

Compliance and Enforcement Program

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Manual 013: Compliance and Enforcement Program

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Introduction

Ensuring that regulated parties comply with regulatory requirements is one of the Alberta Energy Regulator's (AER's) principal objectives. This is achieved using various compliance assurance activities and by considering the circumstances of each noncompliance.

The AER has developed *Manual 013: Compliance and Enforcement Program Manual* to ensure a fair, protective, credible, effective, efficient, and risk-informed approach that balances the three compliance components: education, prevention, and enforcement. This approach will be adapted to changing priorities and trends. As a regulator committed to regulatory excellence, the AER will strive for operational excellence and leadership and will strive to be transparent to the public and to regulated parties.

Responding to noncompliance is often a complex and iterative process that requires technical (engineering, geological, etc.), environmental (land management, biological, etc.), and compliance expertise (inspectors, auditors, investigators, compliance advisors, legal and statutory decision-makers). Communication as a team about compliance issues and the options to resolve them is fundamental to ensuring the best approach and outcomes.

The balanced and principled use of compliance assurance activities and enforcement tools demonstrates the AER's commitment to building confidence through accountable and transparent programs and procedures. Together these activities help make the consequences of noncompliance consistent, clear, and predictable, and ensure that AER resources are directed to the highest priorities.

Purpose

This manual describes the compliance assurance activities and procedures that fall under the *Integrated Compliance Assurance Framework*, with the purpose to do the following:

- Provide clarity and certainty to AER staff, the public, and regulated parties about the key components of the Compliance and Enforcement Program, and how they will be achieved.
- Support the organizational culture of compliance assurance within the AER.
- Support consistent, responsive, coordinated, and effective delivery of the Compliance and Enforcement Program.
- Describe this program's key components and how these components are applied.
- Provide a foundation within which procedures and operational guidelines can be developed.
- Promote effective communication and collaboration between AER staff to achieve the best possible outcomes.
- Support operational excellence through continuous improvement, training, and leadership.

1 Compliance and Enforcement Context

Objectives of this section:

- 1) To emphasize the AER's commitment to achieving compliance.
- 2) To explain the application and scope of this manual.

1.1 Introduction

AER staff have a variety of responsibilities and authorities under a number of statutes (e.g., energy resource enactments and specified enactments—under Acts, Regulations & Rules on the AER website aer.ca) and their accompanying regulations and rules. The type and extent of staff involvement in ensuring compliance with these requirements varies with each position and its job responsibilities. AER staff, including those in the Environment and Operational Performance (EOP), Authorizations, Closure and Liability, Industry Operations, and Information Management branches, are responsible for managing compliance matters.

AER staff are responsible for conducting inspections and audits that may lead to compliance assurance activities or use of a compliance or enforcement tool such as the issuance of a notice of noncompliance, order, administrative sanction, or administrative penalty. Collaboration between AER inspection and audit staff during the verification activities is necessary to determine the most appropriate response to noncompliance. In these cases, inspection and audit staff provide information about the regulatory history or technical expertise on the operational, environmental, or safety impacts; and remediation of noncompliances; while other staff provide investigative expertise. Compliance advisors also have an important role in the organization in ensuring that audit, inspection, and investigation staff follow existing processes and in assessing the most appropriate compliance or enforcement tool for compelling compliance and deterring future noncompliance.

1.2 The AER's Position on Compliance and Enforcement

The AER strives to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance and enforcement tools, using the most appropriate tool necessary to get compliance and to promote future compliance.

When considering how to respond to noncompliance, AER staff consider the factual circumstances of the noncompliance and the severity of its actual or potential impacts. The compliance history of the regulated party is taken into consideration, as well as how to achieve the best environmental, public safety, and operational outcomes. In some cases, the AER uses additional tools when previous compliance and enforcement tools have been ineffective.

The integrity and effectiveness of the regulatory scheme established to achieve the AER's mandate under the *Responsible Energy Development Act (REDA)* is highly dependent on compliance with regulatory

requirements. The AER will consider an appropriate compliance response to any failure to comply with these regulatory requirements.

1.3 Application of the Compliance and Enforcement Program

The Compliance and Enforcement Program applies to

- all incidents of noncompliance with regulatory requirements imposed or administered by the AER, including statutes, regulations, rules, approvals (as defined in the *Responsible Energy Development Act*), directives, orders, codes of practice, and other regulatory instruments;
- all AER inspectors, auditors, and investigators; and
- all other AER staff that play a role in ensuring compliance.

