

Compliance and Enforcement Manual

VERSION 3.1: November 2023



About the Regulator

The BC Energy Regulator (Regulator) is the single-window regulatory agency with responsibilities for regulating oil and gas activities in British Columbia, including exploration, development, pipeline transportation and reclamation.



The Regulator's core roles include reviewing and assessing applications for industry activity, consulting with First Nations, ensuring industry complies with provincial legislation and cooperating with partner agencies. The public interest is protected by ensuring public safety, protecting the environment, conserving petroleum resources and ensuring equitable participation in production.

Vision, Mission and Values

Vision

A resilient energy future where B.C.'s energy resource activities are safe, environmentally leading and socially responsible.

Mission

We regulate the life cycle of energy resource activities in B.C., from site planning to restoration, ensuring activities are undertaken in a manner that:



Protects
public safety and the
environment



Supports reconciliation
with Indigenous peoples
and the transition to
low-carbon energy



Conserves
energy
resources



Fosters a sound
economy and social
well-being



Values

Respect is our commitment to listen, accept and value diverse perspectives.

Integrity is our commitment to the principles of fairness, trust and accountability.

Transparency is our commitment to be open and provide clear information on decisions, operations and actions.

Innovation is our commitment to learn, adapt, act and grow.

Responsiveness is our commitment to listening and timely and meaningful action.

Manual Revisions

The Regulator is committed to the continuous improvement of its documentation. Revisions to the documentation are highlighted in this section and are posted to the [Documentation Section](#) of the Regulator's website.

Stakeholders are invited to provide input or feedback on Regulator documentation to servicedesk@bc-er.ca or submit feedback using the [feedback form](#).

Version Number	Posted Date	Effective Date	Chapter Section	Summary of Revision(s)
3.0	November 24, 2022	November 25, 2022	Various	Various edits have been made to this document to reflect the new submission requirements from KERMIT to CM-IS. Users are encouraged to review in full.
3.1	Nov 09, 2023	Nov 09, 2023	Various	Replace BCOGC with BCER; OGAA with ERAA; new logos, references and associations

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Preface

About

The BC Energy Regulator's (Regulator or BCER) Compliance and Enforcement function provides assurance to British Columbians that oil and gas activities are conducted in compliance with the Energy Resource Activities Act (ERAA), the Regulator's specified enactments and all related regulations.

The Regulator 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 ERAA. Where alleged non-compliances occur, the Regulator will take appropriate actions, as per the processes detailed in this manual.

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

Manual Structure

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

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

Manual Scope

The manual is limited in scope to the Regulator's application processes and the authorities and requirements established within ERAA 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.

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 ERAA and their permits. Should a person not comply with ERAA, the Regulator may take compliance and enforcement actions.

Additional Guidance

As with all Regulator documents, this document does not take the place of applicable legislation. Readers are encouraged to become familiar with the acts and regulations and seek direction from Regulator staff for clarification.

The Regulator publishes both application and operations manuals and guides. The application manual provides guidance to applicants in preparing and applying for permits and the regulatory requirements in the planning and application stages. The operation manual details the reporting, compliance and regulatory obligations of the permit holder. Regulator manuals focus on requirements and processes associated with the Regulator's legislative authorities. Some activities may require additional requirements and approvals from other regulators or create obligations under other statutes. It is the applicant and permit holder's responsibility to know and uphold all legal obligations and responsibilities. For example, Federal Fisheries Act, Transportation Act, Highway Act, Workers Compensation Act and Wildlife Act.

Throughout the document there are references to guides, forms, tables and definitions to assist in creating and submitting all required information. Additional resources include:

- [Glossary and acronym listing](#) on the Regulator website.
- [Documentation and guidelines](#) on the Regulator website.
- [Frequently asked questions](#) on the Regulator website.
- [Advisories, bulletins, reports and directives](#) on the Regulator website.
- [Regulations and Acts](#) listed on the Regulator website.

