

# **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.

Responding to noncompliance is often a complex and iterative process that requires technical (e.g., engineering, geological), environmental (e.g., land management, biological), and compliance expertise (e.g., 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 (e.g., inspections and audits) and enforcement tools (e.g., orders and penalties) demonstrates the AER's commitment to building confidence through accountable and transparent programs and procedures. This helps make the consequences of noncompliance consistent, clear, and predictable, and ensures that AER resources are directed to the highest priorities.

## Purpose

This manual describes compliance assurance activities and procedures that support the *Integrated Compliance Assurance Framework*. The purpose of this manual is the following:

- Support the organizational culture of compliance assurance within the AER.
- Support consistent, responsive, coordinated, and effective delivery of compliance assurance activities.
- 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

The type and extent of staff involvement in ensuring compliance with AER requirements varies with each position and its job responsibilities. AER staff are responsible for conducting verification activities (e.g., inspections and audits) that might result in the use of compliance or enforcement tools such as a notice of noncompliance, an order, an administrative sanction, or an administrative penalty. Collaboration during verification activities might be necessary to determine the most appropriate response to noncompliance. For example, inspection and audit staff conduct an assessment of the operational, environmental, and safety impacts and ensure that the noncompliance is addressed, while investigators provide investigative expertise. Compliance advisors ensure that staff conducting verification activities (e.g., inspectors and auditors) follow procedures, and otherwise help staff ensure compliance.

## 1.2 The AER's Position on Compliance and Enforcement

The AER strives to ensure continued and lasting compliance with its regulatory requirements. This is achieved through the use of a variety of compliance and enforcement tools.

When considering how to respond to noncompliance, AER staff consider the factual circumstances of a 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 response to any failure to comply with 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 acts, regulations, rules, approvals (as defined in *REDA*), directives, directions and orders of the AER, codes of practice, and other regulatory instruments.

This manual is not a complete statement of all AER compliance assurance activities and procedures. In using this manual, AER staff will need to refer to 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 program. Their associated procedures might vary, depending on which AER group is involved, but they are similar in that they

- are systematic, objective, documented processes and procedures for gathering and evaluating evidence and for identifying risks that increase the likelihood of an incident or noncompliance;
- are connected to AER-regulated sites and AER-regulated activities through a risk-informed assessment by AER staff;
- involve review, where applicable, of documents and observations in the field to gather evidence;
- can be planned (proactive) or in response to an incident (reactive) that is occurring; and
- document the results, which are provided to the regulated party.

The purpose of both is to verify compliance with the AER’s regulatory requirements.

### **2.2 Planning**

AER staff verify regulatory compliance through coordinated inspection and audit activities. Criteria that AER staff consider when planning include

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

## 2.3 Inspections

Inspections are generally characterized as any field activities carried out to verify compliance with regulatory requirements. Inspections can be proactive (i.e., operation-specific or sector-specific) or reactive. Proactive inspections are generally done by inspection staff and, where applicable, in collaboration with audit staff. They can include field observations and review of the regulated party's data or other materials. Reactive inspections can 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 to 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.

## 2.4 Staff Authorized to Conduct Inspections

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

- identify themselves;
- advise appropriate personnel, if present, of the purpose of the inspection;
- 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 have authority to do, among other things, 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.



## 2.5 Audits

An audit is generally focused on information and data in the possession of, or requested by, the AER. Audits are typically done by analyzing information and by engaging the regulated party and AER staff when required. They can also be in response to information from inspections, incident notifications, or complaints that come to the attention of the AER. Audits can be announced ahead of time, or they can be unannounced.

Audits may be used to determine sector compliance rates or to assess risks associated with regulated activities. They can also promote compliance by educating the operator. In some circumstances, an audit will identify the need for an investigation of noncompliance with regulatory requirements.

The following are a few audit examples:

- 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.