This manual is not a complete statement of all compliance assurance activities and procedures relating to compliance and enforcement within the AER. In using this manual, AER staff need to consult other business rules, where applicable, that guide other aspects of compliance management relating to specific compliance program areas.

2 Inspections and Audits

Objectives of this section:

- 1) To ensure a common understanding of the terms “inspection” and “audit”
- 2) To provide information about the roles and responsibilities of AER staff authorized to conduct inspections and audits

2.1 Introduction

Inspections and audits are important functions used to support the AER’s compliance assurance activities.

- The purpose of an inspection, which is done in the field, is to verify compliance with the AER’s regulatory requirements.
- The purpose of an audit is to verify compliance with the AER’s regulatory requirements through a review of information provided to the AER.

2.2 Planning

AER staff verify regulatory compliance through coordinated risk-informed inspection and audit activities. Criteria that AER staff consider when planning in these areas include

- operator performance and compliance history,
- sensitivity of areas where operations take place,
- inherent risk, and
- significance of regulatory requirements.

2.3 Regulated-Party Reporting of a Noncompliance

Noncompliance may be identified through reporting by regulated parties as follows:

- Compulsory reporting—reporting by regulated parties of noncompliance as set out under regulatory requirements
- Voluntary reporting—reporting by regulated parties that is not mandated under regulatory requirements (voluntary self-disclosure process, see section 3)

2.4 Inspections

Inspections can be characterized as any field activities carried out to verify compliance with regulatory requirements. They are generally done on a risk-informed basis by inspection staff, and where applicable, are coordinated with audit staff. Inspections are typically conducted at regulated sites and facilities or other associated locations. They can include field observations and review of data or other materials supplied by the regulated party. They are both reactive and proactive (based on the risk-informed planning process), operation-specific or sector-specific, and wherever possible coordinated with audit

activities. Reactive inspections may occur in response to information such as audits, incident notifications, or complaints that come to the attention of the AER. Inspections can be announced ahead of time, or unannounced.

Inspections may also be used to determine sector compliance rates or to assess risks and gain technical understanding of new operations, equipment, or processes associated with regulated activities. Inspections can also promote compliance by educating the operator. In some circumstances, an inspection will identify the need for an investigation of noncompliance with regulatory requirements.

2.5 Staff Authorized to Conduct Inspections

Designated AER staff are authorized to conduct inspections as provided in the AER's delegations of authority. Staff conducting inspections will conduct themselves in a professional manner. Upon arrival at a regulated site, facility, or other associated location, inspectors should

- advise appropriate personnel, if present of the purpose of the inspection,
- identify themselves,
- produce an identification card when requested, and
- identify or explain the nature of the authority that the inspector has and the duties that the inspector plans to carry out.

While conducting inspections, AER staff, in certain circumstances, have authority to do, among other things, some or any of the following:

- Enter any place
- Make reasonable inquiries of any person
- Request any information
- Remove or copy any information

More information on the powers and duties conferred on AER staff during an inspection are found in the energy resource and specified enactments located on the AER's website.

Upon conclusion of the inspection, where representatives of the regulated party are present, findings are discussed, including any particular noncompliance identified or any potential future noncompliance issues. Inspectors should also acknowledge where excellent performance was identified.

For each inspection, the inspector prepares a written inspection report detailing the results and findings and gives it to the regulated party or its representative either in electronic form or as a hard copy, depending on the nature of the inspection, its findings, and its results.

2.6 Audits

Audits can be characterized as an activity to verify compliance with AER requirements or identify risks that increase the likelihood of an incident or noncompliance. Audits are typically done on a risk-informed basis by analyzing information and by engaging corporate personnel and inspection staff when required. The following are some examples of audits carried out by AER staff:

- Air emission source audits 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 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 the method by which the data results were collected against standard testing methodology.
- Ambient air monitoring audits 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 ensure that the information provided by the regulated party during the reclamation certification process is accurate and that the "specified land" has been reclaimed and remediated.
- Well suspension and abandonment audits ensure that inactive wells have been suspended and abandoned in accordance with prescribed requirements.
- Approval and licensing audits ensure that the information provided by regulated parties in the approval process is accurate and that the operations are being conducted as licensed or approved.
- Emergency preparedness audits ensure that regulated parties have emergency response plans in place and can adequately respond to emergencies during energy activities.
- Mineable oil sands and coal scheme approval audits ensure that oil sands mines and coal mines are operating in accordance with their approval.
- Flaring, incinerating, and venting audits ensure that flare systems are designed and operated appropriately and in accordance with approved conditions.

