



MINISTRY OF ENVIRONMENT  
COMPLIANCE AND ENFORCEMENT POLICY AND PROCEDURE

VERSION 1

June 2005



---

**Effective Date:** June 14, 2005

**Revised Date:**

**Responsible Area:** Compliance Division

**Replaces:** All related ministry operational compliance and enforcement policies and procedures previously issued, including Ministry of Environment Procedure Manual Volume 5, Section 1, Subsection 05.10 and 05.11

**Staff Affected:** All ministry staff engaged in compliance and/or enforcement activities.

**Amendments:** Suggested amendments to the policy may be submitted to the Executive Director, Compliance Division, Ministry of Environment

---

# Table of Contents

- Introduction ..... 1
- Definitions ..... 2
- Abbreviations ..... 3
- Chapter 1: Responding to Regulatory Non-Compliance ..... 4
  - Scope..... 4
  - Purpose ..... 4
  - Policy ..... 4
  - 1.0 Regulatory Context ..... 4
  - 1.1 Ministry Position on Compliance and Enforcement..... 4
  - 1.2 Factors For Consideration..... 5
- Chapter 2: Inspections and Investigations ..... 6
  - Scope..... 6
  - Purpose ..... 6
  - Policy ..... 6
  - 2.0 Inspections ..... 6
    - 2.0.1 Staff Authorized to Conduct Inspections ..... 7
  - 2.1 Investigations ..... 7
    - 2.1.1 Staff Authorized to Conduct Investigations..... 7
    - 2.1.2 Transition from Inspection to Investigation ..... 7
    - 2.1.3 Communications with a Regulated Party during an Investigation ..... 8
    - 2.1.4 Review of Investigations..... 8
- Chapter 3: Tools for Addressing Non-Compliance ..... 9
  - Scope..... 9
  - Purpose ..... 9
  - Policy ..... 9
  - 3.0 Advisory ..... 9
  - 3.1 Warning..... 9
  - 3.2 Directive ..... 10
  - 3.3 Administrative Sanction..... 10
  - 3.4 Ticket..... 10
  - 3.5 Formal Charges (Form 2 Information)..... 11
  - 3.6 Use of More than One Tool at a Time..... 11

**Chapter 4: Non-Compliance Decision Matrix ..... 12**

- Scope..... 12
- Purpose ..... 12
- Policy ..... 12
- 4.0 Application of the Non-Compliance Decision Matrix ..... 12
- 4.1 Statutory Decision Makers ..... 12
- 4.2 Promotion of General Deterrence ..... 13
- 4.3 Non-Compliance Decision Matrix..... 14
  - 4.3.1 Levels of Escalating Environmental, Human Health or Safety Impacts..... 15
  - 4.3.2 Categories of Likelihood of Compliance ..... 16

**Chapter 5: Investigation Review Process ..... 17**

- Scope..... 17
- Purpose ..... 17
- Policy ..... 17
- 5.0 Application of the Investigation Review Process..... 17
- 5.1 Pre Investigation Review..... 18
- 5.2 Alternative Compliance Measures ..... 18
- 5.3 Post Investigation Review ..... 18
- 5.4 Description of Regulatory Requirements Subject to the Investigation Review Process ..... 19
- 5.5 Table 1 (Regulatory Requirements Subject to the Investigation Review Process) ..... 20
- 5.6 Operational Considerations..... 22
  - 5.6.1 Exigent Circumstances..... 22
  - 5.6.2 Special or Covert Operations ..... 22
  - 5.6.3 Consultation between Divisions..... 22
  - 5.6.4 Independence of Statutory Decision Makers..... 22
- 5.7 Dispute Resolution ..... 23

## Introduction

Ensuring compliance with its regulatory requirements is one of the ministry's principal objectives. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence. Prosecution is an essential compliance tool to be applied vigorously when necessary, but reserved for those situations where alternative compliance efforts are unable to achieve the desired outcomes or it has been otherwise determined that a prosecution response is appropriate.

By guiding the selection of appropriate tools to respond to non-compliance, the ministry's Compliance and Enforcement Policy and Procedure provides consistency and structure to the assessment of, and response to, regulatory non-compliance. The establishment of an investigation review process ensures that, where necessary, communications will occur between the divisions responsible for defining and protecting environmental values and the division responsible for investigations. These measures further the ministry's aim of providing greater consistency, increased clarity and predictability regarding the consequences of non-compliance, as well as assurance that resources are directed to the highest priorities. The balanced and principled use of compliance and enforcement tools demonstrates the ministry's commitment to building public confidence through accountable and transparent policies.

## Definitions

For the purposes of this policy:

**Administrative sanction** - suspension, restriction or cancellation of ministry authorizations, including approvals, licences or permits.

**Advisory** - a document notifying a party that they are not in compliance with a specific regulatory requirement and that requests the non-compliance be corrected.

**Charge Approval** - the decision process where Crown Counsel reviews all the information and evidence submitted to them by way of a Report to Crown Counsel in order to determine if charges (can be proved and meet the public interest standard) are approved for prosecution.

**Compliance** - means conformity with guidelines and regulatory requirements established by government to protect the environment, human health and safety. This policy addresses the use of tools used to secure compliance with regulatory requirements.

**Compliance Tool** – is an action taken on the part of the ministry to resolve non-compliance and includes advisories, warnings, directives, administrative sanctions, tickets and formal charges.

