



PROCEDURAL FAIRNESS POLICY



Author: Alberta Recycling Management Authority

Date: April 1, 2024

CONTACT US

ADDRESS

10020 108 St NW,
Edmonton, AB, Canada T5J 1K6

MAILING ADDRESS

P.O. Box 189
Edmonton, AB, Canada T5J 2J1

LOCAL

780.990.1111

TOLL FREE

1.888.999.8762

INQUIRIES

epr@albertarecycling.ca

OBJECTIVE OF POLICY

Alberta Recycling Management Authority (the "**Authority**") is dedicated to working closely with EPR Participants to advance a circular economy and a waste free Alberta, in accordance with the principles of fairness and transparency. "**EPR Participant**" means a producer, producer responsibility organization, processing facility, or a community is registered with the Authority as well as all individuals and entities who are obligated to register with the Authority pursuant to the *Extended Producer Responsibility Regulation*, Alta Reg 194/2022.

The Authority takes a risk-based approach to compliance and enforcement. This approach assesses the risks that arise from a EPR Participant's non-compliance with the Authority's bylaws to guide the proper approach to compliance and enforcement.

The Authority shall ensure that process in making all enforcement decisions is procedurally fair, in accordance with this Policy, and the nature and consequences of the decision. The Authority acknowledges that the principles of procedural fairness apply to (i) all administrative enforcement responses, (ii) the degree proportionate to the significance of the enforcement response, and do not apply to (iii) court prosecutions.

SCOPE OF POLICY

This Policy outlines the Authority's procedures for addressing a EPR Participant's non-compliance of the Authority's bylaws.

This Policy does not apply to a EPR Participant's non-compliance of:

- (a) the *Extended Producer Responsibility Regulation*, Alta Reg 194/2022; or
- (b) the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12.

PROCEDURE

1. The Authority shall conduct any audits, inspections, reviews, or investigations ("Inspections") to confirm a EPR Participant's compliance with the bylaws in accordance with the Authority's Inspection Policy.
2. The Authority will appoint a Compliance Director to assess whether the EPR Participant has failed to comply with the Authority's bylaws. The Compliance Director must not:
 - (a) be involved in the relevant inspection, if applicable;
 - (b) have any existing or potential conflict of interest.

3. The Compliance Director shall provide the EPR Participant with a notice of non-compliance ("**Notice**") which will include:
 - (a) the name of the EPR Participant;
 - (b) the particulars of the alleged non-compliance;
 - (c) the bylaw, including the relevant section, under which the alleged non-compliance occurred;
 - (d) the Authority's assessment for the administrative penalty payable by the EPR Participant, if applicable; and
 - (e) the date by which the EPR Participant must pay the administrative penalty to the Authority, if applicable.
4. A Notice may not be issued more than 2 years after the later of:
 - (a) the date on which the non-compliance to which the Notice relates occurred, or
 - (b) the date on which evidence of the non-compliance first came to the notice of the Authority.
5. The EPR Participant may provide a response to a Notice ("**Response**") within thirty (30) days of receipt of said Notice. EPR Participants may challenge the evidence and make submissions regarding the alleged non-compliance in the Response.
6. Unless otherwise agreed to by the Authority in writing, the EPR Participant shall be deemed to admit the alleged non-compliance if the EPR Participant does not provide a Response within thirty (30) days of receipt of said Notice.
7. If the EPR Participant provides a Response, the Compliance Director shall consider the EPR Participant's submission and determine whether the details and imposed enforcement tools set out in the Notice should be:
 - (a) maintained,
 - (b) amended; or
 - (c) cancelled (the "**Decision**").
8. The Compliance Director shall issue a Decision by the later of:

- (a) thirty (30) days after the Notice is provided to the EPR Participant; or
 - (b) thirty (30) days after receipt of the Response.
9. The Compliance Director shall have the authority to make the Decision with unfettered discretion. The Decision or the outcome of this procedure may not be prescribed in policy as the Compliance Director must consider the specific facts of the EPR Participant's alleged non-compliance.
10. When making the Decision, the Compliance Director shall:
- (a) consider all relevant information, including information provided by the EPR Participant;
 - (b) not consider irrelevant information or considerations;
 - (c) ensure that the Decision has no appearance of bias;
 - (d) identify any potential appearance of bias;
 - (e) finalize the Decision in a timely manner;
 - (f) provide the EPR Participant with written reasons explaining the Decision.
11. The Authority shall provide a report to the Minister of Environment and Protected Areas on an annual basis summarizing the compliance activities which the Authority undertook during the year in respect of EPR Participants' non-compliance of the Authority's bylaws.