2.7 Staff Conducting Audits

Similar to AER inspection staff, other AER staff are responsible for conducting audits. While conducting audits, auditors have the authority under legislation to request information and examine records pertaining to the construction, operation, maintenance, or closure of energy resource development.

For each audit, the auditor prepares a written report detailing the results and findings and gives it to the regulated party or its representative either in electronic form or as a hard copy, depending on the nature of the audit, its findings, and the results.

2.8 Transition from Inspections and Audits to Investigation

Inspections and audits may lead to investigation when noncompliance is detected. In these cases, the purpose shifts from verifying compliance and the potential impacts to collecting information and evidence to determine the facts relevant to a noncompliance.

Investigations can be conducted by many groups within the AER where any of the triage factors apply (see section 6). Who conducts the investigation depends on the circumstances and significance of the noncompliance.

3 Voluntary Self-Disclosure Process

Objectives of this section:

- 1) To ensure a common understanding of the voluntary self-disclosure (VSD) process
- 2) To provide criteria for acceptance under the VSD process

3.1 Introduction

Voluntary self-disclosure is a regulated party's disclosure of a noncompliance that may qualify under the VSD process.

When a regulated party identifies a noncompliance, the AER expects it to be corrected or addressed and reported to the AER in writing. The AER also expects the regulated party to act as if the AER had identified the noncompliance. The AER's VSD process is intended to encourage regulated parties to proactively identify, report, and correct noncompliant events.

3.2 Criteria

Upon review, the AER will not accept a regulated party's VSD of a noncompliant event under the following circumstances:

- The regulated party was not the first party to contact the AER about the noncompliance.
- The regulated party has not taken the appropriate steps in response to the noncompliance at the time of disclosure, to the satisfaction of the AER.
- Notification of the noncompliance occurred during a required performance presentation (e.g., as defined in *Directive 054: Performance Presentations, Auditing, and Surveillance of In Situ Oil Sands Schemes*).
- Notification of a noncompliance occurred in an application to restore compliance.
- Notification of a noncompliance was given after the AER had started an audit, inspection, or investigation.
- Notification to the AER of an event or a noncompliance is required by an act, regulation, rule, or directive, or as a condition of an approval.
- Notification was given to the AER of a noncompliance that the regulated party has already been requested to fix.
- Self-disclosure of the noncompliance will result or has resulted in a competitive advantage.

Further guidance on the AER VSD process can be found on the AER website.

4 Noncompliance Triage Assessment Tool

Objectives of this section:

- 1) To ensure fairness and consistency in the assessment of and response to noncompliance
- 2) To reinforce the AER's commitment to compliance by ensuring that the most appropriate measures are used to achieve compliance while considering the facts of the situation and the need to promote future compliance.

4.1 Introduction

The noncompliance triage assessment is a tool that helps to ensure a consistent approach to responding to noncompliance. AER staff are to use it when considering the context and specifics of individual cases of noncompliance.

4.2 Applying the Noncompliance Triage Assessment

In responding to noncompliance, it is necessary to examine the available information to determine the full extent of the noncompliance and any related regulatory history.

The following questions provide direction in determining an appropriate response:

- 1) Did the noncompliance cause significant impact to the environment, public safety, or an energy resource?
- 2) Has the regulated party conducted an unauthorized activity that would not have been approved?
- 3) Is there evidence that suggests that the noncompliance was done knowingly, willfully, or with demonstrated disregard?
- 4) Does the regulated party have a history of noncompliance related to the current noncompliance?
- 5) Has the regulated party knowingly provided false or misleading information while addressing a regulatory requirement?

Note that a statutory decision-maker in EOP may consider any other relevant factors to determine whether an investigation is warranted.

When program staff identify a noncompliance, they are to consider the noncompliance triage assessment, and if any factors apply, they complete the assessment form and refer the noncompliance to the EOP's investigations team. This form incorporates the questions above as factors to assess the magnitude, duration, and frequency of the noncompliance to determine whether an investigation is warranted.

While the noncompliance triage assessment is designed to help AER staff assess individual cases of noncompliance, it also gives program staff a means of coordinating responses to noncompliance. Monitoring emerging noncompliance trends and developing a systematic and coordinated response will be the responsibility of the compliance assurance staff.

Where AER staff encounter noncompliance and none of the triage factors apply, staff will still issue a notice of noncompliance.