**Crown Counsel** - a prosecutor employed by, or on contract to, the Criminal Justice Branch of the Ministry of Attorney General or the Federal Department of Justice.

**Directive** - a written, legal instrument (e.g. order) issued by designated ministry officials which may be used to address non-compliance.

**Due Diligence** – taking all reasonable precautions to prevent or avoid a non-compliant incident from occurring. This standard requires that a person take all the care which a reasonable person might have been expected to take in all the circumstances or, in other words, be in no way negligent.

**Enforcement** – is one response in the array of tools that may be used to achieve compliance; it includes warnings, tickets and formal charges.

**Formal Charges** – laying of charges by way of a “Form 2 Information” in front of a Justice of the Peace.

**Inspections** - activities undertaken to verify compliance with a regulatory requirement.

**Investigations** - activities involved in the gathering of information and evidence relevant to a suspected non-compliance where the purpose is to build a case for possible enforcement response.

**Ministry Program Staff** – means staff in the Environmental Stewardship and Environmental Protection Divisions.

**Non-Compliance** – failure by a regulated party to meet regulatory requirements.

**Non-Compliance Decision Matrix** – a table that guides a response to non-compliance, considering the environmental, human health and safety impacts and the regulated party’s likelihood of achieving compliance.

**Reasonable Grounds** – a set of facts or circumstances that leads one to come to a conclusion beyond that of mere suspicion.

**Regional Management Compliance Team** - includes the Regional Manager, Conservation Officer Service, Regional Manager of Environmental Stewardship and Regional Manager of Environmental Protection (and the Assistant Director, Contaminated Sites where the matter involves a contaminated site).

**Regulatory Requirements** - are defined as requirements established through acts, regulations, authorizations and other legal requirements.

**Report to Crown Counsel** - a formal document submitted to Crown Counsel containing all the information and evidence necessary for Crown Counsel to make an informed decision on whether a charge meets the Criminal Justice Branch charging standard.

**Ticket** - a charging document which may be used instead of “formal charges”. Generally a ticket responds to minor offences and prescribes a monetary penalty to be paid.

**Warning** - a document that notifies a party that they are not in compliance with a specific regulatory requirement and warns of escalating response should non-compliance continue.

## **Abbreviations**

COS – Conservation Officer Service

EP – Environmental Protection

ES – Environmental Stewardship

IRP – Investigation Review Process

RMCT – Regional Management Compliance Team

# Chapter 1: Responding to Regulatory Non-Compliance

---

Revised date: \_\_\_\_\_

## Scope

This policy applies to all ministry staff engaged in responding to regulatory non-compliance.

## Purpose

1. Emphasize the ministry's commitment to achieving compliance.
  2. Guide staff in their consideration of factors affecting a response to regulatory non-compliance.
- 

## Policy

It is ministry policy that:

### 1.0 Regulatory Context

Regulatory requirements administered by the ministry are dealt with in the context of a social regulatory scheme as opposed to the command and control scheme reflected in the *Criminal Code*. This distinction is important for the development of ministry compliance and enforcement policies as a social regulatory scheme allows the program areas and the area responsible for enforcement to be consultative in determining the most appropriate response to non-compliance.

### 1.1 Ministry Position on Compliance and Enforcement

One of the ministry's principal objectives is to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence.

Prosecution is an essential compliance tool to be applied vigorously when necessary, but reserved for those situations where alternative compliance efforts are unable to achieve the desired outcomes or it has been otherwise determined that a prosecution response is appropriate.

Accordingly, formal charges may be recommended where the circumstances such as the severity of actual or potential impact to the environment, human health or safety, the factual circumstances of the alleged offence or the compliance history of the offender are such that other compliance tools would likely be ineffective and prosecution may provide the most effective way to achieve compliance, or there is a need for general deterrence that would result from a court hearing.

Additionally, the integrity and effectiveness of the regulatory regime established to protect the environment, human health and safety is highly dependent on compliance with administrative requirements such as the provision of data or licensing information. Failure to comply with such regulatory requirements, even in the absence of environmental damage, may threaten the regulatory regime and staff will consider appropriate responses, including the recommendation of formal charges.



Ultimately the decision of whether a file should be investigated, and whether it should be forwarded to Crown Counsel for consideration of formal prosecution, rests with the Conservation Officer Service as the law enforcement arm of the ministry. This policy ensures that the best information available within the ministry will inform the COS decision on whether any given file needs to be investigated and which compliance tool is most appropriate. When a file is forwarded to the Criminal Justice Branch, the ultimate decision to lay a charge is the responsibility of Crown Counsel. This policy ensures that the best information available within the ministry will be provided to Crown Counsel to inform their decision.

## 1.2 Factors For Consideration

In responding to regulatory non-compliance, it is necessary to examine the available information to determine the full extent of the non-compliance and any related regulatory history. The following factors provide guidance in developing an appropriate response.

### **Effectiveness in achieving the desired result**

While each fact pattern will be different in relation to non-compliance, the most important factor in determining an appropriate response is the effectiveness of the tool in achieving compliance as quickly as possible with no recurrence.