In addition, this document may reference some application types and forms to be submitted outside of the Application Management System but made available on the Regulator's website. Application types and forms include:

- Heritage Conservation Act, Section 12
- Road use permits
- Water licences
- Master licence to cut
- Certificate of restoration
- Waste discharge permit
- Experimental scheme application
- Permit extension application

Chapter 1:

Compliance System Overview

The Regulator expects permit holders to use formal practices within their day-to-day operations to ensure compliance with the Energy Resource Activities Act (ERAA), the Regulator's specified enactments¹, and all related regulations. The Regulator ensures compliance through the proactive administration of inspections of permit holder activities, audits and management of alleged non-compliances².

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

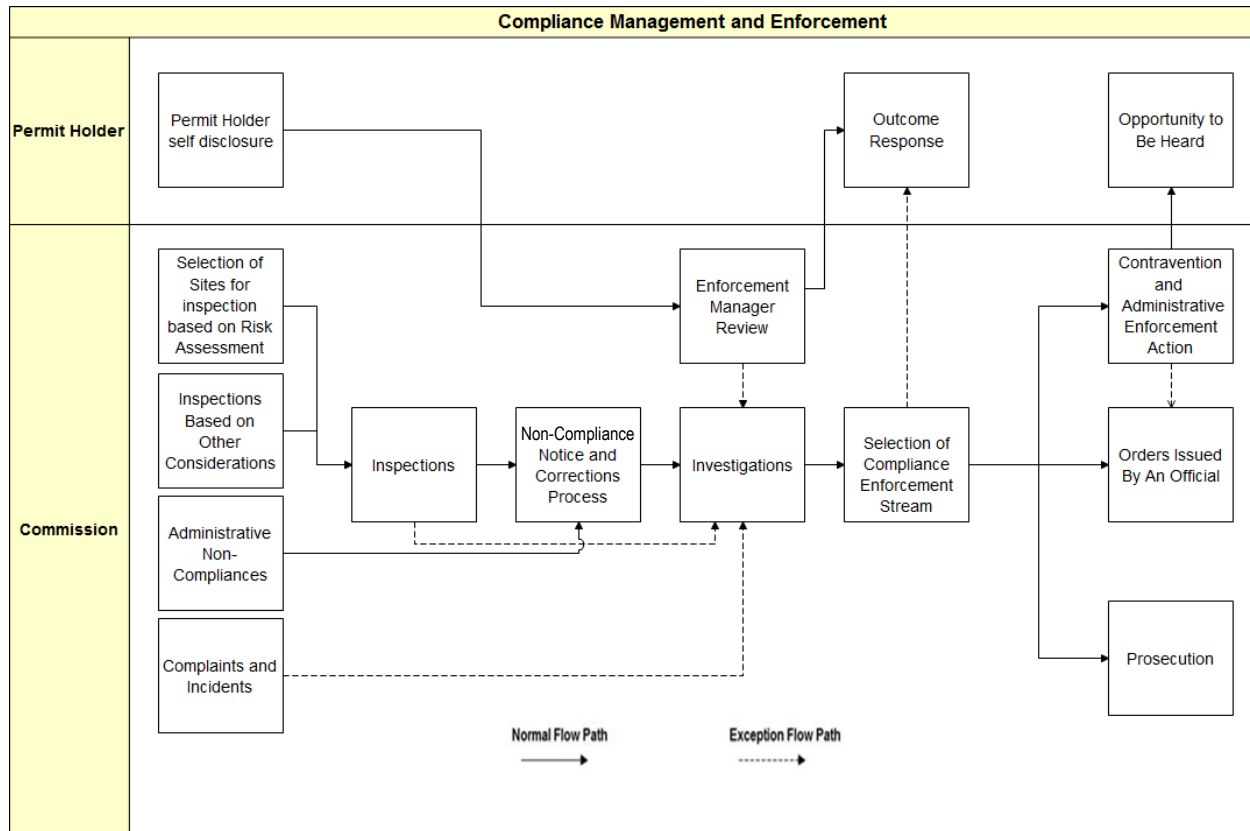
This section provides an overview of the inspection and investigation processes. It includes:

- how inspections are selected and conducted,
- when investigations are carried out,
- the Regulator's compliance and enforcement streams, and an overview of the Regulator's compliance management and enforcement processes is provided in Figure 1.