5 Responding to Noncompliance – Guidance for Program Staff

Objectives of this section:

- 1) To ensure fairness and consistency in the assessment of and response to noncompliance
- 2) To provide guidance to program staff in determining when it is advisable to consult with compliance advisors or the investigation team within EOP on a noncompliance response of a regulated party
- 3) To provide guidance to program staff on when the investigation process applies

5.1 Introduction

This section outlines the procedure for program staff to follow when they become aware of a noncompliance. The procedure sets out common steps and decision points that guide program staff into one of three “compliance streams” as illustrated in the flow chart in figure 1 on page 14.

There are four key steps to determine which stream to follow:

- 1) Assess the noncompliance using the noncompliance triage assessment.
- 2) Consult with the compliance assurance staff and investigation team within EOP, if required.
- 3) Determine whether an investigation is needed.
- 4) Take steps to address the noncompliance through a notice of noncompliance.

These steps underscore the importance of cross-divisional and branch collaboration to determine the most appropriate response for certain cases of noncompliance. Use of these steps by AER staff ensures that consultation occurs when required and that noncompliance is addressed in a consistent and effective manner across the AER.

The first three steps also apply if a noncompliant party fails to comply with a notice of noncompliance.

These steps are not intended to impair the discretion of AER staff to take immediate steps to remediate a noncompliance or to begin an investigation when necessary. AER staff may request the involvement of an appropriate AER investigator within EOP.

5.2 Use of More than One Compliance Tool at a Time

In some circumstances, it is appropriate to consider multiple approaches to noncompliance. A notice of noncompliance, issued to address the immediacy of a situation, may be followed by an investigation, which can result in use of an enforcement tool. Applicable legislation should be reviewed when considering multiple approaches.

5.3 Communication with a Regulated Party during an Investigation

During the investigative process it is important to ensure that communication between program staff and the regulated party does not compromise the investigation. In these situations, program staff must ensure that there is dialogue with the investigating staff about roles and responsibilities before engaging in discussions with the regulated party.

5.4 Involvement of the Investigation Team in EOP

The Investigation Team is a unit of the EOP branch that deals with critical and high-priority investigations (see section 6).

Program managers or their delegates refer investigations directly to the EOP Investigation Team after completing the noncompliance triage assessment if any of the factors apply.

The decision on whether the EOP Investigation Team should investigate is made by the team's manager in consultation with the program manager and the manager of compliance assurance within EOP. In each case, the decision to have the EOP Investigation Team investigate is based on the critical and high priority (discussed in section 6.3) of the noncompliance.

5.5 Procedure

The steps described below are associated with the numbered elements in figure 1 on page 14.

- 1) Program staff may identify the noncompliance in the course of their work, or it may be reported by a member of the public or other stakeholders. Such a report would have to be verified by program staff.
- 2) Program staff will issue a notice of noncompliance and use the noncompliance triage assessment (triage) to assess the noncompliance to determine whether any triage factors apply. Meeting any factors is intended to determine the need for a potential investigation and potentially another compliance and enforcement tool. See section 4 for guidance in using the triage.
 - a) Where none of the triage factors apply, an investigation is not warranted. Program staff will issue a notice of noncompliance in accordance with internal business rules.

Compliance Stream A

- Compliance and enforcement tools are within program authority (notice of noncompliance), triage factors do not apply, and an investigation is not warranted.
 - Program staff will follow program-specific reporting requirements to track the noncompliance response of the regulated party.
- b) If any triage factors apply, program staff will determine that an investigation should be considered. Program staff will issue a notice of noncompliance in accordance with internal business rules and will forward the file and triage to the EOP investigations manager.

- 3) When assessing the noncompliance and the triage, program staff will determine whether consultation with compliance assurance staff is required. Consultation is required if there is uncertainty about meeting any triage factors that apply.
- 4) Consultation between program staff and compliance assurance staff is conducted to review the triage factors and to determine whether any factors that warrant an investigation apply.
 - a) If triage factors do not apply, an investigation is not warranted. Program staff have issued a notice of noncompliance in accordance with internal business rules.

Compliance Stream A

- Compliance and enforcement tools are within program authority (notice of noncompliance), triage factors do not apply, and an investigation is not warranted.
 - Program staff will follow program-specific reporting requirements to track the noncompliance response of the regulated party.
- b) If any triage factors do apply, program staff and compliance assurance staff will determine that an investigation should be considered. Program staff will issue a notice of noncompliance and will forward the file and triage to the EOP investigations manager in accordance with internal business rules.
- 5) The EOP investigations manager (manager) will review and verify the circumstances of the triage to confirm that the factors apply. If the manager determines that triage factors do not apply, an investigation is not warranted. Program staff will issue a notice of noncompliance in accordance with internal business rules.

