



Compliance and Enforcement Management Framework: *“ALC’s Approach to Ensuring Compliance”*



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Responsible Area: Compliance and Enforcement Section, Agricultural Land Commission

Staff Affected: All staff in the Agricultural Land Commission engaged in compliance and/or enforcement activities.

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Definitions

“**ALC**” means the Agricultural Land Commission, which is also referred to as the “**commission**”;

“**ALCA**” means the [Agricultural Land Commission Act](#);

“**ALR**” means the Agricultural Land Reserve;

“**C&E**” means compliance and enforcement;

“**C&E Document**” means this “Compliance and Enforcement Framework” document;

“**CEO**” means the person appointed under section 8(1) of the ALCA, who is also referred to as the “**chief executive officer**”;

“**chief executive officer**” means the person appointed under section 8 (1) of the ALCA, who is also referred to as the “**CEO**”;

“**commission**” means the Agricultural Land Commission, which is also referred to as the “**ALC**”;

“**complaint**” means a concern of possible non-compliance with the ALCA and/or Regulation submitted to the commission by the public, including via email [ALR Land Use Activity Report Form](#);

“**Compliance Notice**” means a document that may be used to notify allegedly non-compliant person(s) in writing that the commission is aware that the person(s) may not be in compliance with the ALCA, Regulation or commission decision or order;

“**decision-maker**” or “**ALC decision maker**” means, for the purpose of this framework, the CEO or an Official, as defined below;

“**dwelling-house**” means a residence for individuals, whether or not presently occupied, and whether or not fixed, mobile, permanent or temporary in nature;

“**Notice of Contravention**” is a document that notifies non-compliant person(s) in writing that they are contravening the ALCA, Regulation or commission decision or order;

“**official**” means the chief executive officer or a person who is designated by name or title by the chief executive officer to be an official;

“**person**” includes a corporation, partnership or individual, and the personal or other legal representatives of a person to whom the context can apply according to law. “Person” also includes a First Nations Government;

“**record**” includes a book, document, map, drawing, photograph, letter, voucher, paper or any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

“referral” means a report of possible non-compliance with the ALCA and/or Regulation submitted to the ALC from commission staff or a local government provincial and/or federal governments or agency;

“Regulation” means the [Agricultural Land Reserve Use, Subdivision and Procedure Regulation](#);

“Remediation Order” means an order issued under s. 52 of the ALCA;

“Stop Work Order” means an order issued under s. 50 of the ALCA.

Introduction

The C&E Document is intended to provide an overview of the compliance and enforcement functions of the commission. This document is available for public information on the [ALC website](#).

The C&E Document is not meant to be prescriptive, is not a training manual for Officials, and does not cover all aspects of compliance and enforcement in relation to the ALCA or the Regulation. The Act and the Regulation are the sources of the commission's powers and should be read for broader context.

The C&E Document is nonetheless intended to assist Commission staff, land owners and the public more generally, in achieving voluntary compliance with the ALCA and Regulation by providing a general understanding of the commission's compliance and enforcement activities. The C&E Document is also intended to provide a general outline of the measures that Officials may choose to take in the face of alleged non-compliance with the ALCA, Regulation or commission-imposed requirements.

The ALC's work in these respects, and more generally, meets the Taxpayer Accountability Principles strategic priorities of building stakeholder relationships whilst "driving a principled, cost-conscious approach to efficient public service delivery."

As noted above, the ALCA provides important context for the work of the commission.

The mandates of the commission are set out in [s. 6 of the ALCA](#), namely:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest; and
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Other provisions of the ALCA and the Regulation reflect these mandates, including s. 20(1) of the ALCA:

"[a] person must not use agricultural land for a non-farm use unless permitted under this Act".

The compliance and enforcement powers exercised under the ALCA are to advance one or more of the above mandates.

The commission seeks high levels of voluntary compliance with the ALCA and the Regulation by working cooperatively and seeking partnerships with land owners, local government, and other government agencies, including via educational endeavours.

It is important that there be awareness of, and support for, the commission's mandate. Others assist the commission in fulfilling that mandate. The commission does not actively patrol the ALR but rather receives and responds to information from the public as well as local, provincial and federal governments and other agencies. The commission's effectiveness in gaining compliance with the ALCA and Regulation is largely dependent on the assistance of those other persons and entities. Indeed, sometimes breaches of the ALCA and Regulation overlap with infractions of other regulations and local bylaws, so parallel or joint activity may be undertaken by the commission and other government entities.

Structure of this Document

The C&E Document is divided into seven (7) chapters:

- Chapter 1 provides an overview of the enforcement context and focuses on guiding principles, confidentiality when related to C&E activities and quality control processes.
- Chapter 2 provides an overview of the fact-finding process from receipt of a complaint or referral through to inspection powers.
- Chapter 3 sets out factors in determining the next steps when assessing and acting on an alleged non-compliance.
- Chapter 4 is directed at ALC staff and explains the process to be followed when responding to referrals of alleged non-compliance.
- Chapter 5 explains the process that C&E Officials generally follow when responding to alleged non-compliance.
- Chapter 6 provides an overview of some options available to the CEO and Officials in the C&E context.
- Chapter 7 provides some general information on the appeal process where certain C&E orders have been made.

Chapter 1: Enforcement Context

Purpose of this Chapter

1. To emphasize the ALC's commitment to achieving compliance.
 2. To explain the application and scope of the C&E Document.
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Introduction

ALC staff have a variety of responsibilities under the ALCA and the accompanying Regulation with respect to land province-wide that is within the ALR. The type and extent of staff involvement in ensuring compliance with the ALCA and the Regulation varies with each position and its job responsibilities. Compliance and Enforcement is the program area within the ALC, that is responsible for dealing with alleged non-compliance with the ALCA and/or Regulation and non-compliance with conditions of commission (application) approvals or commission decisions or orders more generally.

C&E program staff, depending on their respective functions, are responsible for a variety of C&E activities including responding to complaints, inspecting land, obtaining and reviewing documents from land owners or other persons relevant to compliance and enforcement matters, and determining whether to take or recommend measures in response to alleged non-compliance.

