



Natural Resources
Canada

Ressources naturelles
Canada

Explosives Regulatory Division

Enforcement and Compliance

POLICY

January 12, 2001

for the Canada Explosives Act
and Explosives Regulations

Canada

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What do Canadians expect?

Canadians expect their government to provide good legislation (laws and regulations), in order to protect them and society.

In the case of the explosives industries, distributors and users, the federal government creates legislation to set standards for safety and security.

Good legislation must be effectively enforced. Enforcement must be fair, consistent and predictable.

The government's role is to:

- ÷ encourage compliance*
- ÷ encourage voluntary reporting of suspected violations*
- ÷ facilitate compliance*
- ÷ monitor compliance and non-compliance*
- ÷ respond to non-compliance*

Those who administer legislation and those who must comply with it need to understand how enforcement will be carried out.

What is a compliance policy?

A compliance policy is a guideline.

A compliance policy provides regulatees - people who are affected by a law and its regulations - with information on the steps that the regulator - the government department responsible for administering the law and its regulations - is taking to put them into effect.

A compliance policy sets out the principles for a fair, predictable and consistent approach to enforcement.

*The purpose of the Enforcement and Compliance Policy for the **Explosives Act** is to facilitate compliance with the **Act** and to*

*guide compliance activities. It tells everyone who shares a responsibility for safety and security of explosives - government, industry, individuals - what is expected of them. It also lets everyone know what to expect from NRCan and the officials who enforce the **Act** and its regulations. The Policy identifies the Explosives Regulatory Division's (ERD's) role in encouraging and facilitating compliance, and monitoring and responding to non-compliance with the legislation.*

The goal of this Policy is to achieve the greatest possible degree of compliance in order to protect workers and the public from explosives related incidents. A modern compliance policy must give proper emphasis to a full range of compliance techniques.

What are Enforcement and Compliance?

The terms 'enforcement' and 'compliance' are used in this Policy. It is, therefore, useful to make their meanings clear.

*Compliance means the state of conformity with the law. ERD will secure compliance with the **Act** and its regulations through two types of activity: promotion and enforcement.*

Measures to promote compliance include:

- ÷ communication and education*
- ÷ consultations with parties affected by the legislation*
- ÷ technical assistance*

Enforcement means the activities taken by ERD staff to obtain and ensure compliance, and how we respond to non-compliance.

Enforcement activities include:

- ÷ inspection and monitoring to verify compliance*
- ÷ investigation of violations*
- ÷ measures to compel compliance without resorting to formal court action*

÷ *measures to compel compliance through court action*

What is the purpose of the Explosives Act?

*The full title of the **Act** is 'an Act respecting the manufacture, testing, sale, storage, transportation and importation of explosives and the use of fireworks'.*

*The **Act** and its regulations concern themselves with both safety and security - sometimes those concepts may not seem to be compatible. For example, storage of explosives in metal magazines is a security requirement and would seem to go against the grain if safety was the only issue.*

*Therefore, the objectives of the **Act** and its regulations can be stated as:*

- ÷ *to secure the safety of Canadians from explosives related activities, by the reduction or elimination of risk (safety objective)*
- ÷ *to control the keeping of explosives, and preventing people from unlawfully having and keeping them (security objective).*

*The **Act** is written opposite of most other acts, i.e., everything is prohibited unless it is specifically permitted by the **Act** or regulations. Therefore, one must not assume that something is permitted if it is not mentioned.*

*The **Act** makes provision for promulgating major rules in Regulations. Regulations may be made:*

1. *classifying explosives*
2. *including or not including anything in the definition of explosive*
3. *exempting any explosive from the **Act** or Regulations*

4. *prohibiting the sale of any explosive that is intrinsically unsafe and identifying prohibited explosives by their common name or description*
5. *restricting the possession or use of any explosive*
6. *prescribing the duration of documents (licences, permits or certificates), the terms and conditions of documents, the fees for documents, and providing for the cancellation of documents*
7. *regulating the importation, packing (under MOU with Transport Canada, the Chief Inspector is the packaging authority for explosives), handling and transportation of explosives*
8. *requiring that explosives be accompanied by safety instructions*
9. *requiring the bilingual marking of explosives and packaging*
10. *for holding inquiries into any accident caused by explosives*
11. *for taking samples of explosives and specifying the tests to which explosives will be subjected*
12. *providing safety standards for research and large-scale testing of explosives*
13. *prescribing fees for authorization and testing of explosives*
14. *prescribing the procedures and testing required to authorize an explosive*
15. *prescribing the construction, management and licensing of factories and magazines*

