



# **ENFORCEMENT AND COMPLIANCE POLICY FOR THE ENVIRONMENT ACT**

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# Table of Contents

1. Introduction.....	2
2. Definitions.....	3
3. Guiding Principles .....	5
4. Environment Act Enforcement Authority.....	6
Minister of Environment.....	6
Environmental Protection Officers.....	6
5. Promoting Compliance .....	7
Emphasis on Prevention .....	7
Increasing Public Awareness and Involvement.....	8
6. Determining Compliance.....	9
Self-Monitoring.....	9
Inspections .....	9
Investigations .....	12
Search and Seizure.....	12
7. Enforcement Responses to Violations of the Act.....	13
Notices Issued by Environmental Protection Officers.....	14
Orders Issued by Environmental Protection Officers.....	15
Orders Issued by the Minister .....	17
Charges Laid by Environmental Protection Officers .....	20
Civil Actions Initiated by the Government.....	23
8. Contact Information.....	25

# 1. Introduction

The *Environment Act*<sup>1</sup> (the “Act”) provides for a right to a “healthful natural environment”. Individuals, corporations and government are responsible for protecting the Yukon environment from degradation.

The Enforcement and Compliance Policy (the “Policy”) is established in accordance with s. 150 of the *Environment Act*. The purpose of the Policy is to outline those actions which will be taken by government to encourage Compliance with, and where necessary, to enforce the *Environment Act*. This Policy, and an accompanying procedures manual, will guide officials responsible for enforcing the Act.

The Enforcement and Compliance Policy may be revised periodically in order to remain current. The Policy does not have the force of law. Rather, it will guide the application of the law. To the extent of any inconsistency between the *Environment Act* and this Policy, the *Environment Act* prevails. For information on the law, the reader should consult the Act.

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<sup>1</sup> *Environment Act*, RSY 2002, c76

## 2. Definitions

The terms that are defined in this section are capitalized throughout this document.

“Compliance” means acting in the state of conformity with the law.

“Contaminant” means a solid, liquid, gas, smoke, odour, heat, sound, vibration, pathogen or radiation or any combination thereof, that is foreign to the normal constituents of the natural Environment, or that exceeds normal quantities or concentrations in the Environment, and that results directly or indirectly from human activity that may cause or contribute to causing adverse effect.

“Contaminated Site” means an area of land in which the soil or underlying ground water beneath it, or the water including the sediment and bed below it, contains a Contaminant which is in an amount, concentration or level in excess of the applicable standard in the Contaminated Sites Regulation or allowed under a permit.

“Enforcement” means the process taken to compel obedience with the law.

“Environmental Protection Officer” means a person designated as an environmental protection officer by the Minister for the purposes of the Act.

“Environment” means:

- (a) the air, land and water,
- (b) all organic and inorganic matter and living organisms including biodiversity within and among species,
- (c) the ecosystem and ecological relationships,
- (d) buildings, structures, road, facilities, works and artifacts,
- (e) all social and economic conditions affecting community life,
- (f) the inter-relationships between or among any of the factors in paragraphs (a), (b), (c), (d), or (e);

in the Yukon.

“Spill” means a release of a substance

- (a) into the natural Environment;
- (b) from a structure, vehicle or container; and
- (c) that is abnormal in quantity or quality; or
- (d) in excess of an amount specified in Schedule A of the *Spills Regulations*<sup>2</sup>.

Note: to be a Spill, (a) and (b) above must be true, plus either (c) or (d).

“Ticket” means a document issued to commence proceedings for a prescribed offence pursuant to the *Summary Convictions Act*<sup>3</sup> and the *Summary Convictions Regulations*<sup>4</sup>.

“Yukon First Nation” means one of the following:

- Carcross/Tagish First Nation;
- Champagne and Aishihik First Nations;
- Kluane First Nation;
- Kwanlin Dün First Nation;
- Liard First Nation;
- Little Salmon/Carmacks First Nation;
- First Nation of Na-Cho Nyäk Dun;
- Ross River Dena Council;
- Selkirk First Nation;
- Ta'an Kwäch'än Council;
- Teslin Tlingit Council;
- Tr'ondëk Hwëch'in;
- Vuntut Gwitchin First Nation; or
- White River First Nation.

