BC Oil & Gas COMMISSION

Compliance & Enforcement Manual

February 2014

Version 2.1

About the Commission

About Us

The BC Oil and Gas Commission is a single-window regulatory agency with responsibilities for regulating oil and gas activities in British Columbia, including exploration, development, pipeline transportation and reclamation.

The Commission's core services include reviewing and assessing applications for industry activity, consulting with First Nations, cooperating with partner agencies, and ensuring industry complies with provincial legislation and all regulatory requirements.

The public interest is protected by ensuring public safety, respecting those affected by oil and gas activities, conserving the environment, and ensuring equitable participation in production.

For general information about the Commission, please visit www.bcogc.ca or phone 250-794-5200.

Mission

We regulate oil and gas activities for the benefit of British Columbians. We achieve this by:

- Protecting public safety.
- Respecting those affected by oil and gas activities.
- Conserving the environment.
- Supporting resource development.

Through the active engagement of our stakeholders and partners, we provide fair and timely decisions within our regulatory framework.

We support opportunities for employee growth, recognize individual and group contributions, demonstrate accountability at all levels and instill pride and confidence in our organization.

We serve with a passion for excellence.

Vision

To be the leading oil and gas regulator in Canada.

Values

Respectful	Efficient
Accountable	Responsive
Effective	Transparent

Table of Revisions

The Commission is committed to the continuous improvement of its documentation. The table below summarizes revisions to the Compliance & Enforcement Manual. Revisions are posted to the documentation section of the Commission's website at the beginning of every month and are effective one month after posting, unless otherwise noted. For more information about the Commission's monthly revisions and for details of this month's revisions, please visit the documentation section of the Commission's website.

Stakeholders who would like to provide input or feedback on Commission documentation may send comments to OGC.Systems@bcogc.ca.

Posted Date	Effective Date	Chapter	Summary of Revision(s)
6 Jan 2014	6 Feb 2014	1 3 Appendix B	• updated manual to new template format • added additional information to the Inspections Section; updated the Commission's primary means of selecting inspections. (p.6.) • updated the self-disclosure details; removed the reference to Appendix B; removed submission format to a formal letter from email; • removed Appendix B
7-Feb-2014	7-Mar-2014	Chapter 2	• Various updates have been made. Users are encouraged to review the entire chapter.

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Preface

About

The BC Oil and Gas Commission's (Commission) Compliance and Enforcement function provides assurance to British Columbians that oil and gas activities are conducted in compliance with the *Oil and Gas Activities Act* (OGAA), the Commission's specified enactments and all related regulations.

The Commission ensures industry compliance to the highest standard through regular inspections and resulting investigations. In addition, permit holders are expected to use formal systems within their day-to-day operations to ensure compliance with the OGAA. Where alleged non-compliances occur, the Commission will take appropriate actions, as per the processes detailed in this manual.

The *Compliance and Enforcement Manual* is intended to provide information about the Commission's Compliance Management System and processes. By consulting this manual and its requirements in full, users can be confident in their knowledge of Commission processes and expectations.

This manual does not replace legislation. All permit holders are encouraged to read applicable legislation and regulations in full; it is the permit holder's responsibility to know and uphold their legal responsibilities inside and outside of the Commission's legislative authority.

Manual Structure

This manual is divided into chapters that replicate the order of Commission processes and permit holders' requirements for addressing operational non-compliances and contraventions.

It begins with an overview of inspections, investigations, and the Commission's compliance and enforcement streams; then details the Commission's processes for deficiency notice and correction, permit holder self-disclosure, and Opportunities To Be Heard.

Manual Scope

The manual is limited in scope to the Commission's application processes and the authorities and requirements established within the OGAA or specified enactments established thereunder. Carrying out oil and gas and related activities may require additional approvals from other regulators or create obligations under other statutes. It is the permit holder's responsibility to know and uphold all of their legal obligations.