Factors to be considered include

- any related history of non-compliance
- the person's willingness to co-operate with officials
- evidence of corrective action already taken
- the existence of enforcement actions taken under federal or other provincial statutes

### **Nature of the non-compliance**

This includes consideration of

- the seriousness of the actual or potential impact to the environment, human health or safety
- the level of care exercised by the person
- whether the non-compliance was deliberate
- whether monetary gain resulted from the commission of the non-compliance
- whether this is a repeated occurrence
- whether there are attempts to conceal information or otherwise subvert the regulatory requirements
- whether there is a need for general deterrence

### **Consistency in enforcement**

Ministry compliance efforts should attempt to achieve consistency in response to non-compliance. Accordingly, where feasible, staff may consider how similar situations have been addressed – recognizing that each case of non-compliance will have different circumstances which may suggest a different response.

## Chapter 2: Inspections and Investigations

---

Revised date: \_\_\_\_\_

### Scope

This policy applies to all staff undertaking inspections and/or investigations of regulatory requirements administered or enforced by the ministry.

### Purpose

1. Ensure a common understanding of the terms inspection and investigation.
  2. Provide information with respect to the roles and responsibilities of staff authorized to conduct inspections and investigations.
- 

### Policy

It is ministry policy that:

#### 2.0 Inspections

Inspections are a type of compliance verification activity used to assess conformity with regulatory requirements. They are generally done on a risk-based priority and are undertaken by ministry program staff and Conservation Officers.

Inspections include site and facility visits, field checks, and reviewing monitoring data or other materials supplied by the regulated party. They are both scheduled (based on the compliance planning process) and unscheduled, operation-specific or sector based.

Unscheduled or additional inspections may occur in response to information or complaints which come to the attention of the ministry. Inspections may also be used to determine sectoral compliance rates, or to assess risks and gain technical understanding of new operations, equipment or processes associated with regulated activities. Compliance promotion in the form of information exchange and education is often achieved through conducting inspections.

Compliance monitoring is another type of verification activity used to assess compliance with regulatory requirements, as well as adherence to, and the application of, guidelines and best management practices. Activities associated with both inspections and compliance monitoring may serve to identify the need for an investigation of non-compliance with regulatory requirements.

### 2.0.1 Staff Authorized to Conduct Inspections

Designated ministry program staff and Conservation Officers are authorized by legislation to conduct inspections. While conducting inspections, staff are authorized pursuant to specific legislation to undertake certain activities such as entering upon land, as well as examining records, works and materials. The particular legislation should be reviewed with respect to the extent of the authority conferred.

## 2.1 Investigations

Investigations involve a systematic process of collecting evidence and information relevant to a suspected non-compliance for the purposes of enforcement.

The need for an investigation may arise as a result of

- non-compliance detected through compliance verification activities (monitoring, auditing or inspecting)
- information gathered from sources or informants
- public reports of suspected offences
- referrals from other agencies

Investigative activities include

- gathering physical evidence and ensuring its continuity and integrity
- taking statements and interviewing witnesses
- conducting surveillance
- obtaining and executing search warrants
- preparing briefs for Crown Counsel or a Statutory Decision Maker authorized to impose administrative sanctions

### 2.1.1 Staff Authorized to Conduct Investigations

Designated ministry staff, primarily Conservation Officers and Park Rangers, are authorized to conduct investigations. While conducting investigations, these staff are authorized to conduct specific activities such as executing search warrants and performing search and seizures. Ministry program staff often contribute technical expertise in support of an investigation.

### 2.1.2 Transition from Inspection to Investigation

A transition from inspection to investigation may take place when non-compliance is detected during an inspection and the purpose shifts from verifying compliance and the potential impacts upon the environment, human health and safety to collecting information and evidence that may be required to support potential enforcement action. Generally this transition brings with it certain legal consequences with respect to the continued conduct of the investigation. When an inspection is being conducted by staff who are not authorized to conduct an investigation, it is generally appropriate for staff to request the services of an investigator.

### 2.1.3 Communications with a Regulated Party during an Investigation

During the investigative process it is important to ensure that communications between ministry program staff and the regulated party do not compromise the investigation. Ongoing communication with the regulated party is often necessary to mitigate environmental, human health or safety impacts, or seek solutions to rectify ongoing non-compliance. Therefore, ministry program staff responsible for ongoing administration related to the regulated party under investigation are to ensure that there is dialogue with the investigating officer regarding roles and responsibilities prior to engaging in discussions with the regulated party.

Where an alternative approach to proceeding with charges is being considered during the course of an investigation, the investigating officer and ministry program staff must discuss the options and reach consensus regarding proceeding with an alternative approach prior to discussing the alternative approach with the person under investigation.

### 2.1.4 Review of Investigations

Certain investigations are subject to review by the Regional Management Compliance Team. Investigations subject to the Investigation Review Process are those where collaboration between ministry program staff and Conservation Officers may be required in order to determine an appropriate compliance approach. See Chapter 5: Investigation Review Process.

## Chapter 3: Tools for Addressing Non-Compliance

---

Revised date: \_\_\_\_\_

### Scope

This policy applies to all ministry staff using the tools listed in this chapter to promote and secure compliance with ministry regulatory requirements.

### Purpose

1. Ensure a common understanding of the purpose and use of compliance tools available to ministry staff.
  2. Specify the criteria that should be considered when selecting the most appropriate compliance tool.
- 

### Policy

It is ministry policy that the following compliance tools may be applied by authorized staff when addressing non-compliance with regulatory requirements.