Options open to C&E staff in the face of non-compliance with the Act or Regulation include educating landowners on their obligations when owning land within the ALR and working with them to bring a property into compliance. C&E staff may provide correspondence to the landowner or other person noting the contravention, though are not obligated to do so before taking other measures. C&E staff may also respond more formally such as by issuing a Compliance Notice, Notice of Contravention or Stop Work Order. C&E staff may also uncover facts that lead to action by the chief executive officer, such as the issuance of a Remediation Order or monetary penalty. Also, available to the commission in the context of its compliance and enforcement role, is an application to the B.C. Supreme Court to obtain a compliance order. Potentially, consideration could also be given to a prosecution.

A person who is the subject of a Stop Work Order, Remediation Order or an Administrative Penalty may submit a notice of appeal to the commission as outlined in [s. 55 of the ALCA](#) and as noted in Chapter 7 of the C&E Document.

C&E staff often work together with others in performing their compliance and enforcement functions.

For example, other staff of the commission may provide to C&E staff information on the application history regarding a property, or on prior non-compliance issues associated with that property. Other staff may also provide technical expertise to C&E staff.

On occasion, C&E staff also work with enforcement staff in local, regional and other governments and agencies to conduct C&E activities on the ALC's behalf. The C&E Document also informs the work of non-ALC staff who conduct compliance and enforcement activities of that kind.

The C&E Document is not intended to cover all aspects of compliance and enforcement in the ALR, and nothing in it restricts the discretion and autonomy that ALC decision-makers exercise.

1.0 Social Regulatory Approach

Regulatory requirements administered by the ALC are dealt with in the context of a social regulatory approach as opposed to the command and control approach reflected in the *Criminal Code*. This distinction is important as under a social regulatory approach, C&E staff can take consultative steps where appropriate and seek out voluntary compliance.

However, while voluntary compliance is both desired and cost-effective, the CEO and Officials may take such further measures as they determine appropriate consistent with the ALC's mandate, including to ensure the credibility of the ALC, the ALCA and the Regulation.

1.1 Confidentiality

The ALC is committed to a transparent approach consistent with its mandate. However, that mandate could be jeopardized by the release of certain information prematurely or, in certain cases, at all. Issues may arise in particular, though not exclusively, when C&E staff are still undertaking their review of activities on a property by a person who may be in breach of the ALCA or Regulation.

Generally speaking, therefore, the ALC does not release information related to C&E staff's ongoing work, including to a person who has submitted a complaint and to the person whose conduct is at issue. This is so even where a request is made under the [Freedom of Information and Protection of Privacy Act](#), given the provisions of that statute.

The ALC endeavours to remain sensitive throughout to concerns that a complainant may have about not being identified to a person whose conduct is at issue. However, the ALC does not guarantee the anonymity or confidentiality of complainants. If known to the ALC, information about them may need to be disclosed in certain circumstances.

1.2 ALC Principles of Enforcement

The commission seeks compliance with the ALCA and Regulation in order to fulfill its mandate, including preserving agricultural land.

C&E staff deal with a variety of alleged non-compliance issues. Some breaches may involve activity undertaken on land that breaches the prohibition in s. 20 of the ALCA against non-permitted non-farm uses.

When determining whether or how to respond to alleged non-compliance, C&E Officials may consider a variety of factors. Those factors may include the severity of actual or potential impact to agricultural land, the factual circumstances of the alleged contravention, the compliance history of the landowner, how to achieve the best outcome, and how to reduce the likelihood of repetitive activity. In some cases, the ALC may use progressive sanctions when previous enforcement actions have been ineffective.

However, those are not the only kinds of non-compliance that may arise. On occasion, persons also fail to comply with requirements under the ALCA to provide or allow access to data about a given property, its use, activity undertaken in relation to conditions on commission decisions, and other matters. Failure to comply with such requirements to provide or allow access to information, even in the absence of damage to agricultural land, can also threaten the integrity and effectiveness of the regulatory regime.

In responding to a complaint or referral (see section 2.1 of this document), a duty of procedural fairness may arise in certain circumstances, though its content is highly variable. ALC decision-makers are to conduct themselves in accordance with the principles of procedural fairness to the extent applicable.

In determining whether to attempt or move beyond attempts to secure voluntary compliance, factors that the CEO or Official may consider include one or more of the following:

- Whether or not attempts to achieve voluntary compliance have proven successful;
- The elapsed time since the contravention occurred;
- The scale, nature and duration of the contravention;
- The impact of the contravention on ALR land(s), whether directly or through diminishing the effectiveness of the regulatory regime;
- The resources available to resolve the matter;
- The costs associated with any considered enforcement action;
- The other implications of the considered enforcement action;
- The probability of a successful outcome and/or whether the enforcement being considered may act as a deterrent in future cases.

The CEO and officials are not bound to proceed with compliance or enforcement measures in any given case and, if they do, have the choice of what measure to pursue. In some instances, it may be appropriate to use more than one type of approach/tool in order to gain compliance.

1.3 Guiding Principles of the Compliance and Enforcement Team

The C&E team mission is “to ensure a high degree of compliance with commission decisions and the ALCA while reflecting the commission’s values and principles”.

Not all commission values are relevant to C&E functions. In this regard, commissioners adjudicate on applications to exclude land from the ALR, subdivide land in the ALR, permit non-farm use in the ALR, etc., based on different statutory provisions and constraints than those which apply to C&E staff. Commission values of which C&E staff are mindful include:

- the benefits of agricultural land preservation;
- partnerships and collaboration with other governments and agencies;
- the judgment and experience of staff;
- transparency and fairness in decision making; and
- responsiveness.

The C&E principles of the Commission and its Officials include to:

- promote voluntary compliance;
- maximize efficient use of Commission resources; and
- encourage proactive consultation and education.