Compliance Stream A

- Compliance and enforcement tools are within program authority (notice of noncompliance), triage factors do not apply, and an investigation is not warranted.
- Program staff will follow program-specific reporting requirements to track the noncompliance response of the regulated party.

If the triage factors do apply, the manager will determine whether the investigation will be conducted by the program staff with the support of the compliance assurance staff or retained for investigation by the EOP Investigation Team.

Compliance Stream B

- Program staff have issued the notice of noncompliance to achieve compliance, following their specific program policy and procedures.
- Program staff will conduct an investigation with the support of the compliance assurance staff to determine a compliance and enforcement tool beyond the notice of noncompliance in order

to compel compliance or deter future noncompliance (e.g., warning letter, administrative penalty, sanction, or order) in accordance with investigation business rules.

- Program staff will follow program-specific reporting requirements to track the noncompliance response of the regulated party.

Or...

Compliance Stream C

- Program staff will issue the notice of noncompliance to achieve compliance following their specific program policy and procedures.
- The EOP Investigation Team will conduct the investigation to determine a compliance and enforcement tool beyond the notice of noncompliance in order to compel compliance or deter future noncompliance (e.g., warning letter, administrative penalty, sanction, order, or prosecution) in accordance with investigation business rules.
- Program staff will follow program-specific reporting requirements to track the noncompliance response of the regulated party.

Note that where new information becomes available, the appropriateness of the compliance stream will be re-evaluated and may be changed.

6 Investigations

Objectives of this section:

- 1) To ensure a common understanding of the investigation process
- 2) To provide information about the roles and responsibilities of staff authorized to conduct investigations

6.1 Introduction

The goal of an investigation is to systematically collect information and evidence to determine the facts relevant to a noncompliance.

6.2 Initiating an Investigation

There are two processes by which an AER investigation can be initiated:

6.2.1 Triage Process

When program staff identify a noncompliance, they are to consider the noncompliance triage assessment, and if any criterion is met, complete the assessment form and refer the noncompliance to the Investigations Team within EOP. This form outlines specific factors that have been established to assess the magnitude, duration, and frequency of the noncompliance to determine whether an investigation is warranted.

6.2.2 Emergency Process

When an incident occurs that meets the incident reporting factors, notification is immediately sent to EOP's Investigations Team. The Investigations Team immediately reviews the situation report using the triage factors to determine whether an investigation is required.

6.3 Investigation Priorities

A priority is assigned to an investigation to enable informed decision-making to allocate resources for investigations. Investigations are prioritized as critical, high, medium, and low and consider the following:

- **Significance of adverse effect or public safety**—Protection of the environment and public safety is a top priority at the AER.
- **Regulatory confidence**—It is important for the AER to maintain industry and public confidence that the regulatory process is effective.
- **Expectation for a public report**—Energy development in Alberta is of great public interest, and the public has an interest in being informed of the outcome of investigations.

- **Knowing gain of competitive or financial benefit**—If a noncompliance is conducted with intent to gain competitive or financial benefit.
- **Behavioural change**—Not all noncompliance is investigated. However, at times it is necessary to proceed with an investigation for the purposes of an enforcement response in order to change a regulated party's behaviour.
- **And other relevant factors.**

When an investigation is opened, it undergoes an initial review to further assess the supporting information submitted and to prepare an investigation plan. More information is often required to determine facts relevant to the noncompliance. If it is determined that further follow-up is not warranted, the investigation will be closed with no further enforcement response. However, an investigation will advance and a notice may be provided to the regulated party when there is reasonable belief that

- a noncompliance under the AER's jurisdiction has occurred,
- the regulated party has been identified, and
- no mitigating factors exist at the time.

6.4 Issuing a Notice

A notice is a formal notification sent to the regulated party that the AER will be gathering further information in follow up to a noncompliance.

6.5 Outcomes of an Investigation Process

After the initial review, the investigation process at the AER has three general outcomes:

Evidence Collection

Gather initial evidence to assess the complexity of the investigation and to develop an investigation strategy. This phase can include conducting site visits, assessing incident response activities, making inquiries, obtaining information from the regulated party and others, and gathering historical background information. In some cases a court order or other form of judicial authorization may be required.

Samples can be collected for analysis, and audits can be used to verify the accuracy of information provided by the party under investigation.