16. *providing for safety standards for factories and magazines*
17. *requiring the training in safety procedures for employees at factories and magazines*
18. *to protect the safety of the public (this implies major accident prevention procedures and risk management approaches)*
19. *to protect the safety of employees in any factory or magazine (this implies a parallel jurisdiction with provincial OHS authorities)*
20. *to protect the safety of persons involved in the use of fireworks (as well as the general public)*
21. *to protect the safety of any person involved in transporting explosives by road (complementary to the Transportation of Dangerous Goods Act)*
22. *for the establishment, location and maintenance of factories and magazines*
23. *for the making, manufacture and storage of explosives*
24. *specifying the conditions for the blending of non explosive components of an explosive*
25. *limiting the amount of explosives and prescribing the conditions for handling and storing, at unlicensed facilities*
26. *restricting the sale, purchase and possession of explosives*
27. *prescribing the conditions under which explosives are deemed to be under the direction or control of the Minister of National Defence.*

*Even though the long title seems to indicate that the **Act** is all encompassing, there are many areas dealing with explosives that don't come under the **Act**, for example, use of blasting explosives, most aspects of transportation, explosives under the care and*

*control of the Minister of National Defence. Also, other levels of government may pass laws or by-laws that are more restrictive than the **Act**, for example several provinces and municipalities have passed fireworks related legislation.*

To whom does this compliance policy apply?

Maintenance and enhancement of safety and security associated with explosives is a responsibility that is shared among companies, individuals and ERD.

Companies have primary responsibility for their products and processes. Companies must comply with legislative requirements.

Individuals include employees of companies who work with explosives and consumers who use explosives. They have a responsibility to work safely and use explosives safely.

ERD has responsibility to facilitate, monitor, and enforce the legislation it administers. It has responsibility to foster partnerships with the regulated community and other partners.

What are the Guiding Principles?

*The following general principles will govern the application of the **Act**:*

÷ *Compliance with the **Act** and its regulations is mandatory.*

The regulated communities are expected to comply with legislated requirements. Voluntary compliance will be encouraged and facilitated.

÷ *Rules, sanctions and processes used to secure compliance will be securely founded in law.*

The tools used by enforcement officials will be securely

founded in law.

- ÷ *Enforcement personnel across Canada will administer the **Act** and regulations in a consistent and transparent manner.*

Consistent means that ERD will be fair and impartial in our decisions, and that we will try to strike the right balance between promotion and enforcement. Consistency does not mean uniformity. ERD will take a similar approach in similar circumstances to achieve similar ends. Circumstances could vary with such things as level of hazard, accident history, attitude and competence of management.

Transparent means that ERD will be predictable, timely and as open as the law permits. By timely we mean that we will strive to deal with issues as quickly as possible, subject to the availability of resources.

By predictable we mean that, by communicating effectively, we will help those who have a duty to comply to understand what is expected of them and what they should expect from enforcement officials.

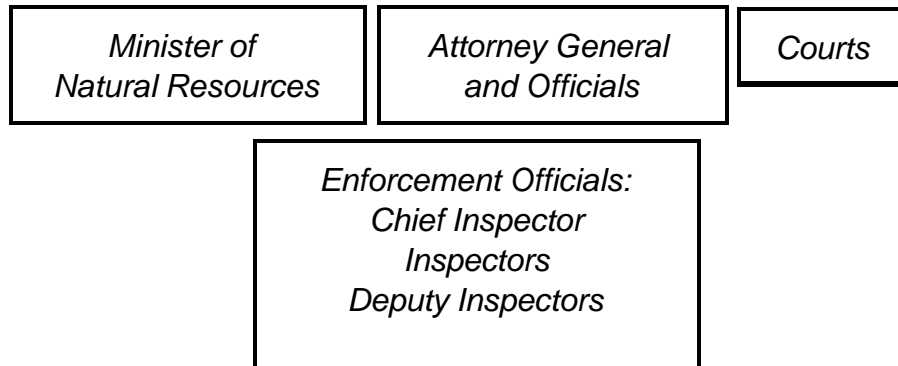
- ÷ *Enforcement responses will be proportionate and appropriate to the seriousness of the infraction.*

Proportionality relates compliance action to the risks.