1.3.1 Appropriate Decision-Maker

Ultimately the decision of whether compliance and enforcement measures should be pursued, and if so what they are, rests with the relevant decision maker of the Commission. The ALCA specifies that certain orders are

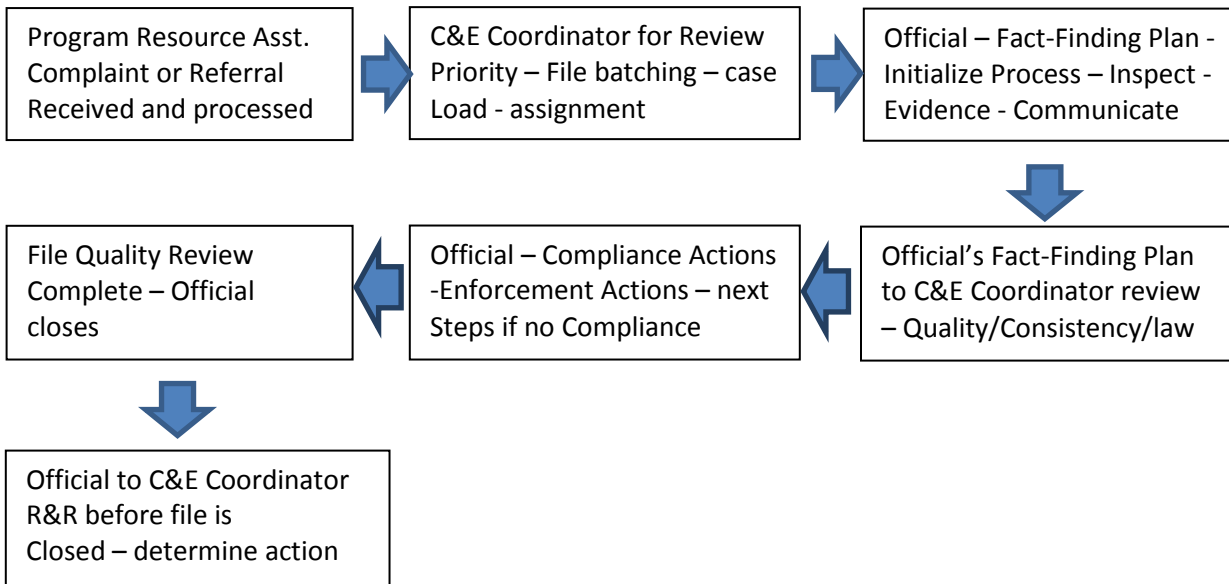
to be made by the indicated decision makers under the ALCA. Only the prescribed decision maker identified in the ALCA can issue the relevant order and in all cases, the decision maker who makes the decision, issues the order.

See Chapter 6 – “Tools for Addressing Non-Compliance” – for more detail.

1.4 Quality Control – Read and Review Process

The following Read and Review Process is typically followed.

Flow of Documentation



In the absence of the C&E Coordinator, the C&E Coordinator’s role in the Read and Review process is generally filled by:

- An Official designated as the Acting Coordinator; or
- Director Responsible for Compliance & Enforcement.

In addition to the above-outlined process, typically the C&E Coordinator holds one or more full file reviews with each Official per month at a schedule to be determined by the Coordinator and the applicable Official.

The Read and Review Process may be helpful in confirming that:

- When and if the provided fact-finding plan(s) are provided, they continue to meet ALC objectives;
- The applicable section of the ALCA and/or Regulation is being addressed;
- Communication processes are timely and respectful;
- Issued or pending compliance and enforcement actions and evidentiary processes meet any applicable requirements or guidelines;
- Chronologies and documentation up to date and complete.

1.5 Performance Indicators

1. The following are intended to be average to maximum action times when a complaint or referral is received. Internal priority setting, coupled with severity of the alleged contravention of the ALCA or Regulation, may shorten the action times.
2. Time frames from initial receipt of the complaint or referral to file closure vary based on the complexities of the file and possible compliance and enforcement measures, including remediation orders and potential recourse to the B.C. Supreme Court. The target for completion time frame is 180 days.

The general timeframe that the ALC would like to follow is as follows:

Program Resource Assistant to receive and process complaints and referrals:

- No more than four (4) business days from receipt of complaint or referral.

C&E Coordinator to review and assign file to an Official:

- No more than three (3) business days after receipt of complaint or referral from Program Resource Assistant.

Assigned official to action the complaint or referral file by:

- No more than ten (10) business days after provision of complaint or referral to C&E official.
- The time frame for processing the complaint or referral from receipt to file closure will vary based on the complexities of the file and possible compliance and enforcement measures if deemed warranted. (See subparagraph #2 under Performance Indicators).

Communication back to complainant:

- Optional at the beginning of the fact-finding process – at C&E Official’s discretion;
- Required during the process of file closure, if possible.

Communication to the land owner or other person against whom formal compliance or enforcement actions have taken place will be advised in writing via a standard letter as part of the file closure process.

Chapter 2: Fact Finding

Purpose of this Chapter

1. To foster understanding of what routes are available to C&E Officials when assessing or reviewing complaints or referrals.
 2. To provide information with respect to the roles and responsibilities of staff authorized to conduct inspections as part of fact-finding measures.
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Introduction

Officials designated under the ALCA have legislated authority to undertake activities such as entering and inspecting land and requesting records.

Only designated Officials of the ALC may undertake such activities.

2.0 Fact Finding

Fact finding may inform a C&E official's decision as to whether compliance and enforcement measures should be undertaken and, if so, what they should be.

Where circumstances permit, officials may be assisted by pre-planning their fact-finding when feasible, documenting their work and any resulting decisions.

Fact finding may include:

- inspecting a property;
- gathering records; soil samples;
- taking photographs;
- speaking with affected persons or witnesses;
- conducting surveillance;
- preparing briefs for the chief executive officer, another ALC official or ALC legal counsel.

2.1 Procedures for Processing Incoming Reports of Misuse of ALR Land

Purpose

This section of the C&E Document further addresses management of information related to complaints from the public and referrals from other staff, governments and agencies.

Receipt of Complaints or Referrals:

The [ALR Land Use Activity Report Form](#) is the document that MUST be received to commence processing of a complaint from the public.

Subject to the exceptions below, the form must be submitted to the C&E Mailbox ALRLandUseConcern@gov.bc.ca. The mailbox is surveyed daily for prompt assessment of incoming complaints.

Relevant commission staff have the flexibility to receive the completed form via facsimile, mail or, if necessary, the information required to fill out the form via email or telephone, as it is understood that some members of the public may have difficulty filling out forms online. Where this occurs, commission staff enter the information into the form and submit it to trigger the complaint process.

Each report of alleged contravention (complaint) is unique and the processing of each form can take several different avenues, depending on the facts and circumstances. The following provides general guidelines but not required sequence for effective management of this information.

Processing a Complaint or Referral

Once a complaint or referral is received, it will be assessed to determine if it is within the jurisdiction of the ALC and if it relates to a potential contravention of the ALCA, the Regulation or an ALC order or decision.

If the complaint or referral is not within the ALC's jurisdiction or does not relate to a potential contravention of the ALCA, the Regulation or an ALC order or decision, no further fact-finding is required and the appropriate ALC staff, commissioner, government or other agency which submitted the referral will generally be updated. In the case of a complaint, contact with the complainant will generally be updated.