¹ The BCER 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 10, 11, 24 Water Sustainability Act. Section 48 of ERAA establishes the scope of the BCER'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 ERAA. Non-compliance occurrences associated with specified enactments are managed in accordance with the related specified enactment.

Figure 1: Overview of Compliance & Enforcement Process



1.1 Compliance Management Information System (CM-IS)

The Compliance Management Information System (CM-IS) is the online portal for permit holders to receive inspection results and to manage and respond to non-compliances. CM-IS provides a centralized location and consistent process for compliance management for alleged non-compliances resulting from administrative review and site inspections. For more information about accounts and security roles, please refer to the resources on the Regulator's website.

1.2 Verifying Compliance

1.2.1 Selecting Inspections

Inspections are the Regulator's primary field-based compliance verification method, and the Regulator dedicates significant time and effort to conducting thousands of inspections each year. The Regulator selects inspections to ensure that inspection resources are used to greatest benefit, which is important given the number of sites and scope of activities the Regulator regulates.

The inspection selection model is made up of several streams. Having multiple methods allows the Regulator to balance several objectives – to allocate time and resources based on risk, to respond to emerging issues and trends, to incorporate the expertise and knowledge of BCER field staff, and to take advantage of opportunities to inspect when compliance is best observed. The inspection selection model is also designed to ensure good coverage of regulated sites, including different activity types, lifecycle phases, and permit holders.

Inspection categories include:

Risk & Data Informed - An inspection derived from bi-annual modelling – Summer and Winter lists.

Planned Inspection - An inspection derived from a planned program outside of the data & risk informed model.

Operational Submission - An inspection triggered by a submission from a Permit Holder i.e., notice of construction start.

Officer Selected - An inspection selected by a BCER employee that is not driven by any other category.

Incident - An inspection derived from an incident.

Major Facility - An inspection derived from the major facility risk model – Inspection done by Technical Advisors.

Facility Start-Up - An inspection triggered by a permit condition – Inspection done by Technical Advisors.

External Request - An inspection derived from an external organization request.

Internal Request - An inspection derived from an internal BCER department request i.e., positive isolation project.

Major Project – An inspection of a [major project](#) activity.

1.2.2 Conducting Inspections

Prior to entering oil and gas fields for planned inspection(s), a BCER inspector will attempt to contact the company responsible for the fields 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(s) or on the day of the inspection(s). 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 themselves,
- 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.

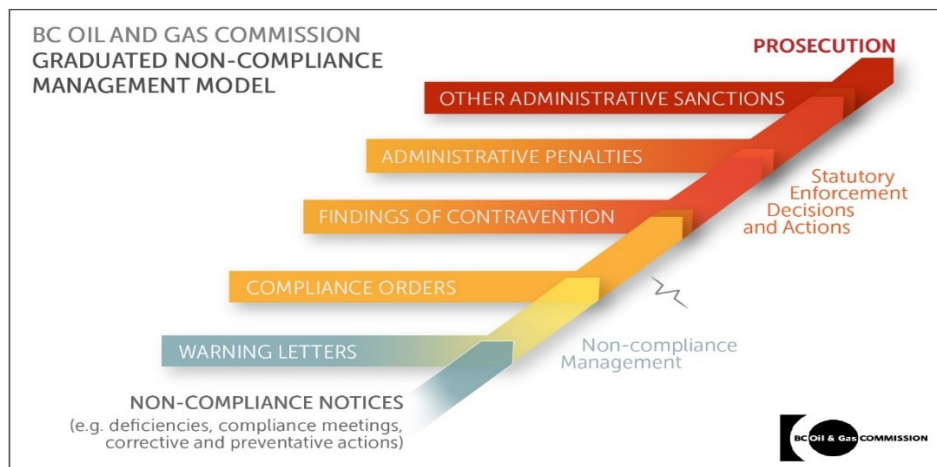
If an inspection is unplanned, operators may not be notified prior to the inspector arriving on-site.