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<sup>2</sup> *Spills Regulations*, YOIC 1996/193

<sup>3</sup> *Summary Convictions Act*, RSY 2002, c.210

<sup>4</sup> *Summary Convictions Regulations*, O.I.C. 2016/105

## 3. Guiding Principles

The following principles will guide the Government of Yukon in Enforcement activities under the *Environment Act*.

### **Prevention a Priority**

The Government of the Yukon, in administering its environmental legislation, policies and programs, will give high priority to the prevention of harm to the Environment. By promoting education and public awareness of environmental concerns, the government is moving toward this goal.

### **Fairness, Consistency and Predictability**

The Government of Yukon will seek Compliance with its legislation in a manner that is fair, consistent and predictable across the Yukon; and will implement Enforcement and Compliance responses based on the law and as guided by this Policy.

### **Comprehensive Response**

Every suspected or actual violation of the Act that comes to the attention of government officials will receive an appropriate Enforcement response. These responses, which are set out in the Act, may involve administrative actions, legal actions, or both.

### **Application of the Act**

Requirements under the law and this Policy apply equally to the Government of Yukon, corporations, and individuals.

## 4. Environment Act Enforcement Authority

The following authorities are responsible for enforcing the *Environment Act*:

### Minister of Environment

The Minister of Environment is responsible for implementing and enforcing the Act.

The Minister may take direct Enforcement action including:

- cancelling or suspending permits;
- ordering cleanup, restoration, or closure; and
- applying for court orders or injunctions.

The Minister may delegate the exercise of any of the Minister's power under this Act or the regulations to employees of the Government of Yukon or of a municipality.

### Environmental Protection Officers

Environmental Protection Officers are designated by the Minister to ensure Compliance with the Act and the regulations throughout Yukon. Environmental Protection Officers may be employees of the federal, Yukon, municipal or Yukon First Nation governments involved in the administration of an environmental law. Their duties include inspections of regulated sites and activities, investigations of violations, and Enforcement actions as required.

# 5. Promoting Compliance

This Enforcement and Compliance Policy is directed primarily towards encouraging individuals and industry to take an active role in protecting the Environment and preventing pollution. The following measures are aimed at ensuring Compliance with the law.

## Emphasis on Prevention

### **Inspections**

Environmental Protection Officers conduct an inspection program, involving all activities and developments that are or that ought to be the subject of a permit, order or direction. The primary objective of the inspection program is to determine Compliance with the Act and support a decision whether to implement administrative Enforcement measures to prevent or mitigate any harm to the Environment.

### **Environmental Protection Orders and Other Instruments**

Orders aimed at anticipating and preventing or mitigating environmental damage may be issued by the Minister of Environment or Environmental Protection Officers where there is a risk of harm to the Environment, or to public health or safety.

Compliance with such an order is mandatory under the Act, and failure to comply is an offence. Before doing so, or as an alternative, an officer may issue a “Duty to Mitigate” letter to inform the parties who either caused the spill, or had care and control of the material, of their responsibilities.

If a person fails to comply with an environmental protection order issued to them, in addition to possible prosecution, the Minister may take necessary measures to effect Compliance with the order. The Minister may then recover expenses incurred in doing so from the recipient of the order or from a purchaser of land from that recipient. As another option to ensure measures are implemented, for instance if a person fails to comply with an environmental protection order issued to them, the Minister may apply



to the courts for an injunction ordering them to comply under terms and conditions imposed by the court. Part 7 of this document provides the range of Enforcement responses to violations, the criteria considered, and the various orders and other instruments that may be used,

The Minister of Environment may apply to the Supreme Court of Yukon for an injunction to stop or prevent a violation of the Act that would constitute or be directed toward the commission of an offence.

