



Ministry of
Energy, Mines and
Low Carbon Innovation

Mines Competitiveness and Authorization Division

Mines Health, Safety and Enforcement Division

Compliance & Enforcement Policy

Version 2.2

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APPROVED AMENDMENTS:

February 20, 2018	Version 1.1 Updated to clarify use of advisories and warnings as an enforcement tool
May 14, 2020	Version 2.0 Updated to reflect organizational changes, to clarify compliance tools, and revise the decision matrix
July 24, 2020	Version 2.1 Updated to reflect anticipated amendments to the <i>Mines Act</i>
November 27, 2020	Version 2.2 Updated to reference the Natural Resource Sector Compliance Management Framework and to clarify roles related to escalated enforcement. Updated Ministry name.

Name of Program or Business Area

Mines Health Safety and Enforcement Division
Mines Competitiveness and Authorizations Division

Name of Policy Compliance and Enforcement Policy (C&E Policy)

Purpose

The Natural Resource Agencies have adopted a [Compliance Management Framework](#) (Framework) that outlines the collaborative approach taken to ensure compliance across the province. The variety of compliance and enforcement activities undertaken across the natural resource sector is wide ranging and diverse.

The Ministry of Energy, Mines and Low Carbon Innovation (EMLI)'s C&E Policy aligns with the Framework, and is intended to enhance compliance and enforcement consistency across the province by providing guidance to Inspectors of Mines and Titles Inspectors (collectively, "Inspectors") on the C&E tools available to them, and how those tools can be used as part of an escalating enforcement program. The C&E Policy will also establish common language for discussing C&E actions, both internally and externally. Through this enhanced consistency, the C&E Policy will provide transparency to proponents, stakeholders and the public.

Scope

The C&E Policy applies to:

- All EMLI staff engaged in mining C&E activities;
- Compliance verification and enforcement activities;
- Incidents of non-compliance with the *Mines Act* and regulations, the Health, Safety and Reclamation Code for Mines in British Columbia, permit conditions and orders; and
- Incidents of non-compliance with the *Mineral Tenure Act*, *Coal Act*, and regulations under these acts.

Policy

In addition to bringing EMLI's mining C&E approach and tools together in one document, the C&E Policy includes the Non-Compliance Decision Matrix. This risk-based tool is designed to assist Inspectors in the consistent selection of the most appropriate C&E tool(s) in response to potential or observed non-compliance.

Staff should consider this document and apply this guidance when implementing C&E tools. The C&E Policy does not restrict the discretion and autonomy exercised by staff as complex, atypical, or exigent circumstances will continue to arise. All staff must apply their professional expertise and judgement when performing their duties and be prepared to provide rationale for compliance actions.

Chapter 1: C&E Context

1. Purpose of this Chapter

1. Establish Mission Statement and regulatory context of MCAD (Mines Competitiveness and Authorizations Division) and MHSED (Mines Health, Safety and Enforcement Division)
2. Emphasize MCAD and MHSED's commitment to achieving compliance in the mining industry

2. Mission Statement

To provide fair, effective, transparent regulatory oversight of mining activities for the benefit of all British Columbians.

3. Introduction and regulatory context

The *Mines Act* and regulations, Health, Safety and Reclamation Code for Mines in British Columbia (the Code), and *Mines Act* permits (collectively referred to as Regulatory Requirements) apply to all mines in British Columbia. The Ministry of Energy, Mines, and Low Carbon Innovation (EMLI)'s regulatory authority applies to all metal mines, including precious and base metal mines, coal mines, industrial mineral (e.g. silica, limestone) mines, mineral exploration projects, rock quarries, sand and gravel (aggregate) operations, and placer mines.

The purpose of the Code is to:

- Protect employees and all other persons from undue risks to their health and safety arising out of or in connection with activities at mines.
- Safeguard the public from risks arising out of or in connection with activities at mines.
- Protect and reclaim the land and watercourses affected by mining.
- Monitor the extraction of mineral and coal resources and ensure maximum extraction with a minimum of environmental disturbance, taking into account sound engineering Practice and prevailing economic conditions.

The *Mineral Tenure Act*, *Coal Act*, and regulations under these acts apply to free miners and recorded holders of mineral titles, coal licensees and lessees, and any other person operating on a mineral or coal title. EMLI's regulatory authority under these acts applies on all "mineral lands" and "coal lands".

EMLI's regulatory activities take place during all phases of the mining life cycle including exploration, development, construction, production, reclamation, closure, and post-closure. Regulatory oversight includes approving mining activities (including reclamation programs) through the issuance of permits under the *Mines Act* and the establishment of site-specific requirements (e.g. permit conditions). Regulatory oversight also includes compliance verification activities (e.g. compliance reviews and inspections) and enforcement activities (e.g. investigations).

Within the broader EMLI mandate to regulate mining activities, Inspectors engage in a variety of C&E activities to ensure that Regulatory Requirements and the purpose of the Code are met.

4. Commitment to C&E

MCAD and MHSED are committed to actively promoting and verifying compliance, and enforcing applicable Regulatory Requirements when compliance is not achieved.