#### 3.0 Advisory

An advisory notifies the non-compliant party *in writing* that they are not in compliance with a specific regulatory requirement and often recommends a course of action that is expected to achieve compliance. An advisory may:

- include an exchange of information on best management practices or technical solutions. Staff may also attend at the site/facility/development to provide additional insight into the regulatory requirements;
- reference where additional information and educational materials can be sourced; and
- include *requests* for a description of the cause of the non-compliance, measures being considered to prevent further non-compliance and a remedial action plan.

#### 3.1 Warning

Similar to an advisory, a warning notifies the non-compliant party *in writing* that they are not in compliance with a specific regulatory requirement; however, the warning differs from an advisory in that it **warns** of the possibility of an escalating response should non-compliance continue. Warnings are generally used when it is determined that an exchange of information alone would not be sufficient in achieving compliance.

A warning may:

- require a description of the cause of the non-compliance, measures being considered to prevent further non-compliance and a remedial action plan;

- require an inspection prior to issuing the warning letter in order to gather sufficient information regarding the non-compliance (a follow-up inspection may also be undertaken in order to verify compliance); and
- request written confirmation from the client that compliance has been achieved.

When issuing a warning, staff are expected to have sufficient information to satisfy themselves that a non-compliance occurred.

### 3.2 Directive

A directive is a written, legal instrument (e.g. Dangerous Wildlife Protection Order, Forest and Range Stop Work Order, Pollution Prevention Order, etc) issued by designated ministry officials. A directive is issued according to statutorily prescribed criteria and may:

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

An inspection may be required prior to issuing the directive in order to gather sufficient information; subsequent inspections may be required to confirm compliance with a directive. A directive and an investigation may be undertaken concurrently, or may be used as a result of either action.

### 3.3 Administrative Sanction

As authorized by various statutes, Statutory Decision Makers have the authority to impose remedial or punitive administrative sanctions. These can include revocation or suspension of ministry issued permits, licences and other administrative instruments which authorize activities such as commercial operations within Parks, guide outfitting and pesticide use. An administrative sanction may be issued when:

- in the opinion of the Statutory Decision Maker, the authorized party has undertaken activities contravening the conditions of the authorization.

The sanction can vary from removing certain allowed activities to total suspension or revocation of the permit depending on the level of actual or potential impact to the environment, human health or safety.

### 3.4 Ticket

Prosecutions by way of a Ticket Information are a summary means of dealing effectively and quickly with the most minor offences. Prosecution by way of a ticket may be initiated by designated ministry staff. In deciding whether to issue a ticket, authorized ministry officials must determine that the:

- contravention is an offence and is ticketable under provisions such as the *Violation Ticket Administration and Fines Regulation*, the *Contraventions Act* (Federal), and the *British Columbia Sport Fishing Regulations*; and
  - issuance of a ticket is the most appropriate enforcement option for the situation.
-

The same standard of proof is required for the issuance of violation tickets as is required for formal charges through the courts. If a ticket is disputed, the Crown is required to prove the offence at trial. The offender who chooses not to contest a ticket is deemed to have pleaded guilty to the offence and is subject to the specified penalty.

Tickets may be issued when:

- there has been non-compliance with a regulatory requirement;
- an advisory or warning is not appropriate;
- the evidence supports a reasonable likelihood of conviction;
- the public interest requires legal proceedings, but not a public hearing;
- the set fine is adequate for the offence; and
- there is no substantial damage to the environment, human health or safety.

### 3.5 Formal Charges (Form 2 Information)

These are legal proceedings in court that are initiated by alleging that a person(s) (including a corporation) has committed an offence(s). The offender is compelled to attend court to address the charges by way of an appearance notice or summons. Formal charges may be recommended by ministry staff, but are initiated by Crown Counsel in the exercise of their discretion.

A recommendation to the Criminal Justice Branch of a formal charge is appropriate where in the opinion of the investigator there is sufficient evidence to prove the commission of the alleged offence, and one or more of the following apply:

- other methods of enforcement have in the past proven ineffective or there is reason to believe that other enforcement methods will not be effective;
- the potential accused is a repeat offender;
- the action of the offender was wilful, or fell significantly below the standard of due diligence;
- there is more than minimal damage to the environment or human health, or there was substantial potential for damage to the environment or human health;
- the lives or safety of persons were endangered, or there was substantial potential for the lives or safety of persons to be endangered;
- there is a significant non-compliance with regulatory requirements; or
- the public interest in the maintenance of environmental values requires a prosecution.

### 3.6 Use of More than One Tool at a Time

In some circumstances, it is appropriate to consider multiple approaches to non-compliance. For example, a directive in the form of a Pollution Prevention Order or a Forest and Range Stop Work Order, issued to address the immediacy of a situation, may be followed by an investigation and the recommendation of formal charges, as appropriate. In another example, an administrative sanction may be levied following a prosecution. The particular legislation should be reviewed with respect to the proposed multiple approaches.

---

# Chapter 4: Non-Compliance Decision Matrix

---

Revised date: \_\_\_\_\_

## Scope

This policy applies to all ministry staff engaged in compliance and enforcement activities related to regulatory requirements administered by the ministry. The principles of the Non-Compliance Decision Matrix apply to ministry regulatory requirements.