### **Financial Assurance**

In certain circumstances, an individual or business may be required to post a financial bond to guarantee that specified measures in a permit or an environmental protection order issued by the Minister will be completed or for measures appropriate to prevent significant adverse effects on and following the closing of the development or cessation of the activity. As an incentive for Compliance, the financial assurance may be reduced or released in stages, as specified in the permit or order.

## Increasing Public Awareness and Involvement

### **Information Programs**

The government is committed to promoting Compliance with the *Environment Act*. Information programs foster understanding and Compliance. Such information programs include:

- education and awareness initiatives in cooperation with First Nations, businesses and communities;
- consultation with all affected interests in the development of regulations; and
- public distribution of the *Environment Act*, and associated regulations and information documents on Government of Yukon's website, [Yukon.ca](http://Yukon.ca).

### **Public Actions**

Members of the public are encouraged to bring any concerns about environmental damage or possible violations of the Act to the attention of government officials. The

public's valuable role reporting situations which may constitute violations is recognized through a formal procedure allowing members of the public to request an investigation.

Public complaints regarding a decision of an official under the Act may be resolved through a formal complaint procedure or mediation.

## 6. Determining Compliance

The Enforcement and Compliance Policy is designed to encourage early detection and response to violations. The measures used to determine the level of Compliance in regulated developments and activities include the regular review of internal audits, ongoing inspections, and thorough investigation of violations.

This part summarizes many of the powers that the Act provides to Environmental Protection Officers in relation to determining Compliance. However, it does not contain all the information an officer needs to know in relation to those powers. Every Environmental Protection Officer should review their powers in the Act, including the restrictions placed on them.

### Self-Monitoring

Permits issued under the Act may require permit holders to collect monitoring data and submit it to the government on a regular basis. In addition, court orders and injunctions may require the submission of data to the government to allow officials to monitor Compliance with the injunction or order.

### Inspections

The purpose of inspections is to monitor activities and developments to determine whether they are in Compliance with the Act, regulations, a permit, order or direction; or to decide upon an appropriate course of action in the case of non-compliance.

Environmental Protection Officers are responsible for conducting inspections. They may engage in the following inspection activities:

- conducting planned inspections, in accordance with annual inspection plans, or spot checks of sites which are, or ought to be, subject to permits, orders, or directions;
- responding to complaints or reports of possible violation;
- monitoring Compliance with permits;
- issuing inspection reports; and
- issuing orders and directions.

While conducting an inspection, Environmental Protection Officers may take any action necessary to complete the inspection and to ensure Compliance, including the following:

- taking samples or measurements and conducting tests;
- requiring that any process or thing be operated, used, or set in motion under specified conditions;
- requiring that a place or thing not be disturbed;
- requiring that certain documents be produced;
- recording or copying relevant information;
- temporarily removing a document for reproduction;
- making reasonable inquiries of any person;
- making excavations;
- stopping a vehicle or vessel or requiring the driver to produce relevant documents; and
- any other action necessary to complete the inspection.

An Environmental Protection Officer conducting an inspection must carry and, upon request, produce an identification card and explain the purpose of the inspection. If, during an inspection, an Environmental Protection Officer observes a violation of the Act, the Officer will choose an Enforcement option consistent with the Act and this Policy.

Environmental Protection Officers have authority under subsections 151(1)-(2) of the Act to enter the following places without a search warrant to inspect something that is, or ought to be, subject to a permit, order, or direction:

- any place, with the consent of the occupant in charge of the place;
- any place to which the public is ordinarily admitted;
- any part of the Environment to determine the extent, if any, to which a development, activity, or Contaminant has caused an adverse effect and how to address it;
- any place they reasonably believe may contain waste, hazardous substances, or pesticides or be governed by regulations regarding those;
- any place from which they reasonably believe a Contaminant is being, has been, or may be released into the natural Environment; and
- any place likely to contain documents related to the above bullets.