Additional Guidance

Additional Commission manuals and guidelines are available in the Documentation section of the Commission's website. The glossary page of the Commission's website provides a comprehensive list of common terms, and the OGAA and its regulations provide the primary source of legal definitions

Compliance and Enforcement

This document does not replace legislation or affect legislative requirements. All permit holders are ultimately responsible for ensuring they understand and meet all requirements of the OGAA and their permits. Should a person not comply with the OGAA, the Commission may take compliance and enforcement actions.

Chapter 1: Compliance System Overview

The Commission expects permit holders to use formal practices within their day-to-day operations to ensure compliance with the *Oil and Gas Activities Act* (OGAA), the Commission's specified enactments[1], and all related regulations. The Commission ensures compliance through the proactive administration of inspections of permit holder activities, audits and management of alleged non-compliances[2].

Alleged non-compliances with the OGAA, or with permits and authorizations granted thereunder, may be investigated by the Commission. Investigations culminate with an Investigation Report, which triggers the Commission's compliance and enforcement determinations process.

This section provides an overview of the inspection and investigation processes. It includes:

- how inspections are selected and conducted;
- when investigations are carried out;
- the Commission's compliance and enforcement streams; and
- an overview of the Commission's compliance management and enforcement processes; see Figure 1

Inspections

Selecting Inspections

The Commission's primary means of selecting inspections is through its Assessment Scoring Model. It informs decision about inspection coverage, and focuses inspection resources where they are most needed. Inspections may also be selected based on industry operational events. For example: construction starts; Commission analyses or audits; and follow-up inspections or other factors.

[1] The Commission has authority under the following specified provisions: sections 9, 14, 15 of the Environmental Management Act, sections 47.4, 117 of the Forest Act, section 12 of the Heritage Conservation Act, sections 11, 14, 38, 39, 40, 96(1) of the Land Act, and sections 8, 9, 26 of the Water Act. Section 48 of OGAA establishes the scope of the Commission's compliance and enforcement activities in relation to its specified provisions.

[2] Alleged non-compliance occurrences associated with oil and gas activities are investigated under OGAA. Non-compliance occurrences associated with specified enactments are managed in accordance with the related specified enactment.

Conducting Inspections

Prior to entering an oil and gas field for a planned inspection, a Commission inspector will attempt to contact the company responsible for the field to learn of any hazards or unsafe conditions that may be present in the fields where inspections are to be conducted. Permit holders may be contacted up to five (5) days prior to the inspection or on the day of the inspection. When contacting the oil and gas company, inspectors will:

- notify the company of the field(s) to be inspected;
- request information about potential hazards or unsafe conditions that are, or may be, present in the field;
- document all field information collected from the company; and
- record the date, time, telephone number, and name of the person contacted

If contact cannot be made with the company, the inspector will continue with the inspection. If a company representative is on-site when the inspector arrives, the inspector will:

- identify himself/herself;
- communicate the intent to inspect; and
- if requested, provide proof of identification and authority

The inspector will carry out the planned inspection and communicate the inspection results to the permit holder via an inspection report.

If an inspection is unplanned, operators may not be notified prior to the inspector arriving on-site.

For additional guidance on what a Commission inspector will be inspecting while on site, please refer to the "Oil and Gas Inspection Procedures" and the "Compliance and Enforcement Site Inspection Form," located within the Documentation section of the Commission's website. Inspections are not limited to these documents and will be based on site specific activities. These are internal documents intended for reference purposes only.

Non-Compliance

Alleged non-compliances may be identified during an inspection. In such cases, the inspection report provided to the permit holder will include a notice of the deficiency and required correction timelines.

Non-compliances may also be identified by the permit holder through his or her own compliance management system. For more information about permit holder self-disclosure, refer to Chapter 3.

Non-compliances may also be related to administrative deficiencies. The OGAA and its regulations establish administrative requirements for permit holders to submit reports and information about their operations to the Commission. Examples of administrative requirements include:

- notices of construction starts;
- notices of operations;
- as-built documents; and
- flaring notices

Whenever appropriate, alleged non-compliances are managed through the deficiency notice and correction process, which provides industry an opportunity to correct alleged non-compliances within specified timelines. For more information about the deficiency notice and correction process, refer to Chapter 2.

