



Ministerial Policy 24.00.01 Compliance and Enforcement

1. Statement of Policy

The Department of Lands (the Department) will safeguard the public interest by working with land users to promote the sustainable use of public land and natural resources and by implementing sound compliance and enforcement practices.

2. Principles

The Department will adhere to the following principles when applying this Policy:

- (1) Enforcement of legislation and regulatory requirements should be conducted in a fair, predictable, transparent, and consistent manner.
- (2) The primary goal of compliance and enforcement efforts should be to deter, minimize, and remedy non-compliance. Enforcement through the use of sanctions is a tool of last resort in most cases.
- (3) Enforcement actions should be timely, authoritative, and proportionate to the severity of the non-compliance and the actual or potential impacts to public land and natural resources.
- (4) Enforcement Authorities should use reliable knowledge, experience, data, and evidence to guide decision making and manage risk.
- (5) Enforcement Authorities should be appropriately trained, experienced, and professional.
- (6) The Department will engage with the community, resource management boards, other Government of the Northwest Territories (GNWT) and federal regulating departments and agencies, community and Indigenous governments to promote legislation and regulatory requirements relating to land and natural resources, set standards, and to improve the overall practice of compliance and enforcement.
- (7) Enforcement Authorities have the discretion to make decisions when exercising their powers with respect to compliance and enforcement as established under law and this policy.
- (8) The Department should strive for regulatory excellence and be committed to continual improvement in carrying out the compliance and enforcement program.

3. Scope

This Policy provides the Department's approach to compliance and enforcement as it applies to: the use and occupation of public land under the *Commissioner's Land Act*, the *Northwest Territories*

Lands Act, and the *Area Development Act*; the use of land on both public lands and settlement lands in the Mackenzie Valley under the federal *Mackenzie Valley Resource Management Act*; and the use of waters, or the deposit of waste at diamond mines under the *Waters Act* and in accordance with the 2014-15 Protocol Agreement between the Department of Environment and Natural Resources and the Department.

4. Definitions

Authorization – licenses, permits, or other authorizations to use land, water, and/or deposit waste.

Compliance – means conformity with legislative requirements and/or the terms and conditions of a disposition or other authorization issued pursuant to the relevant legislation established by government.

Disposition – any instrument that conveys an interest in public land or a right to use or occupy public land, such as a lease, license, mineral claim, reserve, agreement, or other authorization.

Enforcement – an action or initiative taken by an Enforcement Authority to detect, minimize, and resolve non-compliance. This includes monitoring and verification (inspections and investigations) and active intervention through the use of enforcement tools.

Enforcement Tool – powers provided by legislation and regulations which may lead to a remedy and/or a sanction(s) for non-compliance. This includes, but is not limited to, written warnings, notices, directions, orders, recommendations to land and water boards or other authorities to undertake specific enforcement actions, and/or the laying charges for potential prosecution depending on the legislation, regulations, and authorities applicable to the circumstance.

Enforcement Authority - a person or class of persons who carry responsibility to monitor compliance, investigate potential non-compliance, and enforce provisions of the relevant Acts and regulations and/or the terms and conditions of a disposition or other authorization issued pursuant to the relevant legislation. This includes persons appointed or designated as an “inspector”, “enforcement officer”, or “officer” under the respective legislation.

Inspection – the gathering of information to verify compliance with a legislative requirement and/or the terms and conditions of a disposition or other authorization.

Investigation – actions taken to gather and secure evidence involving a reported or detected non-compliance to determine whether or not to lay a charge under the applicable legislation.

Regulated Party – persons, including government proponents that are subject to legislation and regulations and/or the terms and conditions of authorizations or dispositions made pursuant to legislation.

5. Authority and Accountability

(1) Minister

(a) Policy Authority

This Policy is established under the authority of the Minister of Lands (the Minister).

(b) Directives, Standard Operating Procedures and Guidelines

The Minister has the authority to prescribe directives, standard operating procedures, and guidelines necessary for the implementation of this Policy.

(c) Authority to Delegate

The Minister may, through a letter of instruction, delegate authority to the Deputy Minister of Lands to prescribe directives, standard operating procedures, and guidelines necessary to the implementation of this Policy.

(2) Deputy Minister

(a) Policy Administration and Evaluation

The Deputy Minister is accountable to the Minister for the administration of this Policy. The Deputy Minister shall conduct periodic evaluations of the effectiveness of this Policy and may review and recommend amendments to this Policy to the Minister.

(b) Authority to Establish a Case File Review Committee

The Deputy Minister shall establish a Case File Review Committee (the Committee). The Committee may:

- (i) review investigations and case files referred to the Committee and provide recommendations and advice to Enforcement Authorities; and,
- (ii) recommend, through the Chair, future standards or improvements to the Department's compliance and enforcement approach or Policy.

(c) Authority to Delegate

The Deputy Minister may, through a letter of instruction, delegate authority to the Assistant Deputy Minister of Operations to establish a Case File Review Committee.