MCAD and MHSED promote compliance through:

- Educating proponents on the expectation and responsibility to comply with Regulatory Requirements;
- Providing educational presentations to industry that support knowledge of the Regulatory Requirements;
- Setting site-specific requirements through review and establishment of *Mines Act* permit conditions;
- Conducting inspections and having a presence on site;
- Posting information about the C&E program on EMLI's website;
- Organizing and facilitating awards and competitions that support health and safety programs at mines, as well as effective reclamation;
- Administering certifications for shift bosses, supervisors, blasting and mine rescue; and
- Providing advisories to assist proponents in avoiding instances of non-compliance.

MCAD and MHSED verify compliance through:

- Conducting risk-based annual inspection planning;
- Performing inspections of mines, mineral title, and coal titles, and monitoring mining activity for compliance with the Regulatory Requirements;
- Responding to public complaints or reports of suspected non-compliance relating to a mine site or a mineral or coal title; and
- Reviewing plans and reports to ensure compliance with the Regulatory Requirements.

MCAD and MHSED enforce Regulatory Requirements through:

- Issuing orders when non-compliance is identified;
- Issuing notices and orders under the *Mineral Tenure Act* and *Coal Act*;
- Conducting investigations related to escalated enforcement actions, which may lead to:
 - Issuing administrative monetary penalties in situations of contravention of the Acts, regulations, Code or orders;
 - Recommending (through reports to Crown Counsel) court prosecution for serious contraventions

The Chief Inspector of Mines applying administrative sanctions in situations of serious contravention of the Acts, regulations, Code, permit conditions or orders.

5. Transparency and Reporting

Inspection reports and related enforcement actions for major mines are publicly reported on the [BC Mine Information Website](#). Through this website, EMLI, the Ministry of Environment and Climate Change Strategy, and the Environmental Assessment Office collaborate to make information on the Province's oversight of major mines in British Columbia publicly accessible.



The purpose of public reporting is to:

- Provide the public with up-to-date mine information;
- Demonstrate the BC Government's commitment to transparency; and
- Incentivize individuals and corporations to achieve compliance.

The [EMLI mining website](#) provides additional information related to EMLI's regulatory activities. All orders of the Chief Gold Commissioner are posted on the [Mineral Titles public website](#).

The Chief Inspector of Mines Annual Report summarizes regulatory activity, dangerous occurrence and incident data (e.g. number of incidents, type of work and equipment involved) and the results of various competitions and awards promoting mine safety and reclamation.

Chapter 2: Inspections and Investigations

1. Purpose of this Chapter

1. To review regulatory authority in relation to inspections and investigations
2. To provide a common understanding of inspections and investigations

2. Inspectors of Mines

Definition of a Mines Inspector

The Chief Inspector of Mines (CIM) is the statutory decision maker, designated by the Minister under section 3 of the *Mines Act*, for mining activities in British Columbia. The CIM may appoint Mines Inspectors pursuant to section 5 of the *Mines Act*. Pursuant to section 6 of the *Mines Act*, the CIM may delegate in writing any of the powers provided to the CIM to another inspector.

The Chief Permitting Officer (CPO) is the statutory decision maker, designated by the Minister under section 8.2 of the *Mines Act*, responsible for permit authorizations under the *Mines Act*. Pursuant to section 8.3 of the *Mines Act*, the Chief Permitting Officer may delegate in writing any of the powers provided to the Chief Permitting Officer to an inspector.

C&E activities are a core responsibility of all Inspectors met through assessing site-specific requirements (including permits and variances), conducting inspections, and undertaking enforcement actions and investigations.

Definition of a Titles Inspector

The Chief Gold Commissioner is the statutory decision maker under the *Mineral Tenure Act* and *Coal Act*. The chief gold commissioner may appoint a deputy Chief Gold Commissioner, and may delegate some or all of the functions of the Chief Gold Commissioner. Mineral Titles Inspectors are delegated specific responsibilities and authorities under the Acts by the Chief Gold Commissioner. The CIM may appoint Titles Inspectors as inspectors under section 5 of the *Mines Act*. C&E activities are a core responsibility of Titles Inspectors, met through conducting inspections of mineral and coal titles, mines sites, and undertaking enforcement actions and investigations.

Inspector authority

Inspectors are authorized under the *Mines Act* to conduct inspections. Inspectors have authority to enter a mine at any reasonable time and have a worker or management representative accompany them during an inspection. In the course of conducting an inspection, the Inspector may access and review any records, equipment, machinery, or area of the mine that is relevant to verifying compliance. When an inspection is underway, all persons on the mine site must provide the Inspector with any assistance necessary, including producing record(s) or thing(s) in the person's possession or control, for the completion of the inspection. As Gold Commissioners, Titles Inspectors may enter and examine any land covered by a mineral title.

Where non-compliance is identified, Inspectors may utilize a number of C&E tools to bring the proponent into compliance. The available tools are discussed in more detail in Chapters 3 and 4 of this document.

Inspector duties

Inspectors perform a diverse range of duties related to the regulatory oversight of mines for the purpose of ensuring the health and safety of workers and the public, as well as the protection of the environment.