Investigations

Investigations are conducted to collect and document facts, information and evidence related to an alleged non-compliance before pursuing possible enforcement actions.

If the nature of an alleged non-compliance warrants, or if compliance is not achieved through the deficiency notice and correction process, an investigation may be conducted and the results will inform compliance determinations and the selection of enforcement actions.

Compliance and Enforcement

Based on the Investigation Report, the Commission will determine if the report provides necessary grounds to proceed with compliance and enforcement actions.

The OGAA establishes two streams for proceeding with compliance and enforcement actions:

- quasi criminal law; or
- administrative law

Under quasi criminal law, the Commission may pursue an offence as the appropriate course of action for managing an alleged non-compliance, in which case the alleged non-compliance is forwarded to Crown Council for court prosecution consideration (Section 86 of the OGAA).

In addition, the Commission may issue tickets under quasi criminal law for offences defined under Specified Enactments such as the *Water Act* or the *Environmental Management Act*.

Under administrative law the OGAA establishes two administrative enforcement actions:

- Orders issued by official, Section 49(1), and/or
- A finding of Contravention, Section 62

Orders Issued By Official

Section 49(1) of the OGAA establishes the ability for an official to issue an order to a person carrying out oil and gas activity or related activity.

Orders are *not* contingent on a finding of contravention and may be issued if, in the opinion of the official:

- a person fails to comply with the Act, the regulations, the person's permit or authorizations, or a previous order made under the Act, or
- the order is necessary to mitigate a risk to public safety; protect the environment; or promote the conservation of petroleum and natural gas resources

If the recipient of an order has not complied with the order requirements specified, the Commission may pursue enforcement actions. For example:

- Commission may carry out action (OGAA Section 50):

  After issuing an order with which the recipient has not complied, a Commission official may take specific actions respecting the initial order and, upon completion, require the person pay all direct and indirect costs incurred by the Commission. In addition, the Commission may, by order, restrict or prohibit a person from carrying out an action referred to in the order.
- Order for compliance (OGAA Section 88):

  If the Commission considers that a person is not complying, or has not complied, with an order, the Commission may apply to the Supreme Court for either or both of the following:
  - an order directing the person to comply with, or stop violating, the order
  - an order directing the directors and officers of the person to cause the person to comply with, or stop violating, the order

An order may be terminated by an official if the circumstances that caused the order are no longer present or have been affected by other circumstances. If an order is terminated, the person

to whom the order was addressed will be provided with written notice of its termination by the official.

Contraventions

Section 62 of the OGAA establishes that the Commission may find a person in contravention of the Act, the regulations, a permit, an authorization or an order. If a finding of contravention is the appropriate course of action for managing an alleged non-compliance, the Commission will identify a Statutory Decision Maker to lead the administrative processes and make a decision about the alleged non-compliance.

Before a decision is made, the Commission will give the person in alleged non-compliance an Opportunity To Be Heard. For more information about Opportunities To Be Heard, refer to Chapter 4.

If a person is found in contravention after the Opportunity To Be Heard, the Commission will provide the person with a notice of the finding of contravention.

The Commission may carry out the following administrative enforcement actions related to the contravention.

- Actions by the Commission Respecting Permit (Section 26 of the OGAA)