## 2.6 Staff Authorized to Conduct Audits

Similar to AER inspection staff, AER audit staff have the authority under legislation to request information and examine records pertaining to the construction, operation, maintenance, or closure of an energy resource development.

## 2.7 Transition to Investigation

Inspections and audits may lead to investigation when noncompliance is confirmed. In these cases, the purpose shifts from verifying compliance and managing the potential impacts, to collecting information and evidence to determine the facts relevant to a noncompliance (see section 5).

### 3 Voluntary Self-Disclosure and Compulsory Reporting

Objectives of this section:

- 1) To explain the voluntary self-disclosure (VSD) and compulsory reporting processes
- 2) To provide criteria for nonacceptance under the VSD process

#### 3.1 Introduction

The AER might become aware of noncompliance by regulated parties through either voluntary or compulsory reporting of a noncompliance or contravention.

#### 3.2 VSD

VSD is a process by which a regulated party identifies and voluntarily reports noncompliance to the AER where reporting of a noncompliance is not compulsory. The AER's VSD process is intended to encourage regulated parties to proactively identify, report, and correct noncompliant events. When a regulated party identifies its own noncompliance, the AER expects the party to correct or address the noncompliance and report to the AER in writing that it has been corrected or addressed.

#### 3.3 VSD 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.

### 3.4 Compulsory Reporting

Compulsory reporting refers to the obligation of regulated parties to immediately report contraventions to the AER as mandated by regulatory enactments such as the *Water Act*, the *Public Lands Act*, and the *Environmental Protection and Enhancement Act*. Many operating approvals granted by the AER will also include this obligation as a condition.

The requirement to report a contravention will disqualify a regulated party from the option to voluntarily self-disclose.

### 3.5 Transition to Investigation

A regulated party's reporting may lead to an AER investigation. If it does, the purpose shifts from the AER managing the noncompliance and potential impacts to collecting information and evidence to determine the facts relevant to a noncompliance (see section 5).

## 4 Responding to Noncompliance

Objectives of this section:

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

### 4.1 Introduction

This section outlines the steps for AER staff to follow when they become aware of a noncompliance from an inspection, an audit, a VSD, or compulsory reporting. Information may also be reported by a member of the public or other stakeholder; such information is verified by AER staff before the compliance process begins.

In some circumstances, it is appropriate to consider multiple, concurrent approaches to assessing noncompliance. For example, a notice of noncompliance issued to address the immediacy of a situation may be accompanied by an investigation, which can result in the use of an enforcement tool. Applicable legislation should be reviewed when multiple approaches are being considered.

Specific procedures for managing audits, inspections, and noncompliances are not dealt with in this manual.

### 4.2 Responding to Noncompliance

Once a noncompliance has been verified, AER staff follow the steps below and as shown in figure 1. Compliance advisors are available for guidance.

- 1) Address the noncompliance.
  - Although typically done through a notice of noncompliance if identified by AER staff, the appropriate compliance tool or process (e.g., the VSD process) is employed to address and manage the noncompliance, regardless of the noncompliance triage assessment outcome (step 2, below).
  - Manage the file according to the business rules of the AER employee's specific program area. A file will include systems and procedures for recording inspections, audits, VSDs, compulsory reports, noncompliance information, correspondence with the regulated party and the party's noncompliance response, and noncompliance triage assessment decision results.
- 2) Assess the noncompliance using the noncompliance triage assessment.
  - Concurrent with step 1, this is a review of the information available to determine the significance or impact of the noncompliance.
  - If the review indicates that the noncompliance might require more attention, AER staff are to forward the noncompliance triage assessment to the Investigations Team.
- 3) Upon further review of the facts of the noncompliance triage assessment, conduct an investigation if warranted.
  - See section 5 for information on investigations.
  - Investigators are available to all AER staff for consultation to determine whether an investigation is warranted.