## Purpose

1. Ensure consistency and fairness in the assessment and resolution of non-compliance.
  2. Reinforce the ministry's commitment to compliance by ensuring the most appropriate measures are used to achieve compliance - taking into consideration the facts specific to the situation, as well as the need for general deterrence.
- 

## Policy

### 4.0 Application of the Non-Compliance Decision Matrix

The Non-Compliance Decision Matrix is a framework for assessing the variability and severity of factors influencing the selection of compliance tools. These factors include:

- escalating levels of environmental, human health or safety impacts (actual or potential); and
- a diminishing likelihood of achieving compliance

The Non-compliance Decision Matrix is a **guidance tool**; it is to be used with discretion by staff when considering the context and specifics of individual cases of non-compliance.

Where use of the Non-Compliance Decision Matrix indicates that an advisory, warning, directive, or administrative sanction is an appropriate response, staff will take the necessary measures to implement the response or refer the file to staff who are authorized to do so.

Where use of the Non-Compliance Decision Matrix indicates that an investigation may be warranted, staff will consult Chapter 5 to determine whether the investigation is subject to review by the Regional Management Compliance Team through the Investigation Review Process.

### 4.1 Statutory Decision Makers

The Non-Compliance Decision Matrix is a guidance tool; it is in no way to impair the professional judgement, discretion and autonomy exercised by ministry Statutory Decision Makers.

---



#### 4.2 Promotion of General Deterrence

Where staff encounter non-compliances which, in isolation, do not warrant an investigation, but the cumulative or collective impact of these non-compliances may require a response by the ministry, staff are to raise these situations with the Regional Management Compliance Team. The Regional Management Compliance Team is responsible for identifying emerging trends in non-compliance and developing a systematic and coordinated response in order to promote general deterrence.

The Regional Management Compliance Team includes the Regional Manager Conservation Officer Service, Regional Manager of Environmental Stewardship and Regional Manager of Environmental Protection (and the Assistant Director, Contaminated Sites where the matter involves a contaminated site).



### 4.3 Non-Compliance Decision Matrix

The ministry's principal objective is to ensure compliance with its regulatory requirements. This is achieved through the use of a variety of compliance tools, giving consideration to using the most appropriate tool necessary to obtain compliance, and when required, to promote general deterrence. This matrix is a guide; accordingly, it does not fetter Statutory Decision Makers in the exercise of their statutory powers.

		ESCALATING ENVIRONMENTAL, HUMAN HEALTH OR SAFETY IMPACTS (ACTUAL OR POTENTIAL)				
		LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
<b>LIKELIHOOD OF COMPLIANCE (COMPLIANCE HISTORY/WILLINGNESS AND CAPACITY TO COMPLY)</b>	<b>CATEGORY A (HIGH)</b>	ADVISORY	ADVISORY - WARNING	WARNING - DIRECTIVE - ADMINISTRATIVE SANCTION	DIRECTIVE - ADMINISTRATIVE SANCTION - INVESTIGATION	INVESTIGATION
	<b>CATEGORY B</b>	ADVISORY - WARNING	WARNING	ADMINISTRATIVE SANCTION - INVESTIGATION		
	<b>CATEGORY C</b>	WARNING	WARNING - DIRECTIVE			
	<b>CATEGORY D</b>	WARNING - DIRECTIVE - ADMINISTRATIVE SANCTION	ADMINISTRATIVE SANCTION - INVESTIGATION			
	<b>CATEGORY E (LOW)</b>	DIRECTIVE - ADMINISTRATIVE SANCTION - INVESTIGATION				

#### 4.3.1 Levels of Escalating Environmental, Human Health or Safety Impacts (Actual or Potential)

##### LEVEL 1

- Non-compliance that does not result or is unlikely to result in any environmental, human health or safety impact; or
- Minor administrative non-compliance.

##### LEVEL 2

- Non-compliance resulting in a minor, temporary impact to the environment or minor, temporary threat to human health or safety; or
- Significant administrative non-compliance.

##### LEVEL 3

- Non-compliance resulting in a moderate, temporary impact to the environment or moderate, temporary threat to human health or safety.

##### LEVEL 4

- Non-compliance resulting in a significant impact to the environment or significant threat to human health or safety (may be temporary or permanent).

##### LEVEL 5

- Known or likely human health impact that is severe in effect, i.e. resulting in hospitalization and/or long term human health consequences.
-

4.3.2 Categories of Likelihood of Compliance  
(Compliance History/ Willingness and Capacity to Comply)

**CATEGORY A - Indications of future and ongoing compliance are very high**

- No previous occurrences of non-compliance;
- Good demonstrated awareness of and/or capacity to meet regulatory requirement; and/or
- Offender has a reasonable and cooperative attitude.

**CATEGORY B - Indications of future and ongoing compliance are uncertain**

- Few previous occurrences of non-compliance; and/or
- Questionable awareness of and/or capacity to meet regulatory requirement.

**CATEGORY C - Indications of future and ongoing compliance are unlikely**

- Numerous previous occurrences of non-compliance; and/or
- Little or no awareness of and/or capacity to meet regulatory requirement.

**CATEGORY D - No indication of future and ongoing compliance**

- Wilful violation of ministry regulatory requirement; and/or
- Little or no demonstrated willingness or capacity to meet regulatory requirement.

**CATEGORY E - No indication of future and ongoing compliance**

- Hindering or obstructing a ministry official;
  - Refusing to furnish required information; and/or
  - Intentionally including false or misleading information in any required document.
-

## Chapter 5: Investigation Review Process

---

Revised date: \_\_\_\_\_

### Scope

This policy applies to all ministry staff leading or assisting in investigations related to regulatory requirements listed in Table 1 (Regulatory Requirements Subject to the Investigation Review Process).