Analysis

Analyze and interpret the information and evidence and determine whether it substantiates a noncompliance, and determine whether more information is required. More information or evidence may be collected after the initial information is reviewed.

Documentation and File Management

During an investigation, it is necessary to document the findings and organize the evidence using a consistent file management structure. Once an investigation is complete, the investigation summary report is prepared that outlines the findings (including the root cause), the noncompliances, and any possible defences. This information can then be used to assess the appropriate response and identify lessons learned for improved AER and industry performance.

6.6 Investigation Reporting (Transparency)

To increase transparency, the AER has developed a process for the reporting of open investigations on the AER website. Investigations are posted to the website once they have moved beyond the initial review process, and a notice has been issued to the regulated party. Typically, the following details will be released when an investigation is reported on the website:

- Unique reference number
- Company under investigation
- Date the noncompliance occurred
- Operation type (facility, well pipeline, etc.)
- Nearest town to the location under investigation
- Investigation status (phase 1, 2, 3, or closed)
- A brief summary of the noncompliance

This information is posted and updated monthly until the investigation is closed and the enforcement response is completed. Enforcement actions are also reported on the AER website. Further information on investigation reporting can be found in the Incident, Compliance, and Enforcement Communications Protocol.

When an investigation is closed, it is moved to a file location to enable access for *Freedom of Information and Protection of Privacy Act* requests and so it can be accessed by the Information Management Branch.

7 Compliance and Enforcement Tools

Objectives of this section:

- 1) To ensure a common understanding of the purpose and use of compliance and enforcement tools available to AER staff.
- 2) To specify the factors that should be considered when selecting the most appropriate compliance and enforcement tools.

7.1 Introduction

The AER has a variety of compliance and enforcement tools available under its energy resource and specified enactments to compel compliance and to correct and deter future noncompliance. The AER tries to use the most appropriate tool. The AER has processes in place to ensure that each noncompliance meets legal standards and procedural fairness before proceeding with any compliance or enforcement response.

Noncompliant events are triaged to ensure fairness and consistency. This is explained further in section 4.

7.2 Notice of Noncompliance

A notice of noncompliance notifies a regulated party in writing that they are in noncompliance with a specific regulatory requirement and often recommends a course of action that is expected to achieve compliance. It typically includes a request for a regulated party to correct the noncompliance, as well as a description of the cause of the noncompliance and of measures being considered that would prevent further noncompliance. For noncompliances that can be corrected, the AER requests written confirmation from the regulated party when compliance has been achieved.

The AER issues a notice of noncompliance for all findings of noncompliance relating to energy resource and specified enactments. Similar to a warning (see section 7.3 below), it is a formal record of the noncompliance and is an important part of the compliance history.

7.3 Warning

A warning notifies a regulated party in writing that they were found to be in noncompliance with a specific regulatory requirement. It is a formal record and is an important part of the compliance history.

A warning is one of the results of an investigation, whereas a notice of noncompliance is the result of identification of a noncompliance.

7.4 Orders

An order is a written document issued by designated AER staff pursuant to an energy resource enactment or specified enactment. Orders are important tools for addressing issues relating to the AER's mandate.

By requiring regulated parties to address noncompliance issues or take proactive measures, orders are effective for

- ensuring that no regulated party benefits from not complying,
- deterring noncompliance for other regulated parties, and
- responding quickly to prevent or stop actual or potential impact on the environment, public safety, or orderly development.

An order is issued according to statutorily prescribed factors and may

- create a requirement to undertake specific, time-bound actions or to stop specific actions, and
- outline the consequences for failing to comply with the requirements.

Inspections or audits may be required to confirm compliance with an order.

The AER can issue a variety of orders that are described under its energy resource and specified enactments.

7.5 Administrative Sanctions

As authorized by energy resource and specified enactments, designated AER staff have the authority to impose administrative sanctions.

An administrative sanction may be issued when, in the opinion of the statutory decision-maker, the authorized party has undertaken activities contravening the conditions of the approval or other rules governing operations. The sanction can vary from restricting certain activities to total suspension or cancellation of an approval.