Use of these steps by AER staff ensures that consultation occurs when required and that the noncompliance is addressed in a consistent and effective manner across the AER. When a regulated party fails to come back into compliance or when new information becomes available, the appropriateness of the response will be re-evaluated and may change (e.g., AER staff may resubmit the noncompliance triage assessment so the investigation can be reconsidered).

The information in this section is not intended to impair the discretion of AER staff to take immediate steps to remediate a noncompliance.

#### 4.3 Communication with a Regulated Party During an Investigation

During an investigation, it is important to ensure that communication between AER staff and the regulated party does not compromise the investigation—e.g., ensure that evidence is preserved, that statements are taken correctly, and that there are no errors that might prevent an enforcement response. Staff must ensure that there is dialogue with the investigator about roles and responsibilities before engaging in discussions with the regulated party.

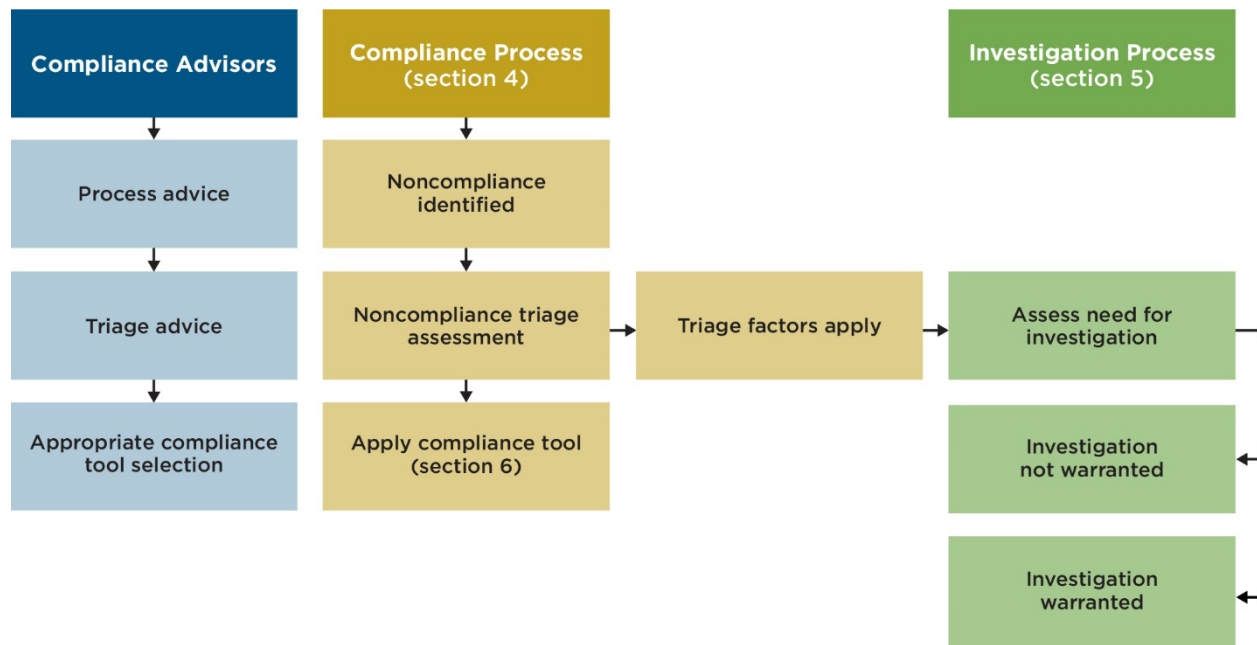


Figure 1. Responding to a noncompliance

## 5 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

### 5.1 Introduction

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

### 5.2 Initiating an Investigation

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

#### 5.2.1 Triage Process

When AER staff identify a noncompliance, they are to consider the noncompliance triage assessment, and if any factor is met, complete the assessment form and refer the noncompliance to the Investigations Team.

#### 5.2.2 Emergency Process

When an incident occurs that meets the AER incident reporting factors, notification is sent to the Investigations Team. The Investigations Team reviews the situation report to determine whether an investigation is required based on initial evidence of a potential noncompliance.