### Purpose

1. Ensure that the decision to undertake investigations is guided by consideration of the mandate of the ministry, as well as the ministry's human and financial resource capacity.
  2. Underscore the importance of consultation between the Conservation Officer Service and the program areas in determining the need for an investigation and the appropriateness of responses to non-compliance.
  3. Ensure that during the course of an investigation, alternatives to formal charges continue to be considered as possible means to achieving compliance.
- 

### Policy

#### 5.0 Application of the Investigation Review Process

Under the Investigation Review Process (IRP), the Regional Management Compliance Team (RMCT) is responsible for reviewing investigations where cross-divisional collaboration may be required in order to determine an appropriate compliance approach.

The RMCT includes the:

- Regional Manager Conservation Officer Service;
- Regional Manager of Environmental Stewardship; and
- Regional Manager of Environmental Protection  
(and the Assistant Director, Contaminated Sites where the matter involves a contaminated site).

Where use of the Non-Compliance Decision Matrix (Chapter 4) indicates that an investigation may be warranted, staff need to refer to Table 1 on pages 20 and 21 in order to determine whether the Investigation Review Process applies and whether it applies pre and/or post investigation.

---

## 5.1 Pre Investigation Review

The pre investigation review applies to regulatory requirements listed in Column 1 of Table 1 (Regulatory Requirements Subject to the Investigation Review Process). At the pre investigation review, the RMCT will review staff requests for an investigation to ensure:

- that there has been careful and thorough consideration of the compliance history and complete disclosure of the regulator's previous contact with the regulated party;
- the alleged offence falls within the scope of the ministry's responsibilities or whether it should be referred to another agency such as the RCMP or Department of Fisheries and Oceans;
- consistency with priorities established by ministry divisions; and
- adequate resources (financial and human) are available and assigned to undertake the investigation (i.e. estimation of person hours required, as well as legal sampling and analysis costs).

If the RMCT declines to support a recommended investigation, their decision will be documented and communicated to the initiating staff. In these cases, it may be appropriate to develop an alternative compliance plan. Whenever feasible, staff initiating a request for an investigation will be included in the discussions with the RMCT.

In circumstances where the region does not have the human or financial resources to support an investigation, the RMCT may consider requesting additional resources.

## 5.2 Alternative Compliance Measures

It is recognized that during the course of an investigation, alternative measures to prosecutorial action may be identified as suitable means to achieving compliance. Therefore, in assessing the results of an investigation, the Non-Compliance Decision Matrix continues to provide guidance in considering the full range of compliance tools - in addition to the consideration of tickets and formal charges. Staff are encouraged to consider alternative measures and may seek guidance from the RMCT where those measures involve considerable ministry oversight, i.e. extensive remediation or mitigation plans.

## 5.3 Post Investigation Review

The post investigation review applies to investigations of regulatory requirements (Columns 1 and 2 of Table 1) where a directive, administrative sanction or formal charge is being recommended as a result of an investigation. At the post investigation review, the RMCT reviews the investigative findings and recommendation(s) made by the investigative team. The key role of the RMCT at this stage is to ensure the most effective approach is taken to achieve compliance, as well as to achieve general deterrence, if that is concluded to be necessary.

---

## 5.4 Description of Regulatory Requirements Subject to the Investigation Review Process

Table 1 (below) outlines the following:

### **Exemptions (Shaded Areas in Column 1)**

The shaded area of Column 1 shows the *parts* of an act or regulation that are exempt from the IRP. Investigations into non-compliance of these regulatory requirements are not subject to the IRP (pre or post investigation). These are regulatory requirements where cross-divisional collaboration through the RMCT is not essential. Examples of exempted requirements are littering, angling or hunting without a licence, or discharging sewage from a recreation vehicle.

Note: there are additional acts and regulations enforced by the ministry which are exempt from the IRP, for example, the *Firearm Act*, the *Motor Vehicle (All Terrain) Act*, etc. These are not listed in the shaded area of Column 1 because no part of that act or regulation is included in the IRP.

### **Pre and Post Investigation Review (Column 1)**

Investigations into non-compliance of these regulatory requirements are subject to a pre investigation review. A post investigation review is required where a ticket, directive, administrative sanction or formal charge is being recommended as a result of the investigation. Due to the complexity or sensitivity of an investigation, the RMCT may indicate at the pre investigation review that a post investigative review is warranted regardless of the compliance approach selected.

### **Post Investigation Review (Column 2)**

Investigations into non-compliance of these regulatory requirements are not subject to a pre investigation review. A post investigation review is only required where a directive, administrative sanction or formal charge is being recommended as a result of the investigation.

The regulatory requirements listed in Column 2 are exempt from the pre investigation review process as these are areas where the ministry has engaged in ongoing compliance promotion activities as part of a provincial or regional compliance strategy. Accordingly, an investigation may be commenced without a review and, provided that the investigative team is not seeking a directive, administrative sanction or formal charge, the investigative team is not required to seek a post investigation review by the RMCT.

### **Amendments to Columns 1 and 2**

The RMCT may recommend to the Executive Director of Compliance that a regulatory requirement be added or removed from Column 1 or 2. Provisions may also be made to include or exclude regulatory requirements based on regions, i.e. where a region has conducted considerable compliance promotion in a particular area, the RMCT may want the related regulatory requirement listed under Column 2 so that it is not required to provide a pre investigation review of investigations into those types of non-compliance.