Inspectors use a diverse, multidisciplinary, and coordinated approach to undertake C&E activities, such as:

- Conducting regular mine inspections and monitoring mining activity for compliance with Regulatory Requirements;
- Reviewing permit conditions and any related mine plans to assess compliance with the permit, and applicable Code requirements;
- Assessing mine health and safety programs and policies for workers' health and safety;
- Conducting reviews of plans for reclamation and protection of the environment;
- Working with Indigenous groups, communities, unions, associations, and industry to promote responsible and safe mining practices that consider stakeholder concerns; and
- Conducting investigations and, where appropriate, taking escalated enforcement action.

3. Inspections

Mines Inspection

The principal purpose of a mine inspection is to verify compliance with Regulatory Requirements and, where necessary, take the appropriate compliance action in accordance with the Inspector's authority. Verification includes ensuring that relevant persons (e.g., the permittee, owner, agent or manager) are complying with a wide range of applicable Regulatory Requirements.

Titles Inspections

The principal purposes of mineral and coal title inspections include gathering information to support an order recommendation to the Chief Gold Commissioner, investigation of complaints, disputes with surface rights holders, disputes between recorded holders on the same mineral lands, and verification of exploration and development work registered under the *Mineral Tenure Act*. Where a mine is located on a mineral or coal title, an inspection may include both aspects of mines and titles inspections.

Inspection Planning

Mine and titles inspections may occur in fulfillment of a planned inspection schedule or may be undertaken in response to an unexpected situation or incident. Planned mine and titles inspections are coordinated to reflect a variety of factors including: the type and size of operation, phase of mine development, reclamation liability, risks associated with site activities, and compliance history. Inspection plans are developed annually by regional inspectors and provincial specialist inspectors. Provincial inspectors predominantly focus on major mines and may coordinate with regional inspectors to conduct focused technical inspections at regional operations as well.

Reactive inspections may occur for several reasons including: employee or public complaints, notification of a potential non-compliance, referrals from other agencies, or following a dangerous occurrence as outlined under section 1.7.1(b) of the Code.

Scope of Inspection

Inspections may be conducted by individual inspectors or teams of inspectors. When an inspector becomes aware of non-compliance that is beyond the scope of their expertise, they must promptly request the assistance of an appropriate specialist (e.g. occupational health, electrical, or geotechnical inspector).

Inspections may range in scope from the entirety of the site to focused inspection of specific work areas. The scope of each inspection is dependant on Inspector discretion and will (for proactive inspections) often be a result of inspection planning, available time, and the inspector's area of expertise.

Under section 15(1.1) of the Mines Act, an inspector who enters a place under subsection (1) may bring any persons and equipment that the inspector considers necessary for the purpose of the inspection.

Interagency Coordination

Inspectors may schedule joint inspections with other agencies in order to coordinate resources and address issues that encompass other agency mandates (e.g., stream crossings, water management and water quality, and wildlife issues). Coordinated inspections may also take place for the purpose of inspector mentorship and continuous learning, increasing mutual familiarity with other inspectors and agencies, Indigenous Groups, supporting program implementation, and in the interests of the public.

EMLI's annual inspection plans for major mines are communicated to the Environmental Assessment Office and the Ministry of Environment and Climate Change Strategy compliance teams, to support greater coordination and integration of C&E activities across the mining sector.

Risk Based Approach to Inspection Planning

Risk-based considerations for inspection planning include:

- Type of operation (e.g. surface, underground, metal, coal, aggregate);
- Size of operation (e.g. number of workers, size of disturbance area);
- Phase of mine development (e.g. exploration, construction, production, reclamation);
- Risks associated with activities and conditions specific to each site;
- Reclamation liabilities;
- Compliance history and operator performance; and
- Date of last inspection.

Adaptive Management and Event-Based Inspections

EMLI's inspection planning is adaptively managed as required to deal with events or emerging issues that develop (e.g. freshet flooding or forest fire risks). Inspections may be unplanned or reactive in nature in response to events occurring at a mine site (e.g. fatality, serious injury, dangerous occurrence or geotechnical incident), complaints, or information received related to potential non-compliance.



Other Compliance Verification Activities

In addition to verifying compliance through on-site inspections, inspectors also verify compliance through various in-office compliance reviews and assessments. This may include reviews of mine plans, reclamation plans, permit applications, technical reports, annual summaries of exploration activities, and manager responses to inspection reports.

Inspection Reports

The inspection purpose and scope, areas inspected, inspection observations, non-compliances, and most enforcement actions (advisories, warnings, orders, and escalated enforcement recommendations) will be recorded in the Natural Resource Inspection System (NRIS).

Inspection reports must be completed by the Inspector and sent to all applicable mine contacts within seven business days of the inspection. The inspection report may be sent by mail (hard copy), e-mail, and/or made available on MineSpace.

4. Investigations

Purpose of a Mines Investigation

The primary purpose of an incident investigation is always to determine what happened, why it happened, and what can be done to prevent a reoccurrence of a similar event. As an investigation progresses, evidence of non-compliance with Regulatory Requirements may be uncovered.