If the complaint or referral is within the ALC's jurisdiction and does relate to a potential contravention of the ALCA, the Regulation or an ALC order or decision, the complaint or referral is forwarded to the C&E Coordinator for assignment.

In considering whether or not the ALC should examine a matter, it should be noted that the ALC does NOT regulate nuisance complaints such as noise, dust or odours.

2.2 Multiple Complaints

On occasion, the commission receives multiple complaints from different persons regarding the same issue. In these cases, staff may assess and determine a response for the complainants as a whole rather than individual responses. However, any specifics of the complaints that differ, are taken under consideration.

If the same person or group of persons sends frivolous, offensive or repeat complaints about the same issue, the CEO or Officials may consider limiting the extent to which they respond to frivolous, offensive or repeat complaints or, not responding at all or, otherwise restricting contact with this type of complainant. Example of possible steps in this type of situation include the following:

- responding only if the complainant in question provides new information or raises a previously unknown issue; or
- requiring the complainant to communicate with ALC staff via a Generic mailbox.

Steps taken should not include limiting or preventing other contact between the complainant and ALC staff that is necessary and not related to the complaint(s).

With the exception noted in the next paragraph, a decision to restrict contact with a complainant should be made by a senior Official (such as the CEO or a Director). The senior Official should clearly communicate to the complainant, in writing, the nature of the restriction(s), the reason(s) for them and when they may be reconsidered.

C&E staff who are not senior Officials may also take immediate steps to terminate a given instance of communication with individuals who verbally abuse that staff member. No staff are expected to listen to verbal abuse such as swearing or personal insults. If this occurs, C&E staff are authorized to take immediate measures to terminate this instance of communication such as advising the caller (if the communication is occurring by telephone) that if the language continues, C&E staff will hang up then advise or forward any known information about the call to the C&E Coordinator.

2.3 Inspections

Inspections can be defined as any action(s) taken to verify compliance with regulatory requirements. They may be done in any circumstances in furtherance of the ALC's mandate. As a practical matter, they are generally done on a risk-based priority and are undertaken by Officials.

Scheduled or non-scheduled inspections are typically conducted to determine the current use of certain land and may include inspection of facilities on that land. Inspections may include reviewing data or other records. Follow-up inspections may occur, for example in response to further information which may come to the attention of the ALC or, to monitor land to determine the progress of remedial activity or, where there is likelihood of continuing contravention.

Inspections may also be used to 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.

2.4 Staff Authorized to Conduct Inspections

An Official is authorized pursuant to [section 49 of the ALCA](#) to conduct inspections, including entering upon land as well as examining records, things and activities. An official may exercise inspection powers in the C&E context or more generally to facilitate the commission's decision-making on a given application, for example.

Section 49 should be reviewed with care with respect to the extent of the authority conferred.

Any person entering the land being inspected who is not an Official or member of the commission, or is not acting within the scope of section 49, must (a) be authorized to do so by some other law or (b) be doing so with the permission of the land owner.

2.5 Section 49 of the ALCA reads as follows:

49 (1) For the purposes of administering this Act or of ensuring compliance with this Act, the Regulation or an order of the commission, a member of the commission or an official may do one or more of the following:

- (a) enter any land, other than a dwelling house;
- (b) make any surveys, analyses, inspections, examinations or soil tests that are necessary to determine any of the following:
 - (i) the current use of the land;
 - (ii) the suitability of the land for farm use;
 - (iii) the potential impact of proposed changes to the use of the land on land in an agricultural land reserve;
- (c) remove soil samples for the purposes of conducting the analyses and tests referred to in paragraph (b);
- (d) make any inspection of records, things or activities reasonably related to the purpose of the inspection;
- (e) make copies of any records or documents reasonably related to the purpose of the inspection;
- (f) make an order requiring a person to produce for the official a record or thing in the person's possession or control.

(2) A person who hinders, obstructs, impedes or otherwise interferes with a person exercising a power under subsection (1) commits an offence.

(3) If a member of the commission or an official exercises a power under subsection (1), the commission may order the person in respect of whom the power was exercised to pay to the commission fees related to the exercise of the power, as prescribed in the Regulation.

Section 49 does **not require** that an owner be present on the land when the activities for which s. 49 provides occur or to receive advance notice of the inspection. In some cases, Officials do provide the land owner with advance notice where they consider this to be appropriate and the circumstances allow for same.

Section 49 should be read as a whole. However, set out below are some particular comments on particular subsections of it.

Section 49(1)(a)

(a) enter any land, other than a dwelling house

The wording of the provision suggests that “land” includes structures on the land other than dwelling houses. Dwelling houses are exempt from an inspection under s. 49.

A person should not hinder, obstruct, impede or otherwise interfere with a person exercising a power under s. 49, including entry. Such interference may result in further steps, potentially including a court application under s. 53 of the ALCA or a prosecution under s. 57 of the ALCA.

Section 49(1)(c)

(c) remove soil samples for the purposes of conducting analyses and test referred to in paragraph (b)

As well as to the power to collect soil samples in s. 49(1)(b), this section authorizes the official to remove the samples from the property for analysis.

Under s. 49(3), the commission may order the owner or other person to pay to the commission any fees related to the testing or analysis of the soil.

Section 49(1)(d)

(d) make any inspection of records, things or activities reasonably related to the purpose of the inspection

Subsection (d) refers to the power of Officials to inspect records, machinery or other items on the land, including structures on it other than dwelling houses, or activities taking place other than in a dwelling house, as long as reasonably related to the purpose of the inspection.

For example, to the extent that the owner keeps records related to the fill allegedly imported onto the land, the Official would be entitled to inspect those records if there is a suspected contravention of the ALCA.

An occasion where the existence of such records is known or suspected, but the owner will either not admit their existence or not provide access, may be one for the Official to exercise his or her power under subsection 49(1)(f) to order production of the records.

“Records” is a broadly defined term and includes, as defined earlier in the C&E Document, books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise.

Section 49(1)(e)

(e) make copies of any records or documents reasonably related to the purpose of the inspection

A corollary to the power to inspect records is authorization to copy records reasonably related to the purpose of the inspection.

Section 49(1)(f)

(f) make an order requiring a person to produce for the Official a record or thing in the person's possession or control

An Official may make an order requiring the persons in issue to produce a record or thing in the person's possession or control. Such an order shall be in writing and personally served on the persons affected.

