

**METRO VANCOUVER ENVIRONMENTAL REGULATION AND ENFORCEMENT DIVISION:
POLICY FOR THE ADMINISTRATION, COMPLIANCE PROMOTION AND ENFORCEMENT OF
ENVIRONMENTAL LAWS AND BYLAWS**

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Revised By: Kathy Preston, Lead Senior Engineer, Environmental Regulation and Enforcement

Approved By: Ray Robb, Division Manager, Environmental Regulation and Enforcement

INTRODUCTION

The public expects Metro Vancouver (the Greater Vancouver Regional District) to pass environmental laws and to actively promote compliance with those Metro Vancouver bylaws and as well as applicable provincial environmental laws (e.g., the Open Burning Smoke Control Regulation, the Ozone Depleting Substances Regulation, and the Antisapstain Chemical Waste Control Regulation).

The Greater Vancouver Regional District Board has adopted environmental bylaws regarding discharges of contaminants to the air, liquid waste discharges to sewer and solid waste management. The bylaws have been enacted to achieve a variety of environmental goals in Air Quality, Liquid Waste and Solid Waste Management.

This document focuses on principles to be considered by staff in choosing the appropriate tool to achieve desired outcomes and is not intended to be prescriptive.

PURPOSE

The purpose of this document is to assist Metro Vancouver Environmental Regulation and Enforcement staff in their efforts to promote compliance with Metro Vancouver bylaws and applicable provincial environmental laws. The document is also intended to assist in achieving transparency to the regulated community and the public who are served by these laws.

DEFINITIONS

- 1. Administrative Actions** – are not compliance promotion or enforcement tools as they are not intended as punishment for wrong doing, rather they are used to create legal requirements to achieve a desired environmental result. Administrative actions may be undertaken by designated authorities ranging from bureaucrats through to regional and provincial elected bodies. Administrative actions include permit amendments, orders, bylaw amendments, provincial act amendments and court injunctions.
- 2. Compliance** – A state in which all Metro Vancouver bylaw and relevant provincial legal requirements are met.

3. **Compliance Promotion** – All measures which may be taken by Metro Vancouver to encourage compliance with Metro Vancouver Environmental Bylaws. Such measures include pro-active as well as reactive and punitive measures such as enforcement actions.
4. **Compliance Promotion Tools**
 - a. **Advisory** – A communication from the Metro Vancouver, usually but not always in writing, that staff believes that there is non-compliance with a requirement of Metro Vancouver or relevant provincial environmental law (e.g., Compliance Assessment Report).
 - b. **Notice of Violation Letter** – A Notice of Violation Letter is an official declaration that non-compliance is serious and that the company should advise of steps being taken to prevent future non-compliance.
 - c. **Notice of Bylaw Violation** – A Notice of Bylaw Violation (NBV) is used for minor bylaw infractions that involve lower fines. The entire process, from issuing the NBV to adjudication is controlled by Metro Vancouver and therefore the process is more cost effective. The standard of proof at an adjudication hearing is the civil standard of “balance of probabilities”. The amount of the penalty is limited to \$500 and a penalty cannot be sought for “continuing conduct” and so a separate NBV is required for each day that an offence occurs.
 - d. **Ticket** – A Municipal Ticket Information (MTI) is an alternative to laying charges. The approval standard for a ticket is the same as for laying charges in a prosecution. The burden of proof is the criminal standard of “beyond a reasonable doubt”. An MTI, unless successfully challenged in a court, is considered equivalent to a conviction. An MTI should be used for more serious or technical infractions or for a continuing offence where fines are sought for each day of the offence.
 - e. **Prosecution** – Laying charges (i.e., laying a long form information) and prosecuting in a court.
5. **Enforcement** – Punitive measures used to promote compliance in a particular case as well as broadly. Enforcement promotes compliance broadly by using the legal system to send a particularly serious message of deterrence. Tickets, NBVs or prosecutions are considered enforcement actions and are a subset of the available compliance promotion tools.

POLICY

Fundamentals

The administration of law must be done in an effective, efficient, timely and, most importantly, a fair manner. In addition, transparency is necessary to promote regulator accountability.

Prevention of non-compliance is better than a cure; consequently efforts should seek to maximize deterrence. Effective deterrence requires that there be a widespread perception that regulators will detect and respond seriously to violations of environmental laws.

Resources are limited; therefore regulatory efforts must be focused to maximize benefits or alternatively achieve the greatest environmental threat reduction. Discretion on the part of staff is necessary to ensure available resources achieve the best outcomes overall. However, discretion does not mean that compliance promotion and enforcement responses may be arbitrary.

Compliance promotion and enforcement actions by staff must be defensible to both the alleged perpetrator and the public. This policy is intended to provide clear and transparent guidelines to ensure responses are proportional to the seriousness of non-compliance and are consistent within and between sectors, as well as over time.

The Regulatory Toolbox

Metro Vancouver environmental regulatory programs have administrative tools as well as compliance promotion and enforcement tools. Administrative tools are used to create legal requirements, such as orders or permit amendments, which are intended to achieve environmental objectives. Compliance and enforcement tools are used to promote compliance with Metro Vancouver and provincial legal requirements.

Administrative Tools

Administrative tools include Pollution Abatement Orders, Pollution Prevention Orders, Pollution Information Orders, Permit or License Issuance and/or Amendments to impose requirements intended to achieve environmental objectives. Some circumstances that call for administrative action (i.e. new law) also require action to promote compliance with existing law. However, the determination of whether to use an administrative tool is based on entirely different criteria than the determination of whether to take compliance promotion or enforcement action.