Promotion, monitoring and enforcement will be targeted on those activities giving rise to the most serious risks or where hazards are least well controlled. Action will be focussed on those who are best placed to control risk or who are responsible for it.

- ÷ *Enforcement personnel will respond to suspected violations of the **Act** and regulations, and will take action consistent with this public compliance policy.*

Who are the Authorities responsible for implementation of the Explosives Act?



Minister of Natural Resources

*The Minister of Natural Resources has responsibility for the administration of the **Act**. The Minister must act in accordance with the legislation and is accountable to parliament for his or her actions.*

*The Minister has power under the **Act** to:*

- 1. issue documentation (licences, permits and certificates), and to add terms or conditions (s.7 of the **Act**).*
- 2. issue permits for importation (s.9)*
- 3. approve amendments to documentation relating to relocation or alteration (s.11)*
- 4. order the cessation or to add conditions, for the operation of any building, structure or vehicle deemed a special danger (s.12)*
- 5. seize and destroy any explosive that appears to be abandoned, to have deteriorated, or to be a danger (s.27)*
- 6. approve the form of documentation (s.10)*

7. *direct an inquiry be made whenever any accidental explosion or accident caused by an explosive has occurred (s.15)*

Under the Regulations, the Minister may suspend or cancel a licence, permit or certificate (s.26)

Attorney General and Officials:

*The Attorney General has responsibility for all litigation relating to the **Act**.*

*While Enforcement Officials may lay charges for offences under the **Act**, the ultimate decision on whether to proceed with prosecution of the charges rests with the Attorney General.*

Courts:

*The courts make the final decision regarding prosecutions under the **Act** including what penalty to impose.*

Enforcement Officials:

*Enforcement officials are individuals designated as an inspector under the **Act**. Inspectors will have the most frequent and regular contact with those companies and individuals affected by the legislation.*

*The Chief Inspector of Explosives and other inspectors are appointed pursuant to s.13 of the **Act**. They have powers of entry, inspection, information gathering, seizure and directing safety measures under s.14 of the Act. Under the **Act** the Minister has delegated powers 1-5 above, to inspectors.*

Deputy inspectors may be appointed by the Governor in Council. Currently, the members of the RCMP, the Quebec provincial police, the Ontario provincial police, persons appointed by the Commissioners in the territories, and police with bomb disposal training are appointed. Appointments are without remuneration. Deputy inspectors have the normal powers of an inspector under s.14 but not the delegated Ministerial powers (unless granted upon appointment).

The Chief Inspector has the powers of other inspectors as well as powers conferred by regulation to authorize every explosive sold in Canada. Customarily the Chief Inspector is also the Director (administrative head) of the Division.

Enforcement officials will:

- ÷ apply the **Act** in a manner that is fair, predictable and consistent*
- ÷ use rules, sanctions and processes securely founded in law*
- ÷ administer the **Act** with an emphasis on preventing misuse and accidents*
- ÷ examine every suspected violation of which they have knowledge and will take action consistent with this Policy*
- ÷ encourage the reporting to them of suspected violations of the **Act***

How does ERD promote compliance?