Subsection (f) does not specify that the person against whom the order is made must be the owner of the land. An order may be made against persons other than owners.

Timing of Exercise of Inspection Powers

The powers under s. 49 of the ALCA can be exercised at any time, provided that the exercise is otherwise in accordance with the purposes for which s. 49 provides.

Action taken under s. 49 may but need not precede other compliance or enforcement measures. For example, there may be sufficient information available to justify a Stop Work Order under s. 50 of the ALCA without an inspection being conducted.

2.6 Ongoing or Repeat Inspections

Section 49 does not limit the number of inspections that the Official can make of a property.

Multiple inspections may be required.

Chapter 3: Factors in Determining Next Steps in Non-Compliance

Purpose of this Chapter

1. To outline the types of considerations that a C&E official may take into account in the assessment of and response to alleged non-compliance.
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Introduction

This chapter outlines the types of considerations that a C&E official may take into account in assessing and responding to alleged non-compliance. It is not intended to be exhaustive, nor is it intended to suggest that all considerations need be taken into account in all cases.

This chapter includes a Non-Compliance Decision Matrix (set out below) along with guidelines for its application. The Matrix is a risk-based tool for assessing the variability and severity of factors influencing the selection of compliance tools. These factors include:

- escalating levels of agricultural impacts (actual or potential); and
- a diminishing likelihood of achieving compliance.

The Non-Compliance Decision Matrix is simply a tool that may assist staff in managing resources and options in the face of regulatory non-compliance. It does not bind staff and is simply an aid which may be used by Officials at their discretion when considering the context and specifics of individual cases of alleged non-compliance.

3.0 Factors that may be considered in determining whether to take compliance and enforcement measures and, if so, which one(s)

In responding to regulatory non-compliance, C&E Officials may consider 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.

Factors that an Official may consider include:

- any related history of non-compliance;
- repeated occurrences;
- was the contravention deliberate, and what was its severity;
- possible long term impact on land within the ALR;
- the person's willingness to co-operate with Officials;
- the existence of any or previous enforcement actions taken by government or other agencies;
- evidence of corrective action already taken; and
- geographic location.

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

Another important factor may be deterrence of other persons from failing to comply with the ALCA, the Regulation or commission decisions or orders. The C&E team, in conjunction with other ALC staff, is responsible for identifying emerging trends in non-compliance and developing a systematic and coordinated

response that strives for general compliance.

The factors identified above and the Non-Compliance Decision Matrix more specifically are simply guidance tools which are in no way to impair the professional judgment, discretion and autonomy exercised by ALC decision makers.

3.1 Non-Compliance Decision Matrix

C&E Officials strive for 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 impact on others.

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

- escalating levels of Agricultural impacts (actual or potential); and
- a diminishing likelihood of achieving compliance.

Again, as stated above, the Non-Compliance Decision Matrix is simply a tool; it does not replace the discretion that staff are to exercise when considering the context and specifics of individual cases of alleged non-compliance.

Where the Non-Compliance Decision Matrix refers to a “verbal communication”, this means discussion by a C&E official with a landowner or other involved person(s).

Where the Non-Compliance Decision Matrix refers to a “Compliance Notice”, this means a written letter intended to assist persons in achieving compliance after minor, to moderate, alleged non-compliance where there is a high likelihood of achieving compliance. A Compliance Notice serves as a formal record of the alleged non-compliance and can form an important element of the compliance history of the person(s) in question.

Where the Non-Compliance Decision Matrix refers to a “Notice of Contravention”, this means a letter to the non-compliant person(s) in writing that they are contravening the ALCA or Regulation. Notices of Contravention are only used when it has been confirmed to the satisfaction of a C&E official that a person is in contravention of a specific section of the ALCA and/or Regulation, or a commission order or decision.






A Notice of Contravention serves as an important formal record of the alleged non-compliance and forms an important element of the compliance history of the person(s) in question.

Where the Non-Compliance Decision Matrix refers to a “Directive Order”, this means a Stop Work Order or a Remediation Order.

Where the Non-Compliance Decision Matrix refers to an “Administrative penalty”, this means a penalty under s. 54 of the ALCA.

Where the Non-Compliance Decision Matrix refers to “Court process”, this means an application to B.C. Supreme Court for a non-compliance order under s. 53 of the ALCA or an application more generally for an injunction.

Levels of Escalating Agricultural Impacts (Actual or Potential)

		Level 1 Negligible	Level 2 Negligible - Low	Level 3 Low - Medium	Level 4 Medium - High	Level 5 High - Extreme	Level 6 Extreme
Likelihood of Compliance (Compliance History and Capacity to Comply)	Category A (High Likelihood)	Verbal communication	Compliance Notice	Notice of Contravention	Directive Order	Administrative penalty 	Court Process
	Category B (Medium Likelihood)	Compliance Notice	Notice of Contravention	Directive Order	Administrative penalty 	Court Process	
	Category C (Low Likelihood)	Notice of Contravention	Directive Order	Administrative penalty 	Court Process		
	Category D (Previous history of non- compliance)	Directive Order	Administrative penalty 	Court Process			
	Category E (High history of Non- Compliance)	Administrative Penalty 	Court Process				
	Category F (Continued indication of Non- compliance)	Court Process					

**3.1.1 Levels of Escalating Agricultural Impacts
(Actual or Potential)**

LEVEL 1
<ul style="list-style-type: none">• Compliance gained through verbal communications.
LEVEL 2
<ul style="list-style-type: none">• Non-compliance despite verbal communication.
LEVEL 3
<ul style="list-style-type: none">• Non-compliance despite Compliance Notice.
LEVEL 4
<ul style="list-style-type: none">• Immediate non-compliance or ongoing non-compliance to previous requests if made
LEVEL 5
<ul style="list-style-type: none">• Failure to comply with previous requests if made.
LEVEL 6
<ul style="list-style-type: none">• Failure to comply with all previous requests if made and other enforcement measures if taken.

3.1.2 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
- Person for whom compliance and enforcement measures being considered has a reasonable and cooperative attitude.

CATEGORY B - Indications of future and ongoing compliance are uncertain

- Questionable awareness of and/or capacity to meet regulatory requirement.

CATEGORY C - Indications that future and ongoing compliance are unlikely

- Little or no awareness of and/or capacity to comply with requirements.

CATEGORY D - No indication of future and ongoing compliance

- Violation of ALC regulatory requirement; and no demonstrated willingness to meet regulatory requirements.

