take photographs, electronic or audio-visual records,
- make reasonable inquiries of any person, and
- provide written directions.

An inspector may also apply for a court order to enter and inspect facilities if those facilities are locked, if access has been denied or if someone has prevented the inspector from carrying out his or her duties. The owner and every person found in the facility or the area that is subject to the inspection must give the inspector all reasonable assistance to enable the inspector to carry out his or her duties. As well, those parties must also provide to the inspector all information that the inspector reasonably requires that is relative to the carrying out of his or her duties. Failure to do so is an offence under *EPEA*.

#### ***Water Act* Inspector Powers and Duties**

The specific powers and duties of an inspector are set out in Part 10 of the *Water Act*. In general terms, *Water Act* inspectors have the authority under s.119 of the *Water Act* to, without a search warrant or order, enter and inspect any place other than a private dwelling place, in which the inspector (or authorized person) believes, on reasonable grounds that:

- there is a works;
- an undertaking is or was initiated or carried out;
- an activity or diversion of water is or was carried out;
- there is or may be an obstruction that interferes with a diversion or flow of water;
- it is or is required to be the subject of or referred to in an approval, preliminary certificate, licence, registration, certificate of completion, water management order, or enforcement order;
- it is necessary to ensure the safety of a works or the protection of any person or property that could be affected by the safety of a works;
- it is relevant to any complaint made with respect to the *Water Act*; or
- it is likely to contain documents related to an activity, operation of a works or diversion of water, or to contain anything that is or is required to be the subject of an approval,

preliminary certificate., licence, registration, certificate of completion, water management order, or enforcement order.

S.120 of the *Water Act* empowers the inspector to do a number of things in the course of exercising these powers such as:

- require things to be operated, set in motion or be required to cease operation under conditions they specify
- use or move any machine, structure, material or equipment in the place of inspection in order to carry out the inspection
- take samples
- conduct tests or take measurements
- require the production of information, data, records, reports and documents
- record, or take copies or extracts of information, data, records, reports and documents
- use computer systems to examine available data
- use copying equipment to make copies
- make reasonable inquiries of any person
- take photographs, electronic or audio-visual records
- take any action necessary to carry out an inspection
- remove information, data, records, reports and documents for examination

An inspector may also apply for a court order to enter and inspect a place that is locked or otherwise inaccessible, if access has been denied or if someone has prevented the inspector from carrying out his or her duties.

The owner and every person found in the place where the inspection is occurring must give the inspector all reasonable assistance to enable the inspector to exercise their powers and carry out their duties. As well, those parties must also provide to the inspector all information that the inspector reasonably requires that is relative to the carrying out of their duties. Failure to do so is an offence under the *Water Act*.

## Appendix 4

### Procedural Fairness Elements for *Water Act / EPEA* Administrative Enforcement Responses

Element of Procedural Fairness	Orders	Warning letter	Administrative Penalty	Cancellation/Suspension/Restriction of Authorization
<b>Ensure subject knows the case against them</b> (Disclose evidence to Subject)	Subject is provided description of the circumstances surrounding the contravention, <i>and</i> Subject is offered opportunity to review and discuss case with decision-maker. <i>(Note: This does not include emergency situations.)</i>	Investigation staff review the circumstances surrounding the contravention with the subject in person, or if appropriate, by telephone, <i>and</i> Staff document their discussion, and provide this information to decision-maker.	Subject is provided description of the circumstances surrounding the contravention, <i>and</i> Subject is provided with copy of criteria (factors, legislation) used in calculating a penalty, <i>and</i> Subject is offered opportunity to review and discuss case with decision-maker.	Subject is provided description of circumstances surrounding contravention, <i>and</i> Subject is offered opportunity to review and discuss case with decision-maker.
<b>Ensure decision-maker has all evidence and relevant information</b> (Subject is given opportunity to challenge evidence and provide information)	Subject is offered opportunity to present relevant information to decision-maker. <i>(Note: This does not include emergency situations.)</i>	Investigation staff ask subject's view on matter, document it and provide this information to decision-maker. Decision-maker does not have to meet with subject.	Subject is offered opportunity to present relevant information to decision-maker.	Subject is offered opportunity to present relevant information to decision-maker.
<b>Written reasons/findings of fact for decision</b>	Findings of fact and reasons for issuing the order are set out in the order.	Warning letter sets out basic findings of fact surrounding contravention.	Decision-maker writes their finding of fact, reasons for issuing the administrative penalty, calculation of penalty, and consideration of degree to which subject's submissions mitigated penalty.	Findings of fact and reasons for cancellation, suspension or restriction are set out in writing by the Director.
<b>Appeal of decision</b>	Subject may appeal most orders to tribunal independent of department (but that may still report to the Minister of Environment). <i>(Note: This does not apply to "emergency" orders.)</i>	No appeal available.	Subject may appeal administrative penalty to tribunal independent of department (but that may still report to the Minister of Environment)	Subject may appeal cancellation/suspension/restriction of authorization to tribunal independent of department (but that may still report to the Minister of Environment) <i>(Note: this does not apply to all types of authorizations)</i>

**Use of Table – Notes:** 1) Elements of procedural fairness are not meant to be sequential; and more than one element of procedural fairness may be achieved in one action. 2) At this time the independent tribunal responsible for appeals is the Environmental Appeal Board.

## **Appendix 5**

### **Collection, Use and Disclosure of Information**

Openness and transparency of information supports public confidence and encourages the regulated community to achieve and go beyond compliance requirements. The use of actual situation examples is an important component in educating and preventing non-compliance. The following sections describe how compliance assurance information is collected and how access to that information is provided. The collection, use and disclosure of information by Alberta Environment is governed by the *Freedom of Information and Protection of Privacy Act (FOIP Act)*, and the access to information provisions of *EPEA* and the *Water Act*.