If an Environmental Protection Officer has reasonable grounds to believe they have been, or will be, refused entry to a place for the purpose of inspection, they may apply for a warrant authorizing that entry. Subject to conditions in any warrant issued, the Environmental Protection Officer and any other person specified in the warrant may then enter and exercise any of the above inspection powers.

Officers may enter private dwellings only with the consent of the occupant or as authorized by a warrant.

Inspection powers in s. 151 of the Act are only available to authorize warrantless searches relating to determining Compliance but are no longer available in relation to search activities conducted by an officer where their objective is directed toward investigating, and gathering evidence of, an alleged offence. At that point, *Charter*<sup>5</sup> rights may be engaged to protect a person's right to privacy, and a search warrant may be required. The determination of whether a search violates the *Charter* is very fact-specific.

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<sup>5</sup> Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

## Investigations

The purpose of an investigation is to gather evidence to determine whether the Environmental Protection Officer has reasonable grounds to believe is a violation of the Act or the regulations. The evidence is being gathered in order to decide on appropriate Enforcement response, or to support a prosecution. Reasonable grounds to believe an offence has been committed may include a reliable complaint or report of a suspected offence, or observations or information from an inspection.

## Search and Seizure

An Environmental Protection Officer may apply for a warrant to enter a place, search for and seize any evidence of an offence, if they have reasonable grounds to believe that there is evidence of a contravention of the *Environment Act* or regulations. If the warrant is issued, the Environmental Protection Officer and any other person named in the warrant can enter and search a place and seize specified evidence of a violation, subject to any conditions specified in the warrant.

While conducting a search authorized by the warrant, or as part of a lawful warrantless search, the Officer may also seize anything that may provide evidence of an offence that is not listed in the warrant but is in plain view or is produced to the environmental protection officer. Plain view occurs when evidence falls inadvertently into the view of an officer who is positioned lawfully when they see it. The Officer may seize and remove the evidence or seize it in place.

In circumstances where the grounds to obtain a warrant exist but the delay associated with obtaining a warrant would result in a risk of serious harm to human life or the Environment, or the loss or destruction of evidence of a commission of an offence, an Environmental Protection Officer may enter and search a place (other than a private dwelling without the occupant's consent) at any reasonable time; and seize evidence of an offence.

## 7. Enforcement Responses to Violations of the Act

The *Environment Act* provides for a wide range of Enforcement responses where violations of the Act or regulations have been identified. A single violation may evoke a single response or a combination of responses. There is no prescribed order in which the responses may be chosen as it depends on the circumstances of each violation. For example, a first violation may result in prosecution, while a repeat offender may receive an Environmental Protection Order imposing specified response action.

The following Enforcement responses are available:

- notice of non-compliance
- environmental protection order
- hold order
- product or packaging ban
- order in relation to hazardous substances
- cancellation or suspension of permit
- closure order
- supreme court order
- injunctions
- charge by way of Ticket (available for some offences)
- charge by way of Information

Enforcement personnel will respond to suspected violations of the *Environment Act* and regulations giving priority to those that have, or will likely have, the greatest harm or pose the greatest risk to public health, public safety, and the Environment. Where there is sufficient evidence to conclude that a violation of the Act or regulations has occurred, officials will use the following criteria to determine the appropriate Enforcement response:

## CRITERIA FOR ENFORCEMENT RESPONSES

### **Nature of the Violation**

What is the nature and the extent of the harm or the potential harm to the Environment, human health or safety? Is the violation of a flagrant or deliberate nature indicating a serious disregard for the Environment? Violations of a serious or long-term nature will be treated more seriously than violations which are of a relatively minor nature and of short duration.

### **History of Compliance**

What is the Compliance history of the individual or business which is alleged to have violated the Act or regulations?

Have other methods of Enforcement been tried and proven ineffective with the individual or business?

Did the individual or business ignore the environmental incident in question or did it take measures to reduce or stop any environmental damage? Did the person responsible report the incident to the authorities promptly or was it discovered during an inspection or an investigation?