*ERD believes that promotion of compliance is an effective tool in securing conformity with the law. ERD also believes that the majority of regulatees will respect the **Act** if they understand how it applies. The range of program activities depends on resources available in any given year but may include:*

÷ Communication and Information

*ERD encourages general compliance with the **Act** through a program of communication and information. ERD will publish and give notice of the availability of the following materials:*

*copies of the **Explosives Act** and its regulations*

copies of standards and guidelines that have been developed

*the Enforcement and Compliance Policy for the **Act***

List of Authorized Explosives

*list of court actions arising from enforcement of the **Act** such as:*

*convictions under the **Act**, indicating the identity of the offender, the nature of the offence, and the sentence imposed by the court*

*forfeitures of items seized under the **Act***

*information on precedent setting cases under the **Act***

*fact sheets, pamphlets, booklets and reports on subjects relevant to the **Act***

the Annual Report

the E & P Newsletter

most information will be available at ERD's Website:

÷ *Certification and Courses*

ERD has updated the Display Fireworks Manual and prepared a Pyrotechnics Special Effects Manual. These manuals outline the certification system for use of display fireworks (2 levels of certification) and pyrotechnic special effects (4 levels of certification). ERD offers courses at various locations across Canada which cover the content of the manuals.

÷ *Consultation*

Few factors contribute as much to a sense that a rule is fair as the opportunity for all affected to provide input. ERD has and will continue to consult on policy, guidelines, standards and legislation.

What is compliance monitoring?

*Despite efforts to increase compliance with the **Act** on a voluntary basis, instances of non-compliance likely will continue to arise. Compliance monitoring is conducted to verify that activities governed by the **Act** are carried out in accordance with the legislation.*

Means to accomplish compliance monitoring include:

- ÷ *inspections*
- ÷ *self-monitoring*
- ÷ *3rd party inspections*
- ÷ *complaints and tips*
- ÷ *investigations*

What are inspection and investigation?

The purpose of an inspection is to verify compliance with the legislation.

*To conduct an inspection of premises other than a private dwelling, an inspector must have reasonable grounds to believe that, on the premises that he or she intends to enter and inspect, there are activities, explosive materials, substances, records, books, electronic data or other documents that are subject to the **Act** or relevant to its administration.*

In the case of a private dwelling, the inspector must obtain the consent of the occupant, or else obtain a search warrant from a justice, to carry out an inspection.

If requested, the inspector must produce a certificate of being an inspector.

In the course of an inspection, an inspector may examine equipment, substances or products, open and examine receptacles, containers or packages, and take samples. The inspector may also examine books, records or electronic data and make copies of them.

Although ERD has an annual program of inspections, inspections are generally unannounced. The schedule of inspections will be determined by the risk to safety or security, and by the compliance record of the company or individual.

Investigation involves gathering, from a variety of sources, evidence and information relevant to a suspected violation.

What are the criteria for responses to violations?

Whenever non-compliance has been identified, the primary objective is to have the responsible company or individual bring the process or product into compliance. Enforcement officials will consider all enforcement options to determine the appropriate action(s) in response to non-compliance.

In determining the most appropriate means to resolve non-

*compliance, ERD will examine the merits on a case-by-case basis and consider which means of resolution is the most consistent with the objectives of the **Act**. It is difficult to provide specific guidelines to describe every possible case. General factors which would normally be taken into consideration when deciding the most appropriate course of action include (the list is not exhaustive, nor is it placed in order of importance):*

- ÷ risk to safety or security*
- ÷ nature of the violation*
- ÷ NRCan priorities*
- ÷ available resources*
- ÷ degree of co-operation once the problem was identified*
- ÷ likelihood that the same problem will reoccur*
- ÷ whether the violation was due to lack of care or was premeditated*
- ÷ need to maintain public confidence in the program*

What are the available response options?

*In dealing with possible contraventions of the **Act** and its regulations, ERD has available a number of instruments to resolve non-compliance. The following responses are available:*

- ÷ Deficiency Observation*
- ÷ Stop Order*
- ÷ Suspension/Cancellation*
- ÷ Prosecution*
- ÷ Seizure/Forfeiture/Surrender*

Deficiency Observation - means a written notice, generally on the inspection form, of a requirement for compliance for essentially minor infractions. The company or individual who has been given

a Deficiency Observation, will be required to confirm in writing (usually within three weeks) that the deficiency has been rectified.