Authority to Investigate

Investigations may be undertaken in one of two ways, pursuant to section 7 of the *Mines Act* or to Mines Regulation section 1, as described below. The **Investigations Policy** provides further detail regarding the use of sections 7 and 8 of the *Mines Act*.

Pursuant to section 7 of the *Mines Act*, on the direction of the chief inspector, an inspector must investigate and report on an incident that has caused, or has or had the potential to cause, serious personal injury, loss of life, or property or environmental damage. Initiation of section 7 investigations is a Chief Inspector authority. All investigations into fatalities will be conducted under s.7 of the *Mines Act* and all s.7 investigations will be led by the Mines Investigation Unit. When conducting an investigation under section 7 of the *Mines Act*, inspectors may access the powers of compulsion contained within section 8 of the *Mines Act*.

Under Mines Regulation section 1, during any phase of mining activity, an inspector may investigate any matter relating directly or indirectly to the health and safety of any person or the public including: death or injury; accidents; dangerous or unusual occurrences; or complaints or allegations relating to health or safety. Where the incident is non-fatal, the Chief Inspector may decide whether the matter warrants a s.1 Mines Regulation investigation.

Transition from Inspection to Investigation

Inspections may lead an inspector to identify the need for further investigation into non-compliance. A transition from inspection to investigation may take place when non-compliance is detected during an inspection and the purpose shifts from verifying compliance to collecting

information and evidence that may be required to support enforcement actions. It is important to note that in the context of regulatory prosecutions the courts have taken a “contextual” rather than a “point in time” approach to the issue of when an inspection transitions into an investigation and this transition is a step that has significant legal ramifications, and inspectors will refer to the Mines Investigation Unit for guidance and direction on this issue.

Chapter 3: Tools for Addressing Non-Compliance

1. Purpose of this Chapter

1. To ensure a common understanding of the purpose and use of available enforcement tools
2. To outline the criteria that should be considered when selecting the most appropriate C&E tool

2. Compliance and Non-Compliance Tools

There is a range of C&E tools to promote compliance or address non-compliance. This chapter briefly describes each C&E tool, including its purpose and the general circumstances in which it may be used.

Available enforcement tools:

- Advisory
- Warning
- Order
- Administrative monetary penalty (AMP)
- Administrative sanction
- Prosecution

3. Advisory

Definition

An advisory, as established by this policy, is a written notification to a person that draws attention to a specific Regulatory Requirement. An advisory is used where the proponent is currently in compliance, but actions may be needed to avoid future non-compliance (e.g. volumetric or height limit is being approached, or there is a pending deadline for the submission of a plan or report). An advisory promotes compliance and reduces the likelihood of a future non-compliance issue.

When to use

Advisories are proactive in nature and can be very useful for compliance promotion. They can be used to advise and/or remind proponents of pending regulatory deadlines and requirements, industry best practices, or actions that may be needed to avoid a future non-compliance. Advisories must not be used to document current non-compliances. Advisories must be recorded in the Natural Resource Inspection System (NRIS).

4. Warning

Definition

A warning, as established by this policy, may be issued by an inspector using their discretionary authority provided under the *Mines Act*. A warning is a written notification to a person that was not in compliance with a specific Regulatory Requirement at the time of inspection, but the Inspector determines that the non-compliance is minor, has not been addressed in previous inspections, and the non-compliance is remedied to the satisfaction of the inspector prior to the completion of the inspection.

A warning will clarify the expectations of Regulatory Requirements or required outcomes. How the required outcomes will be achieved remains the responsibility of the proponent and not the inspector. Inspectors may include references to where additional information and educational materials may be found.

When to use

A warning can be an enforcement response taken in cases of minor non-compliance where the non-compliance is addressed immediately, to the satisfaction of the inspector, prior to the completion of the inspection.

Warnings provide an important tool to ensure that a minor non-compliance in the circumstance described above is recorded to form part of the mine's compliance history and inform future C&E activities, such as subsequent inspections or trend analyses.

Warnings are issued as part of an inspection report and must be recorded in NRIS.

5. Order

Definition

An order, as authorized under the *Mines Act*, is a written, legal instrument issued by an inspector to address non-compliance with a Regulatory Requirement and/or to reduce and manage risk. This is the most common C&E tool that will be used by inspectors in all disciplines.

An order issued by the Chief Gold Commissioner under the *Mineral Tenure Act* or *Coal Act* may be issued independently, or with an order issued under the *Mines Act*. Under the *Mineral Tenure Act* and *Coal Act*, the Chief Gold Commissioner may make orders that relate to requirements under the *Mines Act*.

When to Use

Inspectors may issue an order where the inspector observes, or has reason to believe there is, non-compliance with the Regulatory Requirements or non-compliance with previous orders. Orders may relate to health and safety, the environment, or permitting. Orders may also be used to address immediate dangers to health, safety or the environment.

See Appendix A and B for details on each order type.