---

5.5 Table 1 (Regulatory Requirements Subject to the Investigation Review Process)

<p><b>Pre and Post Investigation Review Column 1</b></p> <p>Investigations into non-compliance of these regulatory requirements are subject to a pre investigation review. A post investigation review is also required when a ticket, directive, administrative sanction or formal charge is being recommended. See Work Flow Processes for details.</p> <p>Exemptions are indicated in the shaded areas – these are provisions to which the IRP does not apply</p>	<p><b>Post Investigation Review Column 2</b></p> <p>Investigations into non-compliance of these regulatory requirements are not subject to a pre investigation review. A post investigation review is required when a directive, administrative sanction or formal charge is being recommended. See Work Flow Processes for details.</p>
<p><i>Dike Maintenance Act</i></p>	<p>None</p>
<p><i>Ecological Reserve Act and Regulations</i></p>	<p>None</p>
<p><i>Environmental Management Act and Regulations</i></p> <p>Exemptions (not included in the policy): EMA Section 12 [littering], Section 13 [recreational vehicle sewage discharge], and Section 120 (5) [Obstruction]</p>	<p><i>Environmental Management Act</i> Section 10(2) [manifests]</p> <p><i>Beverage Container Stewardship Program Regulation</i> <i>Ozone Depleting Substances and Other Halocarbons Regulation</i> <i>Post-Consumer Residual Stewardship Program Regulation</i> <i>Solid Fuel Burning Domestic Appliance Regulation</i> <i>Storage of Recyclable Material Regulation</i> <i>Open Burning Smoke Control Regulation</i> <i>Spill Reporting Regulation</i> <i>Hazardous Waste Regulation</i> Sections 43 – 46, 47, 47.1, 47.2, 50 <i>Waste Discharge Regulation</i> prescribed activities:</p> <ul style="list-style-type: none"> <li>• Burning of vegetative debris</li> <li>• Burning of waste</li> <li>• Commercial waste management or waste disposal industry (only at unauthorized locations/facilities)</li> </ul>
<p><i>Fish Protection Act and Regulations</i></p>	<p>None</p>
<p><i>Fisheries Act (Canada)</i> Only Sections 35(1) and 36(3) [harmful alteration of fish habitat and introduction of deleterious substances]</p>	<p>None</p>
<p><i>Forest and Range Practices Act and Regulations</i> (Ministry of Forests) <i>Forest Practices Code of BC Act and Regulations</i> (Ministry of Forests)</p> <p>Exemptions (not included in the policy): <i>Forest Service Road Use Regulation</i> <i>Forest Recreation Regulation</i></p>	<p>None</p>



<p><i>Water Act</i> Only Part 4 (as it relates to water management plans that pertain to groundwater); Part 5; and Part 6 (as it relates to wells and groundwater protection)</p> <p><i>Ground Water Protection Regulation</i></p> <p>Note that the other provisions of the <i>Water Act</i> are not included.</p>	None
<p><i>Integrated Pest Management Act and Regulations</i></p> <p>Exemptions (not included in the policy): IPMA Section 26(1)(b) [Obstruction]</p>	<p><i>Integrated Pest Management Act</i> Section 4 [licenses] and Section 5 [certificates]</p> <p><i>Integrated Pest Management Regulation</i> Section 3(c) [use, transport, store or dispose in accordance with manufacturer's label]</p>
<p><i>Park Act and Regulations</i></p> <p>Exemptions (not included in the policy): Section 15 of the <i>Park and Recreation Area Regulation</i> [obstruction]</p>	<p><i>Park Act</i> Sections 13 and 14</p> <p><i>Park and Recreation Area Regulation</i></p>
<p><i>Wildlife Act</i> Section 9(1) [damage to beaver dams], Section 34 (b) &amp; (c) [damage to bird nests], Section 48(2) and (3) [fail to hold a guide license or be present in the area], Section 49 [angling guide licenses], Section 77 [release of animals from captivity]</p> <p><i>Wildlife Act Commercial Activities Regulation</i> Division 1 [guiding]</p> <p><i>Angling and Scientific Collection Regulation</i> Section 19 (b),(c),(d),(e),(k) and (l) [angling guiding]</p> <p>Exemptions (not included in the policy): All remaining sections of the <i>Wildlife Act</i> and <i>Regulations</i></p>	None

**Exemptions:** The shaded area of Column 1 shows the *parts* of an act or regulation that are exempt from the IRP. Investigations into non-compliance of these regulatory requirements are not subject to the IRP (pre or post investigation). There are additional acts and regulations enforced by the ministry which are exempt from the IRP and which are not shown in the table. For example, the *Firearm Act*, the *Motor Vehicle (All Terrain) Act*, etc.

Irrespective of whether the investigation is subject to a review by the RMCT, staff are still expected to use the Non-Compliance Decision Matrix to guide their assessment of the regulatory non-compliance. If staff need additional guidance or advice on addressing an issue of non-compliance, they may choose to refer the matter through the RMCT even if it is not subject to the IRP.

## 5.6 Operational Considerations

### 5.6.1 Exigent Circumstances

This policy is not intended to impair the discretion of ministry staff to take immediate investigative action when necessary. In situations where the delay necessary to obtain a review by the RMCT would likely result in danger to the environment, human health or safety, or the loss or destruction of evidence, ministry staff may request the involvement of an appropriate ministry investigator, or commence the investigation immediately if they are qualified to do so.