### 5.3 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 items such as the following:

- **Significance of adverse effects on the environment and on 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**—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.

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. 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.

### 5.4 Issuing a Notice of Follow-Up

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

### 5.5 Phases of an Investigation

After the initial review, the investigation process at the AER has three general phases.

#### 5.5.1 Evidence Collection

Gather initial evidence to determine whether a noncompliance occurred. 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.

### 5.5.2 Analysis

Analyze and interpret the information and evidence to determine whether there is enough evidence to substantiate a noncompliance and assess due diligence. More information or evidence may be collected after the initial information is reviewed.

### 5.5.3 Enforcement Decision

The findings of an investigation are presented to a statutory decision-maker to determine the appropriate response. There are no automatic enforcement responses. All available and appropriate tools are considered.

Nothing in this manual restricts the discretion and autonomy of AER statutory decision-makers responsible for deciding whether to use compliance and enforcement tools.

## 5.6 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 of follow-up 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
- Regulated party 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 as each phase begins until the investigation is closed and the enforcement response is completed. Enforcement responses are also reported on the AER website.

## **6 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 in response to noncompliance.
- 2) To identify factors that should be considered when selecting the most appropriate compliance and enforcement tools.

### **6.1 Introduction**

The AER has a variety of compliance and enforcement tools, including those listed below, which may be used to notify regulated parties of an identified noncompliance, to allow a party to correct a noncompliance, to compel compliance where a party has not taken actions on its own, and deter future noncompliance.

Processes are in place to ensure that legal standards and procedural fairness principles are met before proceeding with any compliance or enforcement response. Compliance and enforcement responses issued to a regulated party become part of the regulated party's compliance and enforcement history.

### **6.2 Notice of Noncompliance**

A notice of noncompliance is issued when the AER identifies a noncompliance. It notifies a regulated party in writing that it is noncompliant with a specific regulatory requirement, requests that it address the noncompliance, and it may include a recommended course of action that is expected to achieve compliance. It may also request a description of the cause and of the 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.

A notice of noncompliance may be followed by an investigation, which may lead to an enforcement response.

### **6.3 Warning**

A warning may be issued at the end of an investigation. It notifies a regulated party in writing that it has been found to be in noncompliance with a specific regulatory requirement. However, this notification differs from a notice of noncompliance in that it is a result of the investigation process and focuses on deterrence rather than correction. It does not require additional information or actions from the regulated party. The decision to issue a warning is made by a statutory decision-maker.



## 6.4 Orders

An order is a written document issued by a statutory decision-maker under an energy resource enactment or specified enactment. 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.

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; and
- responding quickly to prevent or stop potential or actual impacts on the environment, public safety, or the orderly development of energy resources.

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

## 6.5 Administrative Sanctions

“Administrative sanctions” refers to a variety of tools and processes the AER can use to ensure compliance. Most administrative sanctions are issued by statutory decision-makers and impose terms and conditions or place restrictions on a regulated party. This may be done by letter or incorporated into an order. Administrative sanctions are issued for a range of reasons, including as a response to a specific noncompliance, poor compliance history, the identification of risk factors, and to prevent or stop potential or actual impacts.

Administrative sanctions may include the following:

- Regulated party’s applications may be subject to further discussion and analysis before approval (focused refer).
- All of the regulated party’s applications may be reviewed through a nonstandard process (global refer).
- Eligibility of the regulated party to hold certain licences may be restricted.
- Existing authorizations may be suspended or cancelled.
- Other terms and conditions related to the noncompliance or risk identified by the statutory decision-maker (for example, the requirement to conduct a third-party audit or submit a compliance plan).

## 6.6 Fees

For certain noncompliances under the energy resource enactments, regulated parties may be issued a fee. Each noncompliance has a prescribed fee that is intended to address the costs and quality issues associated with missing data or data discrepancies that are not corrected before a filing deadline. A

schedule of fees can be found in the *Oil and Gas Conservation Rules*. The AER may waive or vary the fee, and a regulated party may request a review of the fee invoice within 15 days of its issuance.