(3) Enforcement Authorities

(a) Legislative and Policy Conformance

Enforcement Authorities are responsible for exercising their powers with respect to compliance and enforcement in accordance with:

- (i) the specific authorities and/or powers provided to them within the legislation under which they have been designated or appointed; and,
- (ii) this Policy and any directives, standard operating procedures, or guidelines established as necessary for the implementation of this Policy.

(b) Case File Review Committee Referrals

Enforcement Authorities may refer case files to the Case File Review Committee, when:

- (i) an enforcement response may lead to or include sanctions; and/or,
- (ii) a dispute or complaint, short of a formal appeal or application for formal review, has been made regarding an order, direction, or other decision or action by an Enforcement Authority; and/or,
- (iii) collaboration may be required in order to determine an appropriate enforcement approach; and/or,
- (iv) for any other purpose as deemed necessary by the Enforcement Authority.

6. Provisions

Compliance is mandatory. It is the responsibility of all regulated parties. All parties have a duty to care for the environment, to reduce their environmental impact, and ensure the sustainable use of public land and natural resources. The Department undertakes a range of activities on behalf of the people of the Northwest Territories to ensure compliance with the legislative requirements related to the use of public land and natural resources. The framework for ensuring compliance is comprised of the following key steps (and illustrated in Appendix A):

(1) Inform and Educate

The Department will provide accessible and plain language communication tools, education materials, and training opportunities to promote compliance and enhance public awareness of the standards and requirements set out in the relevant legislation, policies and agreements related to land and natural resources in the Northwest Territories (NWT). Broad knowledge of what the environmental obligations are under the legislation and regulations will increase compliance and provide a common understanding of the Department's role to enforce the legislation and regulations.

The Department will broadly promote its purpose, jurisdiction, and role for protecting public land and natural resources. The Department will clearly communicate its regulatory approach and how it works with resource management boards, other GNWT and federal regulating

departments and agencies, community governments, and Indigenous governments to protect and manage the sustainable use of public land and natural resources in the NWT.

(2) Set Standards

The Department promotes compliance by setting clear standards and raising awareness of risks and controls to protect public land and natural resources. The Department will be clear about legislative and regulatory requirements and will support Regulated Parties to achieve compliance by setting clear standards and providing guidance on how they can be met.

(3) Support to Comply

Enforcement Authorities promote compliance by providing practical and constructive advice and guidance to individual Regulated Parties on how to comply with the legislative requirements, how to interpret and comply with the terms and conditions of an authorization or disposition, how to interpret standards, and, where necessary, provide support on how to remedy any non-compliance.

Compliance advice may include referring Regulated Parties to applicable codes of practice, best practice management guidelines, protocols, standards, or other relevant information. Compliance advice does not extend to providing legal advice.

The onus for compliance will always rest with the Regulated Party who has a duty or obligation under the relevant legislation.

The degree to which a Regulated Party takes into account advice provided by Enforcement Authorities will be taken into consideration when deciding whether to prosecute.

(4) Monitor Compliance

The Department prefers to ensure compliance by preventing incidents of non-compliance rather than pursuing enforcement actions after a non-compliance has occurred.

Enforcement Authorities will monitor the activities of Regulated Parties to ensure compliance with applicable legislative requirements. The Department undertakes a range of compliance monitoring activities appropriate to specific sites and situations. These activities may include:

- Gathering information from departmental staff, staff of other regulating departments, land holders, users and members of the public;
- Receiving complaints or reports;
- On-site inspections; and/or
- Document reviews.

When an incident of non-compliance has been identified, or an Enforcement Authority becomes aware of a problem or a risk, the Enforcement Authority will inspect or investigate, as the specific incident requires, to verify and assess non-compliance and will undertake necessary enforcement actions to address the non-compliance. Where possible, the Enforcement

Authority will seek to resolve the non-compliance before it leads to an impact to the land or natural resources. Departmental resources and enforcement responses are prioritized using a risk-based approach, having considered the principles of the Policy, the objectives of the legislation and regulatory requirements, and any aggravating or mitigating factors.

The applicability and weight to be given to each consideration will depend on the circumstances of each particular case.

(a) Investigations:

Enforcement Authorities must understand the distinction between inspections and investigations and will act within the duties and powers provided to them within the legislation under which they have been designated or appointed.

Investigations will only be carried out by authorized Enforcement Authorities that have received the necessary training and statutory knowledge respecting the conducting of investigations as well as a working knowledge of other pieces of legislation such as the Evidence Act, Summary Conviction Procedures' Act, Criminal Code (as certain provisions may be applicable), and the Canadian Charter of Rights and Freedoms.

(5) Enforcement

The Department's Enforcement Authorities will address non-compliance by objectively and assertively requiring remedy and, where appropriate, by recommending or utilizing sanctions.

(a) Remedy:

Where circumstances warrant, Enforcement Authorities will use Enforcement Tools to stop non-compliance, fix the problem and/or to remedy or "make good" on any harm caused by non-compliance. Where it is not possible to remedy non-compliance, Enforcement Authorities may, in accordance with legislation, require Regulated Parties take actions to limit or minimize the extent of any harm or risks caused by the non-compliance.