### 5.6.2 Special or Covert Operations

“Special” or “covert” investigations are undertaken by the Conservation Officer Service when traditional investigative techniques have failed, or are unlikely to succeed, e.g. trafficking in wildlife, or the urgency of the situation is such that immediate use of this investigative technique is necessary.

Due to the sensitive nature of these types of investigations and the risk to officer safety if the offender discovered the true identity of the officer, the dissemination of information regarding these investigations is closely guarded and not discussed outside of the Conservation Officer Service. However, the principles within the Compliance and Enforcement Policy regarding whether an investigation is required are applied when decisions regarding conducting a “special or covert” investigation are made.

### 5.6.3 Consultation between Divisions

One of the purposes of the Investigative Review Process is to ensure cross-divisional collaboration when responding to non-compliance. Where an investigation does not involve a pre or post investigation review by the Regional Management Compliance Team, it is still incumbent on Ministry program staff and Conservation Officers to collaborate on a compliance approach when appropriate (eg. where an ongoing administrative relationship exists with the regulated party).

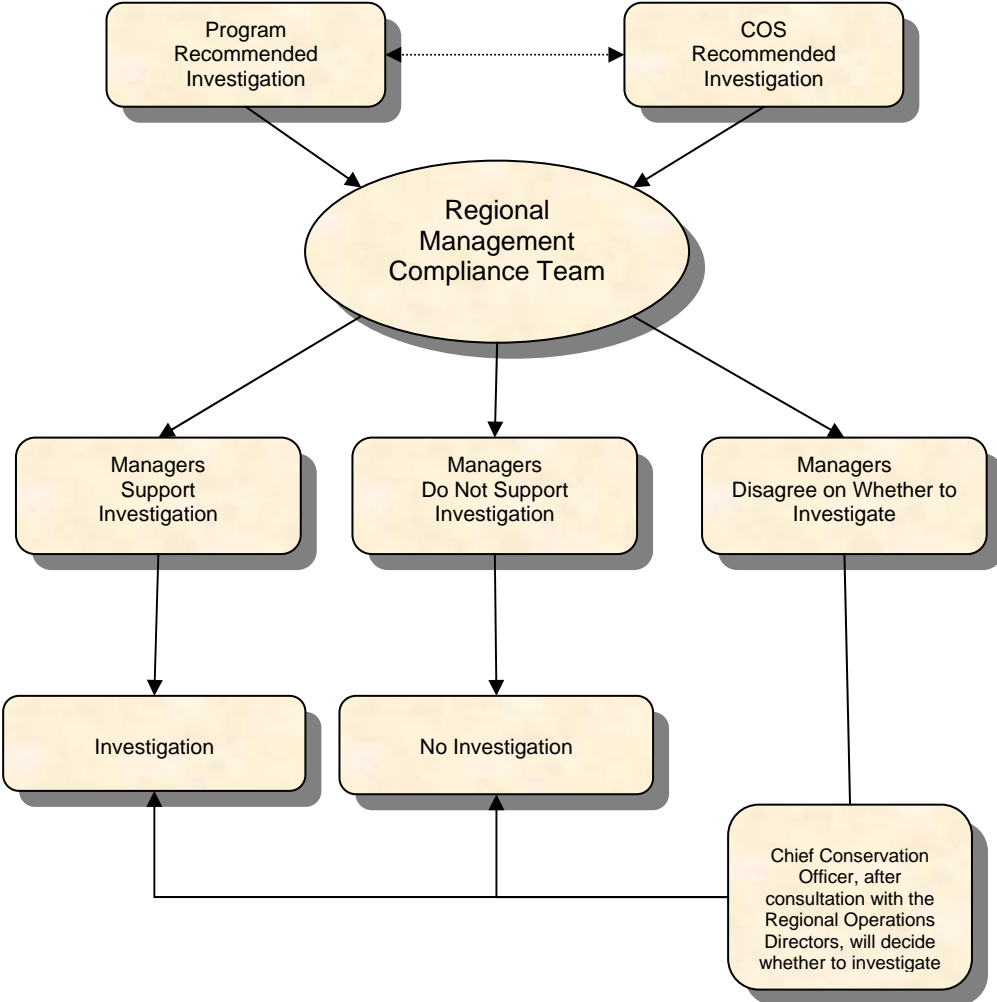
### 5.6.4 Independence of Statutory Decision Makers

Nothing in this policy restricts the discretion and autonomy exercised by ministry Statutory Decision Makers. The Regional Management Compliance Team provides a collaborative cross-divisional review of investigations. As a result of those deliberations, the RMCT may recommend that a directive or administrative sanction is an appropriate response to the non-compliance. This recommendation is not binding on the Statutory Decision Maker. In accordance with the principles of administrative fairness, it may be necessary to refer the adjudication of an administrative sanction to a Statutory Decision Maker who was not involved in the RMCT deliberations.

---

5.7 Dispute Resolution

The same process applies to the recommendation of charges to Crown Counsel.



The RMCT will also act as a dispute resolution mechanism if there is disagreement between Ministry program staff and Conservation Officers as to the appropriate compliance approach (this applies to all possible compliance approaches such as the issuance of warnings, tickets, referrals, or taking no action).