## 6.7 Administrative Penalties

As authorized by statute, administrative penalties (monetary fines) can be imposed by a statutory decision-maker against those failing to comply with a particular provision of an act, regulation, or rule or with the terms of an energy resource or specified enactment approval.

An administrative penalty may be imposed after an investigation where a statutory decision-maker determines that a regulated party has contravened a requirement, including circumstances in which

- a warning does not adequately reflect the severity of the noncompliance and therefore would not be an effective deterrent,
- an administrative sanction is not a sufficient response, or
- there are mitigating or aggravating circumstances that should be considered.

Where the investigation has determined that a person has, regardless of intent, gained an economic advantage from a noncompliance, a statutory decision-maker may require the person to provide an accounting of the proceeds derived directly or indirectly from the noncompliance (*REDA* and *Public Lands Act* only) or impose an amount to address the economic benefit (*Environmental Protection and Enhancement Act* and *Water Act*). The economic benefit component of an administrative penalty is intended to ensure that a regulated party does not have an economic incentive to avoid compliance and is deterred from future noncompliance.

## 6.8 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 following an investigation may be appropriate where in the opinion of the statutory decision-maker there are reasonable grounds to believe an offence has been committed, and where issues such as 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.

When prosecution is selected as an 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 that 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.

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:

- Take specific action to remedy or prevent environmental harm related to the noncompliance
- Publish the facts of the conviction
- Perform community service, such as funding educational programs
- Comply 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 requirements in creative sentencing orders are followed up on and tracked.

## 6.9 Declaration of a Named Individual

A statutory decision-maker 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 to 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,
- a requirement for additional security deposits for abandonment and reclamation costs, and
- a requirement for disclosure of association with other oil and gas operations in Alberta.

## 6.10 Civil Court Proceedings

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

## 6.11 Fine and Monetary Penalty Recovery Processes

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 (e.g., see section 103 of the *Oil and Gas Conservation Act*).

## 6.12 Compliance Dashboard

To increase transparency, the AER has developed a process for the reporting of certain compliance and enforcement responses on the AER website. The following will be posted:

- enforcement decisions, such as warning letters, administrative penalties, and prosecution
- administrative sanctions (e.g., global refer)
- directions of an inspector in relation to section 137(2)(c) of the *Environmental Protection and Enhancement Act*
- orders issued to compel compliance or remediation
- any notice of noncompliance where the noncompliance results in suspension or shut in of operations
- suspension or cancellation of an approval
- cancellation of a reclamation certificate

## 7 Procedural Fairness

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

Generally, a person must be provided with information to enable them to act in their best interests. A person should be provided with enough detail (this does not require disclosure of original documents or identification of confidential sources) about the allegation or complaint against them and about the impending decision affecting them to enable them to prepare a response or defence; detail might include

- 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.

New evidence or information that might be relevant to a person's response or defence should also be provided if it arises after the initial information has been given. Procedural fairness includes providing a person with a reasonable opportunity to be heard or to respond to an allegation or complaint made against them.

## **8 Appeals**

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 *REDA* 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

<b>compliance</b>	Conformity with regulatory requirements established by the AER and the Government of Alberta.
<b>noncompliance</b>	Failure of a regulated party to meet regulatory requirements.
<b>regulated party</b>	A person or business subject to regulatory requirements.
<b>regulatory requirement</b>	Any restriction, duty, or obligation imposed on a regulated party or other person by legislation (e.g., regulations, rules, codes, guidelines, and policy documents), approval (e.g., licences, permits, authorizations, leases, etc.), order, direction, declaration, or other document issued by the AER or the Government of Alberta.
<b>statutory decision-maker</b>	AER staff that have the authority to make statutory decisions such as enforcement responses.