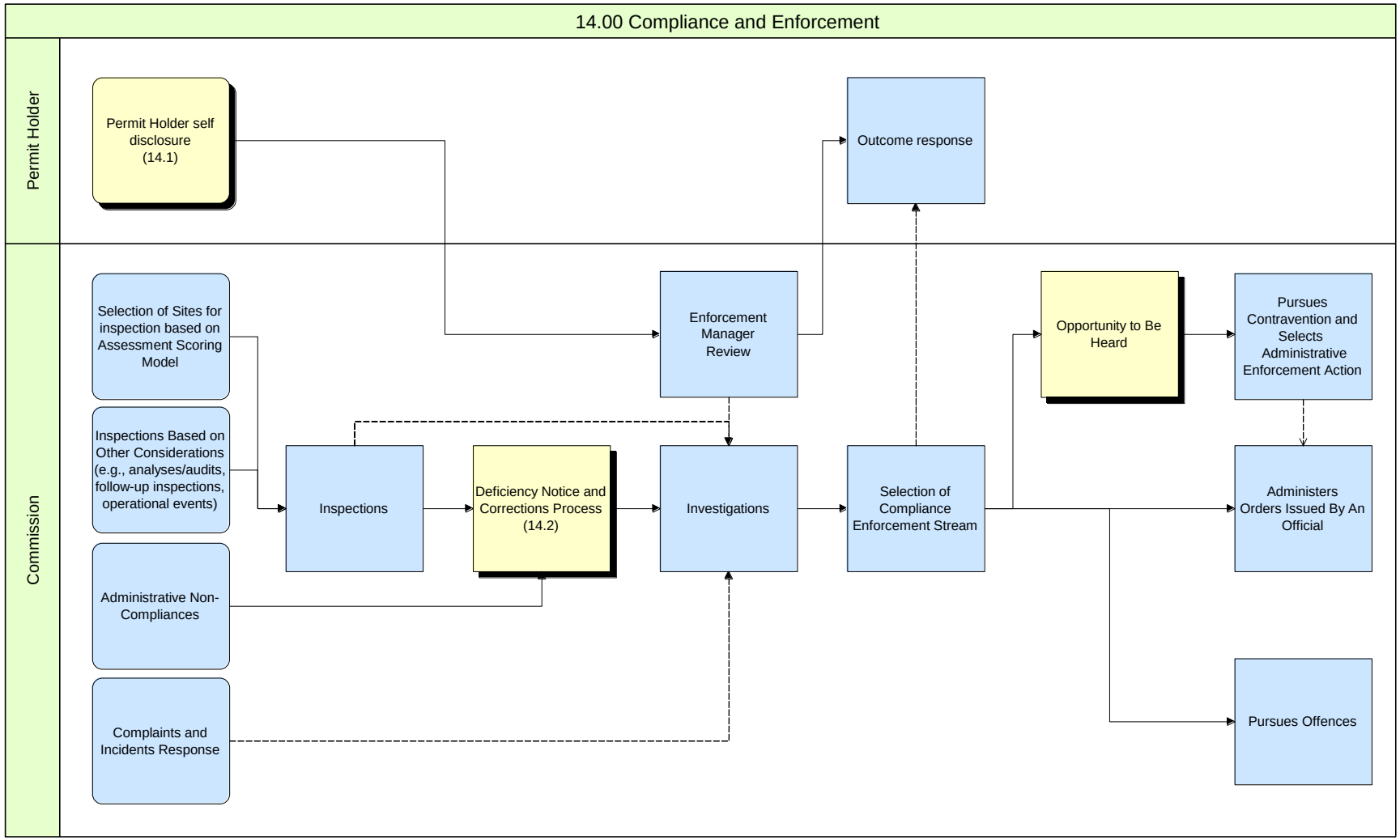
  The Commission, following the conviction of a person under the Act or the *Petroleum and Natural Gas Act* or that person being found to have committed an offence, may take actions respecting the issuance, suspension or cancellation of that persons permits.

- Administrative Penalties (Section 63 of the OGAA)

  The Commission, having found a person in contravention, may levy a penalty against that person, in accordance with the Act and regulation.

Overview of Compliance & Enforcement Processes

Figure 1: Compliance & Enforcement Process



Chapter 2: Deficiency Notice and Correction Process

Whenever appropriate, alleged non-compliances (*deficiencies*) with the *Oil and Gas Activities Act* (OGAA) are managed through the Deficiency Notice and Correction Process. The deficiency and its timeline for correction are communicated to the permit holder via KERMIT notification.