6. Administrative Monetary Penalty (AMPs)

Definition

Authorized under the *Mines Act* and the Administrative Penalties (Mines) Regulation, AMPs are financial penalties that can be imposed on any person contravening a prescribed provision of the *Mines Act* and regulations, the Code. There are three AMPs tiers established in the Administrative Penalties (Mines) Regulation (up to a maximum of \$40,000, up to a maximum of \$100,000, and up to a maximum of \$500,000). The applicable AMP tier will depend on the specific contravention involved.

As an administrative remedy, an AMP can be imposed with simplified procedural and legal requirements. It is important to note that while the AMPs process is simpler than a court prosecution, there are rules in place to ensure procedural fairness.

Further information can be found on the [Administrative Monetary Penalties](#) website.

When to Use

An AMP may be an appropriate response to non-compliance where a person has contravened a Regulatory Requirement prescribed in the Administrative Penalties (Mines) Regulation. An AMP may be an appropriate compliance tool when:

- An order does not adequately reflect the severity of the contravention, and therefore would not be an effective deterrent;
- An order has already been issued but has not been effective in achieving compliance;
- An administrative sanction (e.g. permit cancellation or suspension) is disproportionate to the non-compliance or would cause undue hardship;
- The time and cost of court prosecution would not be in the public interest; and/or
- It is appropriate to recover an economic benefit the person received as a result of the non-compliance or to recoup government costs associated with the non-compliance.

The Mines Investigation Unit leads the investigation and development of AMP recommendations, for consideration by the statutory decision maker. An inspector considering the applicability of an AMP for a non-compliance should engage early with the Mines Investigation Unit.

7. Administrative Sanctions

Definition

Under the *Mines Act*, the Chief Inspector can impose specific administrative sanctions in specified circumstances. Under section 10.1(2) of the *Mines Act*, if an owner, agent, manager or permittee fails to perform or complete reclamation obligations or comply with permit conditions, the Chief Inspector may do one or more of the following:

- Order the owner, agent, manager or permittee to stop the mining operation;
- Enter on or below the surface of the mine and cause the required work to be performed or completed;

- Apply all or part of the security toward payment of the cost of the work required to be performed or completed;
- Close the mine; or
- Cancel the permit.

When to Use

An administrative sanction may be appropriate when other enforcement tools may not be effective in protecting the health and safety of workers, the public or the environment. These actions may only be taken by the Chief Inspector and may only be used following a notice to remedy the failure (as per section 10.1.(1) of the *Mines Act*). Administrative sanctions may have impact on liabilities taken on by the Province. If an inspector is considering making a recommendation to the Chief Inspector for an administrative sanction, they must first consult with their Director or Executive Director.

See Appendix B for details.

8. Sanctions under other Acts

In addition to the administrative sanctions under the *Mines Act*, mines inspectors may refer a non-compliance matter to a Titles Inspector or the Chief Gold Commissioner for consideration of remedies available under the *Mineral Tenure Act* and *Coal Act*.

Under the *Mineral Tenure Act*, the Chief Gold Commissioner (or their delegate, the Deputy Chief Gold Commissioner) can impose specific administrative sanctions in specified circumstances, such as:

- Suspension/cancellation of a Free Miner's Certificate (FMC) (section 10)
- Suspension of work activities (section 18)
- Cancellation of claim(s) (section 18)
- Specific actions relating to complaints as to valid title (section 40)
- Ordered forfeiture of lease(s) (section 50(2), (3))

Mines Inspectors and Titles Inspectors may make a recommendation to the Chief Gold Commissioner based on the results of inspections or investigations and assist in the drafting of written reasons for decision if an administrative sanction is ordered.

Under the *Coal Act*, the Minister can impose administrative sanctions under section 25, which include:

- Suspension of the operations of the recorded holder;
- Refusal to renew any licence or lease held by the recorded holder until the recorded holder complies; and
- Cancellation of the licence or lease.

Inspectors may also consider referrals to other regulatory partners for consideration of sanctions under other acts (e.g. Ministry of Environment and Climate Change Strategy, Ministry of Forests, Lands, Natural Resource Operations and Rural Development, and Environmental Assessment Office)

See Appendix B for details.

9. Prosecution

Definition

A prosecution is a proceeding initiated against a person (individual or corporation) who the Crown alleges has committed an offence.

When to Use

The Mines Investigation Unit leads investigations into cases where it is suspected offences have occurred and, in appropriate cases where the evidence is supportive, may prepare a report to Crown Counsel. This report is referred by the Senior Director of Investigations to Crown for consideration of charge approval. The Mines Investigation Unit is responsible for decisions regarding the use of prosecutions as an enforcement tool.

A person convicted of an offence under the *Mines Act* is liable to a fine of not more than \$1,000,000 or to imprisonment for not more than three years or both. A person convicted of an offence under the *Mineral Tenure Act* or *Coal Act* may be liable to a fine of not more than \$25,000 or to imprisonment for not more than 6 months, or both.

10. Other Compliance Actions

Section 16

This section gives an inspector the authority to order the operation of a mine to be conducted in a manner that will not interfere with a public work, public service, public utility, highway or railway, or with a pipeline as defined in section 1 (2) of the Oil and Gas Activities Act or an adjacent mine property.