*Stop Order - means an order (issued under s.12 or s14(2) of the **Act**) to stop any further action, which is issued when there is a serious risk to safety or security and another means of achieving compliance is not feasible.*

*Suspension/Cancellation - of a licence, certificate or permit may be contemplated by the Minister under s.26 of the **Regulations** for:*

- ÷ contravening any of the terms of the licence or permit*
- ÷ carrying on a practice in connection with the licence or permit that constitutes a special danger*
- ÷ contravening the **Act** or Regulations.*

Prosecution - is a legal proceeding in which the courts determine whether non-compliance contravenes the legislation and if so, the appropriate penalty.

ERD will consider laying charges if non-compliance:

- ÷ creates a significant safety or security risk*
- ÷ is continuing in nature*
- ÷ was premeditated, reckless or a marked departure from a reasonable standard of care, or*
- ÷ other enforcement activities have proven unsuccessful*

Seizure/Forfeiture/Surrender -

*Under s.14.1(1) of the **Act**, an inspector may seize and detain any explosive if the inspector believes on reasonable grounds that an offence has been committed.*

The explosives that have been seized may be detained for 90 days unless before 90 days the explosives have been forfeit or prosecution has been instituted.

The explosives may be detained until the prosecution proceedings are concluded (s.14.4(2)) or the court has ordered the

return of the explosives (s. 14.5(2)).

The owner of an explosive may, in writing, surrender the explosive (s. 14.6).

*Upon conviction of an offence under the **Act** the court may order an authorized explosive forfeit to the Crown and must order an unauthorized explosive forfeit to the Crown.*

What are my rights to appeal a decision by an inspector?

*Under s. 17 of the **Act** a person who is dissatisfied with an order, direction or requirement of an inspector may, within fifteen days after the day on which the order was made, submit the facts to the Minister of NRCan. The Minister may confirm, revoke, or amend the order, direction or requirement.*

What are the possible penalties if prosecution is pursued?

Penalties for:

- ÷ failure to permit an inspector to enter any place, to inspect, to examine or to make inquiries*
- ÷ failure to comply with the order of an inspector*
- ÷ obstructing an inspector in the course of his/her duties*

the maximum fine would be \$5 000 and/or imprisonment up to six months, on summary conviction.

For abandoning any explosive or committing any act that could cause an explosion or fire at or near any factory, magazine or vehicle - on summary conviction the maximum fine would be \$10 000 and/or imprisonment up to six months or on indictment the maximum fine would be \$20 000 and/or imprisonment up to one year.

*For possessing, selling, making , manufacturing, importing or delivering any explosive in contravention of the **Act**, on summary*

conviction, the maximum fine would be \$5 000 for a first offence, and \$10 000 and/or imprisonment up to six months for each subsequent offence.

*For contravening any provision of the **Act** or its regulations for which no other punishment has been provided, on summary conviction, the maximum fine would be \$5 000 for a first offence and \$10 000 for each subsequent offence.*

*Where, in the commission of an offence under the **Act**, the person acquired any monetary benefit, the court may impose an additional fine equivalent to the monetary benefit.*

*For knowingly disclosing any confidential information obtained under the **Act**, the maximum fine is \$5 000 on summary conviction and \$10 000 and/or imprisonment up to six months on indictment.*

Upon conviction of an offence for possessing, selling, offering for sale, storing, using, making, manufacturing or importing the courts may declare the explosives forfeited to the crown, and the courts must order the forfeiture if the explosives are not authorized.

Where can I get more information?

Anyone who has questions about this Enforcement & Compliance Policy or who wishes further information should contact one of the following:

Atlantic Region

*1505 Barrington Street, Suite 1505 North
Halifax, Nova Scotia B3J 3K5
(p)902-426-3599 (f)902-426-7332*

Quebec Region

*P.O. Box 100, 2050 Girouard West
Saint-Hyacinthe, Quebec J2S 7B2
(p)450-773-3431 (f)450-773-6226*

Ontario Region

*1431 Merivale Road
Ottawa, Ontario K1A 0G1*

(p)613-948-5202 (f)613-948-5195

Western Region

*755 Lake Bonavista Drive, S.E., Unit 214,
Calgary, Alberta T2J 0N3*

(p)403-292-4766 (f)403-292-4689

Pacific Region

*101-605 Robson Street,
Vancouver, British Columbia V6B 5J3*

(p)604-666-0366 (f)604-666-0399