It is important to note deficiency notices are not determinations under the OGAA and do not represent formal findings of contravention. However, if deficiencies are not corrected through the Deficiency Notice and Correction Process, the Commission will take further compliance and enforcement action.

This section provides an overview of the Deficiency Notice and Correction Process from the administration of deficiency notices to corrections and escalated compliance actions. Appendix A provides a process map of the process.

Deficiency Notice and Correction Process

Field Inspections: At the completion of an inspection, the permit holder receives a Site Inspection Report. If the inspection identifies deficiencies, the inspection report will provide notice of the deficiencies and indicate the required correction timelines.

Administrative Compliance Review: A review is completed to ensure industry compliance with obligations established within the OGAA, its related regulations, or permits issued by the Commission, which require a permit holder to submit information to the Commission. Administrative deficiencies result from a permit holder's failure to submit administrative requirements such as a submission deadline, or submission standard. At the completion of an Administrative Compliance Review, Commission business areas will issue Administrative Deficiencies Notices (only) where a deficiency is identified.

Upon receiving a deficiency notice, the permit holder is required to:

- correct the deficiency within the specified correction time or request an extension (both the deficiency notice and KERMIT specify a *Required Correction Date*),
- report the correction within the correction timelines via KERMIT

Permit holders can manage deficiencies under KERMIT's Compliance & Enforcement Tab. Options include: *Find Inspections* or *Find Administrative Deficiencies.*

The Commission will monitor the permit holder's progress to correct the deficiency until corrective measures are in place.

Requests to Extend Correction Timelines

If a permit holder cannot achieve compliance within the required correction timeline, they may request an extension via KERMIT.

Extension requests should be submitted at least one week prior to the initial correction date. The request must include a rationale outlining any complicating factors necessitating the extension (for example, seasonal access restrictions, the availability of labour and equipment, etc.).

Extension determinations are based on the permit holder's correction plan and deficiency correction history, as well as the Commission's policies and procedures, and may or may not be granted.

Complete Correction

To achieve remedial compliance, permit holders must submit a notice of remedial action to the Commission via KERMIT. If the corrections are adequate to achieve, the Commission will set the deficiency status, in KERMT, to *Resolved*.

Unacceptable Responses

If the corrections are deemed unacceptable the permit holder will receive a KERMIT based *Notice of Unacceptable Response*, detailing submission inadequacies.

Managing Compliance

When a permit holder fails to correct, or adequately correct, a deficiency prior to the required correction date, a second deficiency letter may be issued to the permit holder. However, if the nature of the non-compliance warrants, the deficiency will be escalated to the Commission's Enforcement division. At that point the deficiency status in KERMIT will read as either: *Referred to Enforcement* or *Subject of an Investigation.* Once escalated, all future communications will be addressed by the Enforcement Division.

Please Note:

High-risk deficiencies require correction within 24 hours of receiving notification. Inspectors will maintain communications with the permit holder to ensure continued monitoring of the deficiency until corrective measures are in place.

Chapter 3: Permit Holder Self-Disclosure

Non-compliance identified by permit holders through their own compliance management systems should be disclosed to the Commission. Where permit holders self-disclose non-compliances and take the appropriate corrective actions, the Commission will consider those actions as part of its review. Diligence shown by a company through the self-disclosure process will be considered by the Commission during the investigation.

The permit holder's self-disclosure process is intended to:

- promote proactive identification and correction of non-compliance by permit holders;
- improve industry compliance and relationships with the Commission;
- instill regulatory confidence;
- protect public safety and the environment; and
- conserve petroleum and natural gas resources

It is important to note the permit holder's self-disclosure process is not a substitute for reporting requirements for specific events or incidents that are outlined in OGAA, the Commission's specified enactments, or their corresponding regulations.

This section provides guidance related to the permit holder's self-disclosure process.

Permit Holder's Self-Disclosure Process

Permit Holder Request

To initiate permit holder self-disclosure, the permit holder must submit a formal letter to C&E@bcogc.ca.