Prior to issuing this order, the inspector should consult with their supervisor/director, as there may be implications affecting other agencies or stakeholders.

Section 18

An inspector may order the owner, agent or manager to provide at the owner's expense an independent study prepared by an engineer or other licensed professional acceptable to the inspector

(a) respecting health and safety at the mine or safety of its equipment, buildings, workings or structures, or

(a.1) respecting actual or potential environmental damage resulting from mining activity at the mine, or

(b) in connection with an incident that the inspector is investigating.

Prior to issuing this order, the inspector must consult with their supervisor/director.

Re-assessment of securities

An inspector should consider if, as a result of non-compliance or other inspection observation, the reclamation securities currently held under the permit are adequate to address site liabilities



as described in *Mines Act* 10(4). A delegated inspector may, in each year, require additional security for the purposes described in *Mines Act* 10(5).

Chapter 4: Non-Compliance Decision Matrix

Purpose of this Chapter

1. To introduce the Non-Compliance Decision Matrix
2. To guide the application of C&E tools using the matrix

1. Introduction

The Non-Compliance Decision Matrix is a risk-based tool used by staff when considering the appropriate enforcement tool to apply to individual cases of non-compliance. The Non-Compliance Decision Matrix supports the professional judgment, discretion, and autonomy exercised by inspectors to achieve consistency in EMLI's response to non-compliance. Inspectors should also consider how similar situations have been addressed in the past, while recognizing that each case of non-compliance will have unique circumstances, which may suggest a different response.

2. Using the Matrix

The Non-Compliance Decision Matrix considers both the impact of the non-compliance and the likelihood of achieving compliance, which define the two axes of the matrix. It assists in determining what enforcement tool is appropriate to use.

Determining location on the matrix

The inspector should evaluate the non-compliance to determine the appropriate category on each matrix axis, and then consider the use of the applicable compliance tools listed. As the level of impact increases, an inspector may wish to, and in some cases must, engage with colleagues, their supervisor, Compliance and Enforcement branch management, and/or partner agencies to discuss potential enforcement actions to ensure consistency and create awareness of serious non-compliances that have been identified.

A. Impact of the non-compliance

Consider the impact of the non-compliance (i.e. the level of actual or potential harm). How significant is the actual or potential harm that the non-compliance has produced?

Minor: A minor non-compliance does not, or is unlikely to, result in adverse impacts to workers, the environment, and the public. The actual or potential impacts of the non-compliance are minimal, temporary, localized, and fully-reversible in the short-term.

Examples may include:

- Failing to supply a required report within the required timeframe, failure to provide specific information in a plan or failure to supply adequate records;
- Minorly cracked window or mirror on a piece of equipment; or
- Mobile equipment seat in a minor state of disrepair (e.g. covered in duct tape), resulting in the operator reporting a lack of comfort.

Moderate: A moderate non-compliance results in potential or actual impacts to workers, the environment or the public. Impacts are typically localized, short term and substantially to fully reversible within a reasonable period of time.

Examples may include:

- Very localized lack of effective guarding;
- Failure to locally apply sediment control measures, as required by the permit or Code; or
- Complex, physically demanding task (e.g. screen changes in a processing plant, washing down mobile equipment with a pressure washing wand) that workers have reported discomfort while or after performing.

Immediate/Major: A major non-compliance that results in immediate potential risk (or actual major impacts) to workers, the environment, or the public. Impacts can be localized or broad, variable in term, and substantially reversible over a moderate to long-term.

Examples may include:

- Failing to adequately train workers;
- Failing to establish and implement safe operating procedures; or
- Failing to manage water or waste rock, as required by the permit or the Code.

Certain and Severe: A certain and severe non-compliance is one that has resulted in severe impact to the environment and/or human health and/or the public. Impacts are permanent, or only partially reversible over the long-term.

Examples may include:

- Fatality;
- Serious injury;
- Significant mine infrastructure failure (e.g. tailings dam failure); and/or
- Severe damage to public infrastructure.

B. Likelihood of achieving compliance

Consider the likelihood of achieving compliance. What is the likelihood that the individual or company will respond appropriately to the enforcement action?

High: There may be a high likelihood of ongoing and/or future compliance if:

- The non-compliance can be easily remedied or has been fully remedied at the time of inspection;
- The mine/operator has a good compliance history;
- The mine/operator voluntarily disclosed the non-compliance and/or did not deliberately cause the non-compliance and was not willfully negligent; or
- The mine/operator demonstrates awareness of regulatory requirements and the willingness and capacity to comply.

Uncertain: There may be an uncertain likelihood of achieving ongoing and/or future compliance if:

- The non-compliance has occurred at a new site or under a new operator; The mine/operator has little or no compliance history;
- The mine/operator has an unknown level of awareness of regulatory requirements, and the willingness and capacity to comply; or
- The mine/operator did not deliberately cause the non-compliance and was not willfully negligent.

Moderate: There may be a moderate likelihood of achieving ongoing and/or future compliance if:

- The non-compliance will be technically challenging or expensive to remedy;
- The mine/operator has had previous contraventions;
- The mine/operator may not have the willingness and/or capacity to comply with regulatory requirements; or
- The mine/operator was aware of the requirements but deliberately did not complete the required action (or took contrary action).