CATEGORY E - No indication of future and ongoing compliance

- Ongoing demonstration of non-compliance.

CATEGORY F - Continued indication of non-compliance

- Other measures not appropriately responded to.

Chapter 4: Considerations for Referrals

Purpose of this Chapter

1. To outline some considerations that non-C&E staff might take into account in determining when it is advisable to refer an alleged non-compliance issue to the C&E program.
-

Introduction

This chapter outlines considerations that non-C&E staff might take into account when they become aware of possible non-compliance with the ALCA, the Regulation, or a commission decision or order. Generally, all issues of alleged non-compliance should be referred to the C&E program.

4.0 Procedure

- Non-C&E staff may learn of possible non-compliance in the course of their work, or it may be reported to them by a government or other agency, or by a commissioner.
- Non-C&E staff may make a “referral” (as defined earlier in the C&E Document). Reasons for doing so may include their perception that action may be warranted to address the alleged non-compliance.
- **In the event of a referral**, Non-C&E staff will generally forward the information relating to the alleged non-compliance to the C&E Program Assistant for processing consistent with C&E procedures.

Non-C&E staff may in the course of their communication, consult with the C&E Coordinator a variety of matters, including:

- to obtain clarity on the facts to ensure that both non-C&E staff and the C&E program have the same understanding of the possible non-compliance;
- to discuss the likelihood of achieving compliance and the degree of impact; and
- to review the application history, including what actions have been taken to date, and discuss next steps.

C&E staff generally acknowledge referrals promptly even if no action is contemplated on the file at that time. A timely response contributes to building or maintaining effective working relationships within the ALC and/or with government and other agencies.

Chapter 5: Some Considerations for C&E Officials

Purpose of this Chapter

1. To set out some considerations that C&E Officials might consider in determining C&E steps.
-

Introduction

This chapter proceeds on the basis that a complaint or referral has resulted in an active C&E file and reached a C&E Official. This chapter sets out, against that backdrop, common steps and decision points for C&E Officials.

5.0 General Application

Responding to an alleged non-compliance is often a complex and iterative process. This procedure outlines the steps to be taken in a “textbook” situation. However, depending on the circumstances of the case, more or fewer steps may occur and/or some steps may occur in a different order. For example, complex files may require consultation between a number of different compliance partners external to the ALC (e.g., FLNRO, Department of Fisheries and Oceans, RCMP) to determine their level of interest and/or involvement when addressing a non-compliance that may affect those agencies. C&E Officials may also consult with one or more ALC program staff at any time during the process.

The C&E official may determine that a cross-divisional or cross-government/agency, collaborative approach would be beneficial for successful completion of a file.

5.1 Use of the Non-Compliance Decision Matrix

The Non-Compliance Decision Matrix may assist staff in their assessment of the reported regulatory non-compliance and subsequent progression of the file. If C&E Officers need additional guidance or advice on addressing an issue of alleged non-compliance, they may choose to refer the matter to the C&E Coordinator, Director of Operations, or the CEO.

5.2 Communications with Other Agencies

Irrespective of the compliance action chosen, the C&E officials may wish to consult with other non-C&E staff as required. They may wish to do so if the C&E officials need history about the person(s) involved and/or technical expertise about the agricultural impacts of the non-compliance.

Chapter 6: Tools for Addressing Non-Compliance

Purpose of this Chapter

1. To foster understanding of the nature, purpose and use of compliance tools available to ALC staff.
 2. To further discuss considerations that C&E Officials might take into account when deciding whether to pursue compliance and enforcement measures and, if so, which one(s).
-

Introduction

There are a range of compliance tools available to ALC staff when addressing an alleged non-compliance.

None of these tools needs to be used, or one or more may be used together (if appropriate) or in succession. It is possible that a compliance and enforcement tool listed later in this chapter is used without the use of an earlier-listed tool.

Section 59 of the ALCA provides: “The powers in this Act and the Regulation enabling the commission, the chief executive officer and an official to make an order, to impose a fine or penalty, or to commence a proceeding may be exercised separately, concurrently or cumulatively and do not affect the powers of the government under this or any enactment.”

6.0 Compliance Notice

A Compliance Notice may be used to notify the alleged non-compliant person(s) in writing that the Commission is aware that the person(s) may not be in compliance with the ALCA, Regulation, or a commission order or decision. A Compliance Notice may:

- include requests for information and/or a description of activities occurring on the property and/or measures being considered to prevent non-compliance;
- include a request for inspection (though a request is not required) of the property at a specific date and time during which Officials may provide to the landowner additional insight into the regulatory requirements; and
- reference where additional information and educational materials can be sourced.

One purpose of a Compliance Notice may be to assist persons in achieving compliance where minor to moderate alleged non-compliance has occurred and where there is a high likelihood of achieving compliance. A Compliance Notice serves as a formal record of the alleged non-compliance and can form an important element of the compliance history of the person(s) in question.

A Compliance Notice can be issued in one of a number of formats such as a letter or email.

6.1 Notice of Contravention

A Notice of Contravention notifies the alleged non-compliant person(s) in writing that they are contravening the ALCA or Regulation. Notices of Contravention are only used when it has been confirmed to the satisfaction of a C&E official that a person is in contravention of a specific section of the ALCA and/or Regulation, or a commission order or decision.

A Notice of Contravention serves as an important formal record of the alleged non-compliance and forms an important element of the compliance history of the person(s) in question. This becomes particularly relevant when assessing and responding to any subsequent non-compliance by the person(s). Although verbal Notices of Contravention in the field are sometimes used, where that is done, officials generally follow up by issuing a written Notice of Contravention.

A Notice of Contravention:

- generally includes a description of the alleged contravention;
- generally establishes a due date for the person(s) to commit to a compliance option;
- sometimes requests written confirmation from the person(s) to whom the Notice of Contravention was directed that compliance has been achieved;
- sometimes addresses the scheduling of an inspection, such as a first or follow-up inspection to verify compliance; and
- sometimes provides compliance options to the person(s) (delivery of a Notice of Intent regarding fill, the submission of a Non-Farm Use application, the cessation of non-farm use, etc.).

6.2 Stop Work Order

As authorized by s. 50 of the ALCA, the CEO or a designated official has the authority to issue Stop Work Orders.