ASSESSING COMPLIANCE TOOLS

12. The Compliance Director shall use a risk-based compliance framework, in accordance with the Inspection Policy, to assess the appropriate enforcement tools or quantum of administrative penalty payable for a EPR Participant's contravention of the bylaws. The Compliance Director shall consider:
- (a) the type and risk of the EPR Participant's non-compliance;
 - (b) the level of knowledge and understanding of the EPR Participant,
 - (c) the EPR Participant's capacity to comply with the bylaws,

- (d) the EPR Participant's history of non-compliance with the bylaws; and
- (e) the reason for the EPR Participant's non-compliance.

PROGRESSIVE COMPLIANCE

13. As a general principle, the Authority shall use a progressive approach, informed by risk assessment and the specific facts of non-compliance. The following compliance tools are available to the Authority:

- (a) proactive education and awareness;

The Authority will implement initiatives to educate EPR Participants about their obligations under the Authority's bylaws.

The objective is to maximize voluntary compliance. Education will mitigate the risk associated with EPR Participants not being aware of their obligations under the Authority's bylaws.

- (b) Inspections;

Inspections shall be used to monitor for compliance, in accordance with the Authority's Inspection Policy.

- (c) communication;

If appropriate considering the risk of the non-compliance, the Authority may first communicate with the non-compliant EPR Participant to encourage compliance. Communication typically begins with an initial letter outlining the issue and may include a Notice with a deadline to comply. Depending on the circumstances, the Authority may provide more active support to EPR Participant to assist them in achieving compliance with the Authority's bylaws.

- (d) compliance order;

The Authority may issue a compliance order to address ongoing non-compliance.

- (e) administrative penalties.

The Authority may issue a Notice with an administrative penalty as a further step to address non-compliance.

ADMINISTRATIVE PENALTIES

14. The Authority shall establish guidelines to assess the severity and potential adverse effect for bylaw contraventions in a consistent manner. The Authority shall consider the factors outlined in Section 12 in this assessment.
15. Subject to Section 16 and 17, the amount of an administrative penalty for each contravention that occurs or continues shall be determined according to Table 1 below, but that amount may be increased or decreased by the Authority in accordance with Section 16. The amount may be applied for each day on which the contravention occurs and continues.

TABLE 1

	Major Contravention	Moderate Contravention	Minor Contravention
Major Potential for Adverse Effect	\$5000	\$3500	\$2500
Moderate Potential for Adverse Effect	\$3500	\$2500	\$1500
Minor Potential for Adverse Effect	\$2500	\$1500	\$1000

16. In a particular case, the Authority may increase or decrease the amount of the administrative penalty from the amount set out in Table 1 on considering the following factors:
- (a) the importance to the regulatory scheme of compliance with the bylaw;
 - (b) the degree of wilfulness or negligence of the EPR Participant in the contravention;
 - (c) whether or not there was any mitigation relating to the contravention;
 - (d) whether or not the EPR Participant has taken steps to prevent reoccurrence of the contravention;
 - (e) whether or not the EPR Participant has a history of non-compliance;
 - (f) whether or not the EPR Participant has derived any economic benefit from the contravention; and

(g) any other factors that, in the opinion of the Authority, are relevant.

17. The Authority shall not require a EPR Participant to pay a penalty which exceeds the maximum penalty value for each contravention or for each day on which the contravention occurs and continues that is described in section 3(3) of the *Administrative Penalty Regulation*, AR 23/2003, as amended or replaced from time to time.