Low: There may be a low likelihood of achieving ongoing and/or future compliance if:

- The non-compliance cannot be remedied, or will be very technically challenging or expensive to remedy;
- The mine/operator has had multiple previous contraventions;
- The mine/operator displays a poor attitude regarding compliance oversight; or
- The mine/operator gives the Inspector reason to believe that the non-compliance was deliberate or the result of willful negligence.

Very low: There may be indications of obstruction and ongoing or future non-compliance if:

- The mine/operator gives the inspector reason to believe that the non-compliance was deliberate or the result of willful negligence;
- The mine/operator has had multiple previous contraventions;
- The mine/operator displays a poor attitude regarding compliance oversight; or
- The mine/operator hinders or obstructs government officials and/or refuses to provide information and/or provides false or misleading information.

Table 1: Non-Compliance Decision Matrix

		LEVEL OF IMPACT			
		MINOR	MODERATE	IMMEDIATE/ MAJOR	CERTAIN and SEVERE
LIKELIHOOD OF COMPLIANCE	HIGH	<i>Warning*</i> Order 15(4)	Order 15(4)	Order 15(4.1)(a),(b),(c) 15(5)(a) and (b) or (c)	Order 15(4.1)(b),(c) 15(5)(a) and (b) or (c) and INVESTIGATION CONSIDERED (CONTACT MIU)
	UNCERTAIN	Order 15(4)	Order 15(4)	Order 15(4.1)(a)(b),(c) 15(5)(a) and (b) or (c)	
	MODERATE	Order 15(4) 35(1)	Order 15(4) 35(1)	Order 15(4.1)(a)(b),(c) 15(5)(a) and (b) or (c) 35(1) AMP	
	LOW	Order 15(4) 35(1) AMP	Order 15(4) 15(4.1)(a),(b),(c) 35(1) AMP Admin Sanction	Order 15(4.1)(b),(c) 15(5)(a) and (b) or (c) 35(1) AMP Admin Sanction	
	VERY LOW	Order 15(4) 35(1) AMP Admin Sanction	Order 15(4) 15(4.1)(a),(b),(c) 15(5)(a) and (b) or (c) 35(1) and INVESTIGATION CONSIDERED (CONTACT MIU)		

**Warnings should only be considered under the circumstances described in the C&E Policy*

Appendix A: Mines Act Orders and Sanctions

Mines Act Orders and Sanctions		
Potential enforcement action	Description	Additional notes/consultation
<i>Mines Act</i> section 15(4) Order	Order to remedy contraventions noted during an inspection (e.g., contraventions of a requirement under the <i>Mines Act</i> and regulations, the Code, or a permit condition.)	An inspection is understood to be either an on-site inspection or an office-based inspection. This order authority may be used in either case.
<i>Mines Act</i> section 15(4.1)(a), (b) and (c) Order	Order to do any of the following: (a) Take immediate remedial action, (b) Suspend regular work until remedial action is taken, (c) Close the mine or part of it until remedial action is taken, where inspector believes on reasonable grounds that contravention of a section 15 order, a provision of the <i>Mines Act</i> and regulations, the Code, or permit condition has <u>detrimental environmental impact</u> .	An inspection is understood to be either an on-site inspection or an office-based inspection. This order authority may be used in either case. The Chief Inspector and Chief Permitting Officer must be notified when issuing an order to suspend regular work or close a mine. In addition, MMO Inspectors are to follow the briefing process established for significant orders, except where immediate action is required to prevent an immediate and imminent impact.
<i>Mines Act</i> section 15(5)(a), (b) and (c) Order	Order to (a) Take immediate remedial action, (b) Suspend regular work until remedial action is taken, <u>or</u> (c) Close the mine or part of it until remedial action is taken, where inspector believes <u>a delay in remedying would be dangerous to persons, property or the environment</u> .	An inspection is understood to be either a site inspection or an office-based inspection. This section may be used in either case. The Chief Inspector and Chief Permitting Officer must be notified when issuing an order to suspend work or close a mine.



	<p>Note that the order must be for (a) and (b), or (a) and (c).</p>	
<p><i>Mines Act</i> section 35(1) Order</p>	<p>Order to comply with a provision of the <i>Mines Act</i> and regulations, the Code or a permit. It may also be issued as an order for failing to comply with a previous order (e.g. escalation).</p>	<p>This order authority may be used for non-compliance observed during an on-site or office-based inspection.</p> <p>As per Chief Inspector direction, all section 35 Orders must be reviewed by the Compliance Management Unit prior to issuance. Applicable Directors must also be notified.</p> <p>Major Mines Office staff are to refer to group specific procedures on significant orders.</p> <p>While the issuance of a section 35(1) order does not specifically require a site inspection, an inspection/ investigation may be required if potential court involvement under section 35(2) is contemplated (e.g. when used as an escalated enforcement tool).</p>
<p><i>Mines Act</i> section 10.1(1) and 10.1(2) Administrative Sanction</p>	<p>If a person fails to complete reclamation obligations or comply with permit conditions, the Chief Inspector may issue an order to remedy that failure by the date specified in the order.</p> <p>If the person to whom the order under 10.1(1) was issued has not complied with the order by the date specified, the Chief Inspector may do one or more of the following:</p> <ul style="list-style-type: none"> (a) order the owner, agent, manager, or permittee to stop the mining operation, (b) apply all or part of the security toward payment of the cost of the work 	<p>The Chief Inspector is the sole authority for orders issued under section 10.1. The Chief Inspector is also responsible for issuing the notice to remedy the failure.</p> <p>Inspectors must consult their director and, where appropriate, the Chief Permitting Officer, prior to recommending an administrative sanction to the Chief Inspector of Mines.</p>