The use of administrative instruments is generally governed by the principles of administrative law. They are not to be used as a punishment or as a threat intended to promote compliance. The use of administrative tools is warranted under circumstances described in the bylaws and the provincial Environmental Management Act. In some circumstances, administrative decisions may be appealed to the Environmental Appeal Board (in respect of liquid waste and air quality).

Compliance Promotion and Enforcement Tools

Compliance promotion and enforcement tools are intended to encourage compliance with laws that have been created to achieve desired environmental outcomes. An effective and efficient compliance promotion and enforcement program requires a strategic balance between non-punitive compliance promotion actions and punitive enforcement actions. Tools range from proactive measures, through non-punitive responses and ultimately punitive actions. The balance employed will be a function of risks and available resources to address those risks.

Table 1: Compliance Promotion and Enforcement Tools

Pro-active Non-punitive	Reactive Non-Punitive	Reactive Punitive
<ul style="list-style-type: none"> • Education • Awareness Promotion • Inspection Report 	<ul style="list-style-type: none"> • Advisory* • Notice of Violation Letter* 	<ul style="list-style-type: none"> • Notice of Bylaw Violation (NBV) • Municipal Ticket Information (MTI - deemed guilty) • Prosecution (admitted guilt or found guilty)

* *Advisory – to be used when there is substantial evidence, i.e. balance of probability, an offence has occurred*

* *Notice of Violation Letter – to be used when there is a high degree of confidence, i.e. beyond a reasonable doubt, that an offence has occurred*

Staff should rely primarily upon non-punitive actions to promote compliance. However, escalating actions may be required if compliance is not achieved. Further, there may be circumstances when it is necessary to send a very strong deterrence message immediately and move directly to a punitive action.

Guiding Principles for Compliance Promotion and Enforcement Tool Selection

The objective is a high level of compliance with Metro Vancouver laws. However, selecting the most severe enforcement tool for each instance of non-compliance is neither necessary nor appropriate. Metro Vancouver compliance promotion is risk based and focused on outcomes. The public interest is best served by allowing staff to exercise discretion in the selection of the appropriate compliance promotion tool. Discretion does not mean arbitrary choices of compliance promotion or enforcement tools in response to a non-compliant event. Staff must consider the following three (3) criteria when determining the most appropriate non-compliance response:

1. How strong is the need to send a message of deterrence to target audiences?
2. How strong is the likelihood of conviction?
3. Does the compliance promotion or enforcement action serve the public interest?

1. Deterrence

In the absence of an effective deterrent, there can be no confidence that all individuals and corporations will obey environmental laws which may conflict with their private interests. An effective compliance program must create the impression that there is a strong likelihood that violations will be detected and regulatory responses will be sufficiently severe to act as a deterrent. Failure to have an effective deterrent allows those that break the rules to gain an unfair competitive advantage, which encourages non-compliant behaviour. The deterrence message is being sent to the offender, industry as a whole, and the general public.

Factors to be considered by staff in determining a non-compliance response include:

- the degree of harm or risk posed by the non-compliance,
- the history of compliance by the entity or sector,
- past compliance promotion and enforcement efforts,

- intent (did the offender intend or choose to violate the law),
- ease of detecting non-compliance (i.e. a stronger message of deterrence is required for circumstances where detection of non-compliance is difficult),
- visibility (the need to send a message and value of sending a message of deterrence increases with the public profile of the non-compliance, i.e. public disrespect for the law must be met with strong deterrence messaging).

2. Likelihood of Conviction

Likelihood of conviction depends on the quality of evidence of a violation as well as the degree of due diligence of the offender. Uncertainty related to evidence may be due to a number of factors including the precision and reliability of measurements as well as the credibility of witness testimony. Due diligence is assessed based on the degree to which the offender did all they reasonably could to prevent the non-compliance. If an offender was duly diligent, they cannot be convicted.

In cases where non-compliance has been determined but there is lower probability of conviction, advisories may be more appropriate. The use of such non-punitive actions may be sufficient to stem the non-compliance; but, if not, the use of these actions may serve to strengthen a more serious response for a future non-compliance.

Note, when it is believed that an offence may have occurred and that future offences may occur but there are insufficient assurances that they will be detected, it may be appropriate to take administrative actions (e.g., change permit requirements) to allow improved confidence in compliance assessments through enhanced works and/or measures.

3. Public Interest

The determination of whether a particular response to non-compliance is in the public interest requires substantial judgment on the part of staff. As public servants, Metro Vancouver staff must weigh their actions in terms of the public interest. Factors that may inform staff regarding the public interest include the following:

- the seriousness of the infraction,
- the likelihood of achieving the desired outcome through less punitive and less expensive public means (i.e. did the offender misunderstand the law, are they genuinely remorseful),
- is prosecution the best means of dealing with the issue (for example it may be more appropriate to take action against a violator that harms a number of people that do not have the means to protect themselves than a discharger that harms the business interests of a neighbour that has the ability to sue for damages and will have a lesser burden of proof), and
- degree of co-operation by the offender (i.e. did they report voluntarily or try to conceal the violation).

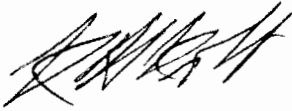
The intent of the violator will be considered by the court in determining a penalty. It is often not in the public interest to obtain a guilty verdict if the fine is minimal and therefore sets a poor precedent for future prosecutions.

INTERNAL POLICY

In carrying out a prosecution, significant resources are expended by industry, Metro Vancouver and society; therefore it must be used sparingly. Consequently, while there will be instances when prosecution will be the most appropriate response, regardless of whether alternative responses have already been exhausted, generally prosecution is considered the method of last resort.

The attached diagram summarizes the selection of appropriate compliance response or enforcement tools.

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Attachment:

Metro Vancouver Environment Law and Bylaw Administration, Compliance Promotion and Enforcement Actions.