For additional guidance on what a BCER inspector will be inspecting while on site, please refer to the procedures and forms posted within the [Compliance and Enforcement Documentation](#) section of the Regulator'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.

1.3 Enforcement Approach

The Regulator is committed to taking action and strives to ensure a fair, effective, and consistent approach to enforcement when non-compliances occur. The Regulator employs a graduated non-compliance response model where appropriate, ranging from non-compliance notices to more formal, statutory enforcement actions. The graduated approach ensures non-compliance response actions are commensurate with the non-compliance and Regulator resources are allocated for maximum effect. Staff may escalate to formal enforcement actions where non-compliance notices are not effective, or as the circumstances warrant.

BCER staff consider several factors to select the most appropriate enforcement action, including the severity of actual or potential impact to the environment and public safety, the factual circumstances of the non-compliance, the compliance history of the permit holder, as well as how to achieve the best remedy and reduce the likelihood of repeat non-compliance. A non-compliance management matrix provides guidance to support BCER staff in selecting appropriate actions to manage non-compliances.



1.3.1 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 non-compliance and required correction timelines.

Alleged 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](#).

Alleged non-compliances may also be related to administrative non-compliances. ERAA and its regulations establish administrative requirements for permit holders to submit reports and information about their operations to the Regulator. Examples of administrative requirements include:

- notices of construction start,
- notices of operations,
- as-built documents, and,
- flaring notices.

Where appropriate, alleged non-compliances are managed through the non-compliance notice and correction process, which provides industry an opportunity to correct alleged non-compliances within specified timelines. For more information about the non-compliance notice and correction process, refer to [Chapter 2](#).

1.3.2 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 non-compliance notice and correction process, an investigation may be conducted, and the results will inform compliance determinations and the selection of enforcement actions.

1.3.3 Enforcement Actions

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

ERAA establishes two streams for proceeding with compliance and enforcement actions:

- prosecutorial law, or
- administrative law.

Under prosecutorial law, the Regulator 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 ERAA).

In addition, the Regulator may issue tickets under prosecutorial law for offences defined under Specified Enactments such as the Water Sustainability Act or the Environmental Management Act.

Under administrative law ERAA establishes two administrative enforcement actions:

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

1.3.4 Orders Issued By Official

Section 49(1) of ERAA 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 Regulator may pursue enforcement actions. For example:

- Regulator may carry out action (ERAA Section 50):

After issuing an order with which the recipient has not complied, a Regulator official may take specific actions respecting the initial order and, upon completion, require the person pay all direct and indirect costs incurred by the Regulator. In addition, the Regulator may, by order, restrict or prohibit a person from carrying out an action referred to in the order.

- Order for compliance (ERAA Section 88):

If the Regulator considers that a person is not complying, or has not complied, with an order, the Regulator 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.

1.3.5 Contraventions

Section 62 of ERAA establishes that the Regulator 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 Regulator 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 Regulator 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 Regulator will provide the person with a notice of the finding of contravention.

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

- Actions by the Regulator respecting permit (Section 26 of ERAA)
The Regulator, 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 ERAA)
The Regulator, having found a person in contravention, may levy a penalty against that person, in accordance with the Act and regulation.

Chapter 2:

Non-compliance Notice and Correction Process

Where appropriate, alleged non-compliances with the Energy Resource Activities Act (ERAA) are managed through the Non-compliance Notice and Correction Process. The non-compliance and its timeline for correction are communicated to the permit holder via the Compliance Management Information System (CM-IS) notification.

It is important to note non-compliance notices are not determinations under ERAA and do not represent formal findings of contravention. However, if non-compliances are not corrected through the Non-compliance Notice and Correction Process, the Regulator will take further compliance and enforcement action.

This section provides an overview of the Non-compliance Notice and Correction Process from the administration of non-compliance notices to corrections and escalated compliance actions. [Appendix A](#) provides a process map of the process.

2.1 Non-compliance Notice and Correction Process

Field Inspections: At the completion of an inspection, the permit holder receives an Inspection Report. If the inspection identifies non-compliances, the inspection report will be accompanied by a non-compliance notice and indicate the required correction timelines.