	<p>required to be performed,</p> <p>(c) close the mine, or</p> <p>(d) cancel the permit.</p>	
<i>Mines Act</i> section 16	<p>An inspector may order the operation of a mine to be conducted in a manner that will not interfere with a public work, public service, public utility, highway or railway, or with a pipeline as defined in section 1(2) of the Oil and Gas Activities Act or an adjacent mine property.</p>	<p>Inspectors using this order must consult with their supervisor/director prior to issuance.</p>
<i>Mines Act</i> section 18	<p>An inspector may order the owner, agent or manager to provide at the owner's expense an independent study prepared by an engineer or other licenced professional acceptable to the inspector</p> <p>(a) respecting health and safety at the mine or safety of its equipment, buildings, workings or structures,</p> <p>(b) respecting actual or potential environmental damage resulting from mining activity at the mine, or</p> <p>(c) in connection with an incident that the inspector is investigating</p>	<p>Inspectors using this order must consult with their supervisor/director prior to issuance.</p> <p>In addition, MMO Inspectors are to follow the briefing process established for significant orders, except where immediate action is required to prevent an immediate and imminent impact.</p>

Appendix B: Mineral Tenure Act and Coal Act Orders and Sanctions

Mineral Tenure Act and Coal Act Orders and Sanctions		
Potential enforcement action	Description	Additional notes/consultation
<i>Mineral Tenure Act</i> section 10	The <u>Chief Gold Commissioner may cancel the Free Miner's Certificate</u> of a miner who has, with respect to activities related to the operation or use of a mineral title, contravened the <i>Mineral Tenure Act</i> , the regulations, the <i>Criminal Code</i> , the <i>Heritage Conservation Act</i> , the <i>Mines Act</i> , the <i>Mining Right of Way Act</i> , or the Code.	A mines inspector must apply to Chief Gold Commissioner to consider actions pursuant to this section.
<i>Mineral Tenure Act</i> section 18(1) or 18(2) Order	The Chief Gold Commissioner may order compliance with the <i>Mineral Tenure Act</i> or the regulations or a provision of any other enactment including the <i>Mines Act</i> . If the order is not complied with, Chief Gold Commissioner may order suspension of activities.	A mines inspector must apply to Chief Gold Commissioner to consider actions pursuant to this section
<i>Mineral Tenure Act</i> section 18(4) Order	The Chief Gold Commissioner may order cancellation of claim of holder who deliberately fails to comply with: <ul style="list-style-type: none"> (a) an order of the chief gold commissioner or other person under this section, (b) the <i>Mineral Tenure Act</i> or the regulations, (c) the <i>Mines Act</i> or the Code, (d) the protection of a protected heritage property under the <i>Heritage Conservation Act</i>, or (e) any enactment under which a mining activity has been or is required to be authorized. 	A mines inspector must apply to Chief Gold Commissioner to consider actions pursuant to this section
<i>Mineral Tenure Act</i> section 40	A complaint to the Chief Gold Commissioner that <ul style="list-style-type: none"> (b) a person has knowingly made a false statement or report under Sections 29, 33 or 33.1 or in a registration or an application for a 	A mines inspector must apply to Chief Gold Commissioner to consider actions pursuant to this section There are a variety of possible outcomes to this complaint. The



	<p>registration under Sections 29, 33 or 33.1, or (c) a claim has been acquired or held for purposes other than a mining activity.</p>	<p>process is detailed in section 40.</p>
<p><i>Mineral Tenure Act</i> section 50(2) and (3), notice and order</p>	<p>The Chief Gold Commissioner may issue notice to comply with rental payment requirements, provisions of the <i>Mineral Tenure Act</i>, the regulations, or conditions respecting the lease. If the holder does not comply, the Chief Gold Commissioner may order forfeiture of the lease.</p>	<p>A mines inspector must apply to Chief Gold Commissioner to consider actions pursuant to this section</p>
<p><i>Coal Act</i> section 25, notice and order</p>	<p>The Minister may notify the recorded holder of failure to comply with the <i>Coal Act</i>, a licence or lease under it, or the <i>Mines Act</i> or a permit under it. If holder does not comply, Minister may (a) suspend operations, (b) refuse to renew any licence or lease of the holder, or (c) cancel the licence or lease.</p>	<p>Authority held by the Minister.</p>