### **Effectiveness in Achieving Compliance**

Which Enforcement response will be most effective in obtaining Compliance with the Act? If Enforcement action has already been taken by Yukon or other government authorities, which Enforcement response will best complement the initial action?

### **Consistency of Responses**

Similar circumstances require similar responses. What action has been taken in previous similar situations?

## Notices Issued by Environmental Protection Officers

### **Notice of Non-Compliance (s. 158)**

A Notice of Non-Compliance may be the initial response for a relatively minor violation of the Act, regulations, or a permit. Notices may be issued where the environmental harm or public health concern is relatively minor and can be easily remedied.

Notices will be in writing and must give the violator the following information:

- the nature of the violation;
- a request for voluntary Compliance;
- the steps which should be taken to achieve Compliance;
- the date by which Compliance should be achieved; and
- a warning that further action will be taken by the Environmental Protection Officer if there is non-compliance with the requirements of the Notice.

If a public register of Notices of Non-Compliance is established (as per s.158(3) of the *Environment Act*), then notices shall be placed on this register and removed when Compliance has been achieved.

## Orders Issued by Environmental Protection Officers

### **Environmental Protection Order: General (s. 159)**

Where an Environmental Protection Officer believes that a development or activity is causing or likely to cause irreparable environmental damage or actual or imminent harm to public health or safety, the Officer may issue an environmental protection order. The order may require the person responsible for the development or activity to stop the development or activity at issue or take other measures to prevent, remedy, or mitigate the damage or harm.

A general environmental protection order issued under this section must be made in the form included in the *Administrative Regulations*. It expires after seven days. An Environmental Protection Officer can extend the expiry date, but only for one period of seven more days. The Minister may also extend the expiry date.

### **Environmental Protection Order: Spill (s. 136)**

In the case of a Spill, an Environmental Protection Officer may issue an environmental protection order under s. 136, which does not have the same legislated expiry as a general order under s. 159. This order may require the person responsible under the Act for that Spill (the person who owns or who had possession, charge, or control of the spilled substance at the time it was spilled) to take remedial measures including investigating the Spill, minimizing the effects of the Spill, setting up pollution control equipment, restoring the area affected by the Spill, and taking measures to prevent further releases.



### **Remedial Action or Direction Relating to Spill (s. 137)**

If a person responsible for mitigating a Spill (the person who owns or has possession, charge, or control of the spilled substance at the time of the Spill) has not taken all reasonable measures to confine, repair, and remedy the effects of the Spill and to remove the substance spilled in such a manner as to reduce or mitigate any danger to human life, health, and the natural Environment, and an Environmental Protection Officer believes that there is or may be a danger to human life or health or the Environment, the Officer may take remedial action themselves, hire another person or direct the person responsible for the substance to take specific action(s) required under paragraph 135(a) of the Act.

### **Hazardous Substances Order (s. 121)**

To reduce the risk of the release of a hazardous substance, an Environmental Protection Officer may order a person who has possession, charge, or control of the hazardous substance to undertake the following measures at his/her own expense:

- to investigate and report on the magnitude of any risk;
- to prepare a contingency plan as directed; and
- to take measures including constructing, altering, or acquiring works or any other measures to abate or prevent a Spill.

### **Hold Order (s. 153)**

An Environmental Protection Officer may issue a hold order to require a person who owns or has possession, charge, or control a Contaminant to control the Contaminant if it is being or likely to be released into the Environment and causing or likely to cause an adverse effect. The Hold Order can require the recipient to secure and detain the Contaminant or the source of the release in the manner set out in the order.

### **Waste Removal Order (s. 97)**

Where either solid waste or special waste is disposed of in an unauthorized manner, an Environmental Protection Officer may order the person responsible for depositing the

waste, or the owner or occupier of the area where the waste was deposited, to remove the waste and restore the site to a satisfactory condition.

### **Litter Order (s. 104)**

An Environmental Protection Officer may order the registered owner, occupier or tenant of unsightly private property in relation to local neighbourhood standards regarding the disposal of litter to take specific actions to clean up the property. The contents of the order must take into consideration local standards and the provisions of the *Public Health and Safety Act*.