#### **1. Release of Information and Reports Submitted to Alberta Environment**

*EPEA* and the Water (Ministerial) Regulation set out the type of information that the public can access from Alberta Environment. The legislation also includes provisions on exemptions and exceptions to disclosure.

All information and reports required to be submitted to Alberta Environment that are categorized as publicly accessible will be disclosed in their entirety, upon request, unless the information or report relates to an open investigation or an enforcement response that is under way.

#### **2. Requests for Confidentiality**

Records and information submitted to Alberta Environment are not confidential, unless a request for confidentiality is made to the Director and accepted, in accordance with provisions under *EPEA*. When a record or information is submitted to Alberta Environment with a request for confidentiality, and there is no applicable confidentiality provision in the statute:

confidentiality will be denied;

- the record or information will be disclosed by Alberta Environment, on request, in accordance with the access to information provisions under *EPEA* or the *Water Act*; and
- the submitter will be advised that the record or information may be released while it is in the regulator's possession.

Within a specified time period after voluntary submission of records and information, the regulator will, at the submitter's request, return records to the submitter.

#### **3. Compliance Assurance Program Reports**

Comprehensive *Compliance Assessment and Enforcement Reports* are produced on an annual basis. These reports include a summary of:

- compliance assessment activities undertaken;
- the results of compliance assessment activities, including the level of compliance by regulated operations or activities; and
- the enforcement responses taken as a result of non-compliance found through compliance assessments.

On a quarterly basis, an *EPEA* and *Water Act* enforcement summary document is compiled and released, providing an overview of enforcement of *EPEA*, the *Water Act* and the regulations during that period. These reports summarize the numbers of enforcement responses, list the amounts of fines and the types of penalties assessed, and provide details on enforcement responses. This includes information on each contravention, the company or individual involved, the decision date, the amount of the penalty and general comments about the offence.

#### **4. Compliance Assessment Information**

Upon request, information contained in a formal routine inspection report will be disclosed. A formal routine inspection report includes the results of a specific inspection. It may be written in a specific format such as a form, or as a letter or memorandum. A formal routine report does not include an inspector's hand-written notes, or regulator reports or information on the regulator's planned compliance assessment programs.

#### **5. Investigation Information**

Records relating to an open investigation will not be disclosed, however, subject to the *FOIP Act* and the requirements of administrative fairness, the regulator may disclose information to the person who is the subject of the open investigation. Information relating to an open investigation will not be released because it could interfere with a third party's right to a fair trial, or to an impartial adjudication, or cause harm to the prosecution or other disposition if the information was released in advance.

Records may be disclosed once the investigation is closed, subject to the provisions in the legislation under which the investigation occurred. Requests for information relating to a closed investigation will be referred to the *FOIP Act* process, unless the regulator routinely discloses the information requested.

Upon request, information leading to the issuance of an order may be released once the order has been issued, even if the investigation is not closed. This does not apply in cases when the investigation is ongoing for an anticipated prosecution, administrative penalty or warning letter, or when a prosecution is underway.

#### **6. Records Management**

Appropriate records management practices will be followed for investigative records including, where practical, clearly identifying on the face of the record or file when an investigation has been commenced and concluded. Investigative records should remain distinct from non-investigative records.

All records surrounding investigations and enforcement responses will be comprehensive and finalized in a timely manner. To accomplish this, the records will fully document the case by including the following:

- any enforcement response taken or reasons why no enforcement response was taken;
- the manner in which the enforcement response has been completed;

- the manner and time in which each condition or term of an order has been complied with; and
- the written notification (to the subject) of completion and closure of an order.

When a file is closed, the complainant will be advised of the investigation's outcome upon request. If the complaint was made pursuant to the section of *EPEA* that provides for a formal request for an investigation, the Director will report back to the complainant within 90 days of receiving the application to inform the complainant about the progress of the investigation and any action to be taken with respect to the alleged offence.

## **7. Personal Information Management**

Personal information is collected and managed in accordance with the provisions of the *Freedom of Information and Protection of Privacy (FOIP) Act*. Alberta Environment's general policy is to maintain in strictest confidence the identity of public complainants who provide information about environmental concerns and possible environmental offences. Alberta Environment will take measures to protect personal information, including an individual's name and any information that could be used to confirm their identity. This can include using identifying numbers and pseudonyms; recording sources as "anonymous"; or making a notation on the file that an individual provided information in confidence. It should be noted, however, that anonymity cannot always be guaranteed, particularly if a prosecution is initiated or if an appeal process related to an enforcement response is initiated.

When a request is made to Alberta Environment for records that include personal information provided to the department in a business or professional context, it will be disclosed as this is not considered to be an unreasonable invasion of privacy under the *FOIP Act*. This may include information such as an individual's name and business contact information (business title, address, telephone number, fax number and email address) – information related solely to the professional or business capacity of a person working for corporation, provided by the corporation or an individual acting on behalf of a corporation, or related information about a person carrying out their corporate duties.

Alberta Environment may disclose statistical information and documents relating to enforcement responses against an individual or corporation. For example, summaries about specific enforcement responses, including the names of offenders, are routinely released by Alberta Environment.

When conducting compliance assurance activities, Alberta Environment will only collect personal information that, at the time of the compliance assurance activity, is reasonably required for performing statutory duties and necessary for meeting the compliance assurance goals of the program.

## **8. Intelligence Information**

*Intelligence information is considered to be confidential and is subject to the provisions of the FOIP Act.* This type of information may not be released because of the potential for harm to law enforcement.