Administrative Compliance Review: A review is completed to ensure industry compliance with obligations established within ERAA, its related regulations, or permits issued by the Regulator, which require a permit holder to submit information to the Regulator. Administrative non-compliances result from a permit holder's failure to submit administrative requirements within the specified timeframe or to the appropriate standard. At the completion of an Administrative Compliance Review, BCER business areas will issue Administrative Non-compliances Notices (only) where a non-compliance is identified.

Upon receiving a non-compliance notice, the permit holder is required to:

- correct the non-compliance within the specified correction time or request an extension (both the non-compliance notice and CM-IS specify a Required Correction Date),
- report the correction within the correction timelines via CM-IS.

The BCER will monitor the permit holder's progress to correct the non-compliance until corrective measures are in place.

2.2 Requests to Extend Correction Timelines

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

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 risks to public safety and the environment, the permit holder's correction plan and non-compliance correction history, as well as the BCER's policies and procedures, and may be granted, denied, or modified.

2.3 Complete Correction

To achieve remedial compliance, permit holders must submit a response to the BCER via CM-IS. If the corrections are adequate to achieve compliance, the BCER will accept the response and the non-compliance is considered satisfied.

2.4 Unacceptable Responses

If the corrections are deemed unacceptable the permit holder will receive a CM-IS response indicating that the submission is not accepted and detailing submission inadequacies.

2.5 Managing Compliance

When a permit holder fails to correct, or adequately correct, a non-compliance within the prescribed time period, an automated notice will be sent via email indicating the it is overdue. However, if the nature of the non-compliance warrants, the non-compliance will be escalated to the BCER's Enforcement division. Once escalated, all future communications will be addressed by the Enforcement Division.

Please Note:

High-risk non-compliances require correction within 24 hours of receiving notification. Inspectors will maintain communications with the permit holder to ensure continued monitoring of the non-compliance 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 BCER. Where permit holders self-disclose non-compliances and take the appropriate corrective actions, the BCER will consider those actions as part of its review. Diligence shown by a company through the self-disclosure process will be considered by the BCER 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 BCER;
- 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 ERAA, the BCER's specified enactments, or their corresponding regulations.

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

3.1 Permit Holder's Self-Disclosure Process

3.1.1 Permit Holder Request

To initiate permit holder self-disclosure, the permit holder must submit a formal letter to C&E@bc-er.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 BCER will select the appropriate compliance and enforcement stream. If the administrative stream is selected, the BCER will offer the permit holder an Opportunity To Be Heard (OTBH) prior to making a determination about the alleged contravention.

ERAA enables the BCER 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.

4.1 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.

4.1.1 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.

4.2 Evidence

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

4.2.1 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.

4.3 Hearings

4.3.1 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 BCER'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.

4.3.2 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.

Chapter 5:

Alleged Third-Party Non-Compliance

As per Section 76 of ERAA and the Pipeline Crossing Regulation, third-parties cannot carry out construction or ground activity within 30 metres of a pipeline, unless authorized to do so.

Permit holders are encouraged to communicate third-party non-compliance instances to the BCER by emailing the following information to C&E@bc-er.ca.

5.1 Permit Holder Information

- Company Name,
- Contact information of company representative,
- Location of the operating area, and,
- Identification number of the approved oil and gas activity (BCER file number, pipeline number, site number where the alleged non-compliance occurred).