## Orders Issued by the Minister

### **Contaminated Sites Restoration Order (s. 115)**

Where the Minister believes on reasonable grounds a contaminated site is, or is likely to cause, a threat to public health or has caused or is likely to cause unsafe conditions or irreparable damage to the natural Environment, the Minister, or person in an appropriate capacity in the Department of Environment, may order a person who had possession, charge or control of the Contaminant at the time of its release into the natural Environment to take certain actions. These include: provide information on the site, investigate and report about the site or adjoining lands, establish a plan for restoration or rehabilitation and a timeline for doing so, and to restore or rehabilitate the site. The order may authorize any person designated by the Minister to enter land to carry out the restoration or rehabilitation.

All restoration orders will be placed on a public registry of contaminated sites. Upon appropriate restoration or rehabilitation of the site, the Minister will issue a Certificate of Compliance.

### **Cancellation or Suspension of Permits (s. 91)**

If a permit holder fails to meet any of the conditions of a permit or violates the Act or regulations and the permitted development or activity has either caused or is likely to

cause irreparable or costly damage to the Environment, the permit may be suspended or cancelled.

The permit may also be cancelled or suspended where the permitted development or activity has caused or is likely to cause a threat to public health or safety. This determination is made on the advice of a health officer.

Before deciding whether to cancel or suspend a permit under this authority, the Minister, or a person in an appropriate capacity in the Department of Environment, must provide the permit holder with reasonable notice of the intended suspension or cancellation and an opportunity to make representations. Upon suspension or cancellation of the permit, the permit holder will receive notice with reasons. The Minister, or person in an appropriate capacity in the Department of Environment, must, when satisfied that the conditions that led to the suspension or cancellation have been adequately remedied, either reinstate the permit or issue a new permit.

### **Closure Order (s. 162)**

The Minister may, by order directed to a permit holder, close a development or stop an activity for any time considered necessary under the circumstances. Before making such an order, the Minister must provide reasonable notice to the permit holder and an opportunity to make representations and must obtain the approval of the Commissioner in Executive Council. The Minister must revoke the order when satisfied that adequate steps have been taken to remedy the conditions that were the basis for the order.

A closure order may be considered an appropriate Enforcement response where, for example, cancelling or suspending a permit alone would not adequately address the issue of ongoing environmental damage.

### **Environmental Protection Order: General (s. 160)**

The Minister, or person in an appropriate capacity in the Department of Environment, may issue an environmental protection order when they have reason to believe that a contravention of a permit or order or of the Act or regulations has occurred or is

occurring, or that a development or activity is causing or likely to cause a significant adverse effect or an actual or likely threat to public health or safety.

The order may require the person in control of the development or conducting the activity to do the following:

- to shut down the development or cease the activity until the Minister is satisfied that Compliance has been achieved;
- to prevent, remedy or mitigate any significant adverse effect or threat to public health or safety;
- to restore or rehabilitate the natural Environment to a condition satisfactory to the Minister;
- to comply with any order issued by an Environmental Protection Officer; or
- to comply with any directions issued by an Environmental Protection Officer relating to a Spill of a hazardous substance, pesticide, Contaminant or special waste.

The order will include the Minister's reasons for issuing it as well as a deadline for meeting requirements, and must be made in the form included in the *Administrative Regulations*.

Except in urgent situations, the Minister must offer to consult with other authorities as the Minister considers appropriate, including the federal government, a municipality or a Yukon First Nation, before issuing an environmental protection order. Where practicable, the Minister will give the intended recipient and any other directly affected person notice of his/her intention to issue the order and a reasonable opportunity to make representations.

### **Environmental Protection Order: Spills (s. 136)**

In the case of a Spill, the Minister, or a person in an appropriate capacity in the Department of Environment, may issue an environmental protection order requiring the person who owns or had possession, charge, or control of the spilled substance at the time it was spilled, to take remedial measures; including investigating the Spill, minimizing the effects of the Spill, and taking measures to prevent further spills.