(b) Sanctions:

Where circumstances warrant, Enforcement Authorities may recommend or utilize certain sanctions to penalize or punish the regulated party for non-compliance. The Enforcement Authority shall consider whether other Enforcement Tools may be appropriate in the circumstances before making a decision to recommend or utilize sanctions.

(i) Prosecution:

An Enforcement Authority may lay a charge alleging an offence under the enabling legislation. However, once a charge is laid, the decision as to whether or not to prosecute is made by a Prosecutor after taking into consideration whether or not there is a reasonable prospect of conviction based on evidence that is likely to be available at trial and whether or not it is in the public interest to proceed with a

prosecution. The Prosecutor has an ethical duty to act independently of the investigators, fairly and objectively.

(6) Encourage Higher Performance

The Department and its Enforcement Authorities will work with resource management boards, other GNWT and federal regulating departments and agencies, community governments, and Indigenous governments to promote higher performance and improve the effectiveness of the NWT regulatory regime, to encourage leadership and continual improvement in the compliance and enforcement code of practice, and to influence future standards to ensure the sustainable use of public land and natural resources in the NWT.

This may involve establishing and supporting networks, holding seminars, and sharing advice and information on the Department's compliance and enforcement practices and lessons learned.

7. Delegations

This Policy does not add, remove, or supersede the specific authorities and/or powers provided to Enforcement Authorities within the relevant legislation and regulations.

8. Recourse Mechanisms

Any appeals or requests for review by a Regulated Party will be managed in accordance with the recourse mechanisms provided for within the respective legislative provisions as well as under common law.

9. Enforcement Authority Performance

To ensure effective delivery of the compliance and enforcement program, the Department will ensure that Enforcement Authorities have the knowledge, skills, abilities, and competencies necessary to meet their responsibilities and work objectives. The Department will achieve this through implementation of the Department's training and development program and the GNWT Competency Based Performance Development Program.

All matters involving improper conduct, breach of policy, directive or procedure by an Enforcement Authority will be managed in accordance with the *Public Service Act*, the Union of Northern Workers Collective Agreement, and the Code of Conduct respecting Conflict of Interest and Oath of Office and Secrecy for the Employees of the Government of the Northwest Territories.

10. Case File Review Committee

The Department will establish a Case File Review Committee to provide a formalized means to provide guidance and support to Enforcement Authorities with individual case files. Through establishment of this Committee, the Department aims to ensure greater consistency, collaboration, leadership, and improvement in the Department's compliance and enforcement code of practice.

(a) Composition

The Case File Review Committee membership will depend upon the specifics of the individual case file referred to the Chair and will include:

- (i) A Senior Enforcement Authority, Lead Investigator in the affected region, who serves as Chair;
- (ii) a Senior Enforcement Authority, from any one of the other four regions; and,
- (iii) a Regional Superintendent/Senior Enforcement Authority, from the affected region.

(b) Mandate

The Case File Review Committee will:

- (i) provide guidance, recommendations, and technical assistance to support Enforcement Authorities with individual case files referred to the Committee;
- (ii) ensure regions are following a consistent and transparent approach to compliance and enforcement;
- (iii) provide a means to ensure cross-regional review of case files that may require technical support;
- (iv) provide an opportunity for peer review/quality assurance of documents to be served;
- (v) provide a means to facilitate effective and respectful communication between Enforcement Authorities to achieve the best outcomes; and,
- (vi) provide a means to identify gaps, emerging issues or concerns related to the Department's compliance and enforcement Policy or code of practice.

11. Transparency

The Department may consider making certain information available to resource management boards and other GNWT and federal regulating departments and agencies, regarding its compliance and enforcement program within the limits established under the GNWT's *Access to Information and Protection of Privacy Act* and the federal *Privacy Act* (if applicable in certain cases) to ensure they are informed of the Department's compliance and enforcement functions, to provide information on areas or issues the Department is focusing on, to inform decisions, and to respond to concerns in a timely and predictable manner.

Information on individual case files will not be made available during an active investigation/legal proceeding.

12. Cooperation

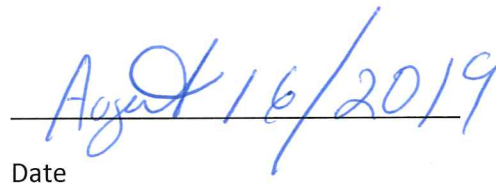
Compliance and enforcement functions in areas of overlapping jurisdiction will be coordinated where and when possible.

13. Performance Measurement and Evaluation

The Department will measure the performance of its compliance and enforcement program in order to: learn from past experience and continually improve to ensure effectiveness and efficiency in compliance and enforcement; identify emerging compliance issues and trends; and understand and respond to emerging risks.



Minister of Lands



Date

APPENDIX A: Department of Lands Compliance and Enforcement Framework

