

Frequently Asked Questions

Integrated Compliance Assurance Framework

February 12, 2016

Q1. What are the *Integrated Compliance Assurance Framework* and *Manual 013: Compliance and Enforcement Program*?

A1. The *Integrated Compliance Assurance Framework (ICAF)* outlines the approach we take to make sure operators follow the rules and energy resources are developed responsibly.

The framework integrates the compliance assurance systems of each of the AER's predecessor organizations into a single approach. It combines the most effective parts of the Energy Resources Conservation Board's and Alberta Environment and Sustainable Resource Development's (now Alberta Environment and Parks) compliance assurance programs.

ICAF outlines the AER's vision, strategy, and approach to ensuring Alberta's energy industry follows the rules. The framework provides a foundation for compliance assurance activities to ensure the rules are followed at every stage of energy development. *Manual 013* explains AER's tactical approach to the compliance assurance process including operator education, prevention of noncompliant activities, and enforcement when energy operators aren't following the rules.

Q2. What was wrong with the old system?

A2. The AER is committed to a single integrated approach making sure Alberta's energy industry follows the rules regardless of which requirement the noncompliance falls under. The AER has been conducting compliance and enforcement work using the enduring systems of both the ERCB and ESRD, along with an integrated approach when it was necessary. This has led to the possibility of inconsistent responses from AER staff when they encounter noncompliance and less certainty for our stakeholders in industry, the public, and government. The AER's new system will combine the most effective parts of both systems to ensure Alberta's energy resources continue to be developed in a way that is safe, efficient, orderly, and environmentally responsible.

Q3. How has the AER's compliance assurance system changed?

A3. As the AER has continued to evolve as a regulator, so has its compliance assurance system and the use of available enforcement tools. The next step in the AER's compliance and enforcement evolution is the integration of the compliance assurance programs of each of the

AER's predecessor organizations. *ICAF* and *Manual 013* will replace *Directive 019: Compliance Assurance*.

Q4. Why is the AER rescinding *Directive 019*?

A4. *Directive 019* contained no requirements. The directive did not set any rules, but rather provided guidance and explained *only* the ERCB compliance assurance process. *ICAF* and *Manual 013* ensure that all aspects of the AER's mandate are accounted for in one compliance and enforcement program.

In a nutshell, rescinding *Directive 019* has no impact on legislation, existing requirements, or the statutory authority of the AER.

Directive 019 is referenced in a number of directives. The AER will be removing those references in all directives. However, the removal of the references to *Directive 019* will in no way affect the regulator's ability to enforce the rules if they are broken.

Q5. How will the change unfold (timelines etc.)?

A5. The AER released *ICAF* and the manual on February 12, 2016. Both came into effect that day. To ease the transition for industry, the AER will be hosting information sessions to explain the changes. Further information is available on the AER website.

Q6. What is staying the same?

A6. Education, prevention, and enforcement continue to be the main pillars of the AER's compliance and enforcement program. Our staff continue to be active across the province, holding industry training sessions, conducting inspections, carrying out audits, and completing investigations.

Specifically, the voluntary self disclosure process has not changed. Furthermore, an energy operator's ability to appeal enforcement action under section 36 of the *Responsible Energy Development Act (REDA)* and section 3.1 of *REDA (General Regulation)* remains the same. Forms for filing an appeal are available on the AER website.

Q7. Specifically, what is changing about the way the AER conducts compliance and enforcement activities?

A7. Changes to the AER's compliance and enforcement program include

- an inspection and audit program that focusses on highest-risk energy development activities;
- issuing a notice of noncompliance as a single approach to dealing with all noncompliances;

- a triage process for escalating noncompliances;
- a standardized investigation process, and
- clarification on the intent and purpose of the AER's compliance and enforcement tools.

Further detail on the changes to the AER's compliance and enforcement program are available on the AER [website](#).

Q8. Will requirements continue to be risk assessed? Why?

A8. The AER will continue to risk assess requirements. The AER's risk assessment is one of the factors considered when determining the level of enforcement.

The AER will also use these risk assessments to allocate inspection and audit resources to the activities that pose the greatest risk to the public, the environment, or orderly development. This is one of the ways the AER is moving toward a risk-based regulatory approach throughout the organization.

Q9. What is a notice of noncompliance and how is it different from high- and low-risk enforcement actions?

A9. The notice of noncompliance is used to notify an energy operator that the AER has identified a noncompliance. The letter can be used to request more information from an energy operator to help our staff decide the appropriate response, including possible enforcement.

A notice of noncompliance also requires an operator to tell the AER what they have done to come into compliance with the rules.

When the AER sends a notice of noncompliance, there is no prejudgement of the outcome of any potential AER investigation. Failure by an energy operator to respond to the notice of noncompliance may lead to further triaging and consideration of enforcement by the AER.

The notice of noncompliance replaces high- and low-risk enforcement action and notices of high- and low-risk noncompliance.

Q10. How does the noncompliance assessment triage process work?

A10. The AER's triage process is used to assess the significance of a noncompliance. Each section within the AER has set criteria that will assess the noncompliance; however, the triage process will be used consistently across the organization.

The process uses five questions to help AER staff determine the appropriate response:

- Did the noncompliance cause significant impact to the environment, public safety, or an energy resource?

- Has the operator conducted an unauthorized activity that would not have been approved?
- Is there evidence that suggests that the noncompliance was done knowingly, willfully, or with demonstrated disregard for requirements?
- Does the operator have a history of noncompliance related to the current noncompliance?
- Has the operator knowingly provided false or misleading information while addressing a regulatory requirement?

If any of the factors apply to the noncompliance, further investigation may be required.

If the factors do not apply, AER staff will

- inform the operator of the noncompliance by issuing a notice of noncompliance, and
- monitor the noncompliance until it gets addressed.

Q11. What is the AER’s compliance and enforcement investigation process?

A11. The AER’s investigation process will determine the facts and evidence regarding a noncompliance. A formal notice will be sent to a company advising it that it is under investigation.

The AER’s investigation process involves three AER activities:

- Information collection by AER staff
- Analysis of the information and materials collected
- Final file review and preparation of an investigation summary report

At the conclusion of an investigation, the information will be used to assess the appropriate enforcement response, if any, and to identify lessons learned for improved AER and industry performance.

Q12. Does the compliance and enforcement investigation process differ from the incident investigation process?

A12. Investigations can be triggered by an incident or by an identified noncompliance. In either case, the noncompliance or the incident must meet one of the AER triage assessment factors for the investigation process to apply.

Q13. How has the AER’s ability to levy fines or shut in facilities changed?

A13. The AER continues to have a variety of compliance and enforcement tools available under its energy resource and specified enactments to compel compliance and to correct and deter future noncompliance. When a noncompliance is identified, the AER tries to use the most appropriate tool.

Tools include

- orders, including suspension orders or cancellation of an approval;
- administrative sanctions; e.g., terms and conditions on an operator's approval that may require additional reporting or more scrutiny of all applications submitted by a company;
- fees;
- fines known as administrative penalties;
- prosecution; and
- declaration of a named individual.

The AER has processes in place to ensure that each penalty meets legal standards and that the AER acts in a consistent and fair manner before proceeding with any compliance or enforcement response.

Q14. Who do I contact with questions?

A14. The AER has introduced a new e-mail address for industry—IndustryRelations@aer.ca—to help answer any questions, including compliance and enforcement questions.