An administrative sanction is most appropriate when dealing with noncompliant parties with a poor compliance history who are undertaking regulated activities that will essentially stop if the approval is cancelled. In contrast, when dealing with a significant industrial operation that is out of compliance, the AER may choose an alternative tool that allows the operation to continue while compelling the operator to remediate any damage, and it may take corrective action by imposing additional terms or conditions

For example, two types of administrative conditions the AER may impose are the following:

- **Focused refer:** Indicates the inability or unwillingness of a regulated party to comply with regulatory requirements. This status means that present and future applications of a regulated party **for a specific activity or operation** will be reviewed through a nonstandard process until the regulated party comes into compliance and the focused refer status is removed.
- **Global refer:** Indicates the inability or unwillingness of a regulated party to comply with regulatory requirements. This status means that **all present and future applications** of a regulated party will be

reviewed through a nonstandard process until the regulated party comes into compliance and the global refer status is removed.

7.6 Fees

For certain noncompliance under the energy resource enactments, regulated parties may be issued a fee. Each noncompliance has a prescribed fee that is intended to cover the administrative costs associated with late-filed information or with correcting data discrepancies in submissions. A schedule of fees can be found in the *Oil and Gas Conservation Rules*.

Regulated parties that continually are subject to fees may be subject to additional compliance and enforcement tools.

7.7 Administrative Penalties (Monetary)

As authorized by statute, administrative penalties can be imposed by designated AER staff against those failing to comply with a particular provision of a statute or regulation rule or with the terms of an approval under either the energy resource or specified enactments.

An administrative penalty may be an appropriate response to noncompliance where a statutory decision-maker determines that a regulated party has contravened a requirement and where the circumstances are as follows:

- A warning does not adequately reflect the severity of the noncompliance and therefore would not be an effective deterrent.
- An administrative sanction is not sufficient response based on the evidence and circumstances.
- There are mitigating or aggravating circumstances that should be considered.

7.8 Prosecution

Prosecution is a court proceeding initiated against a regulated party, individual, or corporation alleged to have committed an offence under an energy resource or specified enactment. The defendant is compelled to attend court to answer to a charge of the alleged unlawful activity.

Selection of prosecution as an enforcement response is appropriate where in the opinion of the designated AER staff there are reasonable grounds to believe an offence has been committed, and where one or more of the following apply:

- Previous enforcement responses have been ineffective, or there is reason to believe that other enforcement responses will not be effective.
- The action of the offender was willful or negligent.
- There is significant harm, or the potential for significant harm, to the environment.

- The lives or safety of people were endangered, or there was potential for the lives or safety of people to be endangered.
- The noncompliance was committed to achieve a competitive advantage.
- The noncompliance undermines the integrity of the regulatory system.
- Any other relevant factor.

When prosecution is selected as the appropriate enforcement response for a noncompliance, the AER sends a copy of the investigation file to the Alberta Crown Prosecution Service (ACPS) for a recommendation on whether charges are warranted. Investigators may also seek advice from the ACPS on any investigation file at any stage to ensure prosecution remains a viable enforcement option. Consultation with the ACPS on an investigation does not mean that prosecution has been or should necessarily be selected as the appropriate enforcement response.

7.8.1 Creative Sentencing

In the event of a conviction, the sentencing court is empowered under the energy resource enactments or specified enactments to impose a creative sentencing order in addition to a fine or other penalty. The following are examples of what creative sentencing orders may compel an offender to do:

- Taking specific action to remedy or prevent environmental harm related to the noncompliance
- Publishing the facts of the conviction
- Performing community service, such as funding educational programs
- Complying with any other conditions that the court considers appropriate to ensure future compliance

AER staff may participate in the review and development of creative sentencing proposals. The AER promotes the use of creative sentencing orders because the orders are enforcement responses that typically include educational and preventive components.

The AER ensures that there is follow-up and tracking of requirements that are included in creative sentencing orders.

7.9 Declaration of a Named Individual

The AER-designated staff may issue a declaration naming persons in control of a regulated party that failed to comply with an AER order or that has an outstanding debt to the AER or the orphan fund under section 106 of the *Oil and Gas Conservation Act* or section 51 of the *Pipeline Act*.

When a declaration is issued, the AER may impose sanctions to restrict the activities of any regulated party controlled by an individual named in a declaration, including

- suspension of the operations of a regulated party,

- refusal to consider applications to the AER,
- requirement for additional security deposits for abandonment and reclamation costs, and
- requirement for disclosure of association with other oil and gas operations in Alberta.

7.10 Additional Compliance and Enforcement Tools

AER staff have access to several other enforcement tools that help to compel compliance or to uphold the integrity of the regulatory system. Depending on the situation, these tools may be used instead of, or in addition to, other enforcement responses and can include more inspections or audits of regulated parties.