## Hazardous Substances Order (s. 121)

If the Minister, or a person in an appropriate capacity in the Department of Environment, is satisfied that the handling or importation of a hazardous substance will cause significant impairment of the natural Environment that cannot otherwise be prevented or mitigated, they may, by order, prohibit the handling or importation of that hazardous substance. The order must specify the hazardous substance subject to the order, any condition required to implement the order, and any necessary exemptions from the order.

## Charges Laid by Environmental Protection Officers

Charges may be prosecuted by way of two alternative processes: by way of Ticket or information. A Ticket must be served within 30 days of the alleged offence. The time limit for commencing proceedings by way of information is within two years of the later of either the day on which the offence was committed or the day on which an Environmental Protection Officer had sufficient evidence of the offence to justify a prosecution.

### Ticketing

Environmental Protection Officers may issue Tickets to persons who commit offences that are listed in the *Summary Conviction Regulations* as prescribed or “ticketable” offences. Where an offence is designated as “ticketable”, a Ticket may be issued in response to violations under the *Summary Convictions Act* in consideration of the totality of the circumstances. However, this option may not be appropriate for more significant violations.

A Ticket provides the alleged violator with a period of time in which to choose one of the following options:

- to plead guilty and pay a prescribed fine without going to court;
- to request an appearance in court to present relevant information to the court; or
- to plead not guilty and proceed to trial.

If one of these options is not chosen within the stated time limit or the accused does not appear in court to answer the charge, the violator will be convicted of the offence in their absence and become liable for the prescribed penalty or potentially up to double the prescribed set fine.

A Ticket must be properly served on the accused person within 30 days of the alleged offence. Service is by personal delivery to the accused. The Ticket must also be filed with the court registry as soon as practicable after it has been served, and within 30 days of service.

In the instance where issuing a Ticket, order or direction does or would likely not result in the recipient's compliance, or for more significant violations, the use of a long form information and summons or appearance notice should be considered, to compel the accused to court to answer to a charge.

### **Offences Charged by Long-Form Information**

Charges by way of information will generally be the response in the case of a violation, subject to officer discretion in the particular circumstances, where any of the following criteria apply:

- The violation results, or could likely result, in serious harm or risk of harm to human life, health or the Environment.
- The alleged violator deliberately provided false or misleading information or test results to an authority under the Act.
- The alleged violator hindered or obstructed an Environmental Protection Officer in his/her duties.
- The alleged violator concealed or attempted to conceal information regarding an offence,
- The alleged violator failed to take all reasonable measures to comply with a direction or order issued under the Act.
- The violation is subsequent to previous convictions of the same nature.
- The violator intentionally contravened the Act or the regulations.
- Issuing a Ticket would be an inadequate response.

A thorough investigation must be conducted before charges are laid. This involves collection of all evidence of the offence including witness statements and cautioned statements from the accused, physical evidence in the form of samples, documents, photographs, and videos. The lead investigator will consider all relevant legislation and possible defences and make every effort to gather evidence that would address all anticipated defences. The lead investigator will maintain all evidence as per agency policies, and this evidence and how it supports the charge(s) will be clearly documented in the Enforcement file. A detailed court brief will be provided to the Crown prosecutor responsible for prosecuting the charge(s) if the matter proceeds to court. The case file will contain all documents in government's possession that are relevant to the offence, including those that might assist the accused in pursuing a line of defence.

Where continuing harm to the Environment or public health and safety exists, it may be necessary to pursue abatement action in the form of an order, direction, or an application to the Supreme Court for an injunction, to minimize environmental harm while at the same time pursuing prosecution.

### **Penalties and Court Orders upon Conviction**

The Act provides the court with broad powers to impose penalties once an accused has been convicted of an offence. The range of penalties available includes fines, imprisonment, and other court orders. Environmental Protection Officers will consider the following criteria when making sentencing recommendations.