Letters must include:

- name of the person disclosing the non-compliance;
- name of the permit holder;
- permit type;
- permit approval number (where applicable, including the pipeline number or installation number);
- licensed substance (if applicable);
- details of the non-compliance being disclosed;

- date and time the non-compliance was identified;
- estimated duration of the non-compliance;
- detailed description of the circumstances that led to the non-compliance; and
- description of how action plans will be updated to avoid similar non-compliance in the future

Permit holders may submit self-disclosures that cover a scope larger than one site. In such cases, all locations to which the non-compliance applies must be identified.

Chapter 4: Opportunity To Be Heard

If the results of an investigation suggest a permit holder is in alleged non-compliance with a provision of the Act, the regulations, a permit, an authorization or an order, the Commission will select the appropriate compliance and enforcement stream. If the administrative stream is selected, the Commission will offer the permit holder an Opportunity To Be Heard (OTBH) prior to making a determination about the alleged contravention.

The OGAA enables the Commission to make rules about the setting and circumstances in which the hearing will be conducted, such as whether the hearing will be conducted in writing, electronically, orally or a combination thereof, as well as the materials to be provided.

The following information provides guidance on the OTBH process.

Pre-Hearing

First, the Statutory Decision Maker (SDM) provides a written notice of an OTBH to the person(s) in alleged non-compliance. The written notice outlines:

- the allegation(s) against the person(s);
- the type of hearing offered; and
- the timeline of the OTBH (that is, the date of hearing, if oral, or the date by which materials must be received, if written)

The notice is accompanied by a copy of all related documents including the investigation report, and reports obtained from experts as part of the investigation, if any.

Pre-hearing Conference

If complex logistics about the case require clarification, the SDM may host a pre-hearing conference.

The intent of the conference is to ensure an efficient and fair hearing by clarifying preliminary procedural issues and resolving any scheduling or formatting issues. Other formalities such as the disclosure of documentation, sharing information, scheduling witnesses, etc., may also be discussed during the conference. However, pre-hearing conferences are only for facilitating the hearing; therefore, the case itself will not be discussed.

All parties will be offered an invitation to attend the conference. The SDM may meet with a party in private. If the party fails to attend the conference, the SDM will uphold procedural fairness and never discuss the case itself.

Evidence

All evidence that shapes the SDM's determination must be submitted before or during the OTBH.

Agreed Statement of Facts

An agreed statement of facts, prepared by the investigator and the person(s) in alleged contravention may be presented to the SDM before or during the hearing for consideration. The SDM may accept the statement as fact, if both parties are in agreement and the SDM has no reason to question the accuracy of the statement.

In the following cases, the SDM may adjourn hearings to allow additional evidence or information to be submitted and exchanged between parties:

- the SDM requires additional clarification of a submission;
- the SDM requires an expert's opinion; and
- the SDM is of the opinion that, under the circumstances, natural justice or public interest demands that additional evidence be considered

Evidence obtained post-hearing will be provided to the person(s) in alleged contravention or to the investigator, if its use will affect the determination.