5.2 Third-Party Information

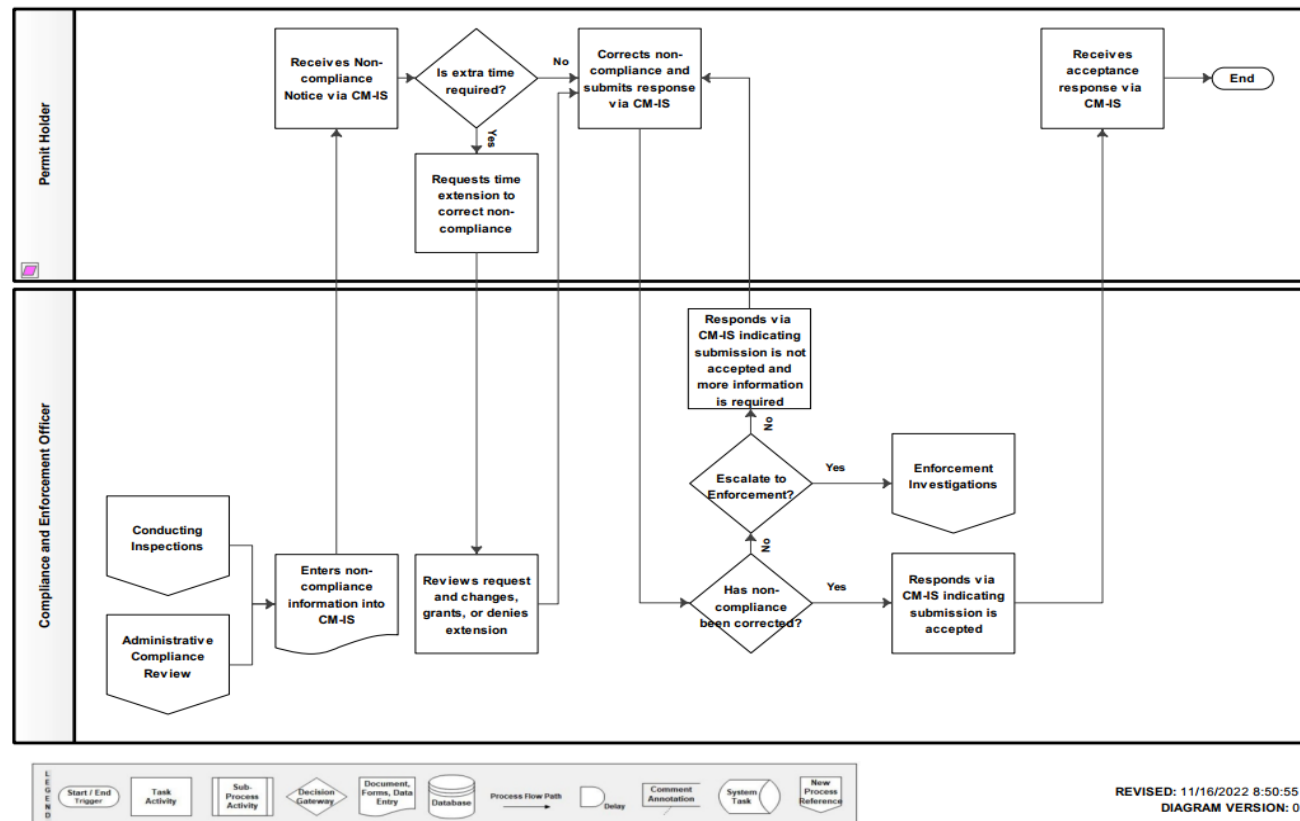
- Name of third-party (if known),
- Contact information (if known),
- Location of the alleged non-compliance within the permit holders operating area (geographic coordinates and or site map),
- Description of the works carried out,
- Time and date the alleged non-compliance occurred,
- Site and activity photos and diagrams,
- Pipeline specific details:
 - Measured distance of works from pipeline,
 - Measured depth of works,
 - Confirmation the third-party activity was not authorized in accordance with ERAA Section 76, and,
 - Actions taken to inform third-party of requirements and risks for work in proximity to a pipeline.

Upon receipt, the BCER will complete an initial assessment and follow-up with permit holder before determining the need for an investigation.

Appendix A: Non-compliance Notice & Correction Process Map

PROCESS NAME: Non-Compliance Notice and Correction
PROCESS MANAGER: Executive Director, Compliance & Enforcement

PROCESS OWNER: Vice President, Compliance & Operations

REPOSITORY HIERARCHY: Process Maps\2.0 Compliance & Operations\2.1 Compliance & Enforcement\Non-Compliance Notice and Correction.lgx

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