7.10.1 Civil Court Proceedings

Civil court proceedings can be used to enforce an AER order. This is an enforcement tool where by civil court proceedings are used to enforce an order issued by the AER. This may be an appropriate tool where further escalation has had no impact or would be ineffective, and compliance with the order is paramount. Failure to comply with a court order may result in contempt of court proceedings being initiated.

7.10.2 Fine and Monetary Penalty Recovery Processes

The AER has authority to impose fees and penalties to address noncompliance in some instances.

Where the AER is owed a debt, the AER may recover the money through one of two processes. The first is through civil enforcement, which is also referred to as judgement enforcement. The second is to register and enforce a lien, which the AER may do in certain circumstances (see s.103 of the *Oil and Gas Conservation Act*, for example).

7.11 Enforcement Direction Meetings

A joint enforcement review process has been established to ensure consistency in the assessment of investigation files. The review process includes statutory decision-makers, lead investigator, and staff who undertakes the investigation process.

The statutory decision-maker, along with those who have completed the investigation process, presents the findings of the investigation and identifies the available enforcement responses. Other statutory decision-makers share the facts and enforcement responses from similar investigation files. The outcome of the review is provided as advice to the responsible statutory decision-maker. The statutory decision-maker then decides on the appropriate enforcement response. There are no automatic enforcement responses. All available and appropriate tools are considered.

Note: Nothing in the Compliance and Enforcement Program restricts the discretion and autonomy exercised by AER statutory decision-makers responsible for making decisions on compliance and enforcement tools.

7.12 Procedural Fairness

AER staff are responsible for ensuring that the process used for compliance and enforcement responses is procedurally fair. The duty to be fair requires the observance of fair procedures. There is a general duty of procedural fairness imposed upon every designated decision-maker making a statutory decision that is not legislative in nature and which affects the rights, privileges or interests of a person.

Generally, a person must be provided the information about statutory decision-making to enable them to act in their best interests. In making decisions related to compliance assurance, a person should be provided with enough details of the allegation or complaint against them and of the impending decision affecting them to enable them to prepare a response or defence, including

- reasons for the allegation, accusation, or complaint made against them;
- information or evidence on which the decision will be based;
- notice of the impending decision;
- relevant statutory provisions or authority; and
- possible consequences or penalties that might be imposed.

New evidence or information which might be relevant to a person's response or defence should also be provided if it arises after the initial information has been given.

For compliance assurance, it will generally be sufficient to provide details of the substance or essence of an allegation, complaint, or impending decision. This does not require disclosure of original documents or identification of confidential sources.

Additionally, fairness includes providing a person with a reasonable opportunity to be heard or to respond to an allegation or complaint made against it.

7.13 Appeals

Some enforcement responses may be subject to a regulatory appeal. Under *REDA*, an eligible person may file a request for a regulatory appeal on appealable decisions. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*.

To file a request for regulatory appeal, the request must be submitted in the form and manner and within the timeframe required by legislation. Appeal-filing requirements and forms are on the AER website.

Appendix 1 Definitions

The following words and phrases are defined as follows for the purpose of this document:

Compliance— conformity with regulatory requirements established by the AER and the GoA.

Crown counsel—a prosecutor employed by the Alberta Crown Prosecution Service.

Enforcement—one response in the array of tools that may be used to compel compliance or deter future noncompliance. It includes warning letters, administrative penalties, administrative sanctions, orders, and formal charges.

Formal charges—laying of charges by way of an “Information” in front of a justice of the peace.

Investigation summary report—contains a summary of the relevant facts pertaining to the noncompliance and the elements that support the noncompliance. The document will also communicate an assessment of an appropriate enforcement response.

Noncompliance—failure by a regulated party to meet regulatory requirements.

Noncompliance triage assessment—a tool that guides a decision as to whether more than a notice of noncompliance needs to be issued upon the finding of each noncompliance.

Program areas/staff—within the AER includes areas of the Authorizations, Environment and Operational Performance, Closure and Liability, Industry Operations, and Information Management Branches.

Regulatory requirements— any restriction, duty, or obligation imposed upon a regulated party or other person by legislation (including regulations, rules, codes, guidelines, and policy documents), approval (including licences, permits, authorizations, leases, etc.), order, direction, declaration, or other document issued by the AER or the Government of Alberta and under the jurisdiction of the AER.

Warning—a document that notifies a party that they were not in compliance with a specific regulatory requirement and forms part of a regulated party’s compliance history.

Appendix 2 Document History and Version Control

Version	Date Approved	Approved By	Brief Description