Hearings

Oral Hearings

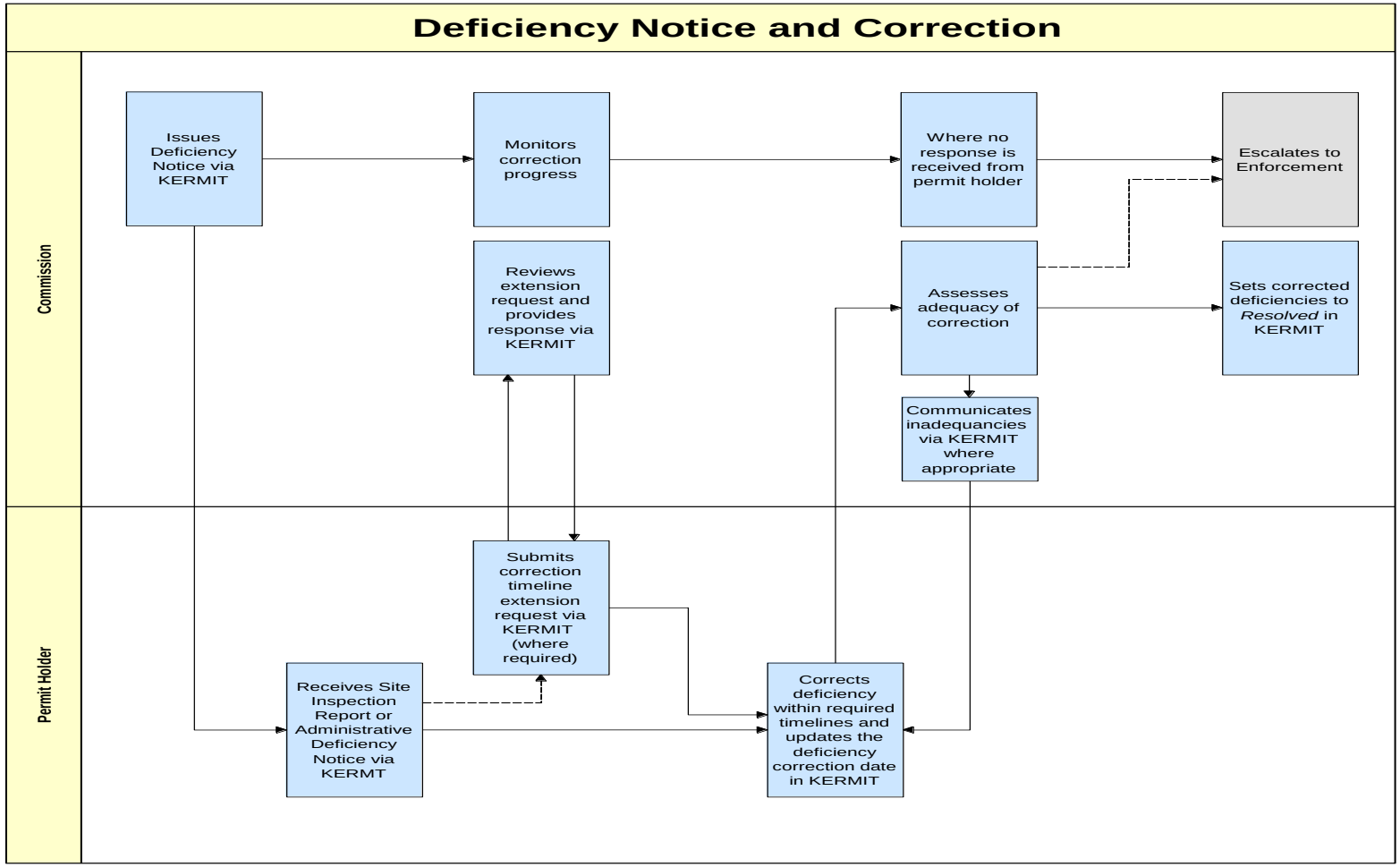
During an oral OTBH, the person(s) in alleged contravention are given the opportunity to present relevant evidence, make submissions, present witnesses, ask questions of the investigator and their witnesses, and respond to evidence presented by others.

Investigators will present the Commission's case and witnesses and, at the discretion of the SDM, ask questions and respond to evidence presented by others.

The SDM retains control of the hearing to ensure procedural fairness. Preparation times for the hearing will be based on the circumstances and complexity of the case.

Written Hearings

Timelines for written submissions will be set based on the circumstances and complexity of the case.

During written hearings, the SDM will regulate requests from all parties for additional information about a submission and may allow the opportunity to reply to a submission, but will do so in a reciprocal fashion; the person(s) in alleged contravention will be granted the last reply. To facilitate the accurate presentation of facts, all requests may be granted.

Appendix A: Deficiency Notice & Correction Process Map