Section 50 of the ALCA reads as follows:

Stop work order

50 If an official considers that a person is contravening or is about to contravene a provision of this Act or the Regulation, the official, in accordance with the Regulations, may order that

- (a) the contravention cease,
- (b) the contravention cease to the extent specified by the order, or
- (c) the person not take any action that would result in a contravention.

AUTHORITY TO ISSUE A STOP WORK ORDER

A Stop Work Order (sometimes referred to as a SWO) is a written document that can be issued only by the chief executive officer or designated official considers that a person is contravening or is about to contravene a

provision of the ALCA or the Regulation.

A Stop Work Order is an important tool in addressing alleged non-compliance issues and managing agricultural risk. By requiring parties to address contraventions by ceasing alleged non-compliant activities, orders can be effective in:

- responding quickly to prevent or stop actual or potential impact to agricultural land;
- and deterring other potential violators.

An inspection may, but need not occur, prior to issuing the Stop Work Order; subsequent inspections may occur to assess compliance with a Stop Work Order.

It is an offence under section [57 of the ALCA](#) to contravene a Stop Work Order issued under section 50 of the ALCA.

AGAINST WHOM MAY A STOP WORK ORDER BE ISSUED?

A Stop Work Order may be issued against a 'person'(s) whom the official considers is contravening or about to contravene the ALCA or the Regulation.

A Stop Work Order may be made not only against owners of land but also against persons other than owners of land.

WHEN MAY A STOP WORK ORDER BE ISSUED?

A Stop Work Order may be issued only if the official considers that a person is contravening or is about to contravene a provision of the ALCA or the Regulation.

The Stop Work Order is a mechanism that allows an Official to act even in advance of the occurrence of a contravention.

CONTENTS OF A STOP WORK ORDER?

In issuing a Stop Work Order, an Official is able:

- (a) to order that a contravention of the ALCA or Regulation cease in part or altogether, or
- (b) to prohibit a specific action or actions that would result in a contravention.

Failure to Comply with a Stop Work Order

It is an offence under section [57 of the ALCA](#) to contravene a Stop Work Order issued under section 50 of the ALCA.

If a person(s) fails to comply with a Stop Work Order the commission may:

- (a) apply to the Supreme Court for a compliance order under [s. 53](#); and
- (b) impose a monetary penalty under [s. 54](#).

6.3 Remediation Order

As authorized by s. 52 of the ALCA, the CEO has the authority to issue Remediation Orders.

Determinations and remediation orders

52 (1) If the chief executive officer determines that a person has contravened this Act, the Regulation or an order of the commission, the chief executive officer, in accordance with the Regulation, may order the person to remedy the contravention by

(a) carrying out a requirement of this Act or the Regulations that the person has failed to carry out, or

(b) repairing or mitigating damage caused to agricultural land by the contravention, including the removal of buildings or structures.

(2) If a person fails to comply with an order under subsection (1), the chief executive officer, in accordance with the Regulation, may do one or more of the following:

(a) in a written notice given to the person, restrict or prohibit the person from carrying out the work referred to in the order;

(b) require the person to provide the security that the chief executive officer considers necessary and realize on that security;

(c) carry out all necessary work.

(3) A person referred to in subsection (2) is liable to the commission for costs incurred by the commission under this section.

AUTHORITY TO ISSUE A REMEDIATION ORDER

A remediation order is a written document that can only be issued by the chief executive officer.

A Remediation Order may be particularly appropriate when dealing with non-compliant persons with a poor compliance history who are undertaking a prohibited activity that will cause damage to agricultural land. In each case, the level of impact and the past performance of the person(s) may influence the decision whether or not to use a Remediation Order.

AGAINST WHOM MAY A REMEDIATION ORDER BE ISSUED?

A Remediation Order may be issued against a “person” whom the chief executive officer under s. 52 of the ALCA determines has contravened the ALCA, the Regulation or an order of the commission. Remediation

Orders may be made not only against owners of land but also against persons other than owners of land.

WHEN MAY A REMEDIATION ORDER BE ISSUED?

A Remediation Order may be issued only if the CEO determines that a person has contravened:

- (a) the ALCA;
- (b) the Regulation; or
- (c) an order of the commission.

Unlike in the case of a Stop Work Order, the contravention must already have occurred in order for a Remediation Order to be issued.

CONTENTS OF A REMEDIATION ORDER

The chief executive officer may order a person in contravention of the ALCA, the Regulation or an order of the commission to remedy the contravention either by:

- (a) carrying out a requirement of the ALCA or the Regulation that the person has failed to carry out; or
- (b) repairing or mitigating damage caused to agricultural land by the contravention, which includes the removal of building or structures.

Failure to Comply with a Remediation Order

It is an offence under section [57 of the ALCA](#) to contravene a Remediation Order issued under section 52 of the ALCA.

There are several options if the Remediation Order is not complied with, including:

- (c) issuance of an order by the CEO under [s. 52\(2\)](#);
- (d) applying to the Supreme Court for a compliance order under [s. 53](#); and
- (e) imposition of a monetary penalty under [s. 54](#).

Pursuant to s. 52(2) of the ALCA the chief executive officer may do one or more of the following, in accordance with the Regulation:

- (a) in a written notice given to the person who fails to comply with the Remediation Order, restrict or prohibit the person from carrying out the work referred to in the order;
- (b) require the person to provide the security that the chief executive officer considers necessary and realize on that security (a bond);
- (c) carry out all necessary work.

6.4 Concurrent Enforcement Actions

A Stop Work Order or Remediation Order may be issued prior to, at the same time, or in isolation of other C&E actions that are being undertaken.

There is no limitation period under the ALCA on when a Stop Work Order or Remediation Order can be issued.

6.5 Administrative Penalty

Under s. 54 of the ALCA, the chief executive officer has the authority to impose discretionary financial penalties on those failing to comply with the ALCA, the Regulation or orders of the commission. Such penalties can be imposed more simply than a fine or other penalty obtained via a court prosecution, making them an effective and efficient enforcement option.

An administrative penalty may be an appropriate response to non-compliance in a variety of circumstances. Considerations that may point in favour of ordering a penalty may include that:

- a Notice of Contravention does not adequately reflect the severity of the contravention and therefore would not be an effective deterrent;
- the time and cost of court prosecution is not in the public interest;
- there are mitigating or aggravating circumstances that should be taken into consideration in setting the penalty; or
- it is appropriate to recover the financial benefit the person(s) received as a result of the non-compliance or to recoup the costs to government.