### **Criteria for Sentencing Recommendations**

The factors that are considered in sentencing recommendations include, but are not limited to:

- How serious was the offence? What was the harm or the potential harm to human health and safety or the Environment?
- What is the Compliance history of the offender? Does the offender have previous convictions for similar offences?

- Has the offender taken responsibility for the offence? What has been the offender's level of cooperation and willingness to minimize the effects of the offence?
- What kind of deterrent effect will the amount of fine have on the offender? If a corporation, what can you find out about its size and profits?
- How effective would the recommended penalty be in achieving Compliance with the Act?
- How effective would the penalty be in deterring the offender and others in the community from committing similar offences?
- What penalties were imposed in similar cases?

### Court Orders

In addition to a fine or imprisonment, upon conviction, the court sentencing may require the convicted person:

- to take measures to refrain from causing any further adverse effect;
- to take corrective measures to restore or rehabilitate the natural Environment affected by the commission of the offence; or
- to pay restitution to compensate any person who has been harmed by the offence.

### Civil Actions Initiated by the Government

The Government of Yukon may commence a range of civil remedies in Yukon Supreme Court, including injunctions, declarations, awards of damages, orders for cost recovery, preventative measures orders, restoration orders, and permit suspensions or cancellations.

Monies received by the government, as a result of a successful civil action under paragraph 8(1)(a) of the Act are directed to the Environmental Account, a special account established under the Act for the purposes of restoration and the general enhancement of the Environment. The government will normally resort to a civil court action only where the matter cannot be otherwise resolved.



### **Court Order for Cost Recovery**

The Government of Yukon may sue to recover costs it has incurred in effecting Compliance with an environmental protection order if the person to whom it was issued failed to comply. Such expenses can also include, without limitation, investigating and responding to a violation or any matter to which a direction or an Environmental Protection Order relates.

### **Injunctions to Prevent Violations (s. 185)**

The Minister, or a person in an appropriate capacity in the Department of Environment, may apply to the court for an injunction if a person has done, is about to do, or is likely to do anything constituting an offence or directed toward the commission of an offence. Generally, an injunction may be sought in circumstances where the violation may cause imminent and serious environmental damage.

Where the violation has already occurred, the Department may, in addition to obtaining the injunction to stop further damage, pursue other Enforcement responses such as prosecution or civil action.

### **Injunction for Non-Compliance with Environmental Protection Order (s. 164)**

Where a person has failed to comply with an environmental protection order, the Minister may apply to the Yukon Supreme Court for an injunction to order Compliance under terms and conditions imposed by the court.

In addition, the Minister may seek an injunction to stop or restrain the operation of a development or activity where the appropriate financial assurance required by an environmental protection order has not been provided. Injunctions may be available even where the defendant has been convicted of an offence for the same activity.

Where a person disobeys an injunction, the Minister may return to court to seek a contempt of court ruling, further instructions from the court or additional penalties.

## 8. Contact Information

The Enforcement and Compliance Policy for the Yukon's Environment Act is issued by the Department of Environment, Government of Yukon.

Information about the *Environment Act* and its regulations and related documents are available on the government's website [Yukon.ca](http://Yukon.ca). Department of Environment can be contacted at the offices identified below.

### Department of Environment Offices

Whitehorse Head Office:	10 Burns Road (across from airport)
Environmental Protection & Assessment Branch	(867) 667-5683
Toll Free Number:	1-800-661-0408 Ext.5683
Fax:	(867) 393-6205
Email	envprot@yukon.ca
Mailing Address:	Environmental Protection & Assessment Branch V-8 Department of Environment Box 2703 Whitehorse, Yukon, Y1A 2C6
<b>Department of Environment Conservation Officer Services' District Offices</b>	
Dawson City	867-993-5492
Faro	867-994-2862
Haines Junction	867-634-2247
Mayo	867-996-2202
Ross River	867-969-2202
Teslin	867-390-2685
Watson Lake	867-536-7363
Whitehorse	867-667-8005