

Risk-Based Compliance

The Authority takes a risk-based approach to compliance. This approach focusses on the risks that arise from non-compliance, and uses an assessment of those risks to guide the selection of compliance tools to be used, and the deployment of resources to minimize risk and maximize compliance. A risk-based approach allows for appropriate priority setting and efficient allocation of resources, a more efficient recovery of regulatory costs from regulated entities, and provides a basis to measure and improve performance.

A risk-based approach to compliance requires the following steps to be taken for each designated product or packaging:

1. Describe the regulatory requirements and the applicable categories of non-compliance risk.

Under the RRCEA, examples of these are:

- a. Prescribed entities do not register
- b. Prescribed entities do not pay the fees associated with registration
- c. Prescribed entities do not file prescribed information or file incomplete or inaccurate information
- d. Prescribed entities do not comply with waste reduction or resource recovery requirements

Under the WDTA, examples of these are:

- a. IFO fails to provide a wind-up plan as directed
- b. IFO fails to implement a wind-up plan as approved
- c. IFO fails to provide information requested by the Authority
- d. Stewards fail to comply with the diversion program rules for stewards

2. Develop an understanding of those parties who are subject to the regulatory requirements, to the extent such information is available, i.e., who and what is prescribed in the applicable regulation, the environment and context within which those parties operate, their level of knowledge and understanding of the regulatory requirements, their capacity to comply, and their previous compliance performance.
3. Identify the potential reason for the non-compliance risk. Obligated parties may fail to comply with their obligations for various reasons:
 - a. Persons subject to regulatory requirements are not aware of those requirements;
 - b. Persons are aware of regulatory requirements but do not understand what is required to meet those requirements;
 - c. Persons are aware of regulatory requirements but lack the capacity to comply;
 - d. Persons are aware of the regulatory requirements and choose not to comply.
4. Based on the information developed above, develop a risk profile for each category of non-compliance by assessing the likelihood of non-compliance and impact of non-compliance for each category of non-compliance using the following matrix:

IMPACT	High	Medium	High	High
	Medium	Low	Medium	High
	Low	Low	Low	Medium
		Low	Medium	High
		LIKELIHOOD		

5. Based on the identified risk level, create a compliance plan that includes compliance priorities, compliance responses, resource requirements and related timing.
6. Measure compliance outcomes to determine the success of the compliance plan and make any adjustments to the plan required to improve compliance outcomes as new information becomes available.

Progressive Compliance and Compliance Tools

As a general principle, a progressive approach is used to achieve compliance, informed by risk assessment. A progressive approach tailors the choice of compliance tool to the nature of the non-compliance. Generally, the choice of compliance tools will follow this progressive approach, informed by the risk analysis and the specific facts of a particular case. The following compliance tools are available to the Registrar:

1. pro-active education and awareness
2. inspections and audits
3. communication to address non-compliance
4. compliance order
5. administrative penalty order
6. prosecution

1. Pro-active education and awareness

The RRCEA provides for the government to establish regulations. Each regulation will typically:

- set a compliance deadline
- prescribe the persons that have to register and the information they have to file
- Set the waste reduction and resource recovery requirements.

The Authority, working with the Ministry of the Environment and Climate Change and other partners, will implement an awareness campaign to alert obligated parties to their regulatory obligations. Education initiatives will be implemented to educate those who are subject to the regulation on what is required, and what they have to do meet the requirements, in advance of the compliance deadline.

The objective is to maximize voluntary compliance. This mitigates the risk associated with persons not being aware of their compliance obligations or not being aware of what they need to do to comply.

2. Inspections and audits

Inspections and audits will be used to monitor for compliance, in accordance with the applicable compliance plan.

3. Communication with non-compliant parties

Communication is generally the first response to non-compliance. Clear communication identifying the non-compliance, the steps required to comply, an offer of assistance where appropriate (e.g. with registration) and potential consequences of continued non-compliance is the most effective approach to achieving compliance at this stage. Communication typically begins with an initial letter and may include a notice of non-compliance with a deadline to comply. Depending on the circumstances, the Authority may provide more active support to parties in achieving compliance.

Communications would be designed using 'communicating for compliance' techniques; i.e., the language used, the format, the means of transmittal and any follow up would be designed to have maximum behavioural impact on the non-compliant party.

4. Compliance order

In most circumstances, a compliance order will be the next step to address ongoing non-compliance. A compliance order may be issued by an inspector, the Deputy Registrar or the Registrar for failure to comply with the RRCEA and regulations.

5. Administrative penalty order

An administrative penalty order may be issued by the Registrar or Deputy Registrar for contravention of specified provisions of RRCEA, the WDTA, and associated regulations as a further step to address non-compliance. Under the RRCEA, this may be done in conjunction with or subsequent to a compliance order or as an alternative to a compliance order, based on the circumstances of the contravention.

6. Prosecution

As an alternative to, or in addition to a compliance order, a non-compliance matter may be assigned to a designated provincial officer for an investigation to determine whether an offence has been committed.