Penalties levied by the CEO

54 (1) The chief executive officer, in accordance with the Regulation, may levy a penalty up to the prescribed amount against a person who contravenes this Act, the Regulation or the orders of the commission.

(2) The time limit for levying a penalty against a person under subsection (1) is 3 years after the facts on which the penalty is based first came to the knowledge of the chief executive officer.

In accordance with the Regulation, the chief executive officer may levy a penalty up to the prescribed amount against a person who contravenes the ALCA and or Regulation or the orders of the Commission.

Section 54 of the ALCA sets out provisions related to penalties. Section 35 of the Regulation adds particular further considerations. Before the chief executive officer levies a penalty under this section, she/he must consider all of the following:

35 (1) Before the CEO levies a penalty under section 54 of the Act, the chief officer must consider all of the following:

- (a) any contravention of a similar nature by the person;
- (b) the gravity and magnitude of the contravention;
- (c) whether the contravention was deliberate, repeated or continuous;
- (d) whether there was an economic benefit derived by the person from the contravention;
- (e) the person's cooperativeness and efforts to correct the contravention;
- (f) the degree to which the contravention detrimentally affected or impaired the agricultural capability of the land or its suitability for farming.

(2) The penalty which the CEO may levy is in the complete discretion of the CEO, but must not exceed **\$100 000** for any single contravention.

(3) The maximum penalty which the CEO may levy for a second or subsequent contravention is **double the amount of the penalty levied for the first contravention.**

(4) If the CEO levies a penalty under section 54 of the Act against an owner of agricultural land, the CEO must give the owner a notice setting out all of the following:

- (a) the nature of the contravention;
- (b) the amount of the penalty;
- (c) the date by which the penalty must be paid;
- (d) a description of the owner's right to appeal the penalty.

6.6 B.C. Supreme Court Order

The commission may also or instead seek the assistance of the B.C. Supreme Court in its compliance and enforcement work. For example, s. 53 of the ALCA provides that the commission may apply to the B.C. Supreme Court for an order for compliance. The Supreme Court may order remedies including that the person(s) comply with an order or cease any violation of that order. An order for compliance may be applied for when the commission considers that the person(s) against whom the court order is sought:

- is not complying with a determination, decision or order issued by an official under s. 50, 52 or 54(1) of the ALCA;
- is not complying with an order by the commission; or

- may currently be contravening or may in the future contravene the ALCA, the Regulation an order of the commission, or a determination, decision or order under s. 50, 52 or 54(1).

Applying for an order for compliance may be appropriate in various circumstances, including where efforts to obtain compliance with the ALCA, the Regulation, a Stop Work Order and/or a Remediation Order have otherwise failed and:

- a Notice of Compliance does not adequately reflect the severity of the contravention and would not be an effective deterrent;
- previous ALC orders have been violated and/or ignored;
- the person gives no indication, by words or actions, that they are working towards compliance; and/or
- there are significant and immediate risks to agricultural land.

Order for compliance

53 (1) The commission may apply to the Supreme Court for an order under subsection (2) if the commission considers

(a) that a person is not complying, or has not complied, with a determination, a decision or an order under section 49 (1) (f), 50, 52 or 54 (1),

(b) that a person is not complying with an order of the commission, or

(c) that a present or future activity or use of agricultural land in an agricultural land reserve may contravene this Act, the Regulation, an order of the commission or a determination, a decision or an order under section 50, 52 or 54 (1).

(2) On application by the commission under this section, the Supreme Court may make one or more of the following kinds of orders:

(a) directing the person to comply with the determination, decision or order;

(b) directing the person to cease violating the determination, decision or order;

(c) restraining the person from violating the determination, decision or order;

(d) if the person is a corporation, directing the directors and officers of the corporation to cause the corporation to comply with an order under this section.

6.7 Court Prosecution

A court prosecution is a legal proceeding initiated by Crown counsel against persons alleged to have committed an offence(s). Breach of s. 20 of the ALCA is among the potential offences identified in s. 57.

Offences

57 (1) A person commits an offence and is liable on conviction to a fine not exceeding **\$1 million or imprisonment for not more than 6 months, or to both**, who contravenes the following:

- (a) an order of the commission;
- (b) section 20 (1);
- (c) a covenant referred to in section 22;
- (d) section 49 (2);
- (e) a stop work order under section 50;
- (f) a remediation order under section 52.

(2) The maximum fine under subsection (1) to which a person is liable on a second or subsequent conviction is double the amount set out in that section.

(3) A proceeding, conviction or penalty under this section does not relieve a person from a penalty under another section or from any other liability.

(4) A person commits an offence who

- (a) without lawful excuse intentionally interferes with,
- (b) without lawful excuse intentionally fails to comply with a lawful requirement of, or
- (c) intentionally makes a false statement or misleads or attempts to mislead,
- (d) the chief executive officer, a member of the commission, an official or an employee or a consultant of the commission appointed under section 8.

(5) If a corporation contravenes this Act or the Regulation, a director or officer of it who authorized, permitted or acquiesced in the contravention also commits the contravention.

(6) Section 5 of the *Offence Act* does not apply to this Act.

Chapter 7: Appeals

Purpose of this Chapter

1. To outline the appeals process.
-

Introduction

[Section 55](#) of the ALCA allows for an appeal of certain determinations or orders. Those are, in particular, ones made under [section 50](#) (Stop Work Orders); [section 52](#) (Remediation Orders) and [section 54](#) (1) (Penalty Orders).

Section 55 does not permit an appeal from determinations, decision or orders other than those specified in section 55(1) – a person dissatisfied with a matter not identified in section 55, must seek a different remedy.

The ALC website has an [Appeals Practice Directive](#) which addresses the issues dealt with in this chapter in greater detail.

7.1 Who may appeal?

A person who is the subject of a determination, decision or order section(s) 50, 52 or 54(1) of the ALCA may appeal from it (ALCA, s. 55; [Regulation, s. 37](#)).

7.2 How is an appeal commenced?

An appeal is commenced by delivering a written notice of appeal to the Commission (ALCA s.55 (1); Regulation s.37).

7.3 What is the deadline for delivery of notice of appeal?

The notice of appeal must be delivered to the commission not more than 60 days after the written determination, decision or order being appealed is personally served on the person. There has been some confusion about the deadline given the statutory framework seems to offer two alternative dates (the other being shorter: 30 days), but the commission follows a 60-day deadline or extends time to correspond to